

**APPENDIX A**

**SUPREME COURT OF ARIZONA**

GABRIELA GONZALEZ,  
Plaintiff/Appellant

Arizona Supreme  
Court  
No. CV-21-0017-PR

v.

Court of Appeals  
Division One  
No. 1 CA-CV 20-0258

HARVEY RONEY, et al./  
Defendants/Appellees.

Maricopa County  
Superior Court  
No. CV2018-090577

**FILED: 07/21/2021  
ORDER**

On July 20, 2021, Appellant Gonzalez, pro se, filed a Motion for reconsideration (Oral Argument Requested) of this Court's order denying the petition for review filed on June 30, 2021. Rule 22(f), Arizona Rules of Civil Appellant Procedure does not allow the filing of a Motion for Reconsideration of an order denying a petition for review. Therefore, **IT IS ORDER** that the Motion to file a Motion for Reconsideration for the Review to the Arizona Supreme Court (oral argument) is denied.

DATED this 21st day of July, 2021.

s/ William G. Montgomery  
Duty Justice

TO:  
Gabriela Gonzalez  
Donn C. Alexander  
Eileen Dennis Gilbride  
Amy M. Wood

**APPENDIX B**

**Supreme Court of Arizona**

Robert Brutinel                      Arizona state court building  
Chief Justice              15 West Washington street, suite,  
402  
Phoenix, Arizona 85007  
(602) 452-3396

Tracie Lindeman  
Clerk of the Court  
**June 30, 2021**

**Re: Gabriela Gonzalez v. Harvey Roney et al**  
Arizona Supreme Court No. CV-21-0017-PR  
Court of Appeals, Division One No.  
1 CA-CV 20-0258  
Maricopa County Superior Court No.  
CV2018-090577

Greetings:

The following action was taken by the Supreme  
Court of The State of Arizona on June 30, 2021, in  
regard to the above-referenced Cause:

**ORDERED: Plaintiffs'/Appellant's Petition for  
review to Supreme Court (oral Argument) =  
DENIED**

A panel composed of cChief Justice Bruntiel, Vice  
Chief Justice Timmer, Justice Lopez, and Justice  
Beene participated in the Determination of this  
matter.

TO:    Clerk  
    Tracie K. Lindeman  
Gabriela Gonzalez  
Donn C Alexander  
Eileen Dennis GilBride

**APPENDIX C**

**IN THE ARIZONA COURT OF APPEALS**

Division One

Gabriela Gonzalez, Plaintiff/Appellant,

v.

Harvey Roney, et al., Defendants/Appellees,  
Depuy Synthes Sales Inc.

No. 1 CA-CV 20-0258

**Filed 12-17-2020**

Appeal from the Superior Court in Maricopa County

No. CV2018-090577

The Honorable Timothy J. Thomason, Judge

**AFFIRMED**

Counsel

Gabriela Gonzalez, Phoenix

*Plaintiff/Appellant*

Jones, Skelton & Hochuli, P.L.C., Phoenix

By Donn C. Alexander, Eileen Dennis GilBride,

Andrea R. Logue *Counsel for defendants/Appellees*

Gonzalez v. Roney, et al.

Decision of the Court

**MEMORANDUM DECISION**

Judge David B. Gass delivered the decision of the

Court, in which Presiding Judge Jennifer M.

Perkins and Judge Michael J. Brown joined.

**GASS**, Judge:

1. Judgment as a matter of law on her defamation claim and the jury's defense claims. For the following reasons, we affirm.

## FACTUAL AND PROCEDURAL HISTORY

2. Gonzalez was working her shift at HonorHealth Scottsdale Shea Medical Center as a surgical technician. Harvey Roney was also present at the hospital as an employee of Depuy Synthes Sales, Inc. (Depuy) which supplied surgical equipment to HonorHealth. Gonzalez and Roney, who assisted in an operation. As Gonzalez was putting on her mask, she alleged Roney "kicked her forcefully between the legs, making contact with her legs and vagina".

3. Gonzalez reported the incident to HonorHealth's human resources department. According to Gonzalez, coworkers later told her they heard she reported Roney for making an "off-color" joke. Gonzalez alleged Roney told coworkers she reported him because of the joke. Gonzalez sued Roney for defamation, battery, and IIED. Gonzalez also sued Depuy on a theory of *respondeat superior*.

4. At trial, Roney testified he had been a sales consultant for Depuy for 28 years. His job included providing technical knowledge and instruction to surgeons and operating room personnel. A doctor had asked Roney to attend surgery the day the incident occurred. As Roney walked past her and jokingly reminded her to put her glasses on. During the surgery, Roney needed to get Gonzalez's attention. Roney would normally use a laser pointer to get Gonzalez's attention during surgery to avoid entering the sterile field, but Gonzalez had previously told him the laser pointer bother her eyes. Roney did not use the laser pointer and instead called Gonzalez, but she did not respond. Roney then tapped the back of her lead apron near her knee to get her attention. Roney denied kicking Gonzalez.

5. Roney testified Gonzalez, reported the incident to the police, claiming Roney kicked her during surgery. Later, Roney learned Gonzalez changed her allegations and now claimed Roney had kicked her in the vagina. The police and the prosecutor found Gonzalez's allegations unsupported and the prosecutor did not charge Roney with any crimes.

6. Gonzalez admitted no one in the operating room backed her story. Gonzalez also admitted she never heard Roney talked about her to anyone else. Gonzalez's licensed professional counselor testified Gonzalez has a mental illness. A neuropsychologist, who conducted over four hours of testing on Gonzalez, testified Gonzalez purposefully chose wrong answers on memory tests and exaggerated her emotional problems.

7. After Gonzalez's case-in-chief, Roney moved for Judgment as a matter of law on the defamation claim. The Superior court granted the motion. The jury render a verdict for the defendants on the battery and IIED claims. Gonzalez timely appealed. This court has Jurisdiction under Article 6, section 9, of the Arizona Constitution, and A.R.S. 12-120.21.A.1 and -2101.A.1.

#### ANALYSIS

**1. The superior court properly entered judgment as a Matter of law on the defamation claim.**

8. Gonzalez argues the Superior Court erred when it granted judgment as a matter of law on the defamation claim. This court reviews a superior court's entry of Judgment as a matter of law *de novo*, "viewing the Evidence and reasonable inference in the light most favorable to "Gonzalez. See *Spooner v. City Of Phoenix*, 246 Ariz. 119, 123, 7 (App.2018).

9. Gonzalez alleged Roney published false statements about her to coworkers, including statements that her complaint to HR was made because of a joke Roney told. To succeed on her defamation claim, Gonzalez needed to prove Roney published a false and defamatory communication about her. *See Dude v. Likins*, 216, Ariz. 406, 417, 35 (App. 2007). "Publication for defamation purposes is communication to a third party". *Id.* At 36. Though Gonzalez asserts Roney "published details of the battery," the record does not support her assertion Gonzalez testified she never Heard Roney talked about her to anyone else. Gonzalez cites no evidence in the record to support publication. Because Gonzalez, could not prove publication, the superior court properly granted judgment as a matter of law.

## II. Substantial evidence supports the jury's verdict.

10. Gonzalez also challenges the jury verdict on the battery and IIED claims. "In reviewing a jury verdict we view the evidence in light most favorable to sustaining the verdict. We will affirm the verdict if there is substantial Evidence to support it." *S Dev. Co. v. Pima Capital Mgmt. Co.*, 201Ariz.10,23, 42 (App.2001) (quotation omitted).

11. To succeed on her battery claim, Gonzalez needed to prove Roney intentionally caused offensive or harmful contact with her. *See Johnson v. Pankratz*, 196, Ariz. 621, 623, 6 (App.2000). The IIED claim required her to prove Roney "caused severed emotional distress by extreme and outrageous conduct committed with the intent to cause emotional distress or with reckless disregard of the near-certainty that such distress would result." *See Watkins v. Arpio*, 239, Ariz. 168, 170-71, 8 (App.2016).

12. Roney testified he tapped the back of Gonzalez's apron after unsuccessfully attempting to get her attention. Gonzalez, moreover, admitted no one in the surgery suite corroborated her story. And the neuropsychologist testified Gonzalez was untruthful and malingering.

13. In short, the jury heard conflicting testimony and found Roney did not intend to cause offensive or harmful contact or emotional distress. We will not, on this record, disturb that verdict. *See S Dev. Co.*, 201 Ariz. at 23, 42; *United Cal. Bank v. Prudential Ins. Co Of Am.*, 140 Ariz. 238, 286 (App.1983) (this court "will not substitute its judgment as to credibility of witnesses and weight of evidence and weight for That of the jury").

