11-25-2014

Alexander v. Stibal Respondent's Brief Dckt. 41604

IN THE SUPREME COURT OF THE STATE OF IDAHO

KARA ALEXANDER and
ROBBY ROBINSON,

Plaintiffs/Respondents,

Docket No. 41604

vs.

VIANNA STIBAL, an individual,
NATURE PATH INC, an Idaho
corporation, and THETAHEALING
INSTITUTE OF KNOWLEDGE,

Defendants/Appellants.

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE
SEVENTH JUDICIAL DISTRICT FOR BONNEVILLE COUNTY

Honorable William H. Woodland
District Judge, presiding

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III. STATEMENT OF THE CASE

A. Facts Presented at Trial

Appellant's Statement of the Case and Factual Background is an account of the evidence Appellants brought on appeal which ignores Respondent's voluminous evidence. In addition, Appellants presented numerous facts, as if true, that were directly contradicted by Respondent's evidence at trial. In light of the burdens on appeal, the following facts must be accepted by the Court as true.

Kara Alexander first became aware of ThetaHealing in 2006, being interested in the possibility of experiencing healings validated by science.[1] Kara was interested in the prospect of spiritual healing backed by science, which ThetaHealing claimed to offer.[2] Vianna Stibal ("Vianna") is the owner of Nature Path Inc., ("Nature Path") which owns the Theta Healing Institute of Knowledge ("THInK," collectively referred to as "ThetaHealing").[3] ThetaHealing is a healing modality Vianna claims to have discovered whereby during meditation a person can reach a "theta brain wave" state, and then command a healing from God of any illness or injury.[4] Vianna claims that anyone can do this healing technique, and that her healing technique is backed by science, including the use of an electroencephalograph proving healing occurred because people achieved a theta state using Vianna's method.[5] However, no proof of scientific

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[1] Tr. p. 232, l. 5 – p. 233, l. 9. For an introduction to ThetaHealing in Vianna's words, the Court is advised to listen to tracks 1, 2 and 4 of Exhibit 23, and/or read Exhibit 24, pages 5 through 28.

[2] *Id.*

[3] Tr. p. 396, l. 20 – p. 397, l. 4.

[4] Tr. p. 439, l. 6 – p. 443, l. 25, p. 320, ll. 14-18.

[5] Tr. p. 224, l. 23 – p. 225, l. 4.

investigation into ThetaHealing was ever provided at trial or through discovery.[6] According to Vianna, the healing is easy to do, instantaneous, and anyone can do it regardless of their faith.[7]

Vianna Stibal claims that ThetaHealing began in 1995 when she was diagnosed with bone cancer, and later with lymph cancer after a biopsy was taken from her leg.[8] Vianna claims that her doctors told her that her leg would need to be amputated to prevent the spread of cancer, and that she only had a couple of months to live.[9] Vianna also claims that her doctors told her she had either lymphoma or sarcoma, and that the treatment for the two cancers was the same, so she should report for chemotherapy.[10]

Vianna claims that she cured her cancer by using this ThetaHealing technique, and her leg and her cancer healed instantly. However, the medical records from Vianna's biopsy concluded that Vianna was "suspicious for Lymphoma, but not diagnostic."[11] Both expert witnesses who testified at trial, Dr. Shull called by the Plaintiffs and Dr. Beron called by the Defendants, concluded that Vianna was never diagnosed with cancer.[12] Both experts testified that Vianna would not have been told that her leg would need to be amputated, or that she only had a few months to live because they were not able to diagnose her.[13] Both experts testified that Vianna would not have been told to report for chemotherapy because in addition to not knowing

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[6] Tr. p. 322, ll. 1-6, *see also*, Tr. p. 440, ll. 6-16.
[7] Tr. p. 235, ll. 8-25.
[8] Exhibit 24, pages 5-6, *see also*, Tr. p. 436, ll. 4-19.
[9] Exhibit 24, p. 5-6, *see also*, Tr. p. 436, l. 20- p. 437, l. 2.
[10] Tr. p. 437, ll. 3-25.
[11] See, Exhibits 16 and 17.
[12] Tr. p. 464, l. 25 – p. 465, l. 17; p. 470, l. 21 – p. 471, l. 24; p. 809, l. 16 – p. 810, l. 15.
[13] *Id.*

if Vianna had cancer, they did not know what cancer she may have had, and the treatment would be different depending on the cancer.[14]

In addition, Vianna's husband at the time, Blake McDaniel, testified that he was at all of Vianna's doctor's appointments, and Vianna was never told that she had cancer.[15] Mr. McDaniel testified that Vianna was never told her leg would need to be amputated, that she only had a few months to live, or that she needed to report for chemotherapy.[16] Consistent with the expert witnesses, McDaniel testified that Vianna was told she needed to have another biopsy for a diagnosis.[17] Mr. McDaniel testified that Vianna's leg slowly healed over a period of a few months, at the end of which Vianna began claiming that she cured herself of cancer.[18] Mr. McDaniel testified that he confronted Vianna about her lie, but she got upset and blew him off.[19] Vianna's story about cancer and claim of scientific validation is the hallmark story upon which ThetaHealing is based, and Kara relied upon this story in her decision to take classes in ThetaHealing.[20]

There were four other basic stories Vianna tells about healings that Kara testified she relied upon in her decision to take classes in ThetaHealing or to continue taking additional classes. Vianna claimed that at the end of 2007 while teaching classes in Italy, she became ill, was in a coma for three and a half days, and subsequently pulled herself out of the coma.[21]

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[14] *Id.*
[15] Tr. p. 585, l. 21 – p. 586, l. 6.
[16] Tr. p. 587, l. 6 – p. 588, l. 4.
[17] Tr. p. 588, l. 19 – p. 589, l. 5.
[18] Tr. p. 591, l. 1 – p. 592, l. 7.
[19] Tr. p. 593, ll. 5-8.
[20] Tr. p. 257, ll. 4-24, *see also*, Tr. p. 224, ll. 7-18.
[21] Tr. p. 428, ll. 4-22.

However, Vianna's daughter-in-law, Lindsey Stock, testified that she and her children spoke to Vianna on the telephone every day she was in Italy, making it impossible for Vianna to have been in a coma for three days.[22] Lindsey also testified that Vianna did not begin claiming that she pulled herself out of a coma until a month after she had returned from Italy.[23] At trial, Vianna altered her story, claiming that her doctors and medications were what pulled her out of the coma.[24]

Vianna also claimed that she cured herself of heart disease.[25] However, Dr, Shull, after reviewing Vianna's medical records, concluded that Vianna continues to be treated for high cholesterol and heart disease, by a physician, Dr. Gorman, and her medical records lack any suggestion that she no longer suffers from heart disease.[26]

Vianna also claimed that she is in good health as a result of ThetaHealing. However, Dr. Shull interpreted Vianna's medical records for the jury, and testified that Vianna suffers from a number of medical conditions, including hypercholesterolemia, insulin resistance, congestive heart failure, diastolic dysfunction, chronic sinusitis, allergies, hypertension, and chronic renal insufficiency.[27] While Vianna admitted to these illnesses and treatment from doctors at trial, she never disclosed her illnesses and treatments to her students.[28]

Vianna also claimed that her grandson was hospitalized with a serious pulmonary issue,

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[22] Tr. p. 561, l. 21 – p. 562, l. 12.
[23] Tr. p. 563, l. 11 – p. 564, l. 12.
[24] Tr. p. 429, ll. 10-23.
[25] Tr. p. 225, ll. 8-21.
[26] Tr. p. 486, l. 23 – p. 487, l. 18.
[27] Tr. p. 486, l. 13 – p. 489, l. 18, and Tr. p. 489, ll. 19-23.
[28] Tr. p. 889, l. 14 – p. 893, l. 6.

and that Vianna healed her grandson's lung and, he now has a perfect lung.[29] Lindsey Stock, Vianna's daughter-in-law, and the mother of the grandson that was allegedly healed, testified that when her son was in the hospital having his lungs treated, they were living in Alaska, and Vianna was never there, and never attempted to heal her grandson's lung.[30] Vianna never contradicted this testimony.

Kara began taking classes in ThetaHealing in 2006 in New York, near where she lives in New Jersey.[31] All but two of the twelve classes Kara eventually took were taught by Vianna.[32] The stories set forth above were told frequently, most in every class Kara took, and Kara relied upon these stories in her decision to take classes.[33]

Kara took some classes, found them interesting, but did not see any miraculous, instantaneous healings.[34] Beginning in early 2008, ThetaHealing announced the opening of the school, THInK, and announced that if a person took all twelve of the courses THInK offered, they would earn a doctorate degree.[35] THInK began promoting the degrees extensively through webpages,[36] through YellowBook advertisement,[37] in course descriptions,[38] through email,[39] through online videos,[40] and in person promotion in classes.[41] The decision to offer doctorate

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[29] Tr. P. 235, ll. 2-9.
[30] Tr. p. 561, ll. 4-11.
[31] Tr. p. 231, ll. 13-20.
[32] Tr. p. 237, l. 5 – p. 256, l. 5.
[33] Tr. p. 225, ll. 8-21.
[34] Tr. p. 259, ll. 4-15.
[35] Tr. p. 264, ll. 3-23.
[36] Exhibit 1, 6, and 7.
[37] Exhibit 3.
[38] Exhibit 4.
[39] Exhibit 5
[40] Exhibit 23, track 6.

degrees was from Vianna and THInK alone.[42] Kara and her boyfriend Robby Robinson had no input into the offering of a degree or what to call it.

