

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT XXIX

Replace the highlighted spaces on this page with the vacancy you seek to fill
VII, XXIX, C, N or O
Candidates may only choose one department.

By

Adam J. Breeden



Personal Information

1.	Full Name	Adam Jennings Breeden
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	NA
3.	How long have you been a continuous resident of Nevada?	19 years
4.	City and county of residence	Las Vegas, Clark County Nevada
5.	Age	45

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Breeden & Associates, PLLC
Phone	702-819-7770
Physical Address & Website	2831 St. Rose Pkwy #200, Henderson, NV 89052 www.breedenandassociates.com
Date(s) of Employment	November 2015 to present
Supervisor's Name and Title	None, I am the owner
Your Title	Attorney
Describe Your Key Duties	I own and run the entire practice, both on a case level and administrative level. The law firm is a plaintiff-oriented personal injury practice with a focus on medical and legal malpractice cases. This is a litigation and trial practice with most matters having close to or in excess of \$1,000,000 in exposure. I handle all marketing, client intake, discovery and trial.
Reason for Leaving	NA

Previous Employer	Lewis Brisbois Bisgaard & Smith, LLP
Phone	702-893-3383
Address & Website	6385 S. Rainbow Blvd., Suite 600 Las Vegas, NV 89118 www.lewisbrisbois.com
Date(s) of Employment	9/2010 to 9/2011 and from 3/2013 to 11/2015

Supervisor's Name and Title	Darrell Dennis, Esq.- Managing Partner
Your Title	Associate Attorney
Describe Your Key Duties	Lewis Brisbois is a multi-state defense law firm based out of Los Angeles with over 800 attorneys in 26 offices and 13 states from coast to coast. My practice there was in the area of personal injury defense, auto accidents, slip and fall and premises liability. Representative clients/insurers include M Resort, Marnell Companies, Caesars Entertainment, Chartis, CNA Insurance, AIG, Lexington Insurance and others. I was responsible for day to day handling of litigation ranging from minor rear end auto cases of less than \$10,000 at issue to multi-million dollar class action suits with \$100,000,000+ in exposure.
Reason for Leaving	Left to pursue self employment

Previous Employer	Breeden & Herbe, Ltd.
Phone	NA
Address & Website	Closed, previously located at 139 E Warm Springs Rd., Las Vegas, NV 89119
Date(s) of Employment	6/2007 to 12/2008
Supervisor's Name and Title	NA
Your Title	Managing attorney
Describe Your Key Duties	Breeden & Herbe, Ltd. was a law firm partnership and general litigation firm. We represented a number of criminal, workers comp and civil clients.
Reason for Leaving	Sought employment due to economic downturn

Previous Employer	Hafen, Porter & Storm, LLC Hafen & Porter, LLC Porter & Terry, LLC
Phone	NA
Address & Website	Closed, previously located at 525 S 9th St Las Vegas, NV 89101
Date(s) of Employment	Hafen, Porter & Storm, LLC 11/2003 to 6/2007 Porter & Terry, LLC 12/2008 to 9/2009
Supervisor's Name and Title	Gregory T. Hafen, Esq. and Ralph Porter, Esq.- Managing attorneys
Your Title	Associate attorney
Describe Your Key Duties	Associate defense litigation attorney. Responsible for day to day litigation defense handling of primarily auto and general liability insurance defense. Primarily Farmers and CSAA/AAA Nevada insurance
Reason for Leaving	Left to pursue self employment/disagreement over compensation

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Unioto High School 14193 Pleasant Valley Rd, Chillicothe, OH 45601	1992-1996	Graduated with general diploma
The Ohio State University 281 W Lane Ave. Columbus, OH 43210	1996-2000	Graduated with B.A.
Hondros College 9286 Schulze Dr. West Chester, Ohio 45069	2001	Completed real estate sales pre-licensing educational requirements
University of Cincinnati College of Law 2925 Campus Green Dr. Cincinnati, OH 45221	2000-2003	Graduated with J.D.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

High school Talented and Gifted Program, All-Ohio high school athlete for golf, band saxophone player, National Honor Society. In undergraduate college at Ohio State I graduated Summa cum laude (top 3% of class), double major in Political Science and Communications, minor in Philosophy, Ohio State University campus scholarship recipient, Ohio State University National Merit scholarship, Ohio State University Dept. of Communications scholarship. Also attended an Ohio State study abroad program at Oxford University, England.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

I attended the University of Cincinnati College of Law, 2925 Campus Green Dr., Cincinnati, OH 45221 from 2000-2003 in their full-time program and was awarded a juris doctorate (JD) degree. Class rank was 21 out of 131. Located in the Clifton area of Cincinnati, the law school was considered a "top tier" law school per the US News & World Reports at the time and attached to a major research University. Its alumni include many distinguished jurists to have been state governors, US attorney general, and US representatives, including William Howard Taft, the only person to ever serve as US President and US Supreme Court Chief Justice.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I was a full-time law student while enrolled at the University of Cincinnati.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

In law school, I was a published member of the Law Review and was responsible for screening and cite-checking submissions for publication. I was a member of VITA (Volunteer Income Tax Assistance), which was a program where law students helped low-income and other community members prepare their tax returns and maximize their refunds. I was on the TIP (Tenant Information Project) where law students manned a call-in hotline for tenants with questions under Ohio law facing eviction or other landlord-tenant issues. I was a judicial extern for Hon. Sandra Beckwith of the United States District Court for the Southern District of Ohio. I also received several book award scholarships based on academic performance, was on the Dean's List every semester in law school, and received the American Legion Certificate School Award for Distinguished Achievement. I was one of four members per class designated as a Corporate Law Fellow and received the Timothy Walker Founder's Scholarship, which led to my last two years of law school being on a full scholarship for tuition.

Law Practice

12. State the year you were admitted to the Nevada Bar.

Admitted in April 2004 to the Nevada State Bar.

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

The following list includes all bar admissions, state and federal. Some are presently voluntarily inactive:

Ohio #77118- 12/2/2003
Nevada #8768- 4/22/2004
US Dist. Nevada- 7/1/2004
US Ninth Circuit Court of Appeals- 9/1/2005
US Supreme Court- 3/30/2015
US Sixth Circuit Court of Appeals- 4/15/2015
US Southern District of Ohio- 5/19/2015
Arizona #32265- 7/8/2015
US Northern District of Ohio- 7/21/2015
US District of Arizona- 11/2/2015
Florida #124046- 9/23/2016
US S.D. Florida- 10/23/2016
US Eleventh Circuit Court of Appeals- 10/28/16

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

I would estimate that my practice is 99% litigation focused. Around 5% of my practice is appellate focused, the remainder being trial court level work.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0
Juvenile matters	0
Trial court civil	95
Appellate civil	5
Trial court criminal	0
Appellate criminal	0
Administrative litigation	0
Other: Please describe	0

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

I cannot recall any matters I have handled that were set for a non-jury trial in the past five years, so I would estimate 100% of my litigation matters were set for jury trials.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

In the last five years, I can recall three full civil jury trials I have conducted as lead counsel, Richardson, Taylor and Lathbury.