III. Gonzalez's remaining arguments are waived.

14. Gonzalez raises several additional issues, but she fails to properly develop supporting argument or show where in the record she raised a proper objection. Accordingly, we find these arguments waived. *See In re Aubuchon*, 233, Ariz. 62, 64-65, 6 (2013) ("Arguments not supported by adequate explanation, citations to the record, or authority" are waived) ; *Best Choice Fund, LLC v. Low & Childers, P.C.*, 228, Ariz. 502, 508, 17 (App. 2012) (appellate courts generally do not consider issues raised for the first time on appeal).

15. We affirm the superior court's entry of judgment as a Matter of law and the jury verdicts. We award Roney his Costs upon compliance with ARCP 21.

Clerk of the Court  
Amy M. Wood  
Filed: AA

**APPENDIX D**

**IN THE COURT OF APPEALS**

State of Arizona Division One

**DIVISION ONE**

Gabriela Gonzalez,  
Plaintiff/Appellant,

Filed: 1/12/2021

Amy M. Wood  
Clerk By: RB

v.

Harvey Roney, et al.,  
Defendants/ Appellees.

Court of Appeals  
Division One  
No. 1 CA-CV 20-0258

Maricopa County  
Superior Court  
No. CV2018-090577

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

The Court, Presiding Judge Jennifer M. Perkins,  
Judges David B. Gass, and Michael J. Brown partici-  
pating has considered Appellant's Motion for Recon-  
sideration, filed December 29, 2020. After considera-  
tion, **It is ORDERED** denying Motion for  
Reconsideration.

\_\_\_\_\_/s/\_\_\_\_\_  
David B. Gass, Judge

A copy of the foregoing  
Was sent to:  
Gabriela Gonzalez  
Donn C. Alexander  
Eileen Dennis GilBride.



**APPENDIX E**

**IN THE COURT OF APPEALS.**

State of Arizona Division One.

	DIVISION ONE
	Filed: 7/28/2021
Gabriela Gonzalez	Amy M. Wood,
Plaintiff/Appellant,	Clerk By: cdc
	Court of Appeals
v.	Division One
	No. 1 CA-CV 20-0258
Harvey Roney, et al.,	Maricopa County
Defendants/	Superior Court
Appellees	No. CV2018-090577

**MANDATE**

To: The Maricopa County Superior Court and the Honorable Timothy J. Thomason, Judge, in relation to cause No. CV2018-090577.

This cause was brought before Division One of the Arizona Court of Appeals in the manner prescribed By law. This Court rendered its Memorandum Decision and it was filed on December 17, 2020.

The motion for reconsideration was denied and notice thereof was given on January 12, 2021. A petition for Review was filed. By order, dated June 30, 2021, the Arizona Supreme Court denied the Petition for review. Arizona Supreme Court No. CV-21-0017-PR.

Now, THEREFORE, you are commanded to conduct such proceedings as required to comply with The Memorandum Decision of this court; a copy of which is attached hereto.

COA: Cost \$1,665.25 (defendants/Appellees)

I, Amy M. Wood, Clerk of the Court of Appeals, Division One, hereby certify the attachment to be a full and accurate copy of the Memorandum Decision filed in this cause on December 17, 2020.

In witness whereof, I hereunto set my hand and affix the official seal of the Arizona Court of Appeals, Division One, on July 28, 2021.

s/ Amy M. Wood, Clerk  
By \_\_\_\_\_ cdc \_\_\_\_\_  
Deputy Clerk

**APPENDIX F**

**SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY**

Clerk of the Superior  
Court, electronically  
Filed 4/22/2020

CV 2018-090577

**04/21/2020**

HON. TIMOTHY J. THOMASON

Clerk of the  
Court  
N. Johnson  
Deputy

Gabriela Gonzalez

Gabriela Gonzalez  
4365 E. Lariat Ln  
Phoenix, AZ 85050

v.

Harvey Roney, et al.

Jill Ann Herman  
Donn C. Alexander

Judge Thomason.

**Minute Entry**

The Court has considered plaintiff's Motion for Supersedeas Bond, the Response and Reply. The request In the reply for oral argument is denied.

The amount of the bond is set a total of \$35,301.46. The amount of the bond with respect to Depuy Synt-  
hes is \$27,627.12 and the amount of the bond as to  
the Roney's id \$7,574.34. Bond is to be filed within  
thirty days from the date of entry of this order.  
Rule 7(a)(4) of the Arizona Rules of Civil Appellate

Procedure provides that the amount of the bond is the lowest of the total of the damages, costs and fees included in the Judgment, fifty percent of the net worth of the party seeking the stay or twenty-five million dollars. The rule Specifically provides that the party requesting the stay Must prove net worth by a preponderance of the evidence. No such showing has been made. As such, the amount of the bond is the total amount awarded To the defendants in costs etc.

Docket Code 019. Form V000A

**APPENDIX G**

**IN THE SUPERIOR COURT OF THE STATE  
OF ARIZONA IN AND FOR THE COUNTY  
OF MARICOPA**

3/28/2018

Gabriela Gonzalez  
Plaintiff,

Case No. CV2018-090577

vs.

**COMPLAINT**

[Battery; Intentional Infliction  
Of Emotional Distress: Defa-  
mation]

Harvey Roney and  
Joan Roney, Husband  
And wife; Depuy Synthes  
Sales, Inc.,  
Massachusetts Corp.  
Defendants.

Gabriela Gonzalez, for her complaint against defen-  
dants, States as follows:

1. Gabriela Gonzalez ("Plaintiff") is a resident of Maricopa County, Arizona.
2. Defendants Harvey Roney ("Roney") and Joan Roney are, and at all relevant times were, husband and wife and residents of Maricopa County, Arizona. All of the acts of Roney alleged herein were performed for and on behalf of the Roney marital community.
3. Defendants Depuy Synthes Sales, Inc. ("Depuy") is a foreign corporation doing business in Maricopa County and, at all relevant times, was the employer of Roney.
4. This Court has Jurisdiction over the persons and Subject matter herein.
5. At all relevant times, Plaintiff was employed as a

surgical technician by HonorHealth.

6. At all relevant times, Roney was employed as an employee of Depuy, with responsibility to deliver surgical equipment to HonorHealth and assist in operating equipment as necessary. All of his actions alleged herein were taken within the scope of his employment.

7. On March 31, 2016, Plaintiff was working her shift at HonorHealth Scottsdale Shea medical Center in Scottsdale, Arizona.

8. That afternoon, Plaintiff was preparing to participate in the operation of a patient at the hospital.

9. Roney was present at the hospital as part of his duties for Depuy.

10. As Roney and plaintiff were preparing to go into a Surgery room, Plaintiff was turned away from Roney and was putting on a mask when Roney, from behind Plaintiff, kicked her forcefully between the legs, making contact with her legs and vagina.

11. As A result of Roney's actions, Plaintiff felt violated and dirty and suffered severe emotional distress, causing her to withdraw from a relationship with her boyfriend, who broke up with her because of her inability to engage in a relationship.

12. As a result of the unwanted contact, plaintiff has suffered for two years from loss of sleep, loss of enjoyment of life, inability to focus at work and take care of her family, depression, anger, fear, headaches, pain in her arms and shoulders, and loss of income all as a result of Roney's actions.

13. Plaintiff reported the kick to the HR department of HonorHealth, which conducted an investigation.

14. As a result of the investigation, Roney was asked by HonorHealth not to return to the hospital for a period of time.

15. Soon after plaintiff learned from co-workers that they heard, that she had reported Roney to HR

because he made an off-color joke.

16. Upon information and belief, Roney told Plaintiff's co-workers that she reported him to HR merely because of a joke he told.

17. As a result, plaintiff's co-workers stopped socializing with her and avoided her at work.

18. Because of the hostile environment, plaintiff has Limited her hours at work and lost income she would otherwise have received.

19. Plaintiff has received counseling and medical care for symptoms caused by Roney's kick.

20. Plaintiff lives in constant fear and apprehension that she will see Roney at work again.

#### **COUNT I, BATTERY**

21. Plaintiff restates and incorporates by reference paragraphs 1 through 20 of this Complaint as though fully set forth herein.

22. Roney intended to cause a harmful or offensive contact to plaintiff or to cause plaintiff apprehension of an immediate harmful or offensive contact, and Roney caused a harmful or offensive contact to plaintiff, damaging plaintiff in an amount to be proven at trial.

23. Plaintiff seeks punitive damages for these injuries from Defendants in an amount to be determined by a Jury.

24. Depuy is liable for the actions of Roney under the respondeat superior.

#### **COUNT II, INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS**

25. Plaintiff restates and incorporates by reference paragraphs 1 through 24 of this complaint as though fully set forth herein.

