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SIMMONS and *Interested Party*
10 GOVERNMENT EMPLOYEES INSURANCE
COMPANY d/b/a GEICO, *appearing for the*
11 *purpose of this Motion only*

IN THE SUPREME COURT OF THE STATE OF NEVADA

12 GENEVA M. SIMMONS, an
individual,

13 Appellant,

14 vs.

14 JESUS MANUEL BRIONES, an
individual,

15 Respondent.

Supreme Court No. 69060

District Court No. A-14-706955-J

**NRAP 27(e) EMERGENCY
MOTION TO STAY RELATED
DISTRICT COURT ACTION
PENDING RESOLUTION OF
APPEAL**

**ACTION REQUESTED BY
AUGUST 11, 2016**

Electronically Filed
Aug 02 2016 04:22 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**NRAP 27(e) EMERGENCY MOTION TO STAY RELATED DISTRICT
COURT ACTION PENDING RESOLUTION OF APPEAL**

ACTION REQUESTED BY AUGUST 11, 2016

I. INTRODUCTION

Appellant Geneva M. Simmons (“Simmons”) respectfully requests, on an emergency basis, that, pending the outcome of this appeal, this Court stay all proceedings in *Briones v. Simmons*, Case No. A-16-730888-C, filed in the Eighth Judicial District Court, Clark County, Nevada, on January 27, 2016 (the “Related Action”). Interested Party Government Employees Insurance Company d/b/a GEICO (“GEICO”) is a defendant in the Related Action, and, by special appearance for the purpose of this Motion only, joins in the Motion.

Simmons and GEICO will suffer irreparable harm, and the object of the appeal will be defeated if the Related Action is not stayed. There is a significant risk that Simmons and GEICO could be held liable in the Related Action for conduct which this Court may ultimately determine to have been entirely proper. This appeal and the Related Action both require interpretation of the scope of NRS 485.035, NRS 485.301(1), and NRS 485.302(1) (collectively, the “Statutes”). If this Court determines that Simmons’ judgment

1 against Respondent Jesus Briones (“Briones”) falls within the scope of the
2 Statutes, then each of Briones’ claims in the Related Action must be dismissed
3 as a matter of law. Because the Related Action is inextricably linked to and
4 dependent upon the resolution of this appeal, the Related Action must be
5 stayed pending the resolution of this appeal.

6 Because Briones’ claims in the Related Action cannot be resolved until
7 this Court interprets the scope of the Statutes, there can be no harm or
8 prejudice from entry of a stay. The duration of the stay will not be prejudicial
9 or unreasonable, as the appeal has now been fully briefed. In fact, Briones
10 admits that he only commenced the Related Action prior to resolution of this
11 appeal due to statute of limitation concerns; thus, he will suffer no prejudice if
12 the Related Action is stayed. (Ex. 2, ¶ 6; Ex. 6, at 2:26-27, 3:3-5.)

13 On May 13, 2016, GEICO filed a Motion for Stay of the Related Action
14 pending resolution of both this appeal and a Petition for Extraordinary Writ
15 Relief (“Writ Petition”) concerning the denial of GEICO’s Motion to Dismiss
16 in the Related Action. (Ex. 2, ¶ 3; Ex. 3.) Simmons filed a Joinder to the
17 Motion for Stay on May 24, 2016, after being served with the Complaint in the

1 Related Action. (Ex. 2, ¶ 5; Ex. 5.) On June 20, 2016, this Court denied the
2 Writ Petition. (Ex. 2, ¶ 8; Ex. 8.) On July 26, 2016, GEICO and Simmons
3 filed a Reply in Support of the Motion for Stay, which clarified that they were
4 still seeking a stay pending resolution of this appeal. (Ex. 2, ¶ 7; Ex. 7, at n.2.)
5 However, on July 29, 2016, the District Court removed the motion from its
6 hearing calendar, finding it moot because of the denial of the Writ Petition, and
7 made no findings regarding a stay pending the appeal. (Ex. 2, ¶ 9; Ex. 9.)

8 Immediate relief is necessary because Simmons' and GEICO's deadline to
9 answer Briones' Complaint is August 12, 2016. (Ex. 2, ¶ 10.) This
10 Emergency Motion is made and based on NRAP 8(a)(2), the following
11 Memorandum of Points and Authorities, and the exhibits attached hereto. All
12 grounds advanced in support of this Motion were submitted to the District
13 Court, and references to the relevant excerpts in the briefs are provided herein.

14 II. STATEMENT OF MATERIAL FACTS

15 Briones and Simmons were involved in a car accident, and, as a result, he
16 commenced a personal injury action against her. (Ex. 3, at 9:15-17; Ex. 4.)
17 GEICO staff counsel defended Simmons in the action because she is an

1 insured of a GEICO affiliate. (Ex. 3, at 9:17-18 & Ex. A, at ¶ 2.) The jury
2 rendered a verdict in favor of Briones but found him to be 50-percent liable for
3 the car accident. (*Id.* at 9:22-26.) Because the verdict was less than Simmons'
4 offer of judgment and a prior arbitration award, the court awarded costs and
5 fees to Simmons. (*Id.* at 10:1-5.) The award of costs and fees was greater than
6 the award to Briones; therefore, the court entered a judgment in favor of
7 Simmons. (*Id.* at 10:5-6.)

8 Briones failed to satisfy this judgment; therefore, Simmons requested that
9 the Department of Motor Vehicles ("DMV") suspend his driving privileges
10 pursuant to the Statutes. (*Id.* at 10:7-9.) The Administrative Law Judge
11 ("ALJ") for the DMV determined that suspension was not warranted because
12 Simmons' judgment did not fall within the scope of the Statutes. (*Id.* at 10:11-
13 13.) Simmons then filed a Petition for Judicial Review ("PJR") in the district
14 court, and Briones requested sanctions pursuant to NRCP 11. (*Id.* at 10:14-
15 17.) The district court denied both the PJR and the request for sanctions. (*Id.*
16 at 10:17-18.) Therefore, on October 22, 2015, Ms. Simmons filed this appeal.
17 (*Id.* at 10:18-19.)

1 On January 27, 2016, Briones commenced the Related Action, alleging
2 claims against Simmons and GEICO for malicious prosecution, intentional
3 infliction of emotional distress, defamation, civil conspiracy, and abuse of
4 process. (*Id.* at 10:20-22.) The claims for civil conspiracy and malicious
5 prosecution have been dismissed. (*Id.* at 10:23-24.)

6 III. ARGUMENT

7 The four-factor test set forth in NRAP 8(c) dictates that the Related Action
8 should be stayed pending resolution of the appeal. *Fritz Hansen A/S v. Eighth*
9 *Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

10 A. The Object of the Appeal Will Be Defeated if a Stay Is Denied.

11 Briones' claims in the Related Action are entirely dependent upon the
12 resolution of the issues presented in this appeal. (Ex. 3, at 13:20-24 & Ex. A, ¶
13 5.) Briones claims that Simmons and GEICO abused process when they filed
14 the PJR and this appeal, because the "law clearly does not allow" for
15 suspension of driving privileges for the non-payment of a judgment for costs
16 and fees. (*Id.* at 13:25-14:5.) Similarly, Briones contends that GEICO and
17 Simmons intentionally caused him emotional distress by using "state power"

1 (i.e., filing the PJR and this appeal) to try to deny him of his driving privileges,
2 because the Statutes “clearly and unambiguously do[] not apply to this
3 situation.” (*Id.* at 14:9-14.) Finally, Briones alleges defamation based upon
4 the letter to the DMV requesting suspension of his driving privileges for non-
5 payment of Simmons’ judgment. (*Id.* at 14:18-21.)

6 None of these claims can be decided until this Court determines if: (1) the
7 Statutes apply to Simmons’ judgment; (2) the ALJ erred in refusing to suspend
8 Briones’ driving privileges; and (3) the district court erred in denying the PJR.
9 (*Id.* at 14:5-8, 14-17, 21-23.) If the Related Action proceeds simultaneously
10 with the appeal, the object of the appeal will be defeated, as Simmons and
11 GEICO could be found liable on each of the tort claims despite the fact that
12 this Court may determine that Simmons’ judgment falls squarely within the
13 scope of the Statutes. (*Id.* at 14:24-15:1.) It is well recognized that when two
14 related actions are pending and resolution of one action could resolve and/or
15 have an impact on the claims and issues in the other action, it is proper to stay
16 one of the actions pending the resolution of the other. *Jowers v. Compton*, 82
17 Nev. 95, 96, 411 P.2d 479, 479 (1966); *see also* Ex. 3 at 15:17-16:13

1 Briones does not contest this factor for obtaining a stay. (Ex. 6, at 2:26-
2 27.) He admits that his claims must be dismissed if this Court resolves the
3 appeal in favor of Simmons. (*Id.* at 3:6-7.) Moreover, both the District Court
4 and Briones acknowledge that his claims may be premature. (Ex. 3, at 15:3-4
5 & Ex. B, at 15:11-25.) As such, Briones' claims should be stayed pending the
6 resolution of this appeal. *Id.* at 15:3-16; *see also Semenza v. Nev. Med. Liab.*
7 *Ins. Co.*, 104 Nev. 666, 668-69, 765 P.2d 184, 186 (1988) (staying malpractice
8 claims until the action giving rise to the claims had been decided on appeal).

9 **B. Simmons and GEICO Will Suffer Irreparable Harm if the Stay Is Denied.**

10 If the Related Action and this appeal proceed simultaneously, GEICO
11 and Simmons are at risk of being held liable for conduct which this Court may
12 determine is not actionable. (Ex. 3, at 17:7-19.) As stated above, the Related
13 Action is entirely dependent upon the resolution of this appeal; therefore, the
14 risk of inconsistent judgments is significant if the stay is denied.

15 Briones admits that the Related Action must be dismissed as a matter of
16 law if the appeal is resolved in Simmons' favor. (Ex. 6, at 3:6-7.) Thus,
17 GEICO and Simmons will be irreparably harmed if they are forced to expend

1 significant time and resources litigating potentially invalid claims. (Ex. 3, at
2 18:1-4.) While incurring unnecessary costs and fees is typically not considered
3 sufficient irreparable harm by itself, it should still be a factor in this case given
4 the interrelated nature of the two actions. *Id.* at 15:25-16:6, 18:4-6; *see also*
5 *Allstate Ins. Co. v. Titusville Total Health Care*, 848 So.2d 1166, 1167 (Fla.
6 Dist. Ct. App. 2003) (“Courts have often held that it is appropriate for one
7 court to stay an action in order to avoid a waste of judicial resources if a
8 similar issue is pending in another action and will be dispositive.”).

9 Although Mr. Briones claims to dispute this factor, he failed to offer any
10 legal or factual arguments in support of his contention. (Ex. 6, at 3:1-10.)

11 Rather, he merely advanced the conclusory assertion that GEICO would not
12 suffer irreparable harm. (*Id.* at 10.) Thus, it is undisputed that GEICO and
13 Simmons will be irreparably harmed if a stay is denied.

14 **C. Briones Will Suffer Little to No Harm if a Stay Is Granted.**

15 As a party to the appeal, Briones knew the appeal was pending when he
16 chose to commence the Related Action and proceed with claims that are
17 dependent upon this Court’s resolution of the issues on appeal. (Ex. 3, at 19:2-

1 6.) In fact, Briones admits that he was uncertain if the Related Action could be
2 commenced prior to the resolution of the appeal and only filed the Complaint
3 due to statute of limitation concerns. (Ex. 3, at 19:6-9 & Ex. B, at 15:18-24;
4 Ex. 6, at 3:3-5.). Therefore, he will suffer no prejudice by entry of a stay.

5 **D. Ms. Simmons Is Likely to Prevail on the Merits of the Appeal.**

6 In the interest of brevity and judicial economy, Simmons and GEICO
7 will not reiterate the extensive arguments set forth in Simmons' Opening Brief
8 and Reply Brief; however, Simmons is likely to prevail on the merits of the
9 appeal. In summary: the plain and unambiguous language of the Statutes is
10 broad and applies to *any* judgment entered in favor of *any* person in a personal
11 injury action arising out of a motor vehicle accident. (Ex. 3, at 19:27-20:23.)
12 Moreover, the statutory "interpretations" offered by Briones, the ALJ, and the
13 District Court violate the rules of statutory interpretation and would lead to
14 absurd results, render portions of NRS Chapter 485 superfluous, and result in
15 an unequal application of the Statutes. (*Id.* at 20:24-21:25; Ex. 7, at 5:13-8:9.)
16 Finally, based on the application of similar statutes in other jurisdictions who
17 have adopted the Uniform Vehicle Code, as Nevada has done, it is clear that

1 there is no rational basis for excluding Simmons' judgment from the scope of
2 the Statutes. (Ex. 3, at 21:26-23:8; Ex. 7, at 8:10-9:10.) Therefore, the ALJ
3 and district court erred in failing to suspend Briones' license and registration.

4 Briones advances nothing more than conclusory statements to support
5 his assertion that this factor weighs in favor of denying a stay. (Ex. 6, at 3:12-
6 4:8; Ex. 7, at 5:14-7:23.) Therefore, it is essentially undisputed that Simmons
7 is likely to prevail on the merits of this appeal.

8 IV. CONCLUSION

9 For the foregoing reasons, Simmons and GEICO respectfully request
10 that this Court stay all further proceedings in the Related Action pending the
11 resolution of this appeal.

12 DATED this 2nd day of August, 2016.

13 BAILEY ♦ KENNEDY

14 By: /s/ Sarah E. Harmon
SARAH E. HARMON

15 *Attorneys for Appellant Geneva M. Simmons and*
16 *Interested Party Government Employees*
17 *Insurance Company d/b/a GEICO, appearing for*
the purpose of this Motion only

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 2nd day of August, 2016, service of the foregoing **NRAP 27(E)** **EMERGENCY MOTION TO STAY RELATED DISTRICT COURT ACTION PENDING RESOLUTION OF APPEAL** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

CLIFF W. MARCEK
CLIFF W. MARCEK, P.C.
700 South Third Street
Las Vegas, Nevada 89101

Email:
cwmarcek@marceklaw.com
Attorneys for Respondent
JESUS MANUEL BRIONES

/s/ Jennifer Kennedy
Employee of BAILEY❖KENNEDY

EXHIBIT 1

EXHIBIT 1

NRAP 27(e) CERTIFICATE

Pursuant to Nevada Rule of Appellate Procedure 27(e)(3), Appellant Geneva M. Simmons (“Simmons”) and Interested Party Government Employees Insurance Company, d/b/a GEICO (“GEICO”), specially appearing for the purpose of this Emergency Motion only, state as follows:

1. Simmons and GEICO are represented by Dennis L. Kennedy and Sarah E. Harmon, of Bailey Kennedy, 8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302, 702.562.8820; and Eric A. Daly, GEICO Staff Counsel, 901 North Green Valley Parkway, Suite 190, Henderson, Nevada 89074, 702.233.9303.

2. Respondent Jesus Briones (“Briones”) is represented by Cliff W. Marcek, of Cliff W. Marcek, P.C., 700 South Third Street, Las Vegas, Nevada 89101, 702.366.7076.

3. This appeal was commenced on October 22, 2015.

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///

1 4. On January 27, 2016, Briones filed a related action in the Eighth
2 Judicial District Court, Clark County, Nevada, entitled *Briones v. Simmons*,
3 Case No. A-16-730888-C (the “Related Action”).

4 5. On May 10, 2016, GEICO filed a Petition for Extraordinary Writ
5 Relief concerning the District Court’s denial, in part, of GEICO’s Motion to
6 Dismiss in the Related Action (Case No. 70362).

7 6. On May 13, 2016, GEICO filed a Motion for Stay in the Related
8 Action seeking a stay pending resolution of this appeal and the Petition for
9 Extraordinary Writ Relief.

10 7. On May 24, 2016, after being served with the Complaint in the
11 Related Action, Simmons filed a Joinder to the Motion for Stay.

12 8. On June 20, 2016, this Court denied the Petition.

13 9. On July 26, 2016, GEICO and Simmons filed a Reply in Support
14 of the Motion for Stay clarifying that despite the denial of the Petition, they
15 were still seeking a stay pending resolution of this appeal.

16 ///

1 10. On July 29, 2016, the District Court removed the Motion for Stay
2 from its hearing calendar, found the Motion to be moot because this Court
3 denied GEICO's and Simmons' Writ Petition, and made no findings regarding
4 the motion for stay pending resolution of Simmons' appeal.

5 11. GEICO and Simmons must respond to the Complaint on August
6 12, 2016.

7 12. Therefore immediate relief is necessary to ensure that the Related
8 Action is stayed prior to the deadline for responding to the Complaint.

9 13. Earlier today, GEICO and Simmons notified the Clerk of the
10 Supreme Court and Mr. Marcek, by telephone, that they intended to file this
11 Emergency Motion.

12 14. GEICO and Simmons have filed this Emergency Motion at the
13 earliest possible time. This Emergency Motion has been filed within two
14 judicial days of the entry of the Minute Order removing the Motion for Stay
15 from the District Court's hearing calendar – the same day that the Parties
16 received notice of the Minute Order.

1 15. This Emergency Motion has been electronically served on Mr.
2 Marcek contemporaneously with the filing of this Motion.

3 DATED this 2nd day of August, 2016.

4 BAILEY ♦ KENNEDY

5 By: /s/ Sarah E. Harmon

6 DENNIS L. KENNEDY

7 SARAH E. HARMON

8 -AND-

9 ERIC A. DALY

10 GEICO STAFF COUNSEL

11 Attorneys for Appellant GENEVA M. SIMMONS
12 and Interested Party GOVERNMENT
13 EMPLOYEES INSURANCE COMPANY d/b/a
14 GEICO, appearing for the purpose of this Motion
15 only
16

EXHIBIT 2

EXHIBIT 2

DECLARATION OF SARAH E. HARMON IN SUPPORT OF NRAP
27(e) EMERGENCY MOTION TO STAY RELATED DISTRICT
COURT ACTION PENDING RESOLUTION OF APPEAL

I, Sarah E. Harmon, declare as follows:

1. I am a partner of the law firm of Bailey❖Kennedy, counsel of record for Appellant Geneva M. Simmons (“Simmons”) in *Simmons v. Briones*, Case No. 69060, pending before this Court, and Interested Party Government Employees Insurance Company, d/b/a GEICO (“GEICO”), specially appearing for the purpose of this Motion only. I have personal knowledge of and am competent to testify to the facts contained in this declaration. I have made this declaration in support of NRAP 27(e) Emergency Motion to Stay Related District Court Action Pending Resolution of Appeal.

2. Simmons and GEICO seek to stay a related action entitled *Briones v. Simmons*, Case No. A-16-730888-C, filed in the Eighth Judicial District Court, Clark County, Nevada, on January 27, 2016 (the “Related Action”).

///

1 3. A true and correct copy of Defendant Government Employees
2 Insurance Company d/b/a GEICO's Motion for Stay Pending Resolution of
3 Nevada Supreme Court Appeal and Writ Petition, on Application for Order
4 Shortening Time, filed on May 13, 2016, in the Related Action, is attached as
5 Exhibit 3.

6 4. A true and correct copy of the Complaint, filed on January 27,
7 2016, in the Related Action, is attached as Exhibit 4.

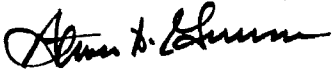
8 5. A true and correct copy of Defendant Geneva M. Simmons'
9 Joinder to Defendant Government Employees Insurance Company d/b/a
10 GEICO's Motion for Stay Pending Resolution of Nevada Supreme Court
11 Appeal and Writ Petition, filed on May 24, 2016, in the Related Action, is
12 attached as Exhibit 5.

13 6. A true and correct copy of the Plaintiff's Opposition to Defendant
14 Government Employees Insurance Company, d/b/a GEICO's Motion for Stay,
15 filed on June 9, 2016, in the Related Action, is attached as Exhibit 6.

16 ///

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

1 MTSY

DENNIS L. KENNEDY

2 Nevada Bar No. 1462

SARAH E. HARMON

3 Nevada Bar No. 8106

AMANDA L. STEVENS

4 Nevada Bar No. 13966

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9 *Attorneys for Defendant*

GOVERNMENT EMPLOYEES INSURANCE

10 COMPANY d/b/a GEICO

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 JESUS BRIONES, an Individual,

14 Plaintiff,

Case No. A-16-730888-C

Dept. No. XXVI

15 vs.

16 GENEVA M. SIMMONS, an Individual;
17 GOVERNMENT EMPLOYEES INSURANCE
18 COMPANY, a Maryland Corporation, dba
19 GEICO; DOES I through X; and ROE
20 CORPORATIONS XI through XX,

Defendants.

21
22 **DEFENDANT GOVERNMENT EMPLOYEES INSURANCE COMPANY d/b/a GEICO'S**
23 **MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME COURT**
APPEAL AND WRIT PETITION, ON APPLICATION FOR ORDER SHORTENING TIME

24 Date of Hearing: May 24th, 2016

25 Time of Hearing: 9:00 a.m.

26 Defendant Government Employees Insurance Company d/b/a GEICO ("GEICO")

27 respectfully requests that this Court stay all proceedings in this action pending the resolution of: (1)

28 Defendant Geneva M. Simmons' ("Ms. Simmons") appeal in *Simmons v. Briones*, Case No. 69060,

1 filed in the Nevada Supreme Court on October 22, 2015 (the “Appeal”); *and* (2) GEICO’s Petition
2 for Extraordinary Writ Relief, filed in the Nevada Supreme Court on May 10, 2016, in Case No.
3 70362 (the “Writ Petition”).

4 The Appeal concerns, *inter alia*: (1) the interpretation of NRS 485.035, NRS 485.301(1), and
5 NRS 485.302(1) (collectively, the “Unsatisfied Judgment Statutes”); (2) whether the Administrative
6 Law Judge (“ALJ”) for the Nevada Department of Motor Vehicles (“DMV”) erred in refusing to
7 suspend Mr. Briones’ license, pursuant to the Unsatisfied Judgment Statutes, for the non-payment of
8 a judgment entered in an action arising out of a motor vehicle accident; and (3) whether the district
9 court (the Honorable Rob Bare) erred in denying a petition for judicial review of the ALJ’s decision.
10 Similarly, the Writ Petition alleges that this Court abused its discretion when it denied GEICO’s
11 Motion to Dismiss Mr. Briones’ claims for abuse of process, intentional infliction of emotional
12 distress, and defamation.

13 If this stay is not granted, GEICO will suffer irreparable harm and the objects of the Appeal
14 and Writ Petition will be defeated. Specifically, if the stay is not granted pending the resolution of
15 the Writ Petition, GEICO will be forced to defend against claims for which it has an absolute
16 immunity from suit. Moreover, if the stay is not granted pending the resolution of the Appeal, there
17 is a risk of inconsistent judgments, as this Court cannot resolve Mr. Briones’ claims without
18 engaging in same statutory interpretation required of the Nevada Supreme Court in the Appeal.

19 This Motion for Stay is made in an effort to conserve judicial resources and prevent all
20 parties from incurring unnecessary costs and fees while the Writ Petition and Appeal are pending
21 before the Nevada Supreme Court. Given that Mr. Briones’ claims cannot be resolved until the
22 Court renders a decision on the Appeal, there can be no harm or prejudice caused to the parties by
23 entry of the stay. Furthermore, GEICO will suffer irreparable harm if it must litigate claims barred
24 by the absolute privilege before the Nevada Supreme Court resolves the issues raised in the Writ
25 Petition.

26 ///


27 ///

28 ///

1 This Motion is based upon all pleadings and papers on file herein, the following
2 memorandum of points and authorities, and any oral argument heard by the Court.

3 DATED this 11th day of May, 2016.

4 BAILEY ♦ KENNEDY

5
6 By: 
7 DENNIS L. KENNEDY
8 SARAH E. HARMON
9 AMANDA L. STEVENS

10 *Attorneys for Defendant*
11 GOVERNMENT EMPLOYEES
12 INSURANCE COMPANY d/b/a GEICO
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APPLICATION FOR ORDER SHORTENING TIME

GEICO hereby applies for an Order Shortening Time for the hearing on the above Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition.

DATED this 11th day of May, 2016.

BAILEY ♦ KENNEDY

By: 
DENNIS L. KENNEDY
SARAH E. HARMON
AMANDA L. STEVENS

Attorneys for Defendant
GOVERNMENT EMPLOYEES
INSURANCE COMPANY d/b/a GEICO

**DECLARATION OF SARAH E. HARMON IN SUPPORT OF GEICO'S
APPLICATION FOR ORDER SHORTENING TIME**

I, Sarah E. Harmon, declare as follows:

1. I am an attorney with the law firm of Bailey ♦ Kennedy, counsel of record for GEICO in *Briones v. Simmons*, Case No. A-16-730888-C, pending before this Court. I have personal knowledge of and am competent to testify to the facts contained in this declaration. I have made this declaration in support of GEICO's Application for Order Shortening Time relating to GEICO's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition ("Motion for Stay").

2. On May 5, 2016, this Court entered an Order Regarding Motion to Dismiss, which dismissed Plaintiff Jesus Briones' ("Mr. Briones") claims for malicious prosecution and civil conspiracy and denied the Motion as to the claims for abuse of process, defamation, and intentional infliction of emotional distress.

3. Notice of Entry of this Order was filed on May 6, 2016.

4. As set forth in this Motion, *infra*, GEICO asserts that it will suffer irreparable harm if this case proceeds prior to the resolution of the Writ Petition, which was filed on May 10, 2016. In the Writ Petition, GEICO contends that it is immune from suit for any claims which arise out of communications made in anticipation of and/or during the course of judicial and/or quasi-judicial proceedings and which relate to the subject matter of the proceedings. Because GEICO is absolutely immune from liability, GEICO would be irreparably harmed if it was forced to answer the Complaint and engage in discovery prior to the Nevada Supreme Court's resolution of the Writ Petition.

5. Moreover, as set forth herein, *infra*, this action is very closely related to the Appeal filed by Defendant Geneva Simmons, an insured of an affiliate of GEICO. All of Mr. Briones' claims for relief in this action may be resolved by the Nevada Supreme Court's opinion concerning the issues raised in the Appeal. Therefore, GEICO contends that the object of the Appeal would be defeated and GEICO would be irreparably harmed, if this action proceeds before the pending Appeal is resolved.

Page 6 of 28

ORDER SHORTENING TIME


The Court, having considered GEICO's Application for an Order Shortening Time and the Declaration of Sarah E. Harmon in support thereof, and good cause appearing,

IT IS HEREBY ORDERED that the above DEFENDANT GOVERNMENT EMPLOYEES INSURANCE COMPANY d/b/a GEICO'S MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME COURT APPEAL AND WRIT PETITION shall be heard on the 24th day of May, 2016, at the hour of 9:00 A.m., in Department XXVI, at the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada 89155.

DATED this 11 day of May, 2016.


DISTRICT COURT JUDGE

Submitted by:
BAILEY ♦ KENNEDY

By: 
DENNIS L. KENNEDY
SARAH E. HARMON
AMANDA L. STEVENS

Attorneys for Defendant
GOVERNMENT EMPLOYEES INSURANCE
COMPANY d/b/a GEICO

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 GEICO respectfully requests that this Court stay all further proceedings in this action
4 pending the resolution of both the Appeal and the Writ Petition. First, the claims alleged by Mr.
5 Briones in this action are almost entirely dependent upon the issues presented for review in the
6 Appeal. If the Nevada Supreme Court determines that Ms. Simmons' judgment against Mr. Briones
7 falls within the scope of the Unsatisfied Judgment Statutes, all of Mr. Briones' claims made in this
8 case fail as a matter of law. If the Unsatisfied Judgment Statutes apply to Ms. Simmons' judgment,
9 then Ms. Simmons and her counsel (employees of GEICO) were legally entitled to: (1) request that
10 the DMV suspend Mr. Briones' license and registration; (2) pursue an administrative appeal of the
11 ALJ's erroneous decision; and (3) pursue an appeal with the Nevada Supreme Court of the erroneous
12 denial of the petition for judicial review. Moreover, even if the Nevada Supreme Court determines
13 that Ms. Simmons' judgment falls outside the scope of the Unsatisfied Judgment Statutes, Mr.
14 Briones' claims still fail as a matter of law if the Nevada Supreme Court determines that the
15 Unsatisfied Judgment Statutes require clarification. Mr. Briones would only be entitled to proceed
16 with his claims if the Nevada Supreme Court determines that: (1) Ms. Simmons' judgment falls
17 outside the scope of the Unsatisfied Judgment Statutes; (2) the Unsatisfied Judgment Statutes are
18 clear and unambiguous and require no clarification; and (3) Ms. Simmons' request for suspension of
19 Mr. Briones' license and registration, and her subsequent appeals, were vexatious, frivolous, and/or
20 in bad faith. Because the Nevada Supreme Court's decision on the issues presented for review in the
21 Appeal are likely to fully resolve all of Mr. Briones' claims, the interests of judicial economy dictate
22 that this action should be stayed pending resolution of the Appeal.

23 Similarly, GEICO respectfully requests that all further proceedings in this action also be
24 stayed pending the resolution of GEICO's Writ Petition, which was filed on May 10, 2016. GEICO
25 asserts that it is absolutely immune from liability for any claims which arise from communications
26 made in anticipation of and/or during the course of judicial and/or quasi-judicial proceedings and
27 which relate to the subject matter of the proceedings. Because GEICO is absolutely immune from
28 having to answer Mr. Briones' claims made in this case, GEICO would be irreparably harmed and

1 the object of the Writ Petition would be defeated if it is forced to proceed with this action pending
2 the resolution of the Writ Petition.

3 The temporary delay necessitated by the Appeal and Writ Petition is not prejudicial or
4 harmful to the Parties. Ms. Simmons has already filed her Opening Brief in the Appeal. By the
5 Parties' stipulation, which is awaiting approval of the Nevada Supreme Court, Mr. Briones is
6 scheduled to file his Answering Brief on June 2, 2016, and Ms. Simmons will be filing her Reply
7 Brief on July 26, 2016. Moreover, this action is in its early stages. GEICO has not yet answered the
8 Complaint, and Ms. Simmons has not yet been served with the Complaint.

9 Because the objects of the Appeal and Writ Petition will be defeated if this case proceeds
10 prior to the resolution of the appellate proceedings, GEICO respectfully requests that this Court enter
11 an Order staying the proceedings pending the resolution of the Appeal and Writ Petition. GEICO
12 will be irreparably harmed if this action proceeds, but, given the early stage of this action, Mr.
13 Briones will not suffer any prejudice.

14 II. STATEMENT OF FACTS

15 On August 20, 2010, Mr. Briones and Ms. Simmons were involved in a car accident in a
16 parking lot. (Compl. ¶ 6.) As a result, Mr. Briones sued Ms. Simmons in the Eighth Judicial District
17 Court, Case No. A-11-645923-C. (*Id.*) Ms. Simmons, an insured of a GEICO affiliate, was
18 represented by GEICO staff counsel in this personal injury action. (*Id.*; Ex. A¹, at ¶ 2.) After
19 participation in court-annexed arbitration, Mr. Briones was awarded \$8,415.00 for medical expenses
20 and pain and suffering. (Compl. ¶ 7.) The arbitrator also determined that Mr. Briones was 50-
21 percent liable for the motor vehicle accident reduced the arbitration award to \$4,207.50. (*Id.*)

22 Mr. Briones was not satisfied with the reduced arbitration award, and he filed a request for
23 trial de novo in the Short-Trial Program. (*Id.* at ¶ 8.) A jury subsequently awarded Mr. Briones
24 \$3,292.00 for medical expenses and pain and suffering. (*Id.*) However, the jury also found Mr.
25 Briones to be 50-percent liable for the car accident, and the jury's award was reduced to \$1,646.50.
26 (*Id.*)

27
28 ¹ A true and correct copy of the Declaration of Sarah E. Harmon (May 10, 2016) is attached as Exhibit A.

1 Because the jury's award failed to exceed either the Offer of Judgment served by Ms.
2 Simmons or the earlier arbitration award, Ms. Simmons moved to recover her costs and fees
3 pursuant to Nevada Arbitration Rule 20(B)(2)(a), Nevada Rule Civil Procedure 68, and Nevada
4 Short Trial Rule 27. (*Id.* at ¶¶ 7, 9.) The district court in the personal injury action awarded Ms.
5 Simmons \$5,146.55. (*Id.* at ¶ 9.) On June 27, 2013, the court offset the two awards and entered a
6 judgment in favor of Ms. Simmons in the amount of \$3,500.05. (*Id.*)

7 Mr. Briones failed to satisfy the judgment; therefore, on September 4, 2013, Ms. Simmons,
8 through GEICO staff counsel, sent a letter to the DMV requesting that Mr. Briones' driving
9 privileges be suspended pursuant to the Unsatisfied Judgment Statutes. (*Id.* at ¶ 10.) On January 30,
10 2014, the DMV notified Mr. Briones that his driver's license and registration would be suspended on
11 March 1, 2014, if he failed to begin making payments on the judgment. (*Id.* at ¶ 11.) Mr. Briones
12 requested a hearing to challenge the suspension. (*Id.* at ¶ 12.) Ultimately, the ALJ determined that
13 suspension of driving privileges was not appropriate and dismissed the case. (*Id.* at ¶¶ 13-16.)

14 On September 12, 2014, Ms. Simmons, through GEICO staff counsel, filed a Petition for
15 Judicial Review in the Eighth Judicial District Court. (*Id.* at ¶ 17.) Mr. Briones filed a response and
16 also requested sanctions against Ms. Simmons pursuant to Nevada Rule of Civil Procedure 11. (*Id.*
17 at ¶¶ 20-21.) The Honorable Judge Rob Bare denied both the Petition for Judicial Review and the
18 request for sanctions. (*Id.* at ¶ 21.) On October 22, 2015, Ms. Simmons, through GEICO staff
19 counsel, appealed the matter to the Nevada Supreme Court. (*Id.* at ¶ 22.)

20 On January 27, 2016, Mr. Briones commenced this litigation. (*See generally* Compl.) Mr.
21 Briones alleged claims against Ms. Simmons and GEICO for abuse of process, civil conspiracy,
22 intentional infliction of emotional distress, defamation, and malicious prosecution. (*Id.* at ¶¶ 24-44.)
23 On May 5, 2016, this Court dismissed the claims for civil conspiracy and malicious prosecution.
24 (Order Regarding Mot. to Dismiss, 2:4-5, 7-8.)

25 Mr. Briones' claim for abuse of process alleges that "Defendants misused the legal process
26 by requesting [that] the DMV suspend [Mr. Briones'] license for lack of payment of an Order and
27 Judgment for attorney's fees and costs when the law clearly does not allow for it under [the
28 Unsatisfied Judgment Statutes]." (Compl. ¶ 25.) Mr. Briones recently clarified that this claim arises

1 solely from the filing of the Petition for Judicial Review and the filing of the Notice of Appeal.

2 (Opp'n to Mot. to Dismiss, 4:22-24.)

3 Mr. Briones' claim for intentional infliction of emotional distress alleges that "Defendants[]"
4 willfully and maliciously continuously [*sic*] acted to use state power to deny [Mr. Briones] from
5 having the ability to drive his car, travel to his job and generally take care of his family." (Compl. ¶
6 34.) Mr. Briones recently clarified that this claim arises from "Defendants[]" outrageous conduct in
7 appealing the administrative hearing officer's decision not to suspend or revoke [Mr. Briones']
8 license when the law clearly and unambiguously does not apply to this situation." (Opp'n to Mot. to
9 Dismiss, 6:20-22.)

10 Finally, Mr. Briones' claim for defamation alleges that Defendants "made false statements of
11 fact to third parties and the DMV that Plaintiff had suffered a 'judgment' covered under [the
12 Unsatisfied Judgment Statutes]." (Compl. ¶ 37.) Mr. Briones recently clarified that the
13 "publication" forming the basis of this claim was the September 4, 2014 letter to the DMV
14 requesting suspension of Mr. Briones' license. (Ex. B², at 17:1-20.)

15 On April 11, 2016, Ms. Simmons, through counsel retained by GEICO, filed her Opening
16 Brief in the Nevada Supreme Court for her pending Appeal. (Ex. A, at ¶¶ 3-4.) The issues presented
17 for review in the Appeal are as follows:

- 18 1. Did the ALJ err in determining that the Unsatisfied Judgment Statutes were
19 ambiguous?
- 20 2. Did the ALJ and the district court err by engaging in an analysis of the legislative
21 intent of the Unsatisfied Judgment Statutes based solely on their personal
22 interpretations of the purpose of the Statutes?
- 23 3. ***Did the ALJ err in concluding that Ms. Simmons' judgment for costs and fees was***
24 ***not a "judgment" within the meaning of the Unsatisfied Judgment Statutes?***
- 25 4. Did the ALJ err in concluding that the jury's Verdict for Mr. Briones was a
26 "judgment" within the meaning of the Unsatisfied Judgment Statutes?
- 27 5. Did the ALJ err in dismissing and rescinding the suspension of Mr. Briones' driving
28 privileges and vehicle registration?

² True and correct copies of excerpts of the Transcript of Proceedings concerning GEICO's Motion to Dismiss (Apr. 19, 2016) are attached as Exhibit B.

1 6. *Did the district court err in concluding that Ms. Simmons' judgment for costs and*
2 *fees was not a "judgment" within the meaning of the Unsatisfied Judgment*
3 *Statutes?*

4 7. Did the district court err in denying Ms. Simmons' Petition for Judicial Review?
5 (*Id.* at ¶ 5 (emphasis added).) By stipulation of the Parties (awaiting approval of the Nevada
6 Supreme Court), Mr. Briones' Answering Brief must be filed by June 2, 2016, and Ms. Simmons
7 Reply Brief must be filed by July 26, 2016. (*Id.* at ¶ 6.)

8 Finally, on May 10, 2016, GEICO filed a Petition for Extraordinary Writ Relief concerning
9 this Court's Order Regarding Motion to Dismiss. (*Id.* at ¶¶ 7-8.) The Writ Petition asserts that all of
10 Mr. Briones' claims must be dismissed as a matter of law. (*Id.* at ¶ 9.) Each of Mr. Briones' claims
11 arises from either a communication made in anticipation of a quasi-judicial proceeding (the
12 September 4, 2013 letter to the DMV requesting suspension of Mr. Briones' driving privileges) or a
13 communication made in the course of a judicial proceeding (the filing of the Petition for Judicial
14 Review and the filing of the Notice of Appeal). (Compl. ¶¶ 10, 17, 22, 25, 34, 37; Opp'n to Mot. to
15 Dismiss, 4:22-24, 6:20-22; Ex. B, at 17:1-20.) Therefore, GEICO asserts that each of Mr. Briones'
16 claims is barred by the absolute litigation privilege, and this Court abused its discretion by denying
17 GEICO's Motion to Dismiss these claims. (Ex. A, at ¶¶ 9-10.)

18 However, even if the Nevada Supreme Court were to hold that the absolute privilege only
19 barred Mr. Briones' claim for defamation, the Writ Petition also asserts that Mr. Briones' claim for
20 abuse of process should have been dismissed as a matter of law because GEICO did not misuse legal
21 process by filing a Petition for Judicial Review or a Notice of Appeal on behalf of Ms. Simmons.
22 (*Id.* at ¶ 11.) The Writ Petition also contends that Mr. Briones' claim for intentional infliction of
23 emotional distress fails as a matter of law, because Mr. Briones has failed to allege any facts in
24 support of his conclusory allegations that: (1) GEICO engaged in extreme and outrageous conduct
25 by filing the Petition for Judicial Review and Notice of Appeal; or (2) Mr. Briones has suffered
26 severe emotional distress because he feared the loss of his driving privileges as a result of Ms.
27 Simmons' appeals of the ALJ's decision.³ (*Id.* at ¶ 12.)

28 ³ In the interest of judicial economy, GEICO has not attached the extensive Opening Brief and its associated
Appellant's Appendix, or the extensive Petition for Extraordinary Writ Relief and its associated Appendix of Exhibits.

III. ARGUMENT

In deciding whether to issue a stay, the district court should generally consider the following factors: “(1) whether the object of the appeal or writ petition will be defeated if the stay . . . is denied; (2) whether [the] appellant/petitioner will suffer irreparable or serious injury if the stay . . . is denied; (3) whether [the] respondent/real party in interest will suffer irreparable or serious injury if the stay . . . is granted; and (4) whether [the] appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” NRAP 8(c); *State v. Robles-Nieves*, 129 Nev. Adv. Op. 55, 306 P.3d 399, 401 (2013); *Fritz Hansen A/S v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). No one factor carries more weight than any other; however, “if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). The United States Supreme Court has held that “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

Here, all four factors dictate that this action should be stayed pending resolution of both the Appeal and the Writ Petition.

A. The Object of the Appeal and the Writ Petition Will Be Defeated if the Stay Is Denied.

1. The Appeal.

The primary issues in the Appeal are: (1) whether Ms. Simmons’ judgment against Mr. Briones falls within the scope of the Unsatisfied Judgment Statutes; (2) whether the ALJ erred in determining that Mr. Briones’ driving privileges should not be suspended; and (3) whether the district court erred in denying Ms. Simmons’ Petition for Judicial Review. (Ex. A, at ¶ 5.) These are also the central issues for each of Mr. Briones’ claims for relief asserted in this action.

Specifically, Mr. Briones’ claim for abuse of process allegedly arises from GEICO’s and Ms. Simmons’ filing of the Petition for Judicial Review and commencement of the Appeal after the ALJ

However, if these briefs will assist the Court’s determination of the Motion for Stay, GEICO will submit copies of these documents for the Court’s review.

1 denied their request for suspension of Mr. Briones' driving privileges pursuant to the Unsatisfied
2 Judgment Statutes. (Compl. ¶ 25; Opp'n to Mot. to Dismiss, 4:22-24.) Mr. Briones claims that the
3 filing of the Petition for Judicial Review and the commencement of the Appeal are an abuse of
4 process because the "law clearly does not allow" for suspension of his license for non-payment of a
5 judgment for fees and costs. (Compl. ¶ 25.) Therefore, this claim cannot be decided until the
6 Nevada Supreme Court determines: (i) if Ms. Simmons' judgment falls within the scope of the
7 Unsatisfied Judgment Statutes; (ii) if the ALJ erred in rescinding the suspension of Mr. Briones'
8 driving privileges; and (iii) if the district court erred in denying the Petition for Judicial Review.

9 Similarly, Mr. Briones' claim for intentional infliction of emotional distress allegedly arises
10 from the Defendants maliciously and continuously using "state power" to deny Mr. Briones of his
11 driving privileges by appealing the ALJ's and the district court's decisions. (*Id.* at ¶ 34; Opp'n to
12 Mot. to Dismiss, 6:20-22.) Mr. Briones claims that this constitutes "outrageous conduct" because
13 the Unsatisfied Judgment Statutes "clearly and unambiguously do[] not apply to this situation."
14 (Opp'n to Mot. to Dismiss, 6:20-22.) Again, this claim cannot be decided until the Supreme Court
15 determines: (i) if Ms. Simmons' judgment falls within the scope of the Unsatisfied Judgment
16 Statutes; (ii) if the ALJ erred in refusing to suspend Mr. Briones' license; and (iii) if the district court
17 erred in denying the Petition for Judicial Review.

18 Finally, Mr. Briones' claim for defamation allegedly arises from the Defendants' September
19 4, 2013 letter to the DMV requesting the suspension of Mr. Briones' driving privileges for
20 nonpayment of a judgment covered by the Unsatisfied Judgment Statutes. (Compl. ¶¶ 10, 37; Ex. B,
21 at 17:1-20.) As with the other claims for relief, this cause of action cannot be decided until the
22 Supreme Court determines if Ms. Simmons' judgment falls within the scope of the Unsatisfied
23 Judgment Statutes.

24 If this action proceeds before the Supreme Court determines the issues on Appeal, the object
25 of the Appeal will be defeated. GEICO and Ms. Simmons could be found liable on each of these tort
26 claims despite the fact that the Supreme Court could ultimately determine that Ms. Simmons'
27 judgment falls squarely within the scope of the Unsatisfied Judgment Statutes and that the ALJ and
28 ///

1 district court erred in failing to suspend Mr. Briones' license and registration. Because of the risk of
2 inconsistent judgments, this action should be stayed pending the outcome of the Appeal.

3 Moreover, during the hearing on GEICO's Motion to Dismiss, the Court noted that this
4 action might be premature. (Ex. B, at 15:11-25.) In *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev.
5 666, 765 P.2d 184 (1988), an attorney was sued for legal malpractice, arising out of his services
6 rendered in a medical malpractice action, while the adverse judgment in the medical malpractice
7 action was on appeal. *Id.* at 667, 765 P.2d at 185. The Supreme Court held that "[w]here there has
8 been no final adjudication of the client's case in which the malpractice allegedly occurred, the
9 element of injury or damage remains speculative and remote, thereby making premature the cause of
10 action for professional negligence." *Id.* at 668, 765 P.2d at 186 (quoting *AMFAC Distribution*
11 *Corp. v. Miller*, 673 P.2d 795, 796 (Ariz. Ct. App. 1983)). Therefore, the Supreme Court found that
12 the trial court erred in denying the motion to stay the legal malpractice action pending the outcome
13 of the appeal of the medical practice action. *Id.* at 668-69, 765 P.2d at 186. Here, there has been no
14 final adjudication of the applicability of the Unsatisfied Judgment Statutes to Ms. Simmons'
15 judgment; thus, the claims asserted by Mr. Briones in this action are speculative and premature. As
16 a result, this Court should stay the action pending the outcome of the Appeal.

17 It is well-recognized that when two related actions are pending in the same court, same
18 jurisdiction, or even two different states, and the resolution of one action could resolve and/or have
19 an impact on the claims and issues in the other action, it is proper to stay one of the actions pending
20 the resolution of the other. For instance, in *Jowers v. Compton*, 82 Nev. 95, 411 P.2d 479 (1966), a
21 will contest was filed in Nevada, and another will contest was filed in California, which involved "a
22 prior will executed in Los Angeles by the same decedent." *Id.* at 96, 411 P.2d at 479. The Nevada
23 Supreme Court "stayed the [Nevada] matter pending [the] outcome of [the] California proceedings."
24 *Id.*

25 Similarly, other "[c]ourts have often held that it is appropriate for one court to stay an action
26 in order to avoid a waste of judicial resources if a similar issue is pending in another action and will
27 be dispositive." *Allstate Ins. Co. v. Titusville Total Health Care*, 848 So.2d 1166, 1167 (Fla. Dist.
28 Ct. App. 2003); *Johnson v. Navient Solutions, Inc.*, No. 1:15-cv-00716-LJM-MJD, 2015 WL

1 8784150 *1 (S.D. Ind. Dec. 15, 2015) (determining that the court “should grant a motion to stay if a
2 higher court in a separate case will decide issues of law that are significant to the case sought to be
3 stayed”) (internal citations and quotation omitted); *Rael Automatic Sprinkler Co. v. Solow Dev.*
4 *Corp.*, 395 N.Y.S.2d 485, 486 (N.Y. Sup. Ct. App. Div. 1977) (holding that “[a] case for a stay is
5 presented where the decision in one action will determine all questions in the other action, and the
6 judgment in one action will dispose of the controversy in both actions”). In fact, some courts have
7 held that “it is an abuse of discretion to refuse to stay a subsequently filed state court action in favor
8 of a previously filed action which involves the same parties and the same or substantially similar
9 issues.” *Fedorov v. Citizens State Bank*, 24 So.3d 1227, 1229 (Fla. Dist. Ct. App. 2009); *Flynn v.*
10 *Flynn*, 132 So.3d 904, 906 (Fla. Dist. Ct. App. 2014) (recognizing “that ‘[i]t is well established that
11 when a previously filed federal action is pending between the same parties on the same issues, a
12 subsequently filed state court action ordinarily should be stayed until the determination of the federal
13 action.’”) (quoting *State v. Harbour Island, Inc.*, 601 So.2d 1334, 1335 (Fla. Dist. Ct. App. 1992)).

14 Because the claims in Mr. Briones’ Complaint are dependent upon the issues presented for
15 review in the Appeal, this Court should stay the action pending resolution of the Appeal. Moreover,
16 given the risk for inconsistent judgments on the common issues in the two actions, the object of the
17 Appeal would be defeated if a stay is denied.

18 2. The Writ Petition.

19 The object of the Writ Petition will also be defeated if the Motion for Stay is denied. Each of
20 Mr. Briones’ claims for relief is barred by the absolute litigation privilege, which applies to
21 communications made in anticipation of and/or during the course of judicial and quasi-judicial
22 proceedings and which relate to the subject matter of the proceedings. *Hoover v. Van Stone*, 540 F.
23 Supp. 1118, 1124 (D. Del. 1982) (“Application of the absolute privilege solely to the defamation
24 count . . . would be an empty gesture indeed, if, because of artful pleading, the plaintiff could still be
25 forced to defend itself against the same conduct regarded as defamatory.”); *see also Blaurock v.*
26 *Mattice Law Offices*, No. 64494, 2015 WL 3540903 (Nev. Ct. App. May 27, 2015) (affirming grant
27 of summary judgment based on application of the absolute privilege, as to claims for slander of title,
28 abuse of process, and civil conspiracy); *Bailey v. City Atty’s Office of North Las Vegas*, No. 2:13-cv-

1 343-JAD-CWH, 2015 WL 4506179, *3 (D. Nev. July 23, 2015) (granting summary judgment based
2 on application of the absolute privilege, as to non-defamation claims). Therefore, if Mr. Briones is
3 permitted to proceed with his claims, he will defeat the purpose of the absolute immunity that
4 GEICO seeks to assert in the Writ Petition.

5 **B. GEICO Will Suffer Irreparable Harm if the Stay Is Denied.**

6 1. The Appeal.

7 If the stay is denied, GEICO is at risk of being held liable for conduct which the Nevada
8 Supreme Court may determine is not actionable. Specifically, if the Supreme Court holds that Ms.
9 Simmons' judgment falls within the scope of the Unsatisfied Judgment Statutes, and that the ALJ
10 and district court erred in failing to suspend Mr. Briones' license and registration, then Mr. Briones
11 cannot state a claim against GEICO as a matter of law. Specifically, Mr. Briones would be unable to
12 allege and prove at least one essential element for each of his claims for relief.

13 There could be no abuse of process for filing the Petition for Judicial Review or commencing
14 the Appeal, because a valid and proper appeal of the erroneous ALJ decision cannot constitute a
15 misuse of legal process. Similarly, there could be no intentional infliction of emotional distress,
16 because the valid and proper appeal of the ALJ's erroneous decision cannot constitute "extreme and
17 outrageous conduct." GEICO also could not be liable for defamation, because its statement that Mr.
18 Briones "had suffered a 'judgment' covered under [the Unsatisfied Judgment Statutes]" cannot be
19 false or defamatory. (Compl. ¶ 37.)

20 Even if the Nevada Supreme Court determines that Ms. Simmons' judgment did not fall
21 within the scope of the Unsatisfied Judgment Statutes, Mr. Briones' claims would still fail as a
22 matter of law. GEICO's request for suspension to the DMV and subsequent appeals would only be
23 potentially improper and actionable if the Supreme Court determines that GEICO's attempt to have
24 Mr. Briones' license and registration suspended pursuant to the Statutes constituted bad faith and/or
25 frivolous and vexatious litigation. Given that the Honorable Judge Rob Bare already determined that
26 the Petition for Judicial Review was not a violation of Nevada Rule of Civil Procedure 11, (Compl. ¶
27 21), it is very unlikely that the Supreme Court will find the Appeal to be improper.

28 ///

1 Not only is there significant risk of GEICO erroneously being held liable for conduct which
2 the Supreme Court determines to have been proper, but GEICO will also be irreparably harmed by
3 having to expend significant time and resources in litigating claims that will have to be dismissed as
4 a matter of law. While having to incur unnecessary costs and fees is typically not considered to be
5 sufficient irreparable harm, in and of itself, it should still be a factor in this case given the
6 interrelated nature of this action and the Appeal.

7 Because GEICO will suffer irreparable harm if this action proceeds at the same time as the
8 pending Appeal, this Court should stay the action pending resolution of the Appeal.

9 2. The Writ Petition.

10 With regard to the Writ Petition, Defendants will also be irreparably harmed if they are
11 forced to answer and litigate claims for which they possess an absolute immunity. When a motion to
12 dismiss is based on an absolute privilege, many jurisdictions have recognized that the denial of the
13 motion should be heard and decided on interlocutory review because the absolute immunity would
14 be rendered meaningless if the aggrieved party were forced to litigate the barred claims before
15 appellate relief could be sought. *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985) (“[T]he denial of a
16 substantial claim of absolute immunity is an order appealable before final judgment, for the essence
17 of absolute immunity is its possessor’s entitlement not to have to answer for his conduct in a civil
18 damages action.”); *James v. Leigh*, 145 So.3d 1006, 1008 (Fla. Dist. Ct. App. 2014) (holding that
19 “absolute immunity protects a party from having to defend a lawsuit at all and waiting until final
20 appeal would render such immunity meaningless if the lower court denied dismissal in error”);
21 *Goddard v. Fields*, 150 P.3d 262, 264 (Ariz. Ct. App. 2007) (allowing “interlocutory appeals of
22 motions to dismiss based on an immunity claim ‘because any benefit of that immunity is lost if the
23 party claiming it is forced to defend himself’”) (quoting *Darragh v. Super. Ct. ex rel. Cnty. of*
24 *Maricopa*, 900 P.2d 1215, 1216 (Ariz. Ct. App. 1995)). Therefore, the Motion for Stay should be
25 granted, because GEICO will be irreparably harmed if it is forced to answer Mr. Briones’ Complaint
26 and engage in discovery prior to the resolution of its Writ Petition.

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28 ///

1 **C. Mr. Briones Will Suffer Little to No Harm if the Stay Is Granted.**

2 Mr. Briones will suffer little, if any, harm if this action is stayed pending resolution of the
3 Appeal and Writ Petition. First, Mr. Briones is a party to the Appeal, not a third party whose claims
4 are subject to the whims of another action between unrelated parties. Mr. Briones knew the Appeal
5 was pending when he chose to commence this action, and it was his choice to allege claims
6 dependent upon the Nevada Supreme Court's resolution of the issues in the Appeal. In fact, Mr.
7 Briones has admitted that he was uncertain if this action could be commenced prior to the resolution
8 of the Appeal; however, he determined that he should proceed with the action in order to avoid any
9 statute of limitations issues. (Ex. B, at 15:18-24.)

10 Second, the stay would not be for an indefinite period of time. Ms. Simmons has already
11 filed her Opening Brief. (Ex. A, at ¶ 4.) By stipulation (awaiting approval of the Supreme Court),
12 Mr. Briones is scheduled to file his Answering Brief on June 2, 2016, and Ms. Simmons will be
13 filing her Reply Brief on July 26, 2016. (*Id.* at ¶ 6.)

14 Finally, if Mr. Briones is able to maintain his claims after the Supreme Court's resolution of
15 the issues on Appeal, Mr. Briones may benefit from a narrowing of the scope of the issues in this
16 action. The doctrine of collateral estoppel would likely apply to many of the issues raised by Mr.
17 Briones' claims; therefore, discovery on Mr. Briones claims and the eventual trial of the claims
18 would be more streamlined.

19 With regard to the Writ Petition, Mr. Briones would also suffer little to no harm by a
20 temporary stay pending the outcome of the Writ Petition. If his claims are barred by an absolute
21 immunity, as GEICO contends, then a stay would allow him to avoid incurring unnecessary costs
22 and fees litigating claims which cannot be maintained as a matter of law. If GEICO's Writ Petition
23 is denied, then Mr. Briones may proceed with discovery on his claims and will have suffered no
24 harm.

25 **D. GEICO Is Likely to Prevail on the Merits of the Appeal and Writ Petition.**

26 1. The Appeal.

27 Ms. Simmons' Appeal is based solely on questions of law, and the well-settled rules of
28 statutory interpretation clearly support Ms. Simmons' interpretation of the Unsatisfied Judgment

1 Statutes. NRS 485.301(1) provides that “[w]henver *any person* fails within 60 days to satisfy *any*
2 *judgment* that was entered *as a result of an accident involving a motor vehicle*, the judgment
3 creditor or the judgment creditor’s attorney may forward to the Department [of Motor Vehicles]
4 immediately after the expiration of the 60 days a certified copy of the judgment.” (Emphasis added).
5 Upon receipt of the certified copy of the judgment, the DMV must “suspend the license [and] all
6 registrations . . . of *any person* against whom the judgment was rendered . . .” NRS 485.302(1)
7 (emphasis added).

8 NRS 485.035 defines “judgment” as “*any judgment* which shall become final . . . *upon a*
9 *cause of action arising out of the ownership, maintenance[,] or use of any motor vehicle for*
10 *damages, including* damages for care and loss of services because of injury to or destruction of
11 property, including the loss of use thereof . . .” (Emphasis added). Therefore, it is clear that Ms.
12 Simmons’ judgment falls within the plain and unambiguous terms of the Unsatisfied Judgment
13 Statutes. The judgment was rendered in an action arising out of the ownership, maintenance, or use
14 of a motor vehicle, in which personal injury damages were sought for a motor vehicle accident.
15 (Compl. ¶¶ 6-9.) Mr. Briones failed to satisfy the judgment; therefore, Ms. Simmons sought relief
16 pursuant to the Unsatisfied Judgment Statutes. (*Id.* at ¶ 10.)

17 Neither Mr. Briones nor Ms. Simmons ever asserted to the ALJ or the district court that the
18 Unsatisfied Judgment Statutes were ambiguous. (Ex. A, at ¶ 13.) Moreover, neither the parties, the
19 ALJ, or the district court ever engaged in statutory interpretation via the generally recognized rules
20 of statutory construction (i.e., examination of legislative history, analysis of the chapter as a whole,
21 comparison of interpretation of similar statutes in other jurisdictions, etc.). Rather, the ALJ and the
22 district court erroneously interpreted the Unsatisfied Judgment Statutes based upon their own
23 personal opinions as to legislative intent. (*Id.* at ¶ 14.)

24 In the underlying proceedings, Mr. Briones alleged that the Unsatisfied Judgment Statutes
25 only apply to judgments rendered against uninsured tortfeasors responsible for motor vehicle
26 accidents. (*Id.* at ¶ 15.) However, nothing in the legislative history of the Statutes supports this
27 interpretation. (*Id.* at ¶ 16.) Moreover, Mr. Briones’ proposed interpretation of the Statutes renders
28 superfluous other statutes in Chapter 485 of the Nevada Revised Statutes concerning uninsured

1 motorists. Specifically, NRS 485.185 to NRS 485.187 require all motor vehicle operators and
2 owners to maintain liability insurance and provide for fines and penalties for the failure to maintain
3 such insurance. Similarly, NRS 485.190 to NRS 485.300 require security deposits from uninsured
4 motorists involved in car accidents and provide for the suspension of licenses and registrations for
5 the failure to deposit the required security.