19. List courts and counties in any state where you have practiced in the past five years.

Nevada: Clark, Nye, Carson City and Washoe counties, US District Court for Nevada, Nevada Court of Appeals, Nevada Supreme Court

Arizona: Maricopa county

**Florida: Miami-Dade county/US District Court S.D. Florida
US Ninth Circuit Court of Appeals**

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: UAS v. Vision Airlines A-09-599852-C (2009)
Court and presiding judge and all counsel: Eighth Judicial District Court Defense counsel- Harold Gewerter, Esq. Presiding Judge- Edward Miley, Esq.
Importance of the case to you and the case's impact on you: This case involved a commercial dispute and non-jury trial over disputed airway fees and services. At the time, this was the largest trial result I achieved. The case resulted in a total victory of all claimed amounts for \$490,302 for the client. This client was a large, international company based in Dubai and was elated with the result.
Your role in the case: Lead counsel for Plaintiff UAS

Case 2
Case name and date: Union Int'l Foods (various matters around 2010)
Court and presiding judge and all counsel: I cannot recall
Importance of the case to you and the case's impact on you: In this case, I was asked to defend an importer of Vietnamese white pepper, which had not been properly irradiated. The pepper was contaminated with Salmonella and resulted in close to 100 reports of serious illness and at least one death. These cases (which were eventually settled) were filed across several states and had numerous plaintiffs. Management of the litigation alone was daunting and I was assigned to work with lead defense counsel from Chicago. This case gave me my first real experience with mass tort litigation and the unfortunate reality of how these cases affect lives.
Your role in the case: Associate defense counsel

Case 3
Case name and date: SLS Properties v. Renzi 08-A-557530-C
Court and presiding judge and all counsel: Eighth Judicial District Court Defense Counsel: Ben Childs, Esq. Judge: Hon. Joanna Kishner
Importance of the case to you and the case's impact on you: This case was a dispute over money owed on a real estate development deal. It involved very high dollars, non-cooperative defendants

and “aggressive” litigation. Ultimately, I achieved an award through sanctions in excess of \$15,000,000 for the client. This would be memorable enough due to the amount involved, but afterward there was an appeal to the new Nevada Court of Appeals, which affirmed the judgment in one of its first opinions written by the new Court, so it is memorable for that purpose as well.
Your role in the case: Lead counsel for the Plaintiff

Case 4
Case name and date: Alicia Sura v. Dr. M. Spann (2022)
Court and presiding judge and all counsel: Eighth Judicial District Court Opposing counsel: Katherine Turpin, Esq. Judge: Hon. Adriana Escobar
Importance of the case to you and the case’s impact on you: This case involved allegations that a physician during a wound repair accidentally severed the patient’s sciatic nerve, leading to permanent pain and disability. When this client originally came to me, she did not even know what had gone wrong. I worked closely with this client for a year and retained multiple experts to properly present her case, ultimately resulting in a substantial but confidential settlement amount. To me, being able to help this client get compensation for such a horrible injury represented the reason why I chose to leave defense practice and instead represent injury victims.
Your role in the case: Lead counsel for Plaintiff

Case 5
Case name and date: Ve Le (2020)
Court and presiding judge and all counsel: This matter resolved prior to litigation
Importance of the case to you and the case’s impact on you: This is another client that had a serious injury but wished to change attorneys because his prior attorney was not listening to him and taking his case seriously. Mr. Le was horribly injured when a semi truck ran a stop sign and hit his vehicle. I often hear from clients that they choose me because their old attorney wouldn’t even take their calls. At any rate, around six months after taking over this case from the former attorney, I was able to get a fantastic settlement for Mr. Le that will provide for him for many years.
Your role in the case: Lead counsel for Plaintiff

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

Yes I have completed AAA Mediator training (provided by the American Arbitration Association) and conducted mediations for the State Bar of Nevada fee dispute committee in the past. I'd like to say that if appointed I would happily and seriously participate in the District Court's settlement conference program and take that very seriously. I think the program is crucial to help the burdened district court dockets but also to keep case costs lower (the program is free) for all parties.

22. Describe any pro bono or public interest work as an attorney.

In my career I have extensively participated in pro bono work as an attorney, mostly in association with Legal Aid of Southern Nevada (believe it or not, all the way back when they were the Clark County Pro Bono Project). I have volunteered for both their Family Law Ask-a-Lawyer events and their Homeless and Veteran Ask-a-Lawyer events. This consists of meeting members of the public at the courthouse, local shelters or veterans offices and providing all sorts of advice from financial to criminal to civil matters. I have handled multiple pro bono appellate matters and been a pro bono appellate mentor to UNLV Law students. I was given an annual award of "rising firm" in 2007 by the Clark County Pro Bono Project and volunteer of the month by the Legal Aid Center of Southern Nevada. I will also say that I represented a victim of attorney E.H. (later disbarred) on a pro bono basis against the State Bar of Nevada for compensation. E.H. had stolen this client's life savings after I had alerted the State Bar of other serious issues with E.H. and no action was taken. While the Victim Compensation Fund ultimately would not pay her, I was proud to have represented this victim of both an attorney and malfeasance by our own State Bar.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

State bar of Nevada, including Client Fee Dispute Committee member (former)
 State bar of Arizona
 Ohio State Bar Ass'n
 State Bar of Florida
 Clark County Bar Ass'n
 Nevada Justice Association
 National Trial Lawyers Association
 American Society of Legal Advocates

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

I am in compliance with all CLE requirements and have attended the following CLE classes in the past five years:

2017

US District Court of NV Conference..... 5/11/2017
 NV Proper Assertion of Privileges..... 10/12/2017
 Jury Selection: The Ultimate Guide..... 10/20/2017

Med. Mal Trial Tactics (NBI)..... 11/16/2017
 Traumatic Brain Injury Cases 101 (NBI) 11/30/2017
 Trials: Pre to Post 12/1/2017

2018

Technology at Trial (LawPro CLE) 3/1/2018
 ADR Overview 7/10/2018
 Addiction in the Legal Field 8/14/2018

2019

Mental Health Matters 1/11/2019
 Identifying and Handling Stressors 1/14/2019
 Keeping Mass Tort Cases In-House..... 2/20/2019
 Proving a Mild TBI Case 3/7/2019
 New NRCP Amendments 3/29/2019
 Medical Causation in Bodily Injury Cases 4/9/2019
 Neurology for Lawyers (AZ bar) 4/12/2019
 US District Court Annual Conference 5/16/2019
 Effective Tech. for Voir Dire 8/22/2019
 A Consumer's Guide to Neuroimaging 12/5/2019
 Diag. and Assessment of Spinal Cord Inj. 12/5/2019

2020

Federal Practice Tips w. Judge Gordon 3/5/2020
 Neuropsych. Diagnosis in mTBI 4/28/2020
 Crash Avoidance Technologies 6/30/2020
 Maximizing Damages from
 Complaint to Trial 8/12/2020
 Cervical Spine Explained:
 Findings, X-rays, and What it All Means 9/16/2020
 NJA Convention 10-7-9/2020
 ERISA subrogation and reimbursement 10/20/2020
 NJA- Maximizing Damages w. D. Prince 11/5/2020
 NJA- Medical Malpractice 12/17/2020

2021

NJA Winter Event..... 2/25/2021
 DIY Focus Groups..... 9/1/2021
 Diversity and Inclusion in the Legal Prof..... 12/26/2021
 Nevada Personal Injury Boot Camp 12/9/2021

2022

15 Signs of High Functioning Alcoholic..... 1/27/2022
 Basics of Handling 1983 Claims 3/30/2022
 Do You Really Understand the
 Attorney-Client Privilege? 12/14/2022

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I carry professional liability insurance. I have through my entire career and believe that professional liability insurance should be mandatory for all private attorneys as a measure to protect the public.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

No. Since graduating law school, I have only worked as an attorney.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

- a. the nature of the business
- b. the nature of your duties
- c. the extent of your involvement in the administration or management of the business
- d. the terms of your service
- e. the percentage of your ownership

Yes.