26. By his conduct, Roney intended to cause plaintiff to suffer severe emotional distress or recklessly disregarded the near certainty that his conduct would produce such distress.

- 27. Roney's conduct was extreme and outrageous.
- 28. Roney's conduct proximately caused plaintiff to suffer severe emotional distress.
- 29. Plaintiff seeks punitive damages for these injuries from defendants in an amount to be determined by a jury.
- 30. Depuy is liable for the actions of Roney under the doctrine of respondeat superior.

### **COUNT III, DEFAMATION**

- 31. Plaintiff restates and incorporates by reference paragraphs 1 through 30 of this complaint as though fully set forth herein.
  - 32. Upon information and belief, Roney published false statements regarding plaintiff, include statements that Plaintiff's complaint to HR was made because of a joke Roney told.
  - 33. These statements were published by Roney to Plaintiff's co-workers in order to malign, disparage, embarrass and humiliate plaintiff.
  - 34. Roney's actions were made knowing that the statements were false and/or in reckless disregard of the truth in making the defamatory statements.
  - 35. Roney's defamatory statements have exposed and continue to expose plaintiff to contempt, thereby causing disgrace, embarrassment and personal humiliation, leaving her reputation severely damaged and subjecting her to ridicule in the eyes of her Co-workers and others.
  - 36. By reason of false, libelous and defamatory statements made by Roney, plaintiff has suffered damages and is entitled to an award of compensatory damages in an amount to be proven at trial.
  - 37. Depuy is liable for the actions of Roney under The doctrine of respondeat superior.
- WHEREFORE, plaintiff prays for judgment against the Defendants as follows:
- A. For special damages as substantiated by evidence



- B. For general damages sufficient to compensate Plaintiff for all injuries and damages suffered;
- C. For punitive damages in an amount to be established at trial;
- D. For Plaintiff's costs and attorneys' fees incurred Herein; and
- E. For such other and further relief as the Courts Deems just and proper.

DATED this 28th day of March, 2018.

ROWLEY CHAPMAN & BARNEY, LTD.

By: s/ Nathaniel H. Wadsworth

Attorney for Plaintiff

**APPENDIX H****IN THE SUPERIOR COURT OF THE STATE  
OF ARIZONA IN AND FOR THE COUNTY  
OF MARICOPA 1/10/2020**

Gabriela Gonzalez  
Plaintiff,

Case No. CV2018-090577

vs.

**PLAINTIFF'S SEPARATED  
PRETRIAL STATEMENT**

Harvey Roney and  
Joan Roney, Husband  
And wife; Depuy Synthes  
Sales, Inc.,  
Massachusetts Corp.  
Defendants.

Plaintiff Gabriela Gonzalez ("Plaintiff"), pursuant to Rule 16 *Ariz.R.Civ.P.* and the Court's Minute Entry dated on May 13th day of 2019, submits her Pretrial Statement, for the trial scheduled to begin on February 11th day of 2020, at 9:30 am (6 days allotted) 12, 13, 14, 18, and 19, of 2020, as follows:

**1 INTRODUCTION**

On March 31, Plaintiff Gabriela Gonzalez was working her shift as a Surgical Technologist for Honor Health at the Scottsdale Shea Medical Center in Scottsdale, AZ. At all relevant times, Defendant DePuy was DePuy Synthes Sales, Inc., previously employed Defendant Harvey Roney. At all relevant times, Defendant Harvey Roney was an employee of Defendant DePuy Synthes Sales, Inc. Within his job responsibilities, Defendant Roney was called

upon by surgeons to bring the company's medical implants to the specific surgeries they would be performing in every Hospital, involving the implantation of DePuy Synthes Sales surgical implants. On March 31st, 2016, Plaintiff was engaged in her professional duties, at Honor Health. Defendant Harvey Roney was a Sales Representative for DePuy Synthes Sales, Inc., and was also present at Honor Health, and Ms. Gonzalez and Mr Roney were preparing to enter the Operating room #15 to assist with a surgery. While Plaintiff was reaching for her surgical mask and with her back to Roney, Defendant Roney forcefully kicked Plaintiff between her legs, making Intentional contact with the inside of her legs and her buttocks and vagina (private parts). On April 1st, 2016, Plaintiff reported Defendant Harvey Roney to her supervisor and Human Resources. On April 1, 2016, Plaintiff filed a complaint against Mr. Roney for intentional battery assault with the Scottsdale Police Department, that he kicked her on the butt (private parts) outside the operating room when they were preparing for surgery on March 31, 2016 at around 1300.

During the Surgery on March 31st, 2016 there was a trainee, Nicole Farber, Plaintiff and Nicole performed the surgery together. with Dr Frank Moussa. When training other coworkers, the main Surgical Technologist has to be right next to the trainee at all times, Plaintiff Gabriela was the trainer in March 31st of 2016 around 1300 and Nicole the trainee and Dr Frank Moussa was the Surgeon. As defendant stated to the Scottsdale Police Officer in recorded interview:

"Well I - I don't know That it was joking manner or if it was her back was to me and it was to, uh, I don't know. I don't think it was to get her attention. I - I don't - I Don't know if it was, uh...."

On April 1, 2016 Plaintiff advised Honor Health HR that Defendant Roney was joking around making fun of Plaintiff cleaning her glasses getting ready to go into room 15 when turned around Roney kicked Her in her butt (private parts). About 3 months prior to the battery on March, 31st of 2016 defendant had kicked Plaintiff on her side, and she had warned him no to do it again. Plaintiff also requested no to work with defendant Roney At any time after the second time he unprovoked had kicked her.

A. Defendant Roney's recorded interview advised ahe Police Officer:

*"But - but I could tell by her demeanor that, ya know, she didn't - she didn't Appreciate it".*

**B. Defendant Roney's audio recorded interview advised Scottsdale Police officer**

**"Well I - I don't know that it was joking manner or if it was her back was to me and It was to uh, I don't know. I don't think it was to get her attention. I - I don't - I don't know if it was. Uh...."**

C. Defendant Roney's recorded interview advised Police Officer:

*"I was - I was - I was on my left leg. I'm right - right hand dominant...."*

D. Defendant Roney's recorded interview

*"Q. So in order to lift up you'd have to actually use a little bit of force to - to lift the apron?"*

*"A. Absolutely."*

*Absolutely. Plus the sterile - sterile gown goes down to one's you know, almost to the s- to a person's ankles."*

E. As defendant stated multiple times in the interview with Scottsdale Police Officer

(1) ***" When Gabrielle turned around John sated he used his right Foot and touched the back***

of Gabrielle's lead apron".

(2) No. It was **my foot** and I touched the back of her lead apron right here.

(3) It was my right foot. Yes

(4) Q. You kicked her - you touched her apron. Tapped her Apron with what you said?  
A. Yeah.

(5) I did not kick it. I tapped it with the toe of my shoe, yes.

(6) she had turned around and - and to - to get her' attention I had just tapped her like I hd shown you. I tapped her on the back of her, um - um, lead - lead skirt, um

(7) No, not the bottom of my foot, It was the - tip of my toe.

F. Defendant also confessed to the police officer **"But - but I could tell by her demeanor that, ya know, she didn't - she didn't appreciate"**.  
G. Defendant Roney also confessed to the police officer **"Well I - I don't know That it was joking manner or if it was her back was to me and it was to, uh, I don't know. I don't think it was to get her attention.**

**I - I don't - I Don't know if it was, uh...."**

H. Interview with Roney n 04/01//2016 at 11:50 pm  
RONEY-POLICE SDT 000021, LIINE 251-252  
Police Officer without consulting with the City Prosecutor made the decision at that point not to filed charges against Defendant.

I. Second interview with defendant Harvey Roney on 04/03//2016 at 5:30pm, RONEY-POLICE SDT 00037 LINES 247 TO 252 again the Police Officer made the personal decision not to pressed charges, the Police officer fail to Performed his duties by submitting the report to a Prosecutor for review. Its clear that Police Officer was reluctant to charge the defendant, it was not his decision to make, and

to tell the defendant at the end of every interview that there were not going to be any charges against him. The Police Officer was obviously bias towards defendant Roney. Plaintiff informed the Police Officer that she felt violated. Defendant admitted on multiple occasion in an audio recorded interview with Scottsdale Police Officer, that he used his right foot a personal weapon to kick plaintiff in her private parts, butt and vagina. A Healthcare worker like any other public servant is a protected class under the Arizona Revised Statutes. Scottsdale Police Officer failed to abide by the law. HR's incident report summary was about the retaliation issues that were occurring in the Operating room to Gabby (Plaintiff), after she reported the battery to HR and The Scottsdale Police Department.