Kara was in Idaho Falls, ID between June and November, 2008 taking the remainder of the classes required for her doctorate. Upon completion of all twelve classes offered at THInK, Kara did in fact earn a doctorate degree from THInK that was admitted into evidence.[43] When people earned their degree, THInK held a graduation ceremony, where the degree was presented, complete with fanfare, applause and congratulations.[44] After being awarded a degree, ThetaHealing put pictures of the graduates, with their degrees, on their webpage.[45] Thereafter, people who graduated held themselves out publicly as having doctorate degrees.[46] Beginning in November, 2008, some graduates and students at THInK began discussing whether or not the degrees were valid.[47] In response, ThetaHealing sent an email to the people who received doctorates claiming the doctorate was real.[48] Subsequently, Kara received an email from Vianna (using her husband's email account) claiming that the doctorate was, "perfectly legal in every sense."[49]

However, THInK was never accredited with an accreditation agency, never even sought

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[41] Tr. p. 267, l. 22 – p. 268, l. 12.
[42] Tr. p. 887, l. 6 – p. 78, l. 25.
[43] Exhibit 8.
[44] Exhibit 23, track 5.
[45] Exhibit 7.
[46] Exhibits 12 and 14.
[47] Tr. p. 310, ll. 8-20.
[48] Exhibit 11, Tr. p. 312, ll. 16-24.
[49] Exhibit 30, Tr. p. 315, l. 25 – p. 316, l. 23.

accreditation, and therefore could not give degrees.[50] In total, Kara took all twelve classes offered in ThetaHealing at a cost of between $500.00 and $4,500.00 per class.[51] At trial, Kara testified that just for 2008, she and her boyfriend Robby Robinson paid $45,725.53 for classes and expenses to live in Idaho Falls to take classes.[52] In addition, Kara did not work while she was in Idaho Falls taking classes, missing approximately 120 work days.[53] Prior to taking classes from Vianna Stibal, Kara was earning $800.00 a day as a technology consultant.[54] By the time trial was held in the summer of 2013, some five years later, Kara was still earning approximately half of what she was earning in 2008.[55]

B. Procedural History

Kara Alexander and Robby Robinson filed their Complaint alleging Breach of Contract and Fraud in Bonneville County, Idaho, on November 10, 2011.[56] Count 1 alleged fraudulent misrepresentation regarding the issuing of invalid degrees, Count 2 alleged fraudulent misrepresentation regarding healings, Count 3 alleged breach of contract for not giving a valid degree as agreed, Count 4 was for unjust enrichment, and Count 5 was for attorney's fees.[57]

Defendants brought a motion for summary judgment and Plaintiffs brought a motion to amend to include a claim for punitive damages, both of which were heard on January 17, 2013.[58]

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[50] Tr. p. 404, l. 8 – p. 405, l. 9, *see also*, Idaho Code §33-2402. The testimony from all parties agreed that THInK could not give degrees, and thus gave Kara an invalid degree. Tr. p. 406, ll. 6-25.

[51] Exhibit 2.

[52] Exhibit 10.

[53] Tr. p. 609, l. 17 – p. 610, l. 11.

[54] *Id.*

[55] Tr. p. 339, l. 20 – p. 341, l. 14.

[56] R. Vol. 1, p. 18-25.

[57] *Id.*

[58] R. Vol. 1, p. 65, *and* p. 209.

Judge Watkins denied the motion for summary judgment in its entirety, except as to Plaintiffs' damages (as stipulated by the parties) under Count 3. He ruled that classes taken by Kara and Robby prior to the time the degree was offered, would not be included.[59]

Judge Watkins denied Plaintiffs' motion to amend to include punitive damages, erroneously applying the wrong standard.[60] The district court also erroneously ruled that because faith is an element of ThetaHealing, Plaintiffs could not prove a harmful state of mind.[61] Before trial, Plaintiffs renewed their motion to plead punitive damages, which was granted by a new judge assigned to the case, Judge Woodland.[62] At the time Judge Woodland granted the motion, he did not limit punitive damages to the fraud count.[63] Two days later, Judge Woodland determined that punitive damages would only be presented in context of the healing issue.[64] However, upon being presented the entirety of the evidence, and considering the jury's verdict, Judge Woodland determined to allow punitive damages at three times the damages of the breach of contract and fraud claims to deter Vianna's willingness, "to make questionable claims to advance her organization."[65]

Robby Robinson was not able to attend trial due to a mandatory training upon which his

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[59] Tr. Karen Konvalinka #319, p. 94, ll. 1-5.

[60] Tr. Karen Konvalinka #319, p. 94, l. 18 – p. 95, l. 1, *and* p. 97, ll. 15-25. The district court required Plaintiffs to prove a reasonable likelihood of proving facts at trial that supported an award of punitive damages by clear and convincing evidence. However, the standard, when determining if plaintiffs can amend their pleading to include punitive damages is a preponderance of the evidence. *Idaho Code* §6-1604(1).

[61] *Id.* at p. 98, ll. 1-19.

[62] Tr. p. 182, ll. 16 – p. 183, l. 15.

[63] *Id.*

[64] *Id.* p. 638, l. 22 – p. 639, l. 2.

[65] R. Vol. 3, p. 419

job relied, that was scheduled the same week as trial.[66] Thus, the Court dismissed all claims brought by Mr. Robinson by directed verdict, except Mr. Robinson's claim for unjust enrichment, which was also subsequently dismissed.[67] However, the Court allowed the jury to hear Kara's claim of fraudulent misrepresentation regarding healings and breach of contract.[68] The jury returned a verdict, finding the Appellants committed breach of contract, awarding Kara $111,000.00. The jury found the Appellants committed fraudulent misrepresentation, and awarded her $17,000.00 in damages. Finally, the jury awarded Kara punitive damages in the amount of $500,000.00.[69]

The Court denied Appellants' post-trial motions, other than to reduce the punitive damages award by statute as set forth above.[70] Kara was awarded an Amended Judgment in the amount of $517,734.24.[71]

IV. ADDITIONAL ISSUES ON APPEAL

Respondent requests her attorney's fees and costs on appeal as the prevailing party, as the Appellants are simply asking the Court to second guess the jury and the trial court on conflicting evidence.

V. STANDARD OF REVIEW

A. Judgment Notwithstanding the Verdict:

The Supreme Court reviews a district court's decision denying a motion for judgment

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[66] Tr. p. 883, ll. 13 – p. 884, l. 3.
[67] Tr. p. 641, ll. 12-23.
[68] Tr. p. 641, l. 12 – p. 642, l. 5.
[69] Tr. p. 969, l.14 – p. 971, l. 6.
[70] R. Vol. 3, p. 420.
[71] *Id.* at p. 422-423.

notwithstanding the verdict *de novo*. The district court properly denies a JNOV motion if the verdict is supported by substantial and competent evidence.[72] Evidence may not be reweighed and the credibility of witnesses may not be considered.[73] The Court must accept all evidence against the moving party as true, and draw all reasonable inferences therefrom in a light most favorable to the non-moving party.[74] Thus, whenever the evidence conflicts, the Court must construe every fact and every inference in favor of the jury verdict.[75] If substantial evidence exists showing that reasonable minds can reach the same conclusion as the jury, the verdict is upheld.[76] "Substantial evidence" does not mean uncontradicted; rather evidence of "sufficient quantity and probative value that reasonable minds could conclude that the verdict of the jury was proper."[77] The moving parties' motion for JNOV will be denied if it ignores important evidence from trial.[78]

B. Motion for New Trial:

When reviewing the denial of a motion for a new trial pursuant to Idaho Rule of Civil Procedure 59(a)(6), the Court applies an abuse of discretion standard.[79] The motion may be granted when the court determines the verdict is not in accord with his assessment of the clear weight of the evidence.[80] The district court is granted broad discretion when considering a

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[72] *Griff, Inc.v. Curry Bean Co.*, 138 Idaho 315, 319, 63 P.3d 441, 445 (2003).
[73] *Id.*
[74] *Id.*
[75] *Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 735, 518 P.2d 1194, 1197 (1974), *see also, Ricketts v. E. Idaho Equip.*, 137 Idaho 578, 581, 51, P.3d 392, 395 (2002).
[76] *Quick v. Crane*, 111 Idaho 759, 764, 727 P.2d 1187, 1192 (1986).
[77] *Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 736, 518 P.2d 1195, 1197 (1974).
[78] *Quick*, 111 Idaho 759 at 727.
[79] *Sheridan v. St. Luke's Reg'l Med. Ctr.*, 135 Idaho 775, 779, 25 P.3d 88, 92 (2001).
[80] *Id.*

motion for a new trial that will not be disturbed absent a showing of manifest abuse of discretion.[81] This broad discretion is allowed because the district court has the unique opportunity to hear and examine the evidence, which the appellate court cannot duplicate.[82] "Respect for the collective wisdom of the jury and the function entrusted to it under our constitution suggests trial judges should, in most cases, accept the jury's findings even though he may have doubts about some of their conclusions."[83] This respect for the jury's function, "prevents the granting of a new trial except in unusual circumstances."[84] To determine if the Court abused its discretion, the Court applies a three part inquiry:

> (1)whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.[85]

On appeal, the Supreme Court's review focuses primarily on the process the district court used to reach its decision, and not on the result the district court reached.[86] The Court must review the evidence, but is not to weigh the evidence as the district court is allowed to do.[87]

To prevail on a motion for a new trial, the moving party must prove both parts of a two prong test; first, that the verdict was against the clear weight of the evidence, and second, that a

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[81] *Id.*
[82] *Quick*, 111 Idaho 759 at 767.
[83] *Quick*, 111 Idaho 759 at 768.
[84] *Pratton v. Gage*, 122 Idaho 848, 850, 840 P.2d 392, 394 (1992).
[85] *Burggraf v. Chaffin*, 121 Idaho 171, 173, 823 P.2d 775, 777 (1991).
[86] *Sheridan*, at 779.
[87] *Id.*

different result would follow on retrial.[88] To prevail on the second prong, the moving party must prove a probability, not a mere possibility that a different result would follow on retrial.[89]

C. New Issues Raised on Appeal:

Appellants' brief raises the issue of the Court's ability to consider new issues on appeal without acknowledging which issues it raised on appeal that are new. None of the new issues raised on appeal, including statute of limitations and religious liberty, are of the type that can be considered on appeal without being raised below. As a general rule, an issue cannot be raised for the first time on appeal, and if raised, the Idaho Supreme Court will not consider the issue.[90] Exceptions to this rule include the failure to object to given jury instructions and when plain fundamental error exists.[91] However, the exception regarding fundamental error only applies to criminal and quasi-criminal cases.[92] This ruling from *In re Doe*, appears to overturn the Court's ruling in *State v. Doe*[93] upon which Appellants rely. Regardless, none of the new issues on appeal rise to the level of error in *State v. Doe* that, "so profoundly distorts the trial that it produces manifest injustice and deprives the accused of his constitutional right to due process."[94] Although the Court should not consider those issues, Respondents will respond to the new issues raised by Appellants on appeal out of an abundance of caution.

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[88] *Blizzard v. Lundeby*, 156 Idaho 204, 207, 322 P.3d 286, 289 (2014).
[89] *Warren v. Sharp*, 139 Idaho 599, 603, 83 p.3d 772, 776 (2003).
[90] *Gardner v. Bartshi*, 139 Idaho 430, 436, 80 P.3d 1031, 1037 (2003).
[91] *State v. Doe,* 144 Idaho 534, 536, 164 P.3d 814, 816 (2007).
[92] *In re Doe*, 330 P.3d 1040, 1045 (2014).
[93] *State v. Doe* at 536.
[94] *Id.*

VI. ARGUMENT

The main problem with this appeal is the Appellants are asking the Court to second guess the jury verdict and the Court's decisions that were clearly in their discretion and upon which there was ample evidence. In addition, Appellants ask this Court to second guess the jury and the Court by citing only the evidence that they presented at trial, and ignoring the vast evidence the Respondent offered at trial that the jury relied upon when issuing its verdict, and the Court relied upon when denying Appellants' post-trial motions.

A. There was Substantial Evidence of the Existence of a Contract:

The substantial evidence presented at trial showed that Kara Alexander accepted an offer from THInK that if she took all the classes THInK offered, she would receive a doctorate degree. The substantial evidence presented included the actual "degree" THInK gave Kara when she completed the classes.