- a) **The business name is Breeden & Associates, PLLC, a private law firm**
- b) **The business is a personal injury law firm, I run and manage all aspects of it**
- c) **I am the sole owner and run all aspects of the business**
- d) **No written terms**
- e) **I own 100% of the business**

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

I cannot say I have served as specifically as an executor or trustee but I am a fiduciary to all clients and operate a client trust account (IOLTA) through which millions of dollars flows annually. This account is balanced to the penny.

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

No

Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I ran for District Court Judge, 8th District Dept. 15 in 2020 and did not advance to the general election. However, I did receive over 32,000 against an incumbent District Court Judge and received several endorsements, including from the .

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

Pertaining to significant activities while in public office, I have never served in public office so I have none to discuss.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

Speaking Engagement for Coaching Pros (a paralegal and case management training school) 8/29/2020 Demand Case Study: Policy Limits Demand in a disputed liability case.

Speaking Engagement for Coaching Pros, 10/23/2020, Chiropractors and the Dreaded Deposition, training medical professionals on depositions and how to testify

CLE Speaking Presentation in conjunction with the National Business Institute- Personal Injury Boot camp, 12/9/2021 Presenter on the topic of personal injury liens and lien resolution

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

Much of this volunteer and community work is listed elsewhere on this application, but I would state the following:

Pro Bono service honor roll (multiple times)

Clark County Pro Bono Project "rising firm" annual luncheon honoree (2007)

Legal Aid Center of Southern Nevada Volunteer of the Month (May 2016)

Legal Aid Center of Southern Nevada attorney mentor to UNLV law students

Commendation from Harry Reid (US Senate) and John C. Porter (US House of Rep.) for pro bono service to the community

Member of VITA (Volunteer Income Tax Assistance) in law school

Member of TIP (Tenant Information Project) in law school

Donor- Adopt a Rescue Pet and Pom Palace Dog Rescue

33. List honors, prizes, awards, or other forms of recognition.

National Trial Lawyers Association- Top 100

Lawyers of Distinction in Personal Injury

Top 100 Trial Lawyers by the American Society of Legal Advocates

Top 40 under 40 Attorneys by the American Society of Legal Advocates

Top 100 Lawyers by MyVegas magazine

Pro Bono service honor roll (multiple times)

Clark County Pro Bono Project “rising firm” annual luncheon honoree (2007)
 Legal Aid Center of Southern Nevada Volunteer of the Month (May 2016)
 Commendation from Harry Reid (US Senate) and John C. Porter (US House of Rep.) for pro bono service to the community
 Ohio State University Summa cum laude (top 3% of class)
 Ohio State University Dept. of Communications Scholarship
 Ohio State University Campus Scholarship
 University of Cincinnati College of Law Timothy Walker Founder’s Scholarship
 Corporate Law Fellow, University of Cincinnati College of Law (one of four in the class)

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Published article: *Atwater v. City of Lago Vista: How Should States Respond to the Supreme Court's Latest Expansion of Automobile Search & Seizure Law*, Breeden, Adam J., 70 U. Cin. L. Rev. 1395 (2001-2002)

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

In 1995 I was named to the Ohio High School Athletic Ass’n First-Team All Ohio golf team based on my performance in the State tournament held that year. I have played and enjoyed golf since age 10 and still enjoy the sport. I have two wonderful dogs (mutts) each from local rescue organizations, to which I have donated. I am also an occasional tournament poker player. I enjoy travelling as well, having been to many states and several foreign countries.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No Minor traffic tickets excepted

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

I know of nothing that would cause me to have to recuse myself from a certain issue or topic. I do vow to disclose all business or friendship associations with other attorneys if I am appointed judge. Failure to disclose these "stealth associations" is rampant in our judiciary today and erodes confidence.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

Not applicable.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify

you as a district court judge. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See attached statement

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

In 2021 I called to the attention of Chief Judge Linda Bell a situation wherein scam artists were getting attorney trust account information from filing fee checks from when the District Court was transmitting files to the Nevada Supreme Court. A copy of the check (showing all banking account and routing numbers) was accidentally being filed as part of the public record. As a result, the transmission system was quickly changed. Because of this, attorney trust accounts and funds of members of the public are more secure from theft and scam artists. I have also advocated for one state-wide mandatory e-filing system to standardize legal practice in the state and to help smaller counties technologically update when otherwise they could not afford those costs.

In 2015 approximately, I lobbied extensively to have all filed bar grievances available to the public to better protect members of the public from unscrupulous attorneys. At that time due to a bad attorney actor, it came to my attention that the State Bar was not publishing pending but undecided attorney grievances on their website. At this time, grievances were taking a long time (up to a year) to resolve so an attorney would go bad and get multiple grievances in a short amount of time but members of the public would look them up and they'd look spotless because the grievances were not public. One woman did this after I made grievances against an attorney and the member of the public looked him up, saw no grievances, and paid the attorney her life savings which he ran off with to another country. Unfortunately, despite my pleas the State Bar refused to change the rules.

I give these examples to show some advocacy in the legal field to improve it and protect the public. Lastly, I would like to say that if selected, I will proudly serve our community and intend to vigorously campaign for retention.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

Please see the attached Motion filed in the Noury matter. I apologize for exceeding the 10 page limit but it is hard to do quality motion work in 10 pages or less.

PERSONAL STATEMENT OF ADAM BREEDEN FOR ITEM #47:

To tell you a little more about me, I've practiced law here in Clark County for nineteen years. I graduated summa cum laude from The Ohio State University, studied legal theory abroad at Oxford University, England, attended a top tier law school at The University of Cincinnati College of Law where I was awarded a full scholarship and externed for a US District Court Judge. During my nineteen year legal career in Clark County, I have helped countless individuals who were innocent injury victims. I've won awards for my commitment to pro bono (free) legal services to our Community (Family Law, Veterans and Homeless assistance), served on the State Bar of Nevada's Fee Dispute Committee, authored a published law review article on the Fourth Amendment and I have been a courtroom litigator my entire career. I'm a member of the Nevada Justice Association and have been recognized by the National Trial Lawyers Assn., American Society of Legal Advocates, and been named a Top 100 Lawyer by MyVegas Magazine. I've presented oral argument before the Nevada Supreme Court on several occasions as well as being involved in several published opinions, which are reserved for the most important and precedential issues of law. Overall, I've been licensed to practice law in four different states and eleven different federal courts. I've handled matters in Nevada's First, Second, Third, Fifth, Sixth and Eighth Judicial Courts as well as the Nevada Court of Appeals (one appeal I handled was one of the first opinions rendered by the new Court of Appeals), Nevada Supreme Court, Nevada District Attorney Support Division, Nevada Department of Motor Vehicles and Nevada Worker's Compensation system. I have also been retained by other local attorneys to serve as an attorney standard of care expert witness in three legal malpractice matters against other practitioners, opining on the attorney rules of professional conduct, handling of trust funds and other topics.