A. On April 14th, 2016 another interview with Gary Pastore from HR he assured Plaintiff that Defendant Roney was suspended for 6 months.

B. Doctors refusing to work with Plaintiff and several surgeons were involved in this issue as well.

C. On July 20, 2016 Defendant Roney hired CLARK HILL PLC, to revoke Roney's suspension; defendant's credentials and access to the HonorHealth facilities were revoked.

D. Roney's administrative suspension from Honor Health started on May, 4th of 2016. Roney was in violation of HonorHealth's policy. On March 28th, 2018 Plaintiff filed this lawsuit for Battery, Intentional Infliction of Emotional Distress and Defamation. Plaintiff regular work hours were, 40 a week before the battery assault, to cope with symptoms of Post Traumatic Stress Disorder, she had to lower her hours on May, 2016 to 32 hours a week, minimum hours to keep her benefits.

## **2 LIST OF CLAIMS AND CAUSES OF ACTION APPLICABLE LAW**

Plaintiff's complaints advance three separate claims committed by Defendant Harvey Roney: Battery; Intentional Infliction of Emotional Distress defamation and Damages. Plaintiff's father, Jose Gonzalez is a third party innocent victim.

### **(1) Battery.**

To establish a Battery claim, plaintiff must establish that the defendant intentionally caused a harmful or offensive contact with the plaintiff to occur. *See* Restatement (Second) of Torts 8A. § 13 (1965) and 18. *Johnson v. Pankratz*, 196 Ariz. 621 (Ariz. App. 2000).

Sec 8A. Intent:

The word "Intent" is used throughout the Restatement of this subject to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.

### **Sec 13 BATTERY: HARMFUL CONTACT**

A wrongdoer is subject to liability to another if:

1. He acts intending to cause offensive or harmful contact to another or to put that person in imminent apprehension of such contact.
2. A harmful contact with another person with direct or indirect results.

### **Sec 18 BATTERY: OFFENSIVE CONTACT**

A wrongdoer is subject to liability to another for battery if:

1. The wrongdoer acts intending to cause a harmful or offensive contact directly or indirectly.
- Defendant Roney committed offensive, non-consensual, unprovoked and unlawful Harm to Plaintiff. Furthermore, dignitary torts, such as assault or Intentional Infliction of emotional distress, the harm from battery affront to the Plaintiff's dignity as a

Human being. Plaintiff who has proven an offensive touching is not disqualified from any award of damages simply because the harm inflicted is difficult to quantify. (*See Dobbs*, 7.1 (2)(awards A Plaintiff who proves battery is entitled to damages even if the harm inflicted is difficult or impossible to quantify, and even when a touching is entirely harmless but offensive, the Plaintiff is entitled to an award for the mental disturbance. *Id.*( awards may be given for unproven emotional distress in dignitary torts, when the facts are such than an ordinary person would feel distress). As a dignitary tort was clearly committed by the defendant.

Defendant Roney has already admitted to the police Officer with very explicit detail that an Intentional kicked occurred.

The kick tap, in this case was a hard kick to Plaintiff, resulted in severe mental distress and Humiliation to Ms. Gonzalez.

**This, in and of itself is injurious.**

Defendant's recorded confession to the Scottsdale Police Officer, where he stated, that he committed the Battery against Plaintiff a public Healthcare worker. Defendant confessed explicitly that he used his right foot, right shoe and right toe to kicked Plaintiff in her private parts, butt and vagina.

Battery is an unlawful *offense*, involving unlawful physical contact, creating apprehension of such contact. Battery was defined at common law as "any unlawful and or non-consensual offensive touching of the person or her/his personal effects such as clothing by the wrongdoer (aggressor).

**(2)Intentional Infliction of Emotional Distress**

To establish an Intentional Infliction of Emotional Distress claim, plaintiff must prove that 1) the defendant's action or inaction was extreme and outrageous, 2) the defendant either intended to cause emotional



distress or recklessly wantonly disregarded the near certainty that such distress will result from his conduct, and 3) severe emotional distress must indeed occur as a result of defendant's conduct. *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43 (1987).

Here defendant's actions were extreme and outrageous, grossly offensive, surpassing reasonable bounds of decency, intolerable by this society (community), when unprovoked, he kicked Plaintiff from behind. The Intentional kick caused severe emotional distress to Plaintiff and adversely affected her personal and Professional relationships.

Plaintiff mental anguish (mental disfigurement) symptoms:

- Shock, denial, disbelief
- Difficulty concentrating
- Shame
- Withdrawing from others
- Feeling humiliation, sad, hopeless, disconnected, numb
- Loss of enjoyment of life in general
- Loss of love care, affection, companionship
- Mood disorders, low self esteem, apprehension, mental anguish
- Work career issues
- Experience a hostile environment daily at work
- Loss of earnings and decrease of earning capacity in the Healthcare Profession..
- Tarnished reputation

#### PHYSICAL SYMPTOMS

- Insomnia
- Fatigue
- shoulders pain
- left elbow pain
- right hip pain
- Muscle tension upper extremities and hip
- Migraines

- Memory issues side effects of PTSD treatment.
- Diminished of sex drive, side effects of PTSD treatment.

(3) **Defamation.**

Defendant is liable for defamation where the defendant publishes a false statement about the Plaintiff which brings the Plaintiff into disrepute, contempt or ridicule or impeaches the Plaintiff's honesty, integrity, virtue or reputation. *Turner v. Devlin*, 174 Ariz. 201, 848 P.2d 286 (Ariz.1993).

Here, after Defendant worked with Plaintiff's co-workers on April, 3rd of 2016, he published details of the battery, with at least 2 of plaintiff's co-workers, one of them is David Zazueta.

Plaintiff is certain, that Roney fabricated his version of the battery to Plaintiff's co-workers to protect himself, and to embarrassed her and that brought her into disrepute and ridicule arising from the defamation. Co-workers refused to work with her as well as Doctors. Co-workers stopped socializing with her because of Roney's false characterization of what happened. Defendant Roney's actions were made knowing that the statements were false and/or in reckless and wanton disregard of the truth in making the defamatory statements. Defendant's defamatory statements have exposed and continue to expose Plaintiff to contempt, thereby causing disgrace, embarrassment and personal humiliation, leaving Plaintiff's reputation irreparable damaged and subjecting her ridicule in the eyes of The medical community and her co-workers in the healthcare field. False statements were published by Roney to Plaintiff's co-workers in order to maliciously, disparage, embarrass and humiliate Plaintiff. Such false statements published by defendant, tarnished Plaintiff's reputation in the Medical and healthcare community in the State of Arizona.

- Defendant statement to plaintiff's co-workers that she got upset of a color joke defendant told.
- Defendant statement to plaintiff's co-workers that he was rubbing his right foot in between the Plaintiff's legs.
- Defendant statement was that plaintiff accused him of sexually harassment.
- Defendant statement was that he used his knee and went to far in Plaintiff's legs and that lead to inappropriate physical contact.

(4) **Respondeat Superior.**

In Arizona, "[t]he doctrine of respondeat superior generally holds an employer vicariously liable for the negligent work related actions of its employee or agent, if the employee or agent was acting within the scope of his employment. The doctrine of *Respondeat Superior* is based in part "on the ground of public policy that where one or two innocent persons must suffer from the agent's wrongful act, it is just reasonable that the Principal, who has put it in the agent's power to commit such wrong, should bear the loss rather than the innocent third person.

*"Ohio Farmers Ins. Co. v. Norman*, 122

Ariz. 330, 332, 594 P.2d 1026, 1028 (App. 1979); see also, *Wiper v. Downtown Development Corp. of Tucson*, 732 P.2d 200, 152 Ariz. 309 (Ariz. 1987)

defendant employer was found liable for the assault committed by its employee.

Here, Roney was working on behalf of DePuy when intentionally unlawfully he kicked Plaintiff with his right foot, right shoe and right toe. He was there engaged in the execution of his official duties. DePuy is therefore liable under the theory of *Respondeat Superior*. Depuy Synthes Sales failed to comply with yearly education in their curriculum, and training to its employees, and former employees. Defendant Depuy fail to complied and enforce the stand-

ards of conduct that govern that company (if there are any standards that Depuy abides by within).

**(5) Liability of the Marital Community**

The marital community is able for the tort of one spouse where the tort 'is committed in the prosecution of community business. "*Howe v. Haught*, 11 Ariz. App. 98, 462 P.2d 395 (1969). Mr. Roney was engaged in work for the benefit of his marital community when he committed the tort, and the marital community is therefore liable.

**(6) Party Asserting cause of Action:**

Plaintiff Gabriela Gonzalez *pro per*, in this proceeding brought this action against Defendant Harvey Roney and DePuy Synthes Sales, Inc., Plaintiff's complaint, was filed on March 28th, 2018.