1. Substantial evidence was presented showing THInK offered a doctorate degree, and that Kara accepted the offer.

There must be a meeting of the minds of the parties for a contract to be formed.[95] Typically, a meeting of the minds is manifested by intent to contract in the form of an offer and acceptance.[96] To find a meeting of the minds, an expression of assent, or conduct sufficient to show agreement must be shown.[97]

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[95] *Gilbert v. Caldwell*, 112 Idaho 386, 390, 732 P.2d 355, 359 (1987).
[96] *Rouse v. Household Fin. Corp*, 114 Idaho 68, 70, 156 P.3d 569, 571 (2007).
[97] *Figueroa v. Kit-San Co.*, 123 Idaho 149, 156, 845 P.2d 567, 574 (1992).

Whether there was a meeting of the minds is a factual issue for the trial court.[98] For example, if the trier of fact determines that one of the parties' testimony was self-serving and dishonest, that finding will be upheld on appeal.[99] In *Corder*, a lessee of farm land alleged that a contract existed for him to lease land from the owner.[100] The lessee actually farmed the land for a season before the owner alleged no contract for the lease of the land existed because there was not a final writing for the lease signed by the parties.[101] At trial, the lessee testified that he and the landowner orally agreed to begin the lease based upon their negotiations, while the landlord testified no agreement was made.[102] The Court upheld the district court's findings that a meeting of the minds existed, and that the landowner was not truthful because the district court was in a better position to make a determination of witness credibility.[103]

In this case, Kara submitted substantial evidence that she and THInK both understood that a doctorate degree would be given upon completion of a series of classes. The jury was justified in not believing Appellants, who offered self-serving and dishonest testimony regarding their promise to give degrees, like the landowner in *Corder*.

At trial, Kara testified that in May, 2008, Vianna Stibal's website announced that upon completion of twelve offered classes, a student would earn a doctorate in ThetaHealing.[104] Kara testified that Vianna informed the class that THInK was in the process of becoming

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[98] *Gilbert*, at 390.
[99] *Corder v. State Farmway*, 133 Idaho 353,360, 986 P.2d 1019, 1026 (1999).
[100] *Id.* at 356.
[101] *Id.* at 360.
[102] *Id.*
[103] *Id.*
[104] Tr. p. 264, l. 3 - p. 265, l. 3.

accredited,[105] and that the doctorate degrees were valid.[106] In addition to the initial website, Respondents admitted an email from Nature Path, Inc., stating, "We now have it set up that once you have completed a full class schedule, you will graduate with your Doctorate of Ministry."[107] Another website, set up by an individual promoting ThetaHealing for Vianna, gave a "Complete Listing of Courses. In order to receive your Ph.D., you must have completed..." and then listed the requisite courses.[108] People who received a doctorate degree from THInK held themselves out as having received a doctorate degree, or Ph.D.[109] In fact, the actual degree, the plaque that Vianna Stibal presented to Kara upon completion of the requisite classes at a graduation ceremony, was admitted at trial.[110] The plaque stated, "You are recognized as one of the 1st graduating classes from the Theta Institute of Knowledge receiving a Doctorate of Ministry in ThetaHealing."[111]

There was a graduation ceremony where Kara was presented her degree along with others who met the criteria, with a line of people to shake hands with in congratulations.[112] The jury saw a video of a similar graduation.[113] Kara was not the only person to receive such a plaque. The ThetaHealing website displayed pictures of a number of people holding up their graduation

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[105] Tr. p. 370, ll. 8-23. This portion of the transcript was cited in Appellant's Brief as evidence that Kara knew THInK was not accredited. However, the actual testimony was that Vianna Stibal told students at THInK that they were going through the process of accreditation. The evidence at trial showed this representation was also not true.

[106] *See*, Plaintiffs Exhibit 11

[107] Tr., p. 272, ll. 4-9, *see also*, Exhibit 5.

[108] Tr. p. 276, ll. 5-9, *see also*, Exhibit 1.

[109] Tr. p. 277, ll. 8-24, *see also*, Exhibit 1.

[110] Tr. p. 278, l. 14 – p. 280, l. 6, *see also*, Exhibit 8.

[111] Tr. p. 280, ll. 18-25, *see also* Exhibit 8.

[112] Tr. p. 281, ll. 3-24.

[113] Exhibit 23, track 5.

plaques, labeled as, "2008 Doctorates in Ministries in ThetaHealing; First graduating class from the ThetaHealing Institute of Knowledge."[114] Kara believed the doctorate to be valid, as did other ThetaHealing students who held themselves out as having received a degree from THInK.[115] The jury was presented advertising from other people who received "doctorates" from THInK who held themselves out as having doctorates, as well as a Yellowbook advertisement from THInK promoting their, "prestigious ThetaHealing Doctorate of Ministry.[116] In light of this voluminous evidence that Vianna Stibal was offering a legitimate degree, including the degree itself, the jury had sufficient evidence to conclude that Vianna Stibal's self-serving statements regarding degrees were not true.

The Appellants seem to believe their failure to give a valid doctorate degree is excused because Kara should have known that the degrees were invalid. However, Vianna Stibal and Nature Path, Inc. represented to Kara that the degrees were valid. Almost two months after Kara "graduated," on November 13, 2008, THInK revealed for the first time that it was not seeking accreditation, but still claimed that the doctorate was "real."[117] Vianna Stibal sent Kara an email the next day, November 14, 2014, claiming that the degree was "perfectly legal in every sense."[118]

There was a clear meeting of the minds between Kara and THInK, that if Kara completed a course of classes, she would receive a "real" and "legal" doctorate degree. Appellants' brief

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[114] Tr. p. 298, ll. 1-18, *see also*, Exhibit 7.
[115] Tr. p. 303, ll. 10-18.
[116] Exhibit 12 and Exhibit 14, *see also*, Tr. p. 303, l. 22 through p. 305, l. 11, *see also*, Exhibit 3.
[117] Tr. p. 311, l. 17 through p. 313, l. 15, *see also*, Exhibit 11.
[118] Exhibit 30, Tr. p. 315, l. 25 through p. 316, l. 23.

fails to account for this evidence, and therefore failed to accept the evidence in favor of Respondents as true, as required for a motion for JNOV. In addition, the district court was well within his discretion to find that there was a contract pursuant to the weight of the evidence. Thus, he properly denied the motion for a new trial as well.

2. The award of contract damages was reasonable because $111,000.00 is a conservative estimate of the value of a doctorate degree.

Kara was entitled to her expectation damages at trial, which was consistent with the jury's award. To determine if damages were excessive, the Court is to compare the jury's award to what the Court deems appropriate damages, and only grant a new trial if the discrepancy is so great, the award must have been given out of passion or prejudice.[119] Ultimately, it is up to the trier of fact to fix the amount of damages.[120] The appropriate measure of damages for a breach of contract is the value that the nonbreaching party expected to receive from the contract.[121]

In this case, the jury's award was within the parameters of what the district court reasonably felt was appropriate because Kara's expectation damages were the value of the doctorate degree Kara contracted for, but never received, not just the cost to attend classes. Respondents agree that the cost of classes attended before the doctorates were offered (before May, 2008) were not recoverable, but what was recoverable was the cost of the classes and the expenses incurred to attend the classes, or the value of the doctorate degree that Kara never received. Both in their motion for new trial and on appeal, Respondents continue to ignore Kara's right to expectation damages.

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[119] *Phillips v. Erhart*, 151 Idaho 100, 108, 254 P.3d 1, 9 (2011).
[120] *Griffith v. Clear Lakes Trout Co.*, 143 Idaho 733, 740, 152 P.3d 604, 611 (2007).
[121] *De Winer v. Nelson*, 54 Idaho 560 (1934).

The total contract damages award of $111,000.00 was appropriate if the several areas of damages are considered. First, the cost of tuition to attend classes from May, 2008 through the time Kara graduated in September, 2008 was $8,700.[122] However, the expenses to attend the classes in Idaho were significantly more. Kara presented a printout, admitted as Exhibit 10, which itemized a number of Kara and Robby's expenses. The total amount of $45,722.53, most of which, including car rental and hotel, Kara would have incurred even if Robby had not accompanied her to Idaho.[123]

Third, the lost wages for attending classes was significant. Kara testified that she did not work while taking classes in Idaho from May, 2008 through November, 2008.[124] In addition, when Kara left to obtain her doctorate, she intended to teach ThetaHealing classes full time, and did not have work waiting for her when she returned home.[125] As a result, Kara was unable to find consistent work.[126] Prior to taking classes from Vianna Stibal, Kara was earning $800.00 a day as a technology consultant.[127] By the time trial was held in the summer of 2013, some five years later, Kara was still earning approximately half of what she was earning in 2008.[128] Just in the 120 business days in 2008 alone that Kara missed by taking classes at THInK, at $800.00 a day, Kara lost $96,000.00 in income.

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[122] Tr. p. 333, l. 10 – p. 337, l. 10. Kara testified that half of the amounts for classes were for her and half were for co-plaintiff Robby Robinson. The amounts paid for classes were $2,100.00 (p. 333, ll. 10-19), $4,400.00 (p. 334, ll. 1-16, $4,000.00 plus a $400.00 deposit), $1,200 (p. 336, ll. 11-16), and $1,000.00 (p. 337, ll. 5-10).

[123] *See*, Exhibit 11, *see also*, Tr. p. ll. 17-25, and Tr. p. 888, l. 21 – p. 889, l. 11. This amount is "approximate," because it includes expenses that were just for Robby, such as golf and the cost for Robby's classes and Robby's airline tickets for Robby, and expenses for Robby. This amount also includes the cost of classes.

[124] Tr. p. 338, ll. 7-9.

[125] Tr. p. 338, l. 10 – p. 341, l. 14.

[126] Id.

[127] Tr. p. 609, l. 17 – p. 610, l. 11.

[128] Tr. p. 339, l. 20 – p. 341, l. 14.

However, the jury was not limited to Kara's lost income and expenses to find an amount for contract damages. Kara's expectation damages entitle her to the value of the bargain she made, or the value of the doctorate degree that she contracted for but did not receive. Thus, the jury was free to value a doctorate degree. The jury had sufficient evidence to determine the value of the degree, including the cost to take the classes to obtain the degree, the expenses to obtain the degree, the time dedication to obtain the degree, and the amount of money that could be made teaching classes once the degree was earned.[129] A teacher in ThetaHealing would be able to charge between $500 to $1,960 per student per class, with each class being between three days to two weeks.[130] Respondents were not required to prove their damages by a mathematical exactitude,[131] and the jury's award of $111,000.00 was reflective of the evidence presented. If anything, $111,000.00 is a conservative value for a doctorate degree that can earn the owner thousands of dollars per three-day class. The district court, utilizing his broad discretion on the motion for a new trial agreed, and his decision was not an abuse of discretion.