I have practiced in the fields of personal injury and civil litigation my entire career, working both sides of the aisle as a defense attorney and a plaintiff attorney. Prior to operating my own firm which resolves millions of dollars in injury cases per year for plaintiffs, I practiced as a defense attorney with the largest law firm in Nevada (by number of attorneys) where I handled numerous seven-figure exposure cases and countless depositions, mediations, arbitrations and trials. I've represented numerous high-profile clients (including a case recently featured on the Netflix reboot of *Unsolved Mysteries*) and have been involved in other high profile media cases as well. My current practice is focused on representing medical malpractice victims and I regularly handle matters with over \$1 million dollars in exposure and severe injuries such as multiple amputation and death. Having practiced in so many different courts and extensively representing both defendants and plaintiffs, it helps me to understand different ways of running a courtroom and how both sides to a dispute see a case.

I've sought to be appointed District Court Judge because I see many problems with the bench today in the Eighth District. To be frank, the legal knowledge of many of our judges is not what it should be. One of the biggest problems in the judiciary today is politicization of the judiciary. I often hear from members of the public that who your attorney donated to or knows in town has more to do with winning than the merits of your case and I want to end that perception. I have been supportive and critical of both major political parties and am beholden to no donors or special interest. I firmly believe in the United States and Nevada constitutions and that judges apply and do not "make" law. I only wish to see our judiciary and court system improve.

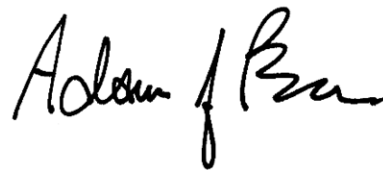
Another problem facing the Eighth District today is poor courtroom demeanor of some of our judges. For the life of me, I don't know what makes some of our judges such unpleasant

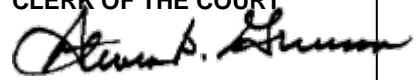
people. Public “servant” certainly does not describe the attitude of some of them. If selected, I promise to get a reputation as the most pleasant judge on the bench. No judge is going to rule in your favor every time, but I will avoid curt “motion denied” rulings, unnecessary berating of counsel and parties, and carefully explain my rulings.

As a judge, I would also be committed to using technology to improve the court system, including remote appearances and welcoming out of town counsel. I have spoken out against the current unnecessary case management conferences and discovery periods of 18 months or more which have led to a massive backlog of cases and trials in our court system. The court system can always use more accessibility to the public as well. The failure to judges to curb frivolous cases and reign in expensive so-called experts plagues our courtrooms today and prevents average people let alone poorer members of the community from even seeking justice. In my law practice, I tell clients I have a 24-hour job. You must be extremely hard-working to operate your own injury law practice and I would bring that same attitude to the bench.

Lastly, on a personal level, I am originally from the small town of Chillicothe, Ohio and am a proud Ohio State University and University of Cincinnati alumnus and donor. When I’m not at my desk answering calls or in court arguing for clients, I am a travel enthusiast wandering the world with my wonderful wife. I am also a former first team All-Ohio golfer but these days I enjoy the fairways for relaxation and exercise rather than competition.

Thank you for consideration of my application.

A handwritten signature in black ink, appearing to read "Adam J. Ben". The signature is written in a cursive, flowing style with a large initial 'A' and 'B'.



1 **MSJD**
2 **ADAM J. BREEDEN, ESQ.**
3 Nevada Bar No. 008768
4 **BREEDEN & ASSOCIATES, PLLC**
5 376 E. Warm Springs Road, Suite 120
6 Las Vegas, Nevada 89119
7 Phone: (702) 819-7770
8 Fax: (702) 819-7771
9 Adam@Breedendandassociates.com
10 *Attorneys for Defendant Dafna Noury*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 RED ROCK DIAGNOSTICS, LLC, a Nevada
14 limited liability company,

15 Plaintiff,

16 v.

17 DAFNA NOURY, an individual;
18 ADAM MUSLUSKY, an individual;
19 ADAM L. MUSLUSKY, P.C. a Nevada
20 professional corporation dba MUSLUSKY
21 LAW, DOES I-X, inclusive; ROE
22 CORPORATIONS I-X, inclusive,

23 Defendants.

24 DAFNA NOURY, an individual,

25 CounterClaimant,

26 v.

27 RED ROCK DIAGNOSTICS, LLC, a Nevada
28 Limited Liability Company,

CounterDefendant.

CASE NO.: A-20-825228-C

DEPT NO.: XXIX


**DEFENDANT DAFNA NOURY'S
MOTION FOR SUMMARY JUDGMENT
AGAINST PLAINTIFF RED ROCK
DIAGNOSTICS, LLC**

1 DAFNA NOURY, an individual,
2
3 Cross-Claimant
4
5 v.
6
7 ADAM L. MUSLUSKY, P.C., a Nevada
8 professional corporation d/b/a MUSLUSKY
9 LAW; and ADAM L. MUSLUSKY, ESQ., an
10 individual,
11
12 Cross-Claim Defendant.
13
14

15 Defendant, DAFNA NOURY, by and through her counsel of record Adam J. Breeden, Esq.
16 of BREEDEN & ASSOCIATES, PLLC, hereby submits her Motion for Summary Judgment.

17 This Motion is made and based on the following Memorandum of Points and Authorities,
18 the papers and pleadings on file herein, and any oral argument allowed by the Court at the time of
19 hearing on this matter.
20

21 DATED this 29th day of September, 2021.

22
23
24
25
26
27
28
BREEDEN & ASSOCIATES, PLLC


ADAM J. BREEDEN, ESQ.
Nevada Bar No. 008768
376 E. Warm Springs Road, Suite 120
Las Vegas, Nevada 89119
Phone: (702) 819-7770
Fax: (702) 819-7771
adam@breedenandassociates.com
Attorneys for Defendant Noury

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Noury brings this Motion for Summary Judgment to declare the medical account,
4 private medical lien and waiver of private health insurance she executed for Spring Valley Hospital
5 and Red Rock Diagnostics is void and unenforceable as against public policy and illegal under
6 Nevada and federal Medicaid law. As the Court will see, state and federal law bans the selective
7 billing of Medicaid recipients for the very over-charging concerns this case presents. The law
8 without question bans the type of alleged waiver and opt-out of Medicaid that RED ROCK
9 DIAGNOSTICS, LLC did in this case and therefore the account it holds is void and unenforceable.

10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 **A. Factual History**

12 The issues raised in this Motion for Summary Judgment are primarily issues of law that
13 challenge the medical account and lien involved in this dispute as void and illegal under Nevada
14 and federal law. However, the following background facts are germane and not reasonably in
15 dispute:

16 1. Defendant Noury was injured in a serious automobile accident on October 5, 2017.
17 She required a cervical fusion surgery as a result of the accident. This surgery occurred on
18 November 22, 2017 at Spring Valley Hospital.¹

19 2. Prior to her surgery, Noury retained an attorney to represent her in her personal injury
20 action against the other driver involved. The attorney she hired was Defendant Adam Muslusky,
21 Esq. and his law firm.²

22 3. At the time of the cervical fusion surgery, Noury was covered through Medicaid
23 administered by the state of Nevada.³

24 4. Beginning on November 15, 2017 and in the week leading up to the surgery, Noury's
25

26 ¹ Declaration of Noury, **Exhibit "1"** at ¶ 1.

27 ² Declaration of Noury, **Exhibit "1"** at ¶ 2.

28 ³ Declaration of Noury, **Exhibit "1"** at ¶ 3.

1 counsel Muslusky made arrangements for Noury to have her hospital bills for the surgery paid
2 through a private medical lien with Red Rock Diagnostics *rather than through Medicaid*. The
3 reason for this may be contested. However, what is indisputable is that it was actually in Noury’s
4 best financial interests to have the surgery paid for through Medicaid.⁴

5 5. Red Rock Diagnostics’ company name is a bit misleading. It provides no medical
6 services. It is merely a buyer of medical accounts and liens from other providers. It is essentially a
7 factoring or health care financing company which pre-arranges to buy medical debt at a discount
8 from the provider and then tries to collect the face amount of the account from the patient.