**(7) Party against whom Cause of action is asserted:**

Defendant Harvey Roney and defendant DePuy Synthes Sales, Inc., Plaintiff brings this lawsuit against defendants for Battery, Intentional Infliction of Emotional Distress and Defamation.

**(8) If Jurisdiction is challenged, the following is to establish Jurisdiction in Arizona:**

A. General Jurisdiction applies when a defendant "Has substantial' or 'continuous and systematic' contacts with Arizona. Under Rule 4.2(a) of the Arizona Rules of civil Procedure, an Arizona Court may exercise personal jurisdiction over parties, whether found within or outside the State, to the maximum extent permitted by the Constitution of this State. The Arizona Supreme Court has stated that under Rule 4.2(a), "Arizona will exert personal jurisdiction over a nonresident litigant to the maximum extent allowed. [3] We use a three-part test to determine whether a district Court may exercise specific jurisdiction over a nonresident defendant:

(1) The nonresident must do some act to consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the market place in Arizona, thereby invoking the benefits and protections [;](2) [t]he claim must be one which arises out of or results from defendant's place of business related activities [; and] (3) [e]xercise of jurisdiction must be reasonable.

(Quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 90 L. Ed. 95 (1945).

B. Depuy Synthes Sales, Inc., conducts business in every corner in the State of Arizona this comports with 'traditional notions of fair play and substantial justice'. Depuy's products are in every Major Hospital in Arizona and every Outpatient surgical facility in the State of Arizona.

C. Depuy Syntes Sales, Inc, Johnson and Johnson CT Corporation Systems, Statutory Agent's office in 3800 N. Central Avenue, suite 460, Phoenix, Arizona 85012. This complaint was served on the CT Corp. Specialist, authorized to received accept service of process in the State of Arizona by CT Corporation System, Statutory Agent Maria Martinez.

### **3. CONTESTED ISSUES OF FACT AND LAW ARE MATERIAL AND APPLICABLE**

1. Defendants are liable for Battery to Plaintiff; Mr. Roney Intentionally kicked plaintiff forcefully between her legs, making intentional, nonconsensual, offensive contact with her legs buttocks and vagina (her private Parts), as she was reaching for her mask outside of Operating Room #15 on March 31, 2016.

2. Defendants are liable for Intentional Infliction of Emotional Distress, Mr. Roney intentionally kicked her forcefully between her legs, making contact with

her legs and vagina (private Parts), as she was reaching for her mask outside of Operating Room # 15 on March 31, 2016.

3. Most importantly the Defendant breached the duty of care to the Patient on the operating table at that particular time.

4. Defendant's wanton disregard and malicious Intentions to inflict harm to Plaintiff not limited to physical harm directly or indirectly. Defendant's intentions to inflict severe emotional distress to Plaintiff. Defendant's actions were of an unreasonable person and rejected by this society.

5. Defendant violated universal human being rights. "Freedom from Torture and Degrading Treatment".

6. Defendant testified to the Scottsdale Police officer that he committed the battery.

7. Defendant untruthful facts of where the battery occurred, how he kicked plaintiff and how hard he kicked her, and where in her **Person** he kicked her.

8. Defendant defamatory statement to co-workers and the medical community brought Plaintiff into disrepute, ridicule and impeached the Plaintiff's honesty, integrity virtue or reputation. *Turner v. Devlin*, 174 Ariz. 201, 848 P.2d 286 (Ariz. 1993). Defendant genuinely caused harm to Plaintiff. Plaintiff is a member of the class of persons the statute was designed to protect "Peace officers while engaged in the execution of any official duties, a Public defender, a Judicial Officer engaged in the execution of any official duties, Firefighters, emergency medical technicians, paramedics engaged in the execution of any official duties, a teacher, a healthcare practitioner while engaged in the person's professional duties, a prosecutor, a code enforcement officer, a state municipal park ranger, ". Defendants violation is the actual and/or genuine cause of the injury.

### 9. Damages

Plaintiff has economical damages and non-economical damages for pain and suffering incurred in the past, and pain and suffering that is reasonably expected to be incurred into the future. Plaintiff also intends to present evidence of the need for future medical treatments including, but not limited to, pain management office visits 2 times per year, Orthopaedic consults at least once a year, counseling as needed and treatments with the chiropractor as needed throughout the year. Additionally she must maintain her current medications regimen for PTSD, including BusPirone HCL 40mgr daily, Sertaline 100mg daily, Propranolol 30mgs daily, Alprazolam 0.25mg as needed, Trazodone 100mg at bedtime and sumatriptan 100mg as needed for migraines. For almost 4years, Plaintiff has been dealing with a Hostile work environment that Roney created. Plaintiff's expenses for Medical and prescriptions treatments average \$700.00 a month.

*See Magma Copper Co. v. Shuster*, 118, Ariz., 151, 153-54, 575 P.2d 350, 352-53 (App. 1977) Nominal damages for battery "signify that the Plaintiff's rights were technically invaded even though he suffered, or could prove, no loss or damage. Technical violation of the integrity of Plaintiff.

*See Skousen v. Nidy*, 90 Ariz. 215, 219, 367 P.2d 248, 250 (1961). On the appeal, the Court rejected the defendant's claim that no evidence corroborated the allegations and that awards were excessive because no damage had resulted. *Id.* With an Intentional Tort such as battery, "physical injury need not to be sustained. Mental suffering, including, including shame from the indignities off the act, is usually consider an injury for which damages may be given. *See Meadows v. Guptill*, 856, F. Supp. 1362 (D. Ariz 1993) Plaintiff (Meadows) was subjected to unwelcome verbal comments, her working

conditions were altered to an abusive working environment. Plaintiff was subjected to verbal abuse from co-workers. Plaintiff took tremendous pride in her work. She was very satisfied with her job, but after defendant actions, Plaintiff was forced to spend her work days in apprehension. Plaintiff is been enduring this hostile environment. She testify to embarrassment and humiliation by Defendant's actions. The Court is satisfied with Plaintiff testimony that she was severe damage emotionally for seventeen months caused by Defendants actions. The Court finds that Plaintiff suffered both Physical and emotional damages from an unwanted touching. The Court finds that Defendant's Battery of Plaintiff has damaged her and orders an award for compensatory damages, therefore an award of Punitive damages is justified, and awards punitive damages against the defendant. Defendant's action or inaction was extreme and outrageous, Harvey Roney's conduct was Intentional and outrageous, his actions caused severe emotional distress *see Ford v. Revlon* 153, Ariz., 38, 734 P.2d 580 (1978). Recovery may be made solely for Emotional distress without any consequential physical injury. Id. Plaintiff was the main care giver for Jose Gonzalez (Father). Father now has irreversible kidney failure, consequently to Plaintiff's inability to take care of father like she used to before defendant Roney committed the battery assault against her. Plaintiff has been dealing with her own health issues, consequences of defendant actions. ***Plaintiff's father is a third party innocent victim.***

#### Ethical Behavior

Ethics are a set of standards that govern the conduct of a person, especially a member of a profession. While ethical beliefs are held by individuals, they can also be reflected in the values, practices, and policies



that shape the choices made by decision makers on behalf of their organization. Professions and organizations regularly establish a "Code of Conduct" that serves to guide the behavior of members of the profession or organization.

#### Legal behavior

Legal behavior follows the dictates of laws, which are written down and interpreted by the Courts. In decision making, determining the legality of a course of action is facilitated by the existence of statutes, regulations and codes. Such statutes, regulations and codes established penalties for behaving in a way that conflicts with the law.

Etiquette is a set of unwritten rules that apply to social situations, is a code that governs the expectations of social behavior in a workplace. This code is put in place to "protect and respect people, time and processes. In the business world, good business etiquette means you act professionally and exercise proper Manners when engaging with others in your profession. Maintaining proper manners and engaging with co-workers in a spirit of cooperation and respect.

Business etiquette is the glue that binds people and keeps them happy in an otherwise stressed out job and market environment. Essentially, it is a common language, a standard code of behavior, which when adopted, becomes standard practice in a community, enabling that community to function smoothly and safely. In business interactions, this facilitates a professional standard of conduct that each business has in common with other business. Good etiquette involves showing respect not only to your superiors, but also to your peers and subordinates; in other words, to everyone. Without proper manners and etiquette, the customs of polite society would soon disappear and we would act more like animals and less like people.

The benefits of etiquette:

1. Enhances company profile among industry peers.
2. Improves professional skills.
3. Promotes cross-cultural awareness.
4. Fosters dignity and respect in the workplace.
5. Provides positive impact on workplace.
6. Improves internal and external customer relation

Depuy Synthes Sales Inc. is liable for the actions of defendant Roney under the doctrine of *Respondeat Superior*. *Depuy failure* to comply with yearly education in their curriculum and training to its employees. Defendant Depuy Synthes Sales fail to comply and to enforce the standards of conduct that govern in govern in that company (if there is any standards that the company abides within).

A. Defendant's wanton disregard and malicious Intentions to inflict harm to Plaintiff not limited to physical harm directly or indirectly:

1. Defendant intentions to inflict severe Emotional Distress to Plaintiff.
2. Defendant actions were of an unreasonable person and rejected by this society.
3. Defendant had a Duty of Care towards the Patient on the Operating Table.

Plaintiff has economical damages and non-economical damages for pain and suffering incurred in the past, and pain and suffering that is reasonably expected to be incurred into the future. Plaintiff also intends to present evidence of the need for future medical treatments including, but not limited to, pain management office visits 2 times per year. Monthly medical treatments and prescriptions expenses average \$700.00. *see Id.* Roney's conduct was Intentional and outrageous, his actions caused severe emotional distress *see Ford v. Revlon* 153, Ariz.38, 734 P. 2d 580 (1978). Recovery may be made solely for Emotional distress without any consequential physical injury. *Id.*

1. Defendant testify to the Scottsdale Police Officer that he committed the battery.
2. Defendant untruthful facts of where the battery occurred, how he kicked Plaintiff and how hard he kicked her and where in her body he kicked her.
3. Defendant defamatory statement to co-workers and the medical community brought Plaintiff into disrepute, ridicule and impeached the Plaintiff's honesty, integrity virtue or reputation. *Turner v. Devlin*, 174 Ariz. 201, 848 P.2d 286 (Ariz. 1993).

#### **B. ITEMIZATION OF ECONOMICAL**

##### **DAMAGES**

#### **Plaintiff claims the following economical damages from 5-2016 to 12-2019:**

1. Wages lost	\$49,076.00
2. Overtime lost	\$11,219.00
3. Bonus lost	\$12,125.00
4. Counselor	\$ 2,860.00
5. Chiropractor	\$ 3,990.00
6. Psychiatric	\$ 900.00
7. Dr Frankel Orthopaedic	\$ 1,275.00
8. Dr Rosen Orthopaedic	\$ 817.00
9. Dr Nunez PCP	\$ 747.00
10. Prescriptions	\$ 2,993.00
11. Lawyers fees.	\$14,700.00

#### **Total economic damages. \$100,700.00**

Plaintiff reserves the right to make a claim for non-economic damages for pain and suffering incurred in the past and pain and suffering that is reasonable expected to be incurred in the future. Plaintiff also intends to present evidence of the need for future medical treatment. Plaintiff has never been a burden for this community, if plaintiff loses her job and has to take a pay cut, doing anything else than what she was trained to do it would be devastating for the entire family. Plaintiff's expenses for medical treatment and prescriptions average \$700.00 a month.

**4. SEPARATE STATEMENT OF APPLICABLE  
ISSUES OF FACT AND LAW.**

1. Plaintiff has the testimony of a co-worker, where he testified that Defendant Roney has been disrespecting the place of healing for patients, breaching the duty of care to patients for decades, it will be introduced at trial.
2. Defendant testifies to the Scottsdale Police Officer that he committed the battery.
3. Defendant untruthful facts of where the battery occurred, how he kicked Plaintiff, how hard he kicked her and where in her person he kicked her.
4. Defendant's defamatory statement to co-workers and the medical community brought Plaintiff into disrepute, ridicule and impeached the Plaintiff's honesty, integrity, virtue or reputation. *Turner v. Devlin*, 174 Ariz. 201, 848 P.2d 286 (Ariz. 1993).
5. It is for the Jury to determine, in light of the circumstances of this case, whether the defendant must have been certain that his acts would cause the unlawful contact.
6. Plaintiff's position is more likely to be true than not.
7. Plaintiff has met the preponderance of the evidence, the burden of proof.
8. Plaintiff's evidence has superiority in weight, force and importance.
9. All facts, opinions, testimony, and issues of any type set forth in Plaintiff's complaint, any disclosure statements or discovery evidence exchange by the parties.
10. Any issues set forth in Plaintiff's Motions in Limine filed with the Court and Defendants' Responses in Opposition to any Motions in Limine filed by Defendants.
11. All opinions, testimony, and issues set forth and addressed in Plaintiff's expert report and Plaintiff's

treating Medical Professionals and Healthcare Professionals.

12. All opinions, testimony, and issues set forth and addressed in Defendants experts disclosures.

13. Any issues set forth in Plaintiff's Motions in Limine filed with the Court and Defendants' Responses in Opposition to any Motions in Limine.

14. Any issues set forth in Defendant's Motions in Limine filed with the Court and Plaintiff's responses in Opposition to any Motions in Limine.

15. All facts, opinions, testimony, and issues of any type set forth in Plaintiff's Complaint, and any disclosure statements or discovery responses exchanged

16. Any discovery disputes and Motions to compel filed with Court by Plaintiff.

17. All opinions, testimony, and issues set forth and addressed in Plaintiff's Expert disclosure and treating Physicians and Healthcare Professionals.

18. All opinions, testimony, and issues set forth and addressed in Defendants' expert disclosures.

19. Plaintiff reserves the right to call Univison for media coverage.

Plaintiff expects to prevail in proving that Defendant Roney committed the battery and he is also liable for Intentional Infliction of Emotional Distress, with the Jury to determine the amount of economical and punitive damages to which Plaintiff is entitle. Depuy Synthes Sales, Inc., Is also liable under the doctrine of *Respondeat Superior*. This is Industry specific, this case is fundamentally different from any other lawsuit, defendants Motion leaves the impression that per se standard is not applied in the Medical Profession.

Plaintiff reserves all other appropriate objections, including but not limited to, other internal foundational objections contained in the records to the exhibits.

## 7. DEPOSITION DESIGNATIONS

Plaintiff do not intend to present any deposition testimony other than for purposes of cross-examination.

## 8. STATEMENT TO BE READ TO THE JURY DURING VOIR DIRE

Defendant Harvey Roney confessed to the Scottsdale Police Officer, in an audio recorded interview multiple times in vivid detail that he used his right foot, right shoe, right toe a personal weapon, to kicked plaintiff in her private parts while standing right behind her. Defendant Roney confessed that he did not need to get Plaintiff's attention, and that him kicking plaintiff was not a joking matter. The transcripts from that interview will be introduce at trial as a main Exhibit for this lawsuit.

Defendant DePuy Synthes Sales, Inc., has been withholding critical documentation to this case, refusing to comply with the rules of discovery evidence, by refusing to produce defendant Harvey Roney's personnel file from 2015, 2016, 2017 and 2018. Ask yourself why Depuy's file conveniently disappeared from their system? What are they hiding? .

Why this company that produces implants to put in patients bodies would be withholding crucial evidence to this lawsuit?. Every company has a yearly records of their employees to keep employee educated and in compliance. During 2019 plaintiff submitted several requests for the production of those documents to Depuy Synthes Sales, Inc., which to this date they keep denning the existence of such critical documentation.

Plaintiff is suing Defendant Harvey Roney for Battery, Intentional Infliction of emotional distress and defamation, Depuy Synthes Sales is liable for their employees while executing a job that Depuy employed him to do under the doctrine of Respondeat Superior.

(1) Jury is instructed to judge the defendant Roney's conduct by an objective standard, *i.e., of a reasonable prudent person*. (2) It is for the jury to determine, in light of the circumstances of this case whether the defendant must have been certain that his act would cause the unlawful contact. (3) Plaintiff's position is more likely than not to be true, (4) plaintiff's evidence has superiority in weight, force and importance. Plaintiff expects to prevail in showing that defendant Roney committed the battery and he is also liable for Intentional Infliction of Emotional Distress, with the Jury to determine the amount of economical and punitive damages to which Plaintiff is entitle. Depuy Synthes Sales Inc,. Is also liable under the doctrine of *Respondeat Superior*. This is industry specific, this case is fundamentally different from any other lawsuit, defendants motion leaves the impression that per se standard is not applied in the Medical profession.

#### **9. REQUESTED TECHNICAL EQUIPMENT**

The parties intend to use technical equipment and shall make the necessary arrangements with the Court's staff.

#### **10. REQUESTED INTERPRETERS**

Plaintiff. reserved the right for Spanish Interpreter.