B. Respondents Presented Substantial Evidence Proving Each Element of Fraud with Clear and Convincing Evidence.

To prove fraud, the Plaintiff has the burden to prove by clear and convincing evidence; (1) A representation. (2) Its falsity. (3) Its materiality. (4) The speaker's knowledge of its falsity or ignorance of its truth. (5) His intent that it should be acted on by the person and in the manner reasonably contemplated. (6) The hearer's ignorance of its falsity. (7) His reliance on its truth. (8)

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[129] *See*, Exhibit 2.

[130] *Id.*, for example, the basic class costs $500 per student for a three day class, and the Intuitive Anatomy class costs $1,960.00 for a two week class. Vianna testified that she would teach between 50 and 300 students per class. See Tr. p. 417, l. 20 through p. 418, l. 21.

[131] *Gillinham Constr., Inc. v. Newby-Wiggins Constr., Inc.*, 142 Idaho 15, 26, 121 P.3d 946, 957 (2005).

His right to rely thereon. (9) And his consequent and proximate injury.[132] Kara presented clear and convincing evidence of each of these elements, which were relied upon by the jury. Appellants' ignore the evidence Respondent presented at trial, ignore the burden that the evidence must be viewed in a light most favorable to the Respondents, and rely solely on their own evidence.

Appellants attack the jury verdict based upon three of the fraudulent statements by Vianna Stibal. The problem with this approach is that since the jury's deliberations were confidential, we do not know which of the fraudulent statements by Vianna Stibal the jury relied upon in their findings or if they relied upon an accumulation of multiple statements. Respondents specifically argued five fraudulent misrepresentations in their case for fraud; (1) That Vianna was never diagnosed with cancer, and therefore could not have cured herself of cancer as stated, (2) that Vianna never cured herself of heart disease as stated, (3) that Vianna never pulled herself out of a coma as alleged because she never was in a coma, (4) that Vianna's health was not good as she had represented, and (5) that Vianna never healed her grandson's lung as she had asserted. Appellants did not argue against the fraudulent statements regarding Vianna's grandson's lung and her overall health on appeal. Because the jury may have relied upon these misrepresentations in their verdict, the verdict must be upheld. In addition, Appellants attempt to attack the jury's verdict by simply listing a number of elements on a few of the stories Kara relied upon, without any citation to the record, or analysis of the evidence. Pursuant to *Quick*, Appellants have failed to meet their burden on appeal.

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[132] *Nab v. Hills*, 92 Idaho 877, 883, 452 P.2d 981, 987 (1969).

1. Respondents offered clear and convincing evidence that Vianna was never in a coma in Italy.

All elements of fraud were proven regarding Vianna Stibal's claim that she was in a coma in Italy, including the fact that Vianna was not in a coma. Beginning in early 2008, and later while Kara was taking classes at THInK in 2008, Vianna claimed that she got sick in Italy, was in a coma for three and a half days, and miraculously pulled herself out of the coma.[133] However, Vianna was never in a coma.

Regarding the element of falsity, Vianna's daughter-in-law, Lindsey Stock testified that while Vianna was in Italy at the end of 2007, that she and her children talked with Vianna on the telephone every day.[134] In addition, Lindsey Stock did not hear any claim that Vianna was in a coma, despite being around the family, for approximately a month after Vianna returned from Italy.[135] It would be impossible for Vianna to talk to Lindsey on the telephone every day while she was in Italy if she was in a coma for three days. The jury was not offered any medical records proving Vianna was in a coma.[136] The jury was entitled to believe Lindsey Stock's testimony over Vianna's claim that she was in a coma, and their determination, affirmed by the court, should be upheld. Regardless, even if Vianna was in a coma, at trial, Vianna began to claim that her doctors' treatment got her out of the coma, not herself, thus proving her original

[133] Tr. p. 428, ll. 4-22.
[134] Tr. p. 561, l. 21 – p. 562, l. 12.
[135] Tr. p. 563, l. 11 – p. 564, l. 12.
[136] Tr. p. 486, ll. 3-12.

story to be false.[137] Prior to trial, Vianna never credited anyone but herself for being pulled out of a coma.[138]

Regarding the element of materiality, Kara testified that numerous statements by Vianna were relied upon in her decision to take classes. Appellants seem to believe that Kara is required to show that one of the stories Vianna tells was relied upon for Kara to take classes and continue taking classes. However, the evidence at trial showed that Vianna made numerous misrepresentations about herself and about healings, all of which were relied upon by Kara to take classes and to continue to take more classes.[139] Appellants do not avoid liability for fraud if Kara relied upon multiple stories. Regardless, the evidence showed that Kara relied upon the truth of those stories in her decision to continue taking classes, and that if Kara had known the stories were not true, she would not have taken any classes.[140]

Regarding the element of knowledge as to falsity, assuming that Vianna was never in a coma, as set forth above, for Appellants to prevail on this element, there would need to be some evidence that Vianna thought she was in a coma. Clearly, if Vianna was talking to Lindsey Stock every day while she was in Italy, she would know that she was not in a coma.

Regarding the element of whether the statement would induce reliance, there is little other explanation as to why such statements would be made. Appellants actively marketed THInK, the classes that were offered, books, videos, and supplements.[141] The coma story was

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[137] Tr. p. 429, ll. 10-23.
[138] Tr. p. 892, l. 14 – p. 893, l. 9.
[139] Tr. p. 389, l. p. 24 – p. 390, l. 7.
[140] Tr. p. 224, l. 7 – p. 225, l. 21, *see also*, Tr. p. 895, ll. 2-9.
[141] Tr. p. 258, ll. 12-24.

offered as another example of the supposed healing power of ThetaHealing. The jury clearly was able to conclude as much after seeing Vianna Stibal tell the same stories, including the coma story, while marketing ThetaHealing.[142]

Kara did not know that Vianna was never in a coma. To suggest otherwise, ignores the uncontradicted fact that Kara was not in Italy with Vianna when the events occurred.

Kara had a right to rely on the claim that Vianna had pulled herself out of a coma because Vianna directed her story at those who may take classes at THInK.

Kara was injured as a result of Vianna's story because it induced Kara to take more classes from THInK under false pretenses.

2. Respondents offered clear and convincing evidence that Vianna has not cured herself of congestive heart failure.

The jury reasonably concluded that Vianna's claim that she has a perfect heart by virtue of a healing was false because Vianna's medical records showed as much. Dr. Schull, who read and interpreted Vianna's medical records for the jury, indicated that Vianna had high cholesterol, congestive heart failure, and was being treated for the same by Dr. Gorman.[143] Dr. Schull testified that there were no records suggesting Vianna's congestive heart failure was cured.[144]

Regarding materiality of the statement, as set forth above, Vianna's false stories, including her assertion that she cured herself of congestive heart failure, were material to Kara's decision to take classes because Kara found these stories so interesting and she wanted to use

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[142] Exhibit 23, track 1.
[143] Tr. p. 486, l. 23 – p. 487, l. 18.
[144] *Id.*

ThetaHealing to help others.[145] In addition, Kara specifically stated that Vianna's claim of healing from heart failure was a story she relied upon in her decision to take classes.[146]

Regarding knowledge of falsity, If Vianna was never told that her heart was perfect, and she continued to see a cardiologist to treat her congestive heart failure, then Vianna had to know that her claim that she cured herself of congestive heart failure and has a perfect heart was false.

Regarding the inducement of reliance, again, Vianna Stibal actively promoted and marketed ThetaHealing in an effort to sell classes and products. Appellants clearly intended people to rely on their statements, such as the heart failure story, so people would be persuaded to take classes.

Regarding Kara's ignorance of the falsity of the statement, Kara did not know that Vianna's claim that she healed herself of congestive heart failure was false until litigation began and she was able to obtain Vianna's medical records.[147] To suggest otherwise does not reflect the evidence in a light most favorable to the Respondents.

Regarding injury, Kara was induced into taking more classes by Vianna's continuous false stories such as the claim that she cured herself of congestive heart failure. Kara's financial loss is her damages.

3. Respondents offered clear and convincing evidence that Vianna's stories regarding cancer were false.

The Jury reasonably relied upon vast evidence that Vianna Stibal was never diagnosed with cancer, as she had claimed, and therefore could not have cured herself of cancer. The

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[145] Tr. p. 225, ll. 8-21.
[146] Tr. p. 224, ll. 7-22.
[147] Tr. p. 890, ll. 5-13, *see also*, p. 891, l. 15 – p. 892, l. 13.

Appellants, again, list a number of the elements for fraud, claiming none of them were proven, but fail to account for the record in a light most favorable to the Respondents, or to admit the truth of Respondent's evidence.

a) Vianna made representations regarding cancer to Kara.

The Jury saw a significant amount of promotional materials Vianna Stibal produced, including videos, interviews, and books to promote ThetaHealing.[148] The hallmark story in all of them was Vianna's claim that she was diagnosed with cancer, told she had six months to live, told her leg would need to be amputated, told to start chemotherapy, and instantly healed herself before treatment began.[149] All but one of the classes Kara took in ThetaHealing were taught by Vianna, and the story about Vianna being diagnosed with cancer and healing herself was told in all of them.[150] Kara's testimony at trial, when asked, "Did you hear her tell the story of her (Vianna) curing herself of cancer?" Kara stated, "I did."[151] No evidence was presented to the contrary.

b) Vianna's statements regarding cancer were false, and Vianna knew they were false.

The jury reasonably concluded that Vianna was never diagnosed with cancer and she knew she was never diagnosed with cancer by virtue of the medical records showing the same, and testimony suggesting Vianna knew she was never diagnosed with cancer. The very medical

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[148] *See*, Exhibit 23, which included a number of videos and audio where Vianna tells her story of healing herself from cancer; Exhibit 24, Vianna's first book "Go Up and Seek God." Which begins with the story, "The Journey" tells Vianna's story regarding cancer.

[149] Tr. p. 224, ll. 7-18.

[150] Tr. p. 215, l. 11 – p. 216, l. 8.

[151] Tr. p. 256, ll. 20-24.

records that Vianna Stibal had revealed stated that a growth in her leg was suspicious for cancer, but "not diagnostic."

The evidence at trial showed that Vianna made specific and dramatic claims pertaining to her cancer story that were not true. These false claims included that she was told her leg would need to be amputated, that she only had six months to live, and that the doctors had scheduled her for chemotherapy.[152] However, both experts, including the expert hired by Vianna, testified that a person with an inconclusive biopsy like Vianna had would never be told such things because there was no diagnosis.[153] Thus, a doctor would not have ordered chemotherapy, would not have ordered radiation, and would not have told the patient that her leg would need to be amputated.[154] None of those things happened, and Vianna knew it.