9 6. On or about November 22, 2017, Noury, with the advice of legal counsel Muslusky,
10 signed two documents at Spring Valley Hospital, a “Red Rock Diagnostics, LLC – Lien” and a
11 “Waiver of Private Health Insurance.” These documents, she was told, needed to be signed before
12 she could get her surgery.⁵

13 7. The medical lien and sale of the account was coordinated and pre-sold by Spring
14 Valley Hospital to Red Rock Diagnostics, LLC. The medical account had a face value of
15 \$298,049.00 for the medical services provided but was sold to Red Rock Diagnostics for \$75,310.10,
16 a discount of around 75% of the face value of the account. It is believed that had the hospital billed
17 through Medicaid, Medicaid would have completely satisfied the hospital’s bill for less than
18 \$20,000. For example, under Medicaid the per diem amount for the hospital services would have
19 been \$1,500 per day (for two days).

20 8. Both Muslusky and Red Rock Diagnostics had actual knowledge that Noury had
21 Medicaid.⁶

22 9. After settlement of the underlying injury case, negotiations to pay a reduced amount
23 on the lien broke down and Red Rock Diagnostics has insisted the full face value of the lien of
24

25
26 ⁴ Declaration of Noury, **Exhibit “1”** at ¶ 4.

27 ⁵ Declaration of Noury, **Exhibit “1”** at ¶ 5. “Red Rock Diagnostics, LLC – Lien” and “Waiver of
Private Health Insurance” are attached as **Exhibit “2.”**

28 ⁶ Declaration of Noury, **Exhibit “1”** at ¶ 7.

1 \$298,049.00 be paid, presumably with interest, fees and costs.

2 **B. Procedural History**

3 This matter was filed on November 20, 2020. A series of pre-answer motions delayed
4 adjudication. Noury’s answer was filed on September 29, 2021, and this Motion for Summary
5 Judgment was filed immediately thereafter. Although discovery has not yet opened in this case, no
6 discovery would affect the legal issue raised in this case, i.e. that the asserted medical account and
7 lien is **illegal and void under state and federal law**, which requires the Medicaid coverage to be
8 used and bars the type of workaround for profit done here by the hospital and medical lien company.
9 State and federal law bar the type of account and waiver done here in order to protect Medicaid
10 recipients from overbilling and financial abuse. Therefore, this Motion for Summary Judgment is
11 ripe for adjudication even at this early stage.

12 **III. SUMMARY JUDGMENT LEGAL STANDARD**

13 The nature of the issue of law involved in this motion make the motion ripe at this time.

14 NRCP 56 sets forth the standard for summary judgment. This rule reads, in pertinent part:

15 (b)...A party against whom a claim, counterclaim, or cross-claim is asserted
16 or a declaratory judgment is sought may, at any time, move with or without
17 supporting affidavits for a summary judgment in the party’s favor as to all
or any part thereof.

18 (c)...The judgment sought shall be rendered forthwith if the pleadings,
19 depositions, answers to interrogatories, and admissions on file, together
20 with the affidavits, if any, show that *there is no genuine issue as to any
material fact and that the moving party is entitled to a judgment as a matter
of law....* [emphasis added]

21 When a motion for summary judgment is made and supported by the facts appearing in the
22 record, a party “...may not rest upon the mere allegations of his pleading, but must, by affidavit or
23 otherwise, set forth facts demonstrating the existence of a genuine issue for trial....” *Garvey v. Clark
24 County*, 91 Nev. 127, 130, 532 P.2d 269, 271 (1975). The United States Supreme Court, in
25 interpreting the identical federal rule for summary judgment, has held that entry of summary
26 judgment is mandatory when the opposing party fails to identify facts supporting the elements of
27 his claim for relief. *See, Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986).

28 The Nevada Supreme Court has made it clear that summary judgment is not to be viewed as

1 a disfavored procedural device but must be granted under the appropriate circumstances. *See, Wood*
2 *v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (Nev. 2005). “Summary judgment is
3 appropriate under NRC 56 when the pleadings, depositions, answers to interrogatories, admissions,
4 and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material
5 facts exists, and the motion party is entitled to judgment as a matter of law.” *Id.* “The substantive
6 law controls which factual disputes are material and will preclude summary judgment; other factual
7 disputes are irrelevant.” Cases that present essentially undisputed issues of fact and involve merely
8 interpretation and application of law are particularly appropriate for summary judgment.

9 **IV. LAW AND ARGUMENT**

10 This Motion for Summary Judgment seeks to void a medical account and medical lien held
11 by Plaintiff Red Rock Diagnostics under Nevada and federal law as contrary to state and federal law
12 and as against public policy.

13 **A. The Medical Lien and Account is Void as it Violates Nevada’s Patients’ Bill of Rights**
14 **Law which Requires Billing through Medicaid**

15 Pursuant to Nevada law, a hospital has an account and a statutory lien for the reasonable
16 value of medical services provided to a patient. This lien may apply against the patient’s judgment,
17 settlement or compromise with a third party causing the injury to the patient.⁷ NRS §§ 108.585-
18 108.668 explains the lien and the process to perfect it. The lien is for the “reasonable value” of
19 services. However, many patients have some form of health insurance or other medical care
20 coverage via Medicare, Medicaid, or other state and federal programs which reimburses the hospital
21 for far less than the charged amount considered to be the “reasonable value.”⁸

22 _____

23 ⁷ NRS § 108.590 Extent of lien; exception; lien in addition to lien on property.

24 1. Whenever any person receives hospitalization on account of any injury, and the injured
25 person, or a personal representative after the person’s death, claims damages from the person
26 responsible for causing the injury, the hospital has a lien upon any sum awarded the injured person
27 or the personal representative by judgment or obtained by a settlement or compromise to the extent
of the amount due the hospital for the reasonable value of the hospitalization rendered before the
date of judgment, settlement or compromise.

28 ⁸ During consideration of 2007 AB 247, University Medical Center stated that only 30% of its

1 Unfortunately, this has led to hospital billing administrators abusively taking advantage of
2 situations where a patient had health insurance, Medicare, Medicaid or similar coverage but had
3 serious third-party liability claims as well. For example, hospitals learned that if they billed
4 Medicaid for treatment rendered to the patient, they would get reimbursed at lower Medicaid rates
5 and would then have to write off the rest of the bill. For example, if the hospital charged \$1,000 for
6 a service but the Medicaid reimbursement rate was only \$100, the hospital would have to accept the
7 \$100 Medicaid reimbursement and write-off or “lose” the difference of \$900. However, if the
8 hospital *refused* to bill the patient’s Medicaid, they could then lien the third-party liability recovery
9 for the full \$1,000. Even if the hospital then reduced the lien and accepted payment for \$900 (90%
10 of the lien) or even \$250 (25% of the lien), the hospital would make more money than billing
11 Medicaid. This gave hospitals a financial incentive to refuse insurance, Medicare or Medicaid
12 payments when they felt a profitable third-party liability claim existed for the patient. This practice
13 was financially good for large companies running hospitals but bad for the common person on
14 Medicaid and other insurance. Hospitals were fleecing Medicaid and Medicare patients, the exact
15 kind of vulnerable and poorer consumers of medical care that can least afford to be overcharged.
16 **As explained below, the Nevada legislature expressly sought to bar this abusive billing practice**
17 **which only saddles Nevadans with skyrocketing medical debt.**

18 A second example of this practice given by a Nevada legislator as the type of situation that
19 arose is as follows: A person has two elderly aunts. One aunt falls and breaks her hip at home and
20 goes to the hospital. Under those facts, the hospital bills health insurance and it is unheard of that
21 any lien or collection of the written-off amount of the bill would be attempted. However, the second
22 aunt is driving and someone side-swipes her in her car and she also goes to the hospital for injuries.
23 In that situation the hospital may know there is a liable third party and the hospital might then refuse
24 to bill insurance and instead file a lien for the whole amount of the bill. Thus, you have two innocent
25 victims being treated differently because “[e]ven though both had health insurance, the lien will be

26

27 _____

28 patients were completely uninsured, meaning 70% have some sort of medical care coverage.