#### **11. NUMBER OF JURORS AND ALTERNATES REQUIRED TO REACH A VERDICT**

1. Number of Jurors: 8
2. Number of Alternates: 2
3. Whether Alternates may deliberate: No
4. Number of Jurors Required to Reach a Verdict: 6

#### **12. EXCLUSION OF WITNESSES FROM THE COURT ROOM PER RULE 615, ARIZONA RULES OF EVIDENCE**

Plaintiff invokes Arizona Rule of Evidence 615. Witnesses will also exit the Courtroom after their testimony.

**13. DESCRIPTION OF SETTLEMENT**

**EFFORTS;** The parties have been unable to reach a settlement,

The parties have participated in mediation twice, organized by Defendants.

**14. METHOD FOR MAKING A VERBATIM RECORD OF THE TRIAL**

Verbatim record of the trial will be made by a Court Reporter.

Parties will raise the subject of court reporters at the final pretrial conference.

RESPECTFULLY SUBMITTED this 10th day of January, 2020.

By: /s/ Gabriela Gonzalez  
*Pro Per Plaintiff*

ORIGINAL of the foregoing mailed/emailed this 10th day of January, 2020 with:

Maricopa County Superior Court  
222 East Javelina Avenue  
Mesa, Arizona 85201

**COPIES** of the foregoing mailed/emailed this: 10th day of January, 2020 to:

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*Attorneys for Defendant Depuy Synthes Sales, Inc.*  
/s/ Gabriela Gonzalez



APPENDIX I

IN THE SUPREME COURT OF THE  
STATE OF ARIZONA

Gilbert Aguirre, Jr.  
*Petitioner*

v.

The Industrial Commission of Arizona  
*Respondent,*

City of Goodyear,  
*Respondent Employer*

CopperPoint American Insurance Company,  
*Respondent Carrier.*

No. CV-19-0001-PR

Filed August 15, 2019

Special Action from the Industrial Commission of  
Arizona Honorable Robert F. Retzer, Jr., Administ-  
rative Law Judge

No. 20152-040228

**AWARD SET ASIDE**

Opinion of the Court of Appeals, Division One  
245 Ariz. 587 (App. 2018)

**AFFIRMED IN PART, VACATED IN PART**

Counsel:

Thomas C. Whitley (argued), Nicholas C. Whitley,  
Taylor & Associates, P.L.L.C., Phoenix, Attorneys  
for "Aguirre, Jr." Gaetano J. Testini, Los Abogados  
Hispanic Bar Association, Inc., Phoenix, Attorney  
for Industrial Commission of AZ.

Aguirre v. ICA/City of Goodyear, et al.

Opinion of the Court

Sharon M. Hensley, Mark A Kendall (argued), Co-  
perPoint American Insurance Company, Phoenix,

Attorneys for City of Goodyear and CopperPoint America Insurance Company.

Toby Zimbalist, Phoenix, Attorney for Amicus Curiae Professional Firefighters of Arizona.

JUSTICE GOULD, opinion of the Court:

1. In post v. Industrial commission of Arizona, we held that when an administrative Law Judge (ALJ) fails to make findings on all material issues necessary to resolve the case,

The award is legally deficient and must be set aside. 160 Ariz. 4, 7-9 (1989). Today, we further hold that a claimant does not waive appellate review of the legal sufficiency of findings before the Industrial Commission of AZ ("ICA").

I.

2. Goodyear ("City") since August 2007. As a firefighter, he has responded to several fires, including a large fire in a cabinet factory that contained "paints, thinners, lacquers," a fire in an airport hangar with burning jet fuel, a house fire with chlorine stored in the attic, and several burning methamphetamine labs. In May 2015, Aguirre was diagnosed with chronic myeloid leukemia ("CML"). He filed a workers compensation claim alleging that his CML was caused by the toxic chemicals he had been exposed to while fighting fires for the City.

3. After Aguirre's claim was denied by the city's workers' compensation carrier, CopperPoint American Insurance Co. ("CopperPoint"), he requested a hearing before the ICA. At The hearing, Aguirre asserted a claim for benefits pursuant To A.R.S. 23-901.01.

## APPENDIX J

**SUPERIOR COURT OF ARIZONA**  
**MARICOPA COUNTY**

Clerk of the Superior  
 Court, electronically  
 Filed 02/21/2020

CV 2018-090577

02/19/2020

HON. TIMOTHY J. THOMASON

Clerk of the  
 Court

N. Johnson

Deputy

Gabriela Gonzalez

Gabriela Gonzalez

4365 E. Lariat Ln

Phoenix, AZ 85050

v.

Harvey Roney, et al.

Jill Ann Herman  
 Donn C. Alexander  
 D Justin Samuels

Judge Thomason.

**JURY TRIAL - DAY FIVE**

East Court Building- courtroom 713

8:30 a.m. Trial to Jury continues from February 18, 2020. Plaintiff, Gabriela Gonzalez, is present on her own behalf Defendants, Harvey Roney and Joan Roney, are present and are represented by counsel, Jill Ann Herman and Justin Samuels. Defendant, Deputy Synthes Sales, Inc., Is represented by counsel, Donn C. Alexander. The Jury is not present.

A record of the proceedings is made digitally in lieu of a Court reporter.

The Court inquires whether or not police officer will be testifying. The Plaintiff states that the police will not be testifying. Accordingly, plaintiff rests.

Ms. Herman makes a Rule 50 Motion for Judgment as a Matter of Law as to the claim of defamation. Argument is presented.

It is Ordered Granting defendants' Rule 50 Motion for Judgment as a Matter of Law as to the defamation claim. Ms. Herman makes a Rule 50 Motion for Judgment as a Matter of Law as to the issue of punitive damages.

**IT IS ORDERED denying defendants' Rule 50 Motion For Judgment as a Matter of Law as to the issues of Punitive Damages.**

**Ms. Herman makes a Rule 50 Motion for judgment as a Matter of Law as to the issue of Intentional Infliction.**

**IT IS ORDERED denying defendants' Rule 50 Motion For judgment as a Matter of law as to the issue of Intentional Infliction of Emotional Distress.**

Mr. Alexander states he joins in the motions.

Court and counsel discuss the final jury instructions.

Discussion is held regarding plaintiff exhibit 133.

Instructions are settled and verdicts are prepared.

Scheduling matters are discussed.

8:43 a.m. Court stands at recess.

8:54 a.m. Court reconvenes with respective parties

And counsel present. The Jury is not present.

A record of the proceedings is made digitally in lieu of a Court reporter.

By stipulation of the parties, defendants' exhibits 69 Is received in evidence.

By stipulation of the parties, defendants' exhibit 86 is received in evidence.

8:58 a.m. Court stands at recess.

9:04 Court reconvenes with respective parties and counsel present. The Jury is present.

A record of the proceedings is made digitally in lieu Of a Court reporter.

Defendants rest.

10:21 a.m. The Jury leaves the Courtroom. Court remains in session.

Discussion is held regarding plaintiff's rebuttal

Testimony.

Discussion is held regarding closing arguments.

10:24 a.m. Court stands at recess.

10:37 a.m. Court reconvenes with respective parties and counsel present. The Jury is present.

A record of the proceedings is made digitally in lieu Of a court reporter.

Rebuttal:

Gabriela Gonzalez resumes the stand and testifies further.

Plaintiff rests.

Both sides rest.

The jury is instructed by the Court as to the law applicable to this case.

FILED: Final Instruction of Law.

Closing arguments.

12:52 p.m. The Jury retires in charged of the sworn bailiff to consider their verdicts. Court stands at recess.

2:34 p.m. Court reconvenes with respective parties and counsel present. The Jury is present.

A record of the proceedings is made digitally in lieu Of a court reporter.

The Jury is all present in the jury box and by their Fore-

person return into court their verdicts, which are read and recorded by the Clerk and are as follows:

"We, the Jury, duly empaneled and sworn in the above entitle action, upon our oaths, do find in favor of defendants."

The verdict is unanimous and signed by the foreperson. The jurors is polled at the request of plaintiff.

Each juror Replies that is his/her true verdict.

FILED: Verdicts

The Jury is thanked by the Court and excused from further consideration of this cause.

Pursuant to the verdict entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the clerk of the Court.

IT IS ORDERED that the clerk permanently release all Exhibits not offered in evidence to the counsel/party causing them to be marked or their written designee. Counsel/party or written designee shall have the right to refile relevant exhibits as needed in support of any appeal. Refiled exhibits must be accompanied by notice of refiling Exhibits and presented to the Exhibits Department of the Clerk's Office. The Court's exhibit Tag must remain intact on all refiled exhibits.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit release form (2).

FILED: Trial/Hearing Worksheet, Jury list

2:36 p.m. Trial concludes.