In addition, the jury had direct evidence that Vianna knew that she was never diagnosed with cancer by virtue of the testimony of Blake McDaniel, Vianna's husband at the time Vianna was being tested.[155] Blake McDaniel testified that he is, and was, a hypnotist. Mr. McDaniel taught Vianna about brainwaves as he learned about them while being a hypnotherapist.[156] Blake McDaniel testified that he went to all of Vianna's medical appointments, and Vianna was never told that she had cancer, that she only had a few months to live, or that her leg would need to be amputated.[157] Blake McDaniel testified that Vianna was never told to report for

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[152] *See*, Exhibit 23, track 1, time 1:30 – 4:10; *see also*, Exhibit 24, pages 5-6.
[153] Tr. p. 464, l. 25 – p. 465, l. 17; p. 470, l. 21 – p. 471, l. 24; p. 809, l. 16 – 810, l. 15.
[154] *Id.*
[155] Tr. p. 580, ll. 13-18.
[156] Tr. p. 580, l. 22 – p. 582, l. 13.
[157] Tr. p. 585, l. 21 – p. 586, l. 6.

chemotherapy or radiation treatment.[158] In fact, Blake McDaniel's testimony was consistent with that of the medical records and the experts, that Vianna was told they needed to do a second biopsy to see if she had cancer.[159] Eventually, Vianna's leg healed and the pain in her leg subsided over a period of three or four months.[160] It wasn't for a while after Vianna's leg had slowly healed that she started claiming that she cured herself of cancer.[161] Once Vianna began claiming she had cured herself of cancer, Blake McDaniel confronted Vianna, and told her she should stop making that claim.[162] In response, Vianna got upset and blew it off.[163]

Appellants, who are obligated to accept Respondent's evidence as true and accept all reasonable inferences therefrom in their appeal, fail to account for any of this evidence, but still suggest in their brief that Respondent failed to prove that Vianna's statements regarding cancer were false and that Vianna knew they were false.

c) Vianna's cancer story was material to Kara's decision to take classes and Kara did not know the story was false.

Appellants make the claim that no evidence was presented suggesting that Vianna's fraudulent misrepresentations were material to Kara's decision to take classes, but offer no review of the record and make no other argument. Directly on this element, Kara testified that Vianna's story about healing herself of cancer is very important because it was the basis of ThetaHealing, and that it was important to her decision to take classes.[164] Later, Kara testified

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[158] Tr. p. 587, l. 6 – p. 588, l. 4.
[159] Tr. p. 588, l. 19 – p. 589, l. 5.
[160] Tr. p. 591, ll. 1-14.
[161] Tr. p. 591, l. 15 – p. 592, l. 7.
[162] Tr. p. 592, l. 18 – 593, l. 4.
[163] Tr. p. 593, ll. 5-8.
[164] Tr. p. 257, ll. 4-24, *see also*, Tr. p. 224, ll. 7-18.

that if she had known that Vianna never had cancer, and did not do the other healings she claimed, "I would not take one theta – have taken one theta class, not one theta session, and I highly doubt anyone that I met when I was there would have either."[165]

d) Vianna intended Kara to rely upon her statements to take classes, and Kara had a right to rely on those statements.

Kara testified that Vianna's stories were told in every class she attended, and that Vianna and the people at ThetaHealing encouraged people to take more classes. Vianna publishes promotional videos actively marketing her books, classes, DVDs, and degrees.[166] The jury saw such marketing videos at the trial, and appropriately relied upon them. Vianna claimed in the videos that she cured herself of cancer and gave herself a perfect body.[167] At the end of Vianna's first book, Vianna gave her contact information, "for further information... and to schedule classes."[168] In addition, Vianna admitted that she does interviews that are posted on the internet to promote ThetaHealing.[169]

Appellants seem to be arguing that because ThetaHealing has a spiritual component to it, that Kara had no right to rely upon Vianna's fraudulent statements. This assertion is made without any law to justify this position. In reality, such a position would result in people of faith having no protection in the law from those who would prey on their faith to make money. Vianna's story is not one of faith, but makes very specific claims about Vianna's ability to heal, including her assertion that she was diagnosed with cancer and instantly healed herself. Kara

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[165] Tr. p. 895, ll. 2-9.
[166] Tr. p. 258, ll. 12-24.
[167] Exhibit 23, tracks 2, 3, and 7.
[168] Exhibit 24, p. 58.
[169] Tr. p. 39, l. 15 – p. 40, l. 4.

absolutely had a right to rely on those statements, which were made in an attempt to get Kara, and anyone else who hears the story, to pay Vianna money to teach them to heal.

e) Kara suffered damages as a result of the misrepresentations.

Again, Appellants make the assertion that Kara did not suffer any damages as a result of Vianna's fraudulent misrepresentations, but fails to make any citation to the record. Kara took classes, costing thousands of dollars from Vianna in reliance on her story of cancer. The cost of classes and the expenses to take the classes, were recoverable and actually awarded by the jury. These amounts do not include the amount of money Kara would have earned if she worked during the months she took these classes. The Jury's award of damages on the fraud claim was conservative and should be upheld.

4. Respondents offered clear and convincing evidence that Vianna did not heal her Grandson's lung.

Appellants make an allegation that "no evidence" was presented proving Vianna did not help heal her grandson's lung. Again, this allegation ignores the record. Lindsey Stock, Vianna's daughter-in-law, and the mother of the grandson that was allegedly healed, testified that when her son was in the hospital having his lungs treated, they were living in Alaska, and Vianna was never there, and never attempted to heal her grandson's lung.[170] Vianna never contradicted this story.

C. Respondent offered clear and convincing evidence of Appellant's bad act and bad state of mind which warranted the jury's consideration of punitive damages.

Vianna Stibal knew that she never was diagnosed with cancer, but told that lie, along

[170] Tr. p. 561, ll. 4-11.

with other lies, to make her claim of healing more interesting, and to entice people to pay her money for classes. This clear fraud warranted the jury's award of punitive damages.

1. Appellants' claim that ThetaHealing is protected as a religion was not proven at trial, is new before this Court, and should not be considered on appeal.

a. Appellants manufactured this argument that ThetaHealing is a religion for the first time on appeal, prejudicing the Respondent.

In civil cases, an issue cannot be raised for the first time on appeal, other than objections to jury instructions, and if raised, the Idaho Supreme Court will not consider the issue.[171] Appellants' Answer in this case is void of any defense that ThetaHealing is a religion, and Appellants never pled a claim pursuant to the Idaho Free Exercise of Religion Protected Act (FERPA).[172] Appellants' did not request any jury instructions or raise any law regarding religion during the trial.[173] When arguing Plaintiff's Renewed Motion to Amend to Include Punitive Damages, Appellants did not argue that ThetaHealing was a religion.[174] As a policy, the Court should refuse to hear new issues such as this because if Respondents had known that Appellants deemed this an issue, the evidence presented at trial would have been very different. Respondents are prejudiced by Appellant's failure to raise this issue below, but now expect them to litigate it without fair notice. The Court should refuse to consider this argument.

b) ThetaHealing is a for-profit business and not a religion

Regardless of whether the issue was new, the issue of religion was not a "pink elephant" at trial because ThetaHealing is not a religion. The Idaho Free Exercise of Religion Protected

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[171] *Gardner v. Bartshi*, 139 Idaho 430, 436, 80 P.3d 1031, 1037 (2003).
[172] R. Vol 1, p. 26-32.
[173] Tr. p. 912, ll. 5-12.
[174] Tr. p. 19, l. 3 – p. 23, l. 2.

Act (FERPA) states that government may not substantially burden the free exercise of religion unless the application of the burden is "(a) Essential to further a compelling government interest; and (b) The least restrictive means of furthering that compelling government interest."[175] It is the burden of the party asserting a religious belief to prove their FERPA claim, with the burden being shifted to the non-moving party to prove a compelling government interest.[176] Whether a law burdens one's free exercise of religion is a factual question, and issues such as sincerity are left to the trial court.[177] Not all claimed beliefs can be religious or every person would be allowed to make their own standards on matters of conduct.[178] The Idaho Supreme Court has adopted the 10th Circuit's factors in *Meyers* to determine if a belief system is a religion, including:

> (1) ultimate ideas; (2) metaphysical beliefs; (3) moral or ethical system; (4) comprehensiveness of beliefs; and (5) accoutrements of religion. As to the latter factor, the court identified ten relevant subfactors: (a) founder, prophet, or teacher; (b) important writings; (c) gathering places; (d) keepers of knowledge; (e) ceremonies and rituals; (f) structure or organization; (g) holidays; (h) diet or fasting; (i) appearance and clothing; and (j) propagation.[179]

The uncontradicted testimony at trial was that ThetaHealing is not a religion, or even a means of prayer to seek healings from God, but a "healing modality," or a means to cause instantaneous physical change to the body that was backed by science.[180] Vianna describes

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[175] Idaho Code §73-402.
[176] *State v. Cordingly*, 154 Idaho 762, 764, 302 P.3d 730, 734 (2013).
[177] *Id,* 154 Idaho at 765.
[178] *Id,* 154 Idaho at 768, quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).
[179] *Id.* 154 Idaho at 768, *United States v. Meyers*, 906 F.Supp. 1494, 1483 (D. Wyo. 1995).
[180] Tr. p. 230, ll. 7-18.

ThetaHealing as a "healing technique," rather than a religion.[181] Vianna claims that the technique is from God, but can be explained scientifically.[182] ThetaHealing cannot be a religion because one of the main teachings is that anyone can do it, and people participating in ThetaHealing bring their own faith with them to attempt healings.[183] Thus, ThetaHealing is a group of spiritually minded people, but not a religion itself. At trial, Vianna testified that the healing was through God, but in her videos she makes claims like, "I'm a good healer," suggesting the skill came from her.[184]

Applying the *Meyers* factors to ThetaHealing, Appellants did not present persuasive evidence at trial proving the factors. ThetaHealing teaches that there is a scientific explanation to healings that can occur when a person reaches a theta brain wave state. Thus, ThetaHealing is supposedly based upon science rather than metaphysical beliefs. In addition, no evidence was presented about any ultimate ideas or explanations about man's role in the universe or the meaning of life. No evidence was presented of a moral or ethical system. There is no comprehensiveness of beliefs in ThetaHealing because ThetaHealing teaches that anyone from any religion can participate. While Vianna is seen as a founder of ThetaHealing, no evidence was presented about important writings, gathering places, keepers of knowledge, ceremonies, rituals, structure or organization, holidays, diet or fasting, appearances or clothing, or propagation.

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[181] Exhibit 24, p. 4.
[182] Id. (Exhibit 24)
[183] Tr. p. 827, l. 19 – p. 828, l. 15, *see also* p. 235, ll. 22-25.
[184] Tr. p. 431, l. 19 – p. 432, l. 8.

Most significantly, ThetaHealing is a for-profit business, not a religion.[185] THInK teaches classes that span from a few days to three weeks, costing between $500.00 to $4,500.00 per student, per class, with anywhere between 50 and 300 people attending each class.[186] Nature Path, Inc., which owns THInK, is taxed as an S Corporation, not a charitable organization.[187] If Appellants believed they were a religion, they would seek a tax-exempt status from the IRS. Appellants did not argue that ThetaHealing is a religion to the trial court is because it is not.

c) Idaho has a compelling government interest in protecting its citizens from fraud.