1 for the billed amount and not the [insurance] contracted amount” on the second aunt.⁹ This creates
2 skyrocketing medical debt for the latter of the two aunts. To combat these abusive billing practices
3 by hospitals which needlessly increase medical debt and harm consumers of health care, Nevada
4 has enacted two important statutes, NRS § 449A.757 and NRS § 108.655.

5 In 2007 the Nevada legislature enacted Assembly Bill 247 which sought to “help keep the
6 amount of a person’s hospital debt manageable and curb abuses in hospital debt collections.”¹⁰
7 Codified first as NRS § 449.757 and later re-compiled in 2017 as the Nevada Patients’ Bill of Rights
8 as NRS § 449A.159, this law expressly sought to force hospitals to charge private health insurance
9 and public programs like Medicaid *first* before billing a patient or initiating a lien collection action
10 for the entire amount of charges:

11 NRS 449A.159 Limitations on efforts of hospitals to collect; date for accrual of
12 interest; rate of interest; limitations on additional fees.

13 1. When a person receives hospital care, the hospital must not proceed
14 with any efforts to collect on any amount owed to the hospital for the
15 hospital care from the responsible party, other than for any copayment or
16 deductible, if the responsible party has health insurance or may be eligible
17 for Medicaid, the Children’s Health Insurance Program or any other public
program which may pay all or part of the bill, until the hospital has
submitted a bill to the health insurance company or public program and the
health insurance company or public program has made a determination
concerning payment of the claim.

18 In fact, NRS § 449A.159(1) states that a hospital “must” determine whether a patient *has* or even
19 *may* be eligible¹¹ for health insurance or public assistance such as Medicaid and then may not seek
20 to collect from the patient until that program has been billed and a determination regarding the claim
21

22
23 ⁹ Assembly Committee on Judiciary (March 2, 2017) comments of Assemblyman Ohrenschall,
Exhibit “3” at History-000003.

24 ¹⁰ Assembly Health and Human Services Committee minutes, March 5 pg. 10 (comments of
25 Assemblywoman (and bill sponsor) Buckley) **Exhibit “3”** at History-000034.

26 ¹¹ The phrase “*may* be eligible” might refer to either (1) people who might meet income or other
27 guidelines but have never applied for Medicaid or (2) people, like Noury, who already have a
28 Medicaid MCO plan but require some sort of pre-authorization for the medical care. Retroactive
coverage of up to three months is available for Medicaid under some circumstances. The law is
written broadly enough to capture both situations.

1 has been made. NRS § 449A.159(2) then further states that no hospital may begin collection from
2 a patient until “after receiving a determination concerning payment of the claim by any insurer or
3 public program and after applying any discounts.” While legislative history for AB 247 is scant, it
4 is clear from committee minutes that the law was meant to “limit [] a hospital’s right to place a lien
5 upon the proceeds of a personal injury lawsuit when the injured party has health insurance or may
6 be eligible for Medicaid...”¹² Legislators seemed surprised that “[h]ospitals are charging patients
7 the top rate even though they have insurance” in order to lien personal injury settlements and sought
8 to stop this abusive hospital billing practice.¹³ Thus, NRS § 449A.159 operates to require hospitals,
9 by law, to bill a private health insurance company, Medicare or Medicaid if the patient *has or even*
10 *may have* coverage. If the hospital does not do so, it may not proceed with any “collection efforts”
11 on the medical bill—it is as if the bill is not owed at all. This assures that hospitals maximize the
12 use of insurance and public assistance and do not leave patients personally holding a large medical
13 bill that could have been avoided. The law also stops practices such as balance billing, simultaneous
14 billing of the patient and insurance program, collection of outdated bills (so-called zombie medical
15 debt), refusing to bill a public program and sending a patient an enormous bill prior to a
16 determination of insurance and discounts to which the patient may be entitled. In 2017, this
17 consumer protection law was re-codified into NRS Chapter 449A which is often referred to the
18 Nevada Patients’ Bill of Rights. It is *good* for innocent consumers of health care and *bad* for large
19 hospitals seeking to gouge patients for extra profits.

20 In 2017 the Nevada Legislature further strengthened Nevada patient consumer protection
21 laws with 2017 Assembly Bill 183, which was codified as NRS § 108.660. This statute sought to
22 close a loophole in NRS § 449A.159. Despite the language and intent of NRS § 449A.159, hospitals
23 began to claim that merely filing a hospital lien on third party liability recovery could not be defined
24 as a “collection effort” disallowed under NRS § 449A.159, even though the legislative history
25

26 ¹² Assembly Health and Human Services Committee minutes, at **Exhibit “3”** at History-000043.

27 ¹³ Assembly Health and Human Services Committee minutes, **Exhibit “3”** at History-000055.
28 (comments of Assembly Committee Chair Leslie and Assemblywoman (and bill sponsor) Buckley.

1 showed that forbidding such lien filings was the main purpose of the law.¹⁴ Rather than debate the
2 issue in the courts, the law was clarified. NRS § 108.660 provides that “[i]f an injured person may
3 be eligible for Medicaid, Medicare, the Children’s Health Insurance Program or any other public
4 program which may pay all or part of the bill, the hospital shall not receive any amount pursuant to
5 a lien asserted pursuant to NRS 108.585 to 108.660, inclusive, which is equal to more than 55
6 percent of the charges billed by the hospital.” In principle this statute further limits hospital lien
7 recovery against Medicaid patients to 55% of the total bill. However, in practice the law should
8 rarely, if ever, be invoked because state and federal law *already* requires the hospital to first bill
9 Medicaid and forego any balance billing. Indeed, during the bill’s debate Assemblyman Pickard
10 noted that NRS § 449A.159 already appeared to ban this hospital practice and asked “why are we
11 not just enforcing the existing law, or are hospitals just ignoring it?” [the real-world answer was the
12 latter]¹⁵ Despite the fact that NRS § 449A.159 bans the hospital practice of refusing to bill
13 insurance, Medicare or Medicaid and instead liening a third party liability recovery, NRS § 108.660
14 was passed and was further intended to curb abusive billing and lien practices of Nevada’s hospitals.

15 Again, the very purpose of these laws was because “some hospitals were filing liens against
16 accident victims who suffered serious injuries” and “[i]n many cases, the liens were filed at the
17 billed rate, even though the accident victims had insurance and were eligible for the contracted rate
18 under their health insurance plans.”¹⁶ This is exactly what the law was meant to prevent and yet is
19 exactly that Spring Valley Hospital and Red Rock Diagnostics has achieved in this case as to Noury,
20 an innocent victim of a serious accident who had Medicaid coverage. The medical account and lien
21 here violates the must-bill requirement of Nevada law and cannot be enforced.

22
23

24 ¹⁴ The state of Wisconsin actually addressed this issue and held that “Both case law and logic
25 indicate that [hospital] liens must be considered an effort ‘to collect from’ the patients.” *Gister v.*
Am. Family Mut. Ins. Co., 2012 WI 86, ¶18, 342 Wis. 2d 496, 510, 818 N.W.2d 880, 887

26 ¹⁵ Assembly Health and Human Services Committee minutes, **Exhibit “3”** at History-000003.
(comments of Assemblyman Pickard).

27 ¹⁶ Assembly Health and Human Services Committee minutes, **Exhibit “3”** at History-000002.
28 (comments of Assemblyman Ohrenschall).

1 When we see the result to Noury in this case, it is clear to see why the Nevada Legislature
2 intervened. Here, Noury was an innocent victim. Her hospital bill should have been paid by
3 Medicaid for an amount likely less than \$20,000. However, the hospital and a lien company saw an
4 opportunity to profit and refused to provide services unless Noury waived her Medicaid coverage,
5 resulting in over-billing her hundreds of thousands of dollars. Fortunately for Noury, the Nevada
6 Legislature already banned this abusive billing practice, and the account Red Rock Diagnostics
7 seeks to collect on is unenforceable.

8 **B. Federal and State Medicaid Law also Bars the Kind of Medicaid Avoidance Account**
9 **and Lien Presented by this Case**

10 Noury must also importantly note that federal law also bans the type of refusal to bill
11 Medicaid or billing the patient for more than Medicaid reimbursement rates that Spring Valley
12 Hospital and Red Rock Diagnostics are trying to do here.

13 “The Medicaid program is a cooperative federal-state program to provide medical care for
14 eligible low-income individuals...jointly funded by federal and state governments.” *Grossmont*
15 *Hosp. Corp. v. Burwell*, 797 F.3d 1079, 1081, 418 U.S. App. D.C. 215 (D.C. Cir. 2015). States
16 must establish "a scheme for reimbursing health care providers for the medical services provided to
17 needy individuals." *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 502, 110 S. Ct. 2510 (1990). States
18 submit the proposed plans to the Centers for Medicare and Medicaid Services ("CMS"), which must
19 "make a determination as to whether it conforms to the requirements for approval." 42 U.S.C. §
20 1316(a)(1); *see also* § 1396a(b) (describing approval by the Secretary). If CMS approves the state's
21 plan, the federal government provides reimbursement to the state for a portion of the cost of its
22 Medicaid benefits and plan administration, and the state pays the remainder of its Medicaid
23 expenses. *See* 42 U.S.C. § 1396b. Therefore, both federal law (42 USC § 1396a) and Nevada state
24 law (mostly found in NRS Chapter 422) govern the approved Medicaid in the state of Nevada. The
25 state of Nevada administers the Medicaid program mostly through Managed Care Organizations
26 (MCOs) which for most practical intents and purposes work just like health care insurance but are
27 actually paid for by Medicaid and thus governed completely by state and federal Medicaid law. If
28 Nevada were to violate federal guidelines for Medicaid coverage, it might lose federal funding

1 which amounts to hundreds of millions of dollars to the state annually. Therefore, Nevada has a
2 large public policy interest in compliance with federal Medicaid billing laws which place limits on
3 Medicaid Providers such as Spring Valley Hospital.

4 The Court can take judicial notice that Spring Valley Hospital is an acute care hospital as
5 defined by Nevada law, NRS § 449.012, and is an authorized Medicaid provider, its Centers for
6 Medicare & Medicaid Services (CMS) Provider Number being 1346230323. Confirmation of this,
7 which is available via search at CMS.gov, provides Spring Valley Hospital's approved Medicaid
8 Provider status since at least November 16, 2012.

9 Federal law requires the state of Nevada's Medicaid plan to impose two provisions on
10 Medicaid providers that work together, (1) a **non-refusal provision** and (2) a **payment-in-full**
11 **provision**. The non-refusal provision is found in 42 U.S.C. § 1396a(a)(25)(D) and specifically
12 states that a provider "who furnishes services and is participating under the [Medicaid] plan **may**
13 **not refuse to furnish services to an individual (who is entitled to have payment made under**
14 **the plan for the services the person furnishes) because of a third party's potential liability for**
15 **payment for the service.**" Thus, the law states that a Medicaid provider may not refuse to accept
16 Medicaid coverage where the patient is eligible and instead pursue some third-party liability source,
17 such as a medical lien on recovery against another driver as occurred in Noury's case. This non-
18 refusal requirement is also found in 42 C.F.R. § 447.20(b) which reiterates the non-refusal policy.¹⁷
19 In order to implement this policy, the Nevada Department of Health and Human Services Division
20 of Health Care Financing and Policy has adopted (as it must in order to abide by federal Medicaid
21 requirements) a Medicaid Services Manual (MSM) which is binding on Medicaid providers in
22 Nevada. Chapter 100 of the MSM makes clear to providers such as Spring Valley Hospital that "**a**
23 **Medicaid provider cannot refuse to provide Medicaid covered services to a Medicaid eligible**
24
25

26
27 ¹⁷ 42 C.F.R. § 447.20(b) ("A provider may not refuse to furnish services covered under the plan to
28 an individual who is eligible for medical assistance under the plan on account of a third party's
potential liability for the service(s).")

1 **recipient due to potential TPL [Third Party Liability] coverage.”**¹⁸ The law essentially says to
2 provider like Spring Valley Hospital, if you are going to accept Medicaid coverage, you have to
3 accept it for all Medicaid patients; the hospital cannot pick and choose when to accept Medicaid.

4 Next, federal and Nevada Medicaid laws also have a payment-in-full provision. This means
5 that a Medicaid Provider agrees to accept the Medicaid reimbursement charges (plus any co-pay or
6 deductible) as **payment in full for the medical services rendered**. Under 42 U.S.C. §
7 1396a(a)(25)(C) and 42 C.F.R. § 447.15, Medicaid plans must limit participation to “providers who
8 accept, **as payment in full**, the amounts paid by the agency plus any deductible, coinsurance or
9 copayment required by the plan to be paid by the individual.” In order to implement this policy,
10 Nevada’s Medicaid Services Manual (MSM) also plainly states, in accordance with federal law, that
11 “Medicaid payment is payment in full. Providers may not attempt to collect additional money
12 directly from recipients.”¹⁹

13 In other words, if a hospital such as Spring Valley Hospital is an approved Medicaid Provider
14 (which it is) it must agree (a) not to refuse to accept Medicaid even if it thinks it can bill or lien
15 some third party liability source to the patient to collect more, and (b) must agree to accept the
16 Medicaid reimbursement rate only and not charge the Medicaid recipient any more than that amount,
17 also known as a ban on balance billing. These two requirements work in tandem. If a hospital were
18 allowed to refuse Medicaid payments in the hopes of liening a third-party liability recovery, in
19 practice the hospital would be refusing to accept the Medicaid charges as payment in full. It would
20 be a fiction to pretend that liening a third-party liability recovery is billing a *third party* and not the
21 *actual patient* for the services since it would ultimately be the patient’s money that is collected.
22 Moreover, the Medicaid program is not a program that covers *hospitals*, it is a program that covers
23 *people*. It would be unfair if Medicaid Providers could pick and choose which covered persons it
24

25 ¹⁸ Medicaid Services Manual (MSM) 100 Section 104 ¶ F, page MSM-000046, **Exhibit “4.”** In
26 practical terms, this is just a more specific statement of NRS § 449A.159 which already requires a
27 hospital to exhaust medical plans of a patient before directly billing a patient. These are two ways
of setting forth the same requirement.

