

1 BRIAN K. TERRY, ESQ.
 2 Nevada Bar No. 3171
bkt@thorndal.com
 3 KENNETH R. LUND, ESQ.
 4 Nevada Bar No. 10133
krl@thorndal.com
 5 THORNDAL, ARMSTRONG, DELK,
 BALKENBUSH & EISINGER
 6 1100 Bridger Avenue
 7 P. O. Drawer 2070
 Las Vegas, Nevada 89101
 8 TEL: (702) 366-0622
 9 FAX: (702) 366-0327
 Attorneys for Defendants,
 10 DAVID Z. CHESNOFF, CHTD. P.C. d/b/a
 CHESNOFF & SCHONFELD; DAVID Z. CHESNOFF,
 11 AND RICHARD A. SCHONFELD

12
 13 UNITED STATES DISTRICT COURT
 14 DISTRICT OF NEVADA
 15

16 MICHELLE MCKENNA,

17 Plaintiff,

18 vs.

19 DAVID Z. CHESNOFF, CHTD. P.C. d/b/a
 20 CHESNOFF & SCHONFELD; DAVID Z.
 21 CHESNOFF, and RICHARD A. SCHONFELD,

22 Defendants.
 23
 24

CASE NO. 2:14-cv-01773-JAD-CWH

**DEFENDANTS' ANSWER TO
 PLAINTIFF'S COMPLAINT**

25 Defendants, DAVID Z. CHESNOFF, CHTD. P.C. d/b/a CHESNOFF & SCHONFELD;
 26 DAVID Z. CHESNOFF, and RICHARD A. SCHONFELD (collectively, "Defendants"), by and
 27 through their counsel of record, the law firm of THORNDAL, ARMSTRONG, DELK,
 28

1 BALKENBUSH & EISINGER, hereby answer Plaintiff's Complaint and admit, deny, and
2 allege as follows:

3
4 **JURISDICTION AND VENUE**

5 1. Defendants are without knowledge or information sufficient to form a
6 belief as to the truth of the allegations contained in Paragraphs 1 and 2 of Plaintiff's
7 complaint, and therefore deny the same.
8

9 **CASE SUMMARY**

10 2. Paragraph 3 is a compound summary of numerous intertwined allegations
11 appearing throughout the complaint. Defendants deny the sum of the allegations
12 contained therein.
13

14 **THE PARTIES**

15 3. Defendants admit the allegations contained in Paragraphs 4, 5, and 6.

16 4. Defendants are without knowledge or information sufficient to form a
17 belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's complaint,
18 and therefore deny the same.
19

20 **THE UNDERLYING LITIGATION**

21 5. Answering Paragraph 8, Defendants admit that on or about January 4,
22 Plaintiff was attacked by Patrick Jones at Pure, where Plaintiff was employed. Defendants
23 are without knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations contained therein.
25

26
27 // //

28 // //

1 12. Defendants deny the allegations contained in Paragraph 118 of Plaintiff's
2 complaint.

3
4 **CHESNOFF & SCHONFELD'S ALLEGED CONFLICT OF INTEREST**

5 13. Defendants deny the allegations contained in Paragraphs 119, 123, 124 and
6 126 of Plaintiff's complaint.

7 14. Upon information and belief, Chesnoff had a one-half to one percent
8 interest in Pure and had a financial interest in its success. Defendants deny any remaining
9 allegations contained in Paragraph 120.

10 15. Defendants are without knowledge or information sufficient to form a
11 belief as to the truth of the allegations contained in Paragraph 121 and 122 of Plaintiff's
12 complaint, and therefore deny the same.

13 16. Paragraph 125 is a legal assertion to which no answer is required. On that
14 basis, Defendants deny each and every allegation contained therein, including any factual
15 assertions contained therein.

16
17 **CHESNOFF & SCHONFELD'S ALLEGED INADEQUATE REPRESENTATION**

18 17. Answering Paragraph 127, Defendants admit Plaintiff retained Chesnoff &
19 Schonfeld to represent her in a personal injury action against Jones. Defendants deny the
20 remaining allegations.

21 18. Defendants deny the allegations contained in Paragraphs 128, 131, 134,
22 135, 137, 138, and 141 of Plaintiff's complaint.

23 19. Defendants admit the allegations contained in Paragraph 129, 130, and 139
24 of Plaintiff's complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CAUSE OF ACTION NO. 3

28. Answering Paragraph 159 of Plaintiff's complaint, Defendants repeat and reallege their responses to Paragraphs 1 through 158 as though fully set forth herein.

29. Defendants deny the allegations contained in Paragraphs 160, 161, 162, 163, 164, 165, and 166 of Plaintiff's complaint.

CAUSE OF ACTION NO. 4

30. Answering Paragraph 167 of Plaintiff's complaint, Defendants repeat and reallege their responses to Paragraphs 1 through 166 as though fully set forth herein.

31. Defendants admit the allegations contained in Paragraph 168 of Plaintiff's complaint.

32. Paragraph 170 is a legal assertion to which no answer is required. On that basis, Defendants deny each and every allegation contained therein, including any factual assertions contained therein.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 169 and 171 of Plaintiff's complaint, and therefore deny the same.

AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state a claim upon which relief can be granted.
2. Defendants are entitled to indemnity from third-parties.
3. Defendants are entitled to contribution from third-parties.

///
///
///

1 4. Any damages Plaintiff alleges in her complaint were caused by new,
2 independent, and efficient intervening causes and by alleged wrongdoing on the part of
3 third-parties.
4

5 5. Plaintiff failed to mitigate her damages.

6 6. Plaintiff dealt with Defendants in bad faith.

7 7. Plaintiff breached any alleged contract which may have existed and Plaintiff
8 is not entitled to any relief under that contract
9

10 8. Plaintiff, with full knowledge of the relevant facts alleged in the complaint,
11 ratified and confirmed in all respects Defendants' acts.

12 9. Plaintiff is equitably estopped from bringing this lawsuit due to unclean
13 hands, equitable estoppel or other equitable defenses.
14

15 10. Plaintiff was comparatively negligent.

16 11. Plaintiff's comparative negligence exceeds Defendants' negligence, if any.

17 Accordingly, Plaintiff is barred from recovery.
18

19 12. Plaintiff is barred from recovering any damages herein for failure to
20 specifically allege the types of special damages claimed, pursuant to NRCP 9(g).
21

22 13. Plaintiff's claims are barred by the doctrine of laches, the statute of
23 limitations, or a statute of repose.

24 14. Plaintiff has failed to name an indispensable party necessary for full and
25 adequate relief essential to the action.
26

27 15. Defendants are entitled to an offset.

28 16. There has been accord and satisfaction.



1 17. The damages Plaintiff has sustained, if any, were caused by Plaintiff's own
2 acts or the acts of others, and not through any fault of Defendants.

3
4 18. This Court lacks subject matter jurisdiction over this lawsuit.

5 19. Defendants are not liable due to frustration of purpose, impossibility,
6 impracticability, and/or prevention of performance.

7 20. Plaintiff has no private right of action.

8 21. Plaintiff's lawsuit is not ripe.

9
10 22. Plaintiff's lawsuit is barred by the exclusivity provisions of the Nevada
11 Industrial Insurance Act.

12 23. It has been necessary for Defendants to employ the services of an attorney
13 to defend against Plaintiff's action and reasonable attorney fees and costs should be
14 awarded to Defendants.
15

16 24. Defendants incorporate by reference those affirmative defenses
17 enumerated in Fed. R. Civ. P 8, as though fully set forth herein. In the event further
18 investigation or discovery reveals the applicability of any such defenses, Defendants
19 reserve the right to seek leave of this Court to amend their answer to specifically assert
20 the same. Such defenses are herein incorporated by reference for the specific purpose of
21 not waiving the same.
22

23 25. Pursuant to Fed. R. Civ. P. 11, all possible affirmative defenses may not
24 have been alleged herein insofar as sufficient facts were not available after reasonable
25 inquiry upon the filing of Defendants' answer to Plaintiff's complaint, and therefore,
26
27
28



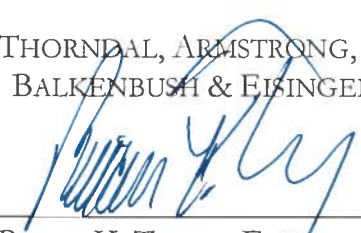
1 Defendants reserve the right to amend their answer to Plaintiff's Complaint to allege
2 additional affirmative defenses if subsequent investigation so warrants.
3

4 WHEREFORE, Defendants pray for judgment as follows:

- 5 1. That Plaintiff takes nothing by way of her complaint;
- 6 2. That Plaintiff's complaint be dismissed, with prejudice, as to the answering
7 Defendants;
- 8 3. That answering Defendants recover their attorney fees and costs incurred
9 herein; and
- 10 4. For such other relief as this Court may deem just and proper.

11 DATED this 12 day of December, 2014.
12

13
14 THORNDAL, ARMSTRONG, DELK,
15 BALKENBUSH & EISINGER


16
17 BRIAN K. TERRY, ESQ.
18 Nevada Bar No. 3171
19 KENNETH R. LUND, ESQ.
20 Nevada Bar No. 10133
21 1100 Bridger Avenue
22 Las Vegas, Nevada 89101
23 TEL: (702) 366-0622
24 FAX: (702) 366-0327
25 Attorneys for Defendants,
26 DAVID Z. CHESNOFF, CHTD. P.C. D/B/A
27 CHESNOFF & SCHONFELD; DAVID Z.
28 CHESNOFF, and RICHARD A. SCHONFELD


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2014, a true and correct copy of the foregoing Defendants' Answer to Plaintiff's Complaint was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following individuals at the following electronic mail addresses:

Dennis L. Kennedy, Esq. at DKennedy@BaileyKennedy.com
Sarah E. Harmon, Esq. at SHarmon@BaileyKennedy.com
Kelly B. Stout, Esq. at KStout@BaileyKennedy.com
Bailey Kennedy

Executed on December 12th, 2014, in Las Vegas, Nevada. I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct


An Employee of THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER