

**THE SUPREME COURT  
OF THE STATE OF NEVADA**

FORD MOTOR COMPANY,

Appellant,

v.

THERESA GARCIA TREJO AS THE  
SUCCESSOR-IN-INTEREST AND  
SURVIVING SPOUSE OF RAFAEL  
TREJO, DECEASED,

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case No. 67843**

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT, COUNTY OF CLARK  
THE HONORABLE VALERIE ADAIR, DISTRICT JUDGE  
DISTRICT COURT CASE No. A-11-641059-C

**MOTION TO STRIKE PLAINTIFF'S REPLY TO  
SUPPLEMENTAL AUTHORITIES; MEMORANDUM OF  
POINTS AND AUTHORITIES**

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SUPPLEMENTAL AUTHORITIES**

Pursuant to Nevada Rules of Appellate Procedure 27, 28, and 31(e), Appellant Ford Motor Company respectfully requests Respondent Theresa Garcia Trejo’s Response to Ford’s Second Notice of Supplemental Authorities be stricken or disregarded because it violates Rule 31(e). It contains a multi-page extended legal argument and is, in effect, a surreply brief filed without this Court’s permission. In the alternative, Ford requests leave to file a response to Trejo’s surreply brief not to exceed seven pages.

This motion is based upon the attached memorandum of points and authorities and the record on appeal.

Dated: August 10, 2017

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**FORD MOTOR COMPANY**

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Appellant Ford Motor Company moves to strike Respondent Theresa Garcia Trejo's Response to Ford's Second Notice of Supplemental Authorities because it contains lengthy argument in violation of the limitations placed on such responses by Nevada Rule of Appellate Procedure 31(e) and is effectively a surreply brief filed without leave of court.

This matter has been fully briefed since April 2016. Oral argument was completed in December 2016 and the case is awaiting decision. In the meantime, on July 20, 2017, Ford submitted a notice of supplemental authorities to bring to the Court's attention two new out-of-state authorities bearing on Ford's position that the consumer expectations test is inappropriate for cases like this one. Ford devoted a single paragraph to each case, going no further than describing the holdings and the sections of briefing in this case to which those holdings pertained. In response, Trejo filed seven pages of argument, replete with record citations and explication of other cases, addressing the points previously raised in Ford's April 2016 Reply Brief.

Trejo's surreply brief is not authorized by the Nevada Rules of Appellate Procedure and should be stricken. In the alternative, if the Court is inclined to consider the points raised in the surreply brief—in particular Trejo's new points attempting to argue California's standard for design defect liability is somehow materially different than Nevada's—Ford respectfully requests permission to file a brief response of a similar length to Trejo's submission.

## II. ARGUMENT

Nevada Rule of Appellate Procedure 28 provides for the filing of an Appellant’s Brief, a Respondent’s Brief, and a Reply Brief. No other briefs maybe filed without court permission. NRAP 28(c); *see, e.g., Ronning v. State*, 116 Nev. 32, 33 n.2 (2000) (permitting memorandum containing supplemental argument to be filed upon motion). Briefs that do not comply with Rule 28 “may be disregarded or stricken.” NRAP 28(j); *see Nevada Attorney for Injured Workers v. Nevada Self-Insurers Ass’n*, 126 Nev. 74, 77 n.1 (2010) (striking supplemental reply brief filed without leave of court); *see also In re Powell’s Estate*, 62 Nev. 121 (1944) (striking supplemental authorities not authorized by rule).

Nevada Rule of Appellate Procedure 31(e) provides that “[w]hen pertinent and significant authorities come to a party’s attention after the party’s brief has been filed, but before a decision, a party may promptly advise the Supreme Court . . . by filing and serving a notice of supplemental authorities.” Under this rule, the notice must “state concisely and without argument the legal proposition for which each supplemental authority is cited” and “may not raise any new points or issues.” *Id.* Importantly, “[a]ny response . . . must be similarly limited.” *Id.*

Ford’s two-paragraph discussion in its July 20 Notice of Supplemental Authorities complied with the limitations imposed by Rule 31(e). It (1) explained the relevant portions of two new products liability decisions and (2) identified the portions of its appellate briefing to which those decisions related, and nothing more.

In contrast, Trejo’s response is neither concise nor free of argument. It contains seven pages of points and authorities concerning purported

differences between the standards for design defect liability in California and Nevada (a new argument); why Trejo believes use of the consumer expectations test was harmless in this case even if it was error; and why Trejo believes the risk-utility test imposes too onerous a burden on plaintiffs (another new argument).

If Trejo had provided a few lines of argument in an effort to distinguish the supplemental authorities Ford cited, Ford would have let it be. But Ford objects to Trejo's seven page surreply brief containing new and expanded arguments. A party's effort to keep the court apprised of new cases pertinent to the matter before the court is not, and should not be allowed to become, an invitation for the opposing party to file further briefs to rehash its arguments or raise arguments that should have been made in its principal brief or at argument.

If Trejo's filing is going to be considered, at a minimum, Ford should be given the opportunity to explain its disagreement with the arguments she raises.

### **III. CONCLUSION**

For the foregoing reasons, Ford respectfully requests this Court strike or at least disregard Trejo's Response to Ford's Second Notice of Supplemental Authorities. Alternatively, Ford requests permission to file a response not to exceed seven pages.

Dated: August 10, 2017

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## **PROOF OF SERVICE**

### **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, California 91505-4681.

On August 10, 2017, I served true copies of the following document(s) described as **MOTION TO STRIKE PLAINTIFF'S REPLY TO SUPPLEMENTAL AUTHORITIES; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

### **SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**BY ELECTRONIC TRANSMISSION:** Based on electronic transmission via the Nevada Supreme Court's Appellate Case Management System (ACMS) indicated as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2017, at Burbank, California.

s/ Cassandra St. George



## SERVICE LIST

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Nevada Supreme Court No. 67843

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