Appellants seem to be arguing that Vianna should not be accountable for punitive damages because fraud is acceptable in the religious context. Such an argument ignores the interest the State of Idaho has in protecting its citizens from fraud, especially desperate or spiritually minded people who may be susceptible to claims of instant healing.

d) There is no less restrictive means to preventing fraud than making it illegal and deterring future fraud through punitive damages.

Other than subjecting fraudulent conduct to civil courts, there is no less restrictive means to prevent fraud. Without the deterrence that comes from punitive damages, Vianna would have no compelling reason to stop making false claims about healings that never occurred. No other legal avenue can have this effect.

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[185] Tr. p. 396, l. 20 – p. 397, l. 4.
[186] Tr. p. 417, l. 20 – p. 418, l. 21.
[187] Exhibits 33, 34, 35, 36.

2. The validity of Vianna's beliefs was not a trial issue.

The Court and Respondents never asked the jury to determine the validity of Vianna's beliefs, but simply asked the jury to determine if she was making fraudulent statements to get Respondent's money. During pre-trial motions, the district court stated, "We're not here to determine whether she's (Vianna) a fake or not. That's not the issue in this case... whether she's a fake or not is not -- right now is not really a relevant question." Similarly, in closing arguments, while addressing the fraud claim, Respondent's counsel argued,

> The Defendants want you to believe this case is about beliefs. It's not. I have no problem with someone convincing themselves if something's true or not. You may know people like this, people who embellish stories for whatever reason... I don't have a problem with that. That's totally fine. People want to believe what they want to believe. But in the law, based on what the judge read to you, we draw the line somewhere; and that's where you fraud someone... Beliefs are fine. If people want to believe in ThetaHealing, I think that's great... However, at the point you're stealing people's money with those fraudulent misrepresentations, that's when the law and you need to get involved.[188]

Appellants continue to claim the case is about beliefs, when none of the evidence, none of the law, and none of the argument focuses on the validity of ThetaHealing as a belief system. Only Vianna's actionable misrepresentations are argued.

D. Punitive Damages were Appropriate because Appellants' Fraud was Substantial and Displayed a Bad Act with a Bad State of Mind.

Punitive damages were appropriate at trial because Vianna Stibal's conduct was extreme, outrageous and demonstrated a bad state of mind. Vianna claimed that she had been diagnosed with cancer and cured herself of cancer when she never was diagnosed with cancer. Vianna claimed that she cured herself of heart disease when she still has heart disease. Vianna claimed

[188] Tr. p. 917, l. 19 – p. 918, l. 7

that she pulled herself out of a coma when she was never in a coma. Vianna claimed that she healed her grandson's lung when no such healing was ever attempted. Vianna claimed she is in good health when she suffers from a number of chronic ailments. These lies, told to induce people to give her money to learn how to heal, is extreme and outrageous conduct demonstrating a bad state of mind. Before trial, the decision to allow Plaintiff to amend their complaint was in the discretion of the trial court.[189] The plaintiff may amend his complaint to seek punitive damages if the plaintiff shows by a preponderance of the evidence, "a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages."[190]

At trial the burden to be awarded punitive damages is raised to a clear and convincing standard. Plaintiffs must offer evidence proving oppressive, fraudulent, malicious or outrageous conduct to prevail.[191] The Court has summarized this requirement saying the Plaintiffs must prove the Defendant performed a bad act with a bad state of mind.[192]

The primary purpose of punitive damages is to deter similar conduct from happening again in the future.[193] In *Walston*, the Defendant was engaging in deceptive business practices, which the Court believed, "are likely to continue if not deterred."[194]

The Idaho Supreme Court has ruled, "It is well established in this state that punitive damages may be awarded when the defendant has committed fraud."[195] The Idaho Supreme

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[189] *Gunter v. Murphy's Lounge, LLC*, 141 Idaho 16, 29, 105 P.3d 676, 689 (2005).
[190] *Id.*
[191] *Idaho Code* §6-1604(1).
[192] *Meyers v. Workmen's Auto Ins. Co.*, 140 Idaho 495, 503, 95 P.3d 977, 985 (2004).
[193] *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 221, 923 P.2d 456, 466 (1996).
[194] *Id.* at 222.
[195] *Umphrey v. Sprinkel*, 106 Idaho 700, 710, 682 P.2d 1247, 1257 (1983).

Court continued to find, "One of those situations in which additional awards are appropriate is when the defendant is engaged in deceptive business practices operated for profit posing danger to the general public."[196]

Oppressive and fraudulent conduct is evident when the conduct was deliberate or willful.[197] In *Vendelin*, the Idaho Supreme Court upheld the district court's decision to allow the plaintiff to seek punitive damages when the deliberate or willful conduct was failure to train Costco employees proper ways of displaying products to prevent injury.[198]

1. The initial denial of Plaintiff's Motion to Amend is irrelevant, and the district court properly allowed punitive damages to be pled at a later motion

The district court was well within its discretion to allow Plaintiffs to amend their complaint to include punitive damages because the preponderance of the evidence presented shows the Appellants had willfully engaged in deceptive business practices. The evidence before the district court when he granted the motion to plead for punitive damages showed that Kara was enticed to pay for courses taught by Vianna Stibal, or courses taught by individuals licensed by Vianna Stibal because of Vianna's claims that she had cured herself of cancer using her ThetaHealing modality. Kara was also enticed to pay for courses based upon Vianna's assertion that her healing was proven scientifically. However, no such scientific proof exists. To the contrary, Dr. Shull testified, and Dr. Beron agreed, that Vianna was never diagnosed with cancer. In addition, Vianna's statements about being in a coma in Italy, having cured herself of heart

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[196] *Id.*
[197] *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 423, 95 P.3d 34, 41 (2004).
[198] *Id.*

disease, having healed her grandson's lung, and being in good health are all falsehoods manufactured by Vianna to entice people like Kara to take more classes.

Judge Watkins prior decision not to allow punitive damages was not controlling on Judge Woodland, and was not well reasoned. Judge Watkins seemed to believe that as long as there was an element of faith in the misrepresentations, then punitive damages could not be recovered.[199] Such a statement takes the position that as long as fraudfeasers use an element of faith in their attempt to fraud others, punitive damages could never be used to deter such conduct. The State of Idaho and the Court should uphold the district court's ability to protect the public from fraud that sounds of faith to some degree. Regardless, Judge Woodland's reasoning was sound, that ThetaHealing is commercial in nature, and the misrepresentations made showed a bad act with a bad state of mind.[200]

2. The trial court properly allowed the issue of punitive damages to be decided by the jury, and the jury's award should stand

The district court properly used his discretion to allow the jury to consider punitive damages. The district court's decision to allow the jury to be instructed on punitive damages is left to an abuse of discretion standard, meaning the decision will be upheld unless the record lacks evidence of substantial evidence to support the trial court's decision.[201] In *Manning*, the plaintiff offered evidence that a nurse disconnected a patient's oxygen despite the pleadings of family members that she not do so.[202] The decision to instruct the jury on punitive damages was

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[199] Tr. No. 2, p. 98, ll. 4-19.
[200] Tr. p. 182, l. 21 – pl. 183, l. 8.
[201] *Manning v. Twin Falls Clinic & Hosp.*, 122 Idaho 47, 52, 830 P.2d 1185, 1190 (1992).
[202] *Id.*

upheld because this conduct was grossly negligent and showed a disregard of the consequences that would follow.[203]

In this case, the district court had ample evidence of outrageous conduct made with a disregard of the consequences that would follow. Appellants, again, make their arguments by urging the Court to adopt their evidence, and ignore the substantial evidence showing bad intent. Vianna's book, *Go Up and Meet God* and her story regarding cancer is not a mere memoir; it is told with the intent to persuade people to pay money to take classes, and buy books and videos.[204] As Vianna's husband at the time said, Vianna tells her false stories because she wanted to have a following and wanted to be a guru type.[205] Vianna sells classes for as much as $4,400.00 each, markets those classes, and even offered a doctorate degree for a time to entice people to take more classes. Making up stories about healing a nonexistent cancer, pulling one's self out of a coma, healing heart disease and children, all of which never happened, is extreme and outrageous. The district court properly ruled in his discretion that the jury could consider those facts to determine if punitive damages were proper.

Appellants appear to believe that because Vianna offered self-serving testimony that she believed she had cancer, the jury should not have been allowed to consider punitive damages. Again, this argument ignores all the facts that show Vianna knew she was lying about the cancer story. Blake McDaniel testified that he was at all of Vianna's doctor's appointments, and that

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[203] *Id.*
[204] Tr. p. 258, ll. 12-24.
[205] Tr. p. 583, ll. 8-17.

she was never told she had cancer.[206] Vianna claimed a doctor told her that her leg would need to be amputated, but Blake McDaniel testified that never happened either.[207] Even Vianna's own expert testified that after having an inconclusive biopsy Vianna would never have been told to report for chemotherapy, would not have been ordered to report for radiation, and would not have been told that her leg would need to be amputated.[208] These false details that Vianna adds to her story to make it sound dramatic or interesting reveal her propensity for lying, specifically about cancer.

However, in the district court's decision to allow the jury to be instructed on punitive damages, the district court did not have to rely on the cancer story alone. He could also rely on Vianna's claims that she pulled herself out of a coma in Italy, which never happened, that she healed herself of heart disease, which never happened, that she healed her grandson's lung, which never happened, and that she is in good health, which is also not true. These multiple falsehoods, told in an attempt to get people like Kara to take more and more classes in ThetaHealing is astonishing, outrageous, and justifies punitive damages.

3. The district court reduced the punitive damages award to the proper amount.

The district court properly reduced the punitive damages award to $384,000.00, which is three times the compensatory damages, as required by Idaho Code. The punitive damages award met all other statutory criteria to be upheld. The maximum amount allowed in a punitive

[206] Tr. p. 585, l. 21 – p. 586, l. 6.
[207] Tr. p. 585, l. 21 – p. 586, l. 6.
[208] *Id.*

damages claim is the greater of $250,000.00 or three times the compensatory damages.[209] In addition, a punitive damage award must not violate the defendant's due process rights. Appellants did not argue that the award of punitive damages violated due process, but did argue the guideposts for determining if an award violates due process. Those guideposts are the degree of reprehensibility of the behavior, the disparity between the harm or potential harm suffered and the award, and the difference between the punitive damages awarded and the civil penalty authorized in comparable cases.[210]

a) Appellant's conduct, including multiple lies regarding her past, was very reprehensible.