28 ¹⁹ Medicaid Services Manual (MSM) 100 Section 105 ¶ A, page MSM-000050, **Exhibit “4.”**

1 could serve, accepting the coverage for destitute patients but declining it for patients that appear to
2 have lucrative injury claims against third parties. Such a practice would be highly coercive on the
3 Medicaid patient as they need medical care. Therefore, the law bans this practice and requires a
4 Medicaid Provider to accept Medicaid payments where the patient is eligible and accept Medicaid
5 reimbursement as payment in full. This is hardly onerous or unfair to health care providers. A
6 facility such as Spring Valley Hospital can always elect to *not* accept Medicaid payments if it feels
7 these requirements do not financially serve it well. However, in the long run the hospital does better
8 financially accepting Medicaid. The problem in this case is that the hospital and Red Rock
9 Diagnostics are trying to cheat the system to make the rare Medicaid patient like Noury, who may
10 obtain a lot of money in the future, pay in full resulting in a windfall to them. Fortunately for Noury,
11 the state and federal Medicaid law already bans this abusive billing practice, and the account Red
12 Rock Diagnostics seeks to collect on is unenforceable.

13 C. **The Assignment of Account, Medical Lien and Waiver of Medicaid are Void as Against**
14 **Public Policy**

15 In this case then, we have a situation where Spring Valley Hospital and Red Rock
16 Diagnostics have plainly violated state and federal law. They saw a situation where instead of
17 accepting Medicaid reimbursement they felt they could ignore the mandatory Medicaid billing
18 requirements of Nevada and federal law and instead get the patient to waive Medicaid and treat on
19 a private medical lien. In this way, instead of making perhaps \$20,000 through Medicaid, the
20 hospital made \$75,310.10 through selling the lien. Medicaid patient Noury—the least sophisticated
21 and most vulnerable party with little bargaining power if she wants the medical treatment she
22 needs—is the big loser, now being saddled with a \$298,049.00 medical debt which Medicaid would
23 pay for perhaps less than \$20,000. **This is the exact kind of overbilling and fleecing of Medicaid**
24 **patients that state and federal law sought to ban.**

25 Although on the surface of this case we have a patient treating on a private medical lien,
26 underneath that facade we have a hospital and Red Rock Diagnostics knowingly violating Nevada
27 and federal law in order to abusively bill the patient and make windfall profits. The entire
28 transaction is merely an effort to skirt the law and overbill the Medicaid patient.

1 Because the business account and lien arrangements perpetrated on Noury are against the
2 law and public policy, they are unenforceable, and she is entitled to summary judgment dismissing
3 this collection action against her. It is well-settled that “[a]ll contracts the purpose of which is to
4 create a situation which tends to operate to the detriment of the public interest are against public
5 policy and void...” *W. Cab Co. v. Kellar*, 90 Nev. 240, 245, 523 P.2d 842, 845 (1974). Contracts
6 which violate the law are void as against public policy. *Int'l Ass'n of Firefighters, Local #1285 v.*
7 *Las Vegas*, 104 Nev. 615, 621, 764 P.2d 478, 481 (1988) (“Contracts that violate such ordinances
8 are void and against public policy.”); *State Farm Mut. Auto. Ins. Co. v. Hinkel*, 87 Nev. 478, 484,
9 488 P.2d 1151, 1154 (1971) (“If a contract of insurance is at variance with the statutory requirement,
10 it is against public policy and void.”); *Gaston v. Drake*, 14 Nev. 175, 181 (1879) (“a contract will
11 not be enforced if it is against public policy, or that, if a part of the consideration of an entire contract
12 is illegal as against public policy...”). It is clear in this case that the medical account, lien and
13 waivers executed by Ms. Noury violate Nevada and federal law. Thus, they are void and
14 unenforceable and the account is uncollectable.

15 Importantly, Noury should address any anticipated argument from Red Rock Diagnostics
16 that Spring Valley Hospital’s efforts to evade Nevada law and charge her more on her account than
17 Medicaid rates are irrelevant because Red Rock Diagnostics is a private lien or medical financing
18 company, not the Medicaid Provider hospital. The Court cannot ignore that Red Rock Diagnostics
19 simply has an assignment of a collection account from Spring Valley Hospital. The classic rule of
20 assignments is that **Red Rock Diagnostics as an assignee, takes no more legal rights than the**
21 **assignor Spring Valley Hospital has and takes the hospital’s assigned account subject to all**
22 **legal rights and defenses that Noury has against the hospital.** *E.g., First Fin. Bank, N.A. v. Lane*,
23 130 Nev. 972, 978, 339 P.3d 1289, 1293 (2014) (“an assignment operates to place the assignee in
24 the shoes of the assignor, and provides the assignee with the same legal rights as the assignor had
25 before assignment”); *JPMorgan Chase Bank v. Saticoy Bay, LLC Series 1423 Orange Jubilee*, 448
26 P.3d 572 (Nev. 2019) (“An assignee stands in the shoes of the assignor and ordinarily obtains only
27 the rights possessed by the assignor at the time of the assignment, and no more” citing 6A C.J.S.
28 Assignments § 111 (2019)). It is clear that Spring Valley Hospital could not have enforced a “waiver

1 of private health insurance” or refused to accept Noury’s Medicaid coverage and billed the client
2 contrary to NRS § 449A.757 and Medicaid laws. Ergo, the hospital’s assignee Red Rock
3 Diagnostics cannot do what its assignor, Spring Valley Hospital is banned from doing. The hospital
4 cannot opt-out of the Nevada Patients’ Bill of Rights consumer laws by doing account assignments
5 and trying to wash their hands of the bills. The hospital cannot work around state and federal law
6 by doing assignments. The efforts of Spring Valley Hospital and Red Rock Diagnostics are not only
7 detrimental to the lower income people Medicaid should be protecting the most but are also plainly
8 illegal and thus are void against public policy and unenforceable. Red Rock Diagnostics took its
9 account and lien subject to all of those compelling defenses.

10 **V. CLOSING**

11 One ponders an age-old question: If only we could violate the law, how much money could
12 we make? Spring Valley Hospital and Red Rock Diagnostics have a simple answer to that question.
13 They think they can fleece Nevada’s low-income Medicaid recipients and reap windfall profits if
14 they just don’t have to follow federal and state Medicaid and hospital billing and collection laws.
15 For certain, breaking the law is often a wonderful business model—until you get caught.
16 Unfortunately, the court system cannot be used to enforce agreements that are illegal, in violation
17 of law or against public policy. Therefore, Defendant Noury requests the court declare the medical
18 account charges, the medical lien and the waiver of Medicaid in this case as void and enter summary
19 judgment in Noury’s favor such that she owes nothing to Red Rock Diagnostics.

20 DATED this 29th day of September, 2021.

21 **BREEDEN & ASSOCIATES, PLLC**

22 

23 **ADAM J. BREEDEN, ESQ.**

24 Nevada Bar No. 008768

25 376 E. Warm Springs Road, Suite 120

26 Las Vegas, Nevada 89119

27 Phone: (702) 819-7770

28 Fax: (702) 819-7771

adam@breedenandassociates.com

Attorneys for Defendant Noury