LATER

**It Is Ordered** assessing Jury fees in the amount of \$1,413.50 against plaintiff, Gabriela Gonzalez, all in accordance with the formal written Judgment for Jury fees signed by the Court on February 20, 2020 filed (entered) by the Clerk on February 20, 2020.  
Docket Code 012 Form V000A

APPENDIX K

Interview with Roney  
Interviewer: ofc.  
Jacob Pedersen  
04/01/2016

- Q. What happened immediately after you- you kicked the apron?.. Did she say anything to you for retaliate or anything like that?
- A. No. She-I-she- she made a comment saying- um, I wish I could remember her words, um It-it was something to the extent of, um, please don't do that. I said....
- Q. Okay.
- A. I said - I acknowledge it.
- Q. And once again your intentions, it was just a -a joking manner how you....
- A. Well - I don't know that it was joking manner or if it was her back was to me and it was to, uh, I don't know. I don't think it was to get her attention. I - I don't - I don't know if it was, uh....

RONEY-POLICE SDT 000019

## APPENDIX L

IN THE SUPERIOR COURT OF THE STATE  
Of ARIZONA IN AND FOR THE COUNTY OF  
MARICOPA

Gabriela Gonzalez  
Plaintiff,

Case No. CV2018-090577

vs.

Defendants Harvey  
Roney And Joan Roney's  
Fourth Supplemental  
Disclosure Statement

Harvey Roney and  
Joan Roney, Husband

And wife; Depuy Synthes. (Hon. Joshua Rodgers)  
Sales, Inc.,

Massachusetts Corp.

Defendants.

Defendants Harvey Roney and Joan Roney (herein after, "Defendants"), by counsel undersigned, hereby submit their **Fourth Supplemental** Rule 26.1 Disclosure statement. In doing so, defendants incorporate herein by this reference, all information contained in all parties, Disclosure statements, answers to interrogatories, responses to requests for production, requests for admission, correspondence, depositions taken or to be taken, documents produce pursuant to subpoenas medical records and other items already exchanged among the parties. In disclosing this information, defendants do not waive any objection to the admissibility of the above trial. The content of this disclosure is provisional and subject to supplementation, amendment, explanation, change and amplification. This matter is only in preliminary stages of discovery. Further investigation and discovery may lead to additional information which it may have bearing on the Defendants' defensive theory, to theories. This disclosure statement is not intended to represent defendants' complete defense for



the case, it is merely a preliminary disclosure produce not as they were getting ready to enter to the operating room as alleged by plaintiff - Roney tapped plaintiff's foot/lower leg lead apron with his foot one time to get her attention; similar to a tap on the shoulder. Plaintiff also alleges that after the incident, she heard from co-workers that Roney had told them that the reason plaintiff reported Roney to the HR department was because he made an off-color joke. Plaintiff alleges that because of this information, her co-workers stopped socializing with her and avoided her at work. Plaintiff further alleges this somehow created a hostile work environment, which caused her to limit her work hours at work and lose income she would have otherwise received. Roney denies that he ever told Plaintiff's co-workers that the reason for the HR investigation was because of an off-color joke. In fact, after the commencement of the HR investigation Roney did not have any communications with plaintiff's co-workers.

## II Legal Theories Supporting Defenses

### A. Battery

To establish a battery claim, a plaintiff must prove that the defendant intentionally caused a harmful or offensive contact with the plaintiff to occur. *See* Restatement (second) of torts 13 (1965). As with other dignitary torts, such as assault, false imprisonment, or Intentional infliction of emotional distress, "the only harm [from a battery may be] the affront to the plaintiff's dignity as a human being, the damage to his self-image, and the resulting mental distress. It does not follow recovery is limited to nominal damages, however, even if the extent of emotional distress is not proved. "Dan B. Dobbs, *Dobbs Law of remedies*, 7.1 (2d ed.1993) (emphasis added). Furthermore, Arizona allows damages for mental distress resulting from "a physical invasion of a person or the

person's security." *Valley Nat'l Bank v. Brown*, 110 Ariz. 260, 265, 517 P.2d 1256, 1261 (1974).

Even when a touching is "entirely harmless but offensive [that] contact entails the plaintiff to vindication of the legal right by an award of nominal damages, and, to compensation for the resulting mental disturbance, such as fright, revulsion or humiliation.

"W. Page Keeton et al., Posser and Keeton on the Law of torts 9, at 40 (5th ed. 1984) (footnotes omitted); see also *Magma Copper Co. v. Shuster*, 118, Ariz. 151, 153-54, 575 P.2d 350, 352-53 (App. 1977) (Nominal damages for battery "signify that the plaintiff's rights were technically invaded even though he suffered, or could prove, no loss or damage."). Here, plaintiff alleges the Roney kicked her forcefully between her legs contacting her thighs and private area. Roney adamantly denies such allegations. Roney tapped plaintiff's ~~foot/lower leg area~~ **lead apron** to get her attention. Such co-ntact was neither harmful nor offensive, and plaintiff's battery claim must fail as a result.

#### B. Intentional Infliction of Emotional Distress

The elements of this cause of action are:

First, the conduct by the defendant must be extreme and outrageous; second, the defendant must either intend to cause emotional distress or recklessly disregard the near certainty that such distress will result from his conduct; and third, severe emotional distress must intended occur as a result of defendant's conduct. *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43 (1978). Roney's harmless and inoffensive tapping of plaintiff's ~~foot~~ **lead apron** does not constitutes extreme and outrageous conduct.

Respectfully Submitted this 15th of February, 2019  
Wood, Smith, Henning & Berman LLP  
By: s/ Jill Ann Herman.

## APPENDIX M

## SUPREME COURT OF THE UNITED STATES

No. 20-297

TRANSUNION LLC, PETITIONER

v.

Sergio L. Ramirez

*On writ of certiorari to the united states court of  
Appellees for the ninth Circuit*No. 20-297. Argued 3/30/2021 **decided 6/25/2021****REVERSED AND REMANDED**

JUSTICE KAVANAUGH delivered the opinion of the Court. To have Article III standing to sue in Federal Court, plaintiffs must demonstrate, among other things that they suffered a concrete harm. No concrete harm, no standing. Central to assessing concreteness is whether the asserted harm has a “close relationship” to a harm traditionally recognized as providing a basis for a lawsuit in American courts - such as physical harm, monetary harm, or various intangible harms including (as relevant here) reputational harm. *Spokeo, Inc. v. Robins*, 578, U.S. 330, 340-341 (2016). In this case, a Class of 8,185 individuals sued Transunion, a credit Reporting Act. The plaintiffs claimed that Transunion Failed to use reasonable procedures to ensure the accuracy of their credit files, as maintained internally by Transunion. For 1,853 of the class members, transunion provided misleading credit reports to third-party business. We concluded that those 1,853 class members have demonstrated concrete reputational harm and thus have Article III standing to sue on the reasonable-Procedures. “Any violation of an individual right” created by congress gives rise to Article III standing.

**APPENDIX N**

**SUPREME COURT OF THE STATE OF  
ARIZONA**

John R. France,  
*Petitioner,*

*v.*

The Industrial Commission of Arizona  
*Respondent,*  
Gila County,  
*Respondent Employer,*  
Arizona Counties Insurance Pool,  
*Respondent carrier.*

No. CV-20-0068-PR

**Filed 3/2/2021**

Special Action from the Industrial Commission of  
Arizona The Honorable Michelle Bodi,  
Administrative Law Judge.

No. ICA 20171-990349

Carrier claim No. WC17000001316

**AWARD SET ASIDE**

Opinion of the Arizona Court of Appeals,  
Division One

248 Ariz. 369 (App.2020)

**VACATED**

**COUNSEL:**

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Kristin M. Mackin, William J. Sims Mackin LTD,  
Phoenix, Attorneys for Amicus Curiae Workers'  
Injury Law & Advocacy Group.

JUSTICE GOULD, opinion of the Court:

1. Under A.R.S. 23-1043.01(B), employees may receive compensation for mental injuries if "some unexpected unusual or extraordinary stress related to [their] employment ... was a substantial contributing cause of the **mental injury, illness or condition**." We hold that under this statute, a work-related mental injury is compensable. If the specific event causing the injury was objectively "unexpected, unusual or extraordinary." We further hold that under this objective standard, an injury-causing event must be examined from the standpoint of a reasonable employee with the same or similar job duties and training as the claimant, as opposed to the claimant's subjective reaction to the event.

2. Here, deputy John France developed post-traumatic stress disorder ("PTSD") after he shot and killed a man who threatened him with a shotgun during a welfare check (the "shooting incident"). In denying France's claim for benefits, the Administrative Law Judge ("ALJ") for The Industrial Commission of Arizona ("ICA") erred by limiting her analysis to whether France's job duties encompassed the possibility of using lethal force in the line of duty and failing to consider whether the shooting incident itself was "unexpected, unusual or extraordinary".