Appellant's conduct, marketing a business based upon untrue stories of sicknesses, ailments and Vianna's ability to heal is reprehensible because it was repeated, deceitful, and targeted susceptible people who are spiritually minded or desperate for a healing. The degree of reprehensibility is the most important factor when determining the reasonableness of punitive damages because reprehensibility shows the enormity of the offense.[211] In determining whether conduct is reprehensible, the Court evaluates whether:

> the harm caused was physical as opposed to economic; the tortuous conduct evidenced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.[212]

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[209] *Idaho Code* §16-1604.
[210] *BMW of N. Am. V. Gore*, 517 U.S. 559, 575 (1996).
[211] *Id.*
[212] *Weinstein v. Prudential Prop. & Cas. Ins. Co.*, 149 Idaho 299, 338, 233 P.3d 1221, 1260 (2010).

In *Weinstein*, a $1,890,000.00 punitive damages award was upheld when an insurance company refused to pay benefits.[213] This conduct was purely economic and did not affect anyone's health or safety. However, the insurance company repeatedly refused to pay the benefit, which the jury found to be intentional.[214]

Similar to *Weinstein*, the jury must have relied upon Vianna's repeated, intentional and deceitful conduct. The trial court found a high level of reprehensibility, stating,

> The evidence at trial clearly showed that the Defendant had vigorously marketed her healing method world-wide and made claims regarding her own health and healing of others to gain tuition and paying followers... Her belief that she had cancer, sincere or otherwise, is one thing, but her claim of specific diagnosis to market her tuition paid seminars and classes is quite another. The evidence regarding the cancer diagnosis was indisputably false. Other claims, such as her own state of health and the claiming of healing of a grandson show that she was quite willing to make questionable claims to advance her organization. Even if she were merely enthusiastic in her own beliefs, she was most reckless in her preying on susceptible people.[215]

The evidence at trial showed Vianna Stibal repeatedly told her false story about cancer as well as other false stories, and Kara took Vianna's classes relying on the truth of these stories. The evidence further showed that if Kara knew the stories were not true, she would not have taken the classes. The jury reasonably did not believe Vianna's testimony that she believed she had cancer, relying on the testimony of Blake McDaniel and the experts instead. The medical records specifically stated that Vianna's biopsy was "suspicious, but not diagnostic" for cancer. The medical records were void of any treatment advice such as chemotherapy or amputation. The medical records and Blake McDaniel's testimony were clear and convincing evidence that

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[213] *Id.*
[214] *Id.*
[215] R. Vol. 3, p. 419.

Vianna's claim that she had been diagnosed with cancer, or believed she had been diagnosed with cancer, were lies. Telling such a story for money amounts to trickery or deceit, and is more reprehensible than mere negligence.[216]

Nevertheless, Vianna Stibal told the Plaintiffs, and many others, her deceitful and untrue stories to get people to pay money to take her classes. This conduct targeted spiritual people like Kara Alexander. Simply put, it is very reprehensible for a person to make up facts about being diagnosed with cancer, and then take people's money based upon those lies.

Further evidencing the need for punitive damages, Kara also relied upon Vianna's other false stories discussed above in her decision to take classes. The evidence that Vianna tells multiple false stories in her promotion of ThetaHealing reveals her deceitful and intentional conduct made with a disregard of the potential consequences.

Vianna's conduct, making up numerous stories about illness and healings when the stories are not true, marketing classes based upon these stories of illness and healing, and taking people's money for those classes, is very reprehensible. This conduct is extreme, and more reprehensible than simply not paying insurance benefits like in *Weinstein*. An award of $384,000.00 is justified by the evidence, and punitive damages are necessary to deter the Appellants from continuing this reprehensible conduct.

b) By statute, the ratio between actual suffered and the punitive damages are within an acceptable range.

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[216] *BMW of N. Am.* at 576.

Punitive damages in the amount of $384,000.00 is below Kara's actual and potential damages, and should thus be upheld. When evaluating the second guidepost, the Court looks to whether there is a reasonable relationship between the punitive damages award and the harm *likely to result from the defendants conduct*, as well as the harm that actually occurred.[217] "Few awards exceeding a single-digit ratio between punitive damages and compensatory damages, to a significant degree, will satisfy due process. Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution."[218] In Idaho, punitive damages are automatically reduced to be no greater than three times the compensatory damages in the jury verdict.[219] In *Weinstein*, the Idaho Supreme Court upheld an adjusted punitive damages award of nine times the compensatory damages because nine times did not violate the due process clause.[220]

Plaintiff's statutorily adjusted punitive damages award of three times the compensatory damages, is an acceptable, single digit ratio between compensatory damages and punitive damages. In Idaho, this second guidepost capping a punitive damages award to a single digit ratio with compensatory damages is automatically met because punitive damages awards may not be more than three times the compensatory damages. Further validating the ratio, Kara's potential damages, including all her lost wages and costs to attend classes over two and a half years, make the jury's award seem conservative.

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[217] *Weinstein*, at 149 Idaho 339 (emphasis added). Defendants' memorandum attempts to limit this inquiry to the amount of harm actually inflicted. However, the potential harm is also part of this evaluation.

[218] *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 424 (2003).

[219] *Idaho Code* §6-1604.

[220] *Weinstein* at 149 Idaho 339.

It was appropriate for the award to be three times the jury verdict, and not just three times the award for fraud because the plain language in the statute caps the punitive damages award at "three (3) times the compensatory damages contained in such judgment."[221] Thus, the proper award was three times the entire compensatory damages, not just the fraud claim. The district judge had discretion to apply punitive damages to the entire award, and his discretion to do so must be upheld. In addition, the breach of contract claim similarly showed reckless and reprehensible conduct by the Appellants. Again, in order to entice people to take more classes and pay more money, Appellants offered a fake degree in exchange for students taking all the classes that were offered. This reprehensible conduct should be included in the punitive damages award. The district court properly included contract damages when calculating his punitive damages award.

c) The civil penalties for similar conduct is not a relevant factor in this case.

Appellants did not argue the third guidepost for evaluating a punitive damages award. While the existence of civil penalties for similar conduct is a factor when determining the validity of a punitive damages award, the desired effect of deterrence for similar conduct outweighs this factor. In *Weinstein*, the insurance company claimed a $1,890,000.00 punitive damage award was excessive because the statutory civil penalty for similar conduct was only $10,000.00.[222] However, the Idaho Supreme Court looked to the possible negative effects, and

[221] *Idaho Code* §6-1604(3).
[222] *Idaho Code* §6-1604(3).

noted that if the penalty was limited to compensatory damages, then the insurance company would have no deterrent to keep it from refusing to pay benefits in the future.[223]

In this case, there is a great risk that the Appellants will continue to use deceitful business practices without the deterrent punitive damages provides. Like in *Weinstein*, where the conduct was less reprehensible, an award of three times the compensatory damages is appropriate to deter the Defendants' deceptive and fraudulent business practices. The State of Idaho has a clear interest in deterring the same. $384,000.00 is a modest sum to protect this interest.

E. The trial court gave the Appellants a fair trial and thus properly denied their motion for a new trial.

The district court must grant a new trial if prejudicial errors of law have occurred.[224] While arguing for a new trial, Appellants have raised new issues on appeal that should not be considered. The remainder of the issues raised by Appellants are without merit and a new trial was properly denied.

1. The district court's calculation of damages was appropriate.

As set forth above, the jury's award of contract damages reflected a conservative view of Kara's expectation from her contract with Appellants. Kara expected a doctorate degree, but received a useless plaque. In addition, Vianna's reprehensible conduct justified a punitive damages award of three times the compensatory damages.

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[223] *Id.*

[224] *Schaefer v. Ready*, 134 Idaho 378, 380 (2000).

2. The videos admitted were relevant and proper foundation was laid.

The Court properly admitted videos of Vianna Stibal making comments about ThetaHealing and promoting her business because the videos and audio introduced the case, and helped the jury understand the reprehensibility of Vianna's conduct and the extent of her fraud. The Supreme Court defers decisions on the admissibility of evidence to the trial court, and only overturns those decisions in the event of a manifest abuse of discretion.[225] Even when the trial court makes an evidentiary error, error is not grounds for a new trial unless the evidentiary failure is inconsistent with substantial justice.[226] In *Hake*, the doctor in a medical malpractice case was not allowed to offer evidence of his referral habit at trial.[227] While this was error, the doctor was able to introduce evidence of his referrals of the patient at issue to other doctors, as well as his medical charts showing he suggested the patient get consultations from other doctors.[228] Thus, the exclusion of habit evidence was not inconsistent with substantial justice and the request for a new trial was properly denied.[229]

In this case, the videos shown were introductory and relevant to fraud and punitive damages. Kara testified that the statements Vianna made in the videos and the audio recording were reflective of her understanding of ThetaHealing as described by Vianna.[230] Kara testified that the stories in the audio were very consistent with how Vianna told the stories.[231] It was better for the jury to hear Vianna tell the stories that form the basics of ThetaHealing, than Kara

[225] *Hake v. DeLane*, 117 Idaho 1058, 1064, 791 P.2d 1230, 1236 (1990).
[226] *Id.*
[227] *Id.*
[228] *Id.*
[229] *Id.*
[230] Tr. p. 209, ll. 5-19.
[231] Tr. p. 215, ll. 11-24.

giving a resuscitation of Vianna's words. ThetaHealing is not a mainstream concept, and the jury needed an introduction into ThetaHealing teachings in order to comprehend the case. In addition, the audio and videos were relevant to fraud because they showed Vianna's intent that when she tells stories, she intends the listener to act upon them. The video and audio also showed that the listener has the right to rely upon Vianna's statements because they are made for the purpose of promoting ThetaHealing. The video and audio are also relevant to punitive damages because it shows Vianna's reprehensibility by telling her false stories many times and to a vast audience in an attempt to recruit people to take classes and pay tuition.

Regardless, the videos were harmless to the Appellants because the information in the videos and audio were no different than the statements Vianna made at trial regarding her alleged healing and business. Vianna had ample time to rebut any statements made in the audio and videos if she wished, but did not do so because the statements made in the audio and videos were "extremely consistent" with how Vianna told the same stories to Kara over years of Kara taking classes.[232]

Evidence is adequately authenticated if it is supported by evidence "sufficient to support a finding that the matter in question is what its proponent claims."[233] In each of the videos, Kara was able to identify Vianna as the speaker, and where she found the video or audio.[234]

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[232] Tr. p. 215, ll. 23-24.
[233] *Idaho Rule of Evidence* 901(a).
[234] Tr. p, 207, l. 11-15, Tr., p. 215, ll. 11-24.

Thereafter, Vianna authenticated the videos as well, testifying that she was the one being interviewed.[235]

One of the videos the Appellants object to was made in 2010.[236] In that video, Vianna shows some of her medical records, claiming they support her cancer story. However, the records Vianna shows were the records from the University of Utah showing that Vianna's biopsy was "suspicious, but not diagnostic," for cancer.[237] This video, released in 2010, was the first time Kara became aware that Vianna had not been diagnosed with cancer. The video is relevant to show falsity to Vianna's story of being diagnosed with cancer, and showing Kara's discovery of the falsity.

3. The District Court properly refused to allow both parties from testifying about healings that Kara did not rely upon.

At trial, the district court properly prevented the Appellants from providing evidence of healings which Kara did not rely upon because Respondents were subjected to the same limitation. Before trial, Appellants filed a motion in limine, and argued extensively that the only admissible stories were those Vianna told that the Respondents relied upon.[238] Respondents wanted to offer evidence of other stories of healings and statements Vianna made that Respondents could prove were not true, even if the Respondents did not rely upon those statements. Respondents were prepared with a number of such stories from Lindsey Stock, Vianna's former daughter-in-law. Respondent's argument was that the stories were relevant to

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[235] Tr. p. 399, ll. 15-25, p. 401, ll. 1-4.
[236] Exhibit 23, track 7.
[237] Tr. p. 325, l. 2 – p. 330, l. 22.
[238] Tr. p. 40, l. 11 – p. 41, l. 4.

prove that Vianna Stibal's entire healing modality was false, and she could not heal people. However, Appellants objected, and the Court agreed that Respondents were limited in their presentation to only offer evidence of stories Kara relied upon in her decision to take classes from Vianna.[239] The district court's rationale was that the case was not about whether Vianna was a legitimate healer, but over whether she made false statements that Kara relied upon.[240] The Court correctly limited both sides equally, and limited evidence to representations Kara Alexander relied upon.

The Appellants were happy with that ruling when it prevented Respondents from offering evidence of more false stories by Vianna, of which Lindsey Stock could have testified about.[241] However, when that same ruling prevented Vianna from testifying about healings that allegedly occurred that she can prove, Appellants objected. Appellants cannot have it both ways. The Respondents cannot be limited to offer only specific stories Kara relied upon, while the Appellants offer stories intended to prove her abilities as a healer that Kara did not rely upon. All stories of healings, whether true or not, that were not relied upon by the Respondents were properly omitted from evidence. Simply put, whether Vianna healed Sean Campbell or other people Appellants intended to call as witnesses was not relevant to whether Vianna told false stories in an attempt to get Kara to take classes in ThetaHealing.

Regardless, the Court's decision to exclude such testimony was harmless to the Appellants because Vianna had the opportunity to present any evidence she could that she had

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[239] Tr. p. 649, ll. 12-23.
[240] Tr. p. 649, l. 24 – p. 650, l. 11.
[241] P. 649, ll. 19-23.

cancer, had pulled herself out of a coma, did cure herself of heart disease, did heal her grandson's lung, and was in good health. She was simply not able to provide any compelling evidence on those relevant issues. Even if Vianna had presented evidence of other healings, she would not have overcome the fact that the stories upon which Kara relied upon in her decision to take ThetaHealing classes were false.

4. Blake McDaniel was able to testify about Vianna Stibal's propensity for veracity.

Idaho Rule of evidence 608(a) states that:

> The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attached by opinion or reputation evidence or otherwise.

While it is true that credibility of a witness is an issue for the jury to decide, opinion as to propensity for telling the truth may be offered.[242]

Taking advantage of this rule, Respondents offered the opinion of Blake McDaniel, Vianna's former husband who was married to her at the time she was being tested for cancer, that Vianna Stibal is not a truthful person.[243] This testimony is helpful to the jury in its evaluation of Vianna's truthfulness. Appellants seem to believe this testimony was improper because this is a civil case, and because the jury ultimately decides who is truthful. IRE 608(a) does not limit opinion evidence to criminal cases, and while the jury decided who was truthful, that does not preclude Respondents from providing relevant opinions on that issue. Blake knew

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[242] *Idaho Rule of Evidence* 608(a).
[243] Tr. p. 595, l. 18 – p. 596, l. 11.

what allegations Vianna was making about cancer, and knew they were not true. His opinion as to her veracity was relevant and helpful.

As a result of this testimony, Appellants were free to offer evidence of Vianna Stibal's propensity for telling the truth, and actually did so. For example, Guy Stibal, Vianna's current husband, testified that Vianna was the second most honest person he knew besides his father.[244] This testimony was also allowed pursuant to IRE 608(a), and made the inclusion of Blake McDaniel's testimony harmless because Appellants were able to offer evidence to the contrary.

5. Vianna's medical records were properly admitted and were not prejudicial

The Court properly admitted Vianna Stibal's medical records contained in Exhibit 18 because the value in assisting the jury to evaluate Dr. Shull's opinion outweighs any prejudicial effect. An expert witness may testify regarding facts and data that is otherwise not admissible.[245] However, the data and facts may be admitted to the jury if the probative value of the information assisting the jury in its evaluation of the expert's opinion substantially outweighs any prejudicial effect.[246]

In this case, the data and facts relied upon by Dr. Shull were admissible, and properly admitted to the jury to assist them in evaluating Dr. Shull's opinions. One of the claims by Vianna Stibal, upon which Kara Alexander relied was Vianna's claim that she was in good health. Dr. Shull gave testimony based upon review of Vianna's medical records[247] that Vianna

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[244] Tr. p. 689, l. 6 – p. 684, l. 13.
[245] *Idaho Rule of Evidence* 703.
[246] *Id.*
[247] Appellants' Brief argues that Dr. Shull never commented on Vianna's medical records and only reviewed four pages of Vianna's medical records. The record is void of this testimony. Dr. Shull testified that he

suffers from hypercholesterolemia, insulin resistance, congestive heart failure, diastolic dysfunction, chronic sinusitis, allergies, hypertension, and chronic renal insufficiency.[248] Based on these diagnosis and Vianna's extensive treatment for these ailments, Dr. Shull testified that Vianna suffers from a number of potentially serious medical conditions.[249] Dr. Shull's testimony directly contradicted Vianna's claim that she was in good health. Giving the jury the medical records aided them in evaluating Dr. Shull's testimony and the validity of Vianna's claim that she is in good health.

The Appellants claim a prejudicial effect of these medical records, but fail to identify the prejudicial effect. No improper inference can be made from the medical records. Rather, the medical records directly refute Vianna Stibal's claim that she is in good health, which was clearly at issue at trial. Appellants' argument seems to suggest that this evidence is prejudicial simply because it reveals that Vianna's claim of having good health is untrue. The medical records had a high probative value by aiding the jury in its evaluation of Dr. Shull's testimony. Without any prejudicial effect, the records were properly admitted.

Regardless, admission of the records through Dr. Shull, if improper, was harmless error because the records could have been admitted through other witnesses such as Vianna herself.

6. Appellants' Statute of Limitations argument is void for being new on appeal and is without merit.

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reviewed the medical records in Exhibit 18, and testified about a number of conditions Vianna suffers from as evidenced by those records. See, Tr. p. 460, l. 13 – p. 461, l. 3. *See also*, p. 484, l. 23 – p. 489, l. 223.

[248] Tr. p. 486, l. 13 through p. 489, l. 18.

[249] Tr. P. 489, ll. 19-23.

The Court should not consider Appellants' statute of limitations claim because it was never asserted before this appeal. As set forth above, an issue cannot be raised for the first time on appeal, and if raised, the Idaho Supreme Court will not consider the issue.[250] For the first time in this litigation, Appellants argue that Kara's fraud claim is barred by the statute of limitations. The Appellants did not make a statute of limitations claim in their answer,[251] Appellants never argued statute of limitations as part of their motion for summary judgment,[252] and never argued statute of limitations at trial.[253] The issue should not be considered.

Regardless, Respondent's fraud claim is not barred by the statute of limitations because Kara did not discover the fraud until 2010. The statute of limitations on a fraud claim is three years.[254] However, this time does not accrue, "until the discovery, by the aggrieved party, of facts constituting the fraud or mistake."[255] Kara testified that she saw a video on YouTube that Vianna posted in 2010 that showed Vianna's medical records from Utah that did not diagnose her with cancer.[256] Before seeing that video, and the corresponding medical records shown on that video, Kara did not know that Vianna was never diagnosed with cancer. Therefore, the statute of limitations would not have begun to accrue until 2010, making Kara's complaint, filed the next year on November 10, 2011, timely.

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[250] *Gardner v. Bartshi*, 139 Idaho 430, 436, 80 P.3d 1031, 1037 (2003).
[251] R. Vol. 1, p. 26-31.
[252] *Id.*, at p. 65-91.
[253] Tr. p. 933-953.
[254] *Idaho Code* §5-218(4).
[255] *Id.*
[256] Tr. p. 323, ll. 6-23, Exhibit 23, track 7.

F. Attorney's Fees and Costs on Appeal.

Respondent should be awarded her attorney's fees and costs. This appeal simply asks the Supreme Court to second guess the jury's award, and ignores the burden placed upon Appellants. "Attorney's fees are awardable if an appeal does no more than simply invite the appellate court to second-guess the trial court on conflicting evidence, or if the law is well settled and appellants have made no substantial showing that the district court misapplied the law."[257] For instance, when both parties are able to thoroughly argue their positions at trial, the Supreme Court will simply conclude that the jury found the prevailing party's argument more believable.[258] Thus, attorney's fees will be awarded.[259]

In this case, Respondents are entitled to their attorney's fees on appeal because none of the issues raised on appeal warrant a reversal, and the appeal simply asks the Court to second guess the jury and trial court. All of Appellant's issues on appeal surround the district court's decision to deny JNOV or a new trial. On appeal on a motion to JNOV, the court accepts all evidence against the moving party as true, and draw all reasonable inferences therefrom in a light most favorable of the non-moving party.[260] On appeal of a motion for a new trial, the district court is granted broad discretion when considering a motion for a new trial that will not be disturbed absent a showing of manifest abuse of discretion.[261] However, when arguing this appeal, Appellants do not even account for the voluminous evidence Respondents presented in

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[257] *Booth v. Weiser Irrigation Dist.*, 112 Idaho 684, 687, 735 P.2d 995, 998 (1987).
[258] *In re Estate of Roll*, 115 Idaho 797, 799, 770 P.2d 806, 808 (1989).
[259] *Id.*
[260] *Griff, Inc.v. Curry Bean Co.*, 138 Idaho 315, 319, 63 P.3d 441, 445 (2003).
[261] *Sheridan v. St. Luke's Reg'l Med. Ctr.*, 135 Idaho 775, 779, 25 P.3d 88, 92 (2001).

support of their claims, and do not grant them any reasonable inferences. The appeal seeks a new trial without any showing that the district court abused his wide discretion. The appeal even brings in new arguments that were never argued before the appeal. Based upon the arguments, and a review of all the facts, the district court properly denied the Appellants' motion for judgment JNOV and motion for a new trial. This appeal only asks this court to second guess the jury and the trial court, so Respondent should be awarded her attorney's fees and costs.

VII. CONCLUSION

Wherefore, the Respondent respectfully requests that the Court dismiss the appeal and award the Respondent her attorney's fees and costs on appeal.

Dated this 21st day of October, 2014.

Alan Johnston
Pike Herndon Stosich & Johnston, PA
Attorneys for Plaintiff/Respondent

VIII. CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2014, I caused a true and correct copy of the foregoing document to be served by first class U.S. mail, postage prepaid to the following:

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