6 Moreover, Mr. Briones', the ALJ's, and the district court's interpretations of the Unsatisfied
7 Judgment Statutes would lead to absurd results. The ALJ believed that the legislature intended the
8 Unsatisfied Judgment Statutes to only assist persons unable to collect judgments for personal injury
9 and/or property damages suffered as a result of a car accident. (Ex. A, at ¶ 17.) Not only is this
10 contrary to the express terms of the Unsatisfied Judgment Statutes — which apply to *actions* for
11 personal injury and property damages, not *judgments* limited to such damages — but such an
12 interpretation leads to absurd and unequal results. For instance, in this action, where both Mr.
13 Briones and Ms. Simmons were found to be equally liable for the car accident, (Compl. ¶ 8), Ms.
14 Simmons could not seek suspension of Mr. Briones' driving privileges for non-payment of the
15 judgment for costs and fees incurred in defending against the action, but Mr. Briones could seek
16 suspension of her driving privileges if a judgment had been entered in his favor on the claim for
17 negligence and the judgment remained unsatisfied. Given that both judgments arise out of the same
18 transaction and occurrence in the same action, there is no rational basis for such a distinction in the
19 application of the Unsatisfied Judgment Statutes.

20 Similarly, under Mr. Briones' construction of the Statutes, an injured motorist could seek
21 relief under the Unsatisfied Judgment Statutes if the tortfeasor causing the accident was uninsured,
22 but this same injured motorist could not request suspension of driving privileges if the same
23 tortfeasor possessed liability insurance in an amount that was insufficient to satisfy the judgment in
24 full. There is no valid public policy for such a distinction, particularly since the purpose of the
25 Statutes is to compensate persons injured in a motor vehicle accident.

26 Finally, the Unsatisfied Judgment Statutes are based on the Uniform Vehicle Code. *Nev.*
27 *Dep't of Motor Vehicles v. Turner*, 89 Nev. 514, 516-17, 515 P.2d 1265, 1266 (1973). As such, a
28 majority of other states have adopted statutory schemes virtually identical to the Uniform Vehicle

1 Code. Because it appears that Nevada has never interpreted the Unsatisfied Judgment Statutes prior
2 to this case, the interpretation and application of similar statutory schemes in the other jurisdictions
3 is informative and persuasive.

4 Many other jurisdictions have determined that one of the purposes of unsatisfied judgment
5 statutes is to serve as leverage for the collection of judgments entered against negligent motor
6 vehicle owners and drivers. Mr. Briones is a negligent motor vehicle owner/driver with a judgment
7 entered against him which remains unsatisfied. (Compl. ¶¶ 8, 10.)

8 Moreover, other jurisdictions have applied the unsatisfied judgment statutes to: (1) judgments
9 against car owners who lent their cars to friends who subsequently got into car accidents while using
10 the borrowed cars, despite the fact that the car owners never negligently operated, maintained, or
11 used the cars, *MacQuarrie v. McLaughlin*, 294 F. Supp. 176, 177-79 (D. Mass. 1969); (2) judgments
12 against fully insured drivers who got into car accidents and failed to satisfy the judgments entered
13 against them, *Wilfong v. Wilkins*, 318 S.E.2d 540, 540-42 (N.C. Ct. App. 1984); (3) judgments
14 obtained by insurers who brought subrogation claims against tortfeasors for the costs and fees paid
15 to make the insureds whole, *Smith v. Commw., Dep't of Transp., Bureau of Driver Licensing*, 892
16 A.2d 36, 37-38, 40-41 (Pa. Commw. Ct. 2006); (4) judgments which include both personal injury
17 damages and costs, where the unsatisfied judgment statute only applied to judgments in excess of
18 \$100.00, and the judgment at issue would not have exceeded this minimum requirement without
19 inclusion of a separate award of costs, *Steinberg v. Mealey*, 33 N.Y.S. 2d 650, 652-54 (N.Y. App.
20 Div. 1942); and (5) judgments obtained by insurers who brought subrogation claims despite the fact
21 that the injured driver accepted a voluntary payment from the tortfeasor in full satisfaction of all of
22 his damages, *Tomai-Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228, 1231, 1238 (4th Cir.
23 1985).

24 If completely innocent car owners, like the driver in *MacQuarrie*, who are entirely
25 uninvolved in the car accident, can face suspension of driving privileges under an unsatisfied
26 judgment statute, then a driver found to be 50-percent liable for a car accident, like Mr. Briones,
27 (Compl. ¶ 8), should also be at risk for suspension of driving privileges if he fails to satisfy a
28 judgment arising from the action relating to the car accident. Moreover, if fully insured drivers, like

1 the driver in *Wilfong*, who fail to satisfy the judgments entered against them are subject to
2 suspension of driving privileges, then Mr. Briones' interpretation of the Unsatisfied Judgment
3 Statutes cannot stand. Furthermore, if judgments entered on subrogation claims, like the judgments
4 in *Smith* and *Tomai-Minogue*, fall within the scope of unsatisfied judgment statutes, then Ms.
5 Simmons' judgment for costs and fees would also fall within the scope of the Statutes. Finally, if an
6 award of costs, like the award in *Steinberg*, can be added to a judgment for personal injury/property
7 damages to meet the monetary threshold of an unsatisfied judgment statute, then Ms. Simmons'
8 award for costs and fees should also fall within the scope of the Statutes.

9 For the reasons set forth above, Ms. Simmons is likely to prevail on the merits of the Appeal.
10 There is a great likelihood that the Nevada Supreme Court will hold that Ms. Simmons' judgment
11 falls within the scope of the Unsatisfied Judgment Statutes. As such, all of Mr. Briones' claims in
12 this case would fail as a matter of law.

13 However, even if the Supreme Court determines that the judgment fell outside the scope of
14 the Statutes, Mr. Briones' claims would still fail as a matter of law, because there is a great
15 likelihood that the Supreme Court will determine that the Unsatisfied Judgment Statutes require
16 clarification. Therefore, Mr. Briones cannot demonstrate that Ms. Simmons' appeals were in bad
17 faith, frivolous, or vexatious.

18 2. The Writ Petition.

19 First, it is likely that the Nevada Supreme Court will accept the Writ Petition despite the fact
20 that it arises from the denial of a Motion to Dismiss. As stated in Section III(B)(2), *supra*, many
21 courts have recognized that an aggrieved party will suffer irreparable harm if it is forced to litigate
22 claims from which it is immune. *James v. Leigh*, 145 So.3d 1006, 1008 (Fla. Dist. Ct. App. 2014)
23 ("[A]bsolute immunity protects a party from having to defend a lawsuit at all and waiting until final
24 appeal would render such immunity meaningless if the lower court denied dismissal in error.").

25 Second, many jurisdictions have applied the absolute litigation privilege to communications
26 designed to initiate official action, like the enforcement of a remedy or the investigation of a
27 complaint, regardless of whether or not a judicial or quasi-judicial proceeding is ever conducted as a
28 result of the communication. *See e.g., Wise v. Thrifty Payless, Inc.*, 100 Cal. Rptr. 2d 437, 440-42

1 (Cal. Ct. App. 2000) (holding that the absolute privilege protected an ex-husband's letter to the
2 DMV requesting suspension of ex-wife's license based on an alleged poor driving record and an
3 alleged addiction to prescription drugs, as the privilege protects statements "made to initiate official
4 action"); *see also Rhea v. Uhry*, No. 08-0738-cv, 2009 WL 4065639, *2 (2d Cir. Nov. 25, 2009)
5 (applying absolute privilege to letter sent to Department of Banking alleging illegal conduct, because
6 it was a complaint seeking to initiate quasi-judicial proceedings, and finding that the complaint need
7 not result in a hearing to be protected by the privilege); *Shestul v. Moeser*, 344 F. Supp. 2d 946, 948,
8 948, 951 (E.D. Va. 2004) (applying absolute privilege to letter sent by the National Conference of
9 Bar Examiners to California and Virginia Bar Examiners informing them that the plaintiff had
10 engaged in improper conduct during the bar exam, despite the lack of a proceeding regarding the
11 allegation); *Able Energy, Inc. v. Marcum Kliegman LLP*, 893 N.Y.S.2d 36, 37 (N.Y. App. Div.
12 2010) (applying privilege to a letter sent to the Securities Exchange Commission, and finding it to be
13 irrelevant whether or not the SEC actually commenced quasi-judicial proceedings in response to the
14 letter); *Presson v. Bill Beckman Co.*, 898 P.2d 179, 179-80 (Okla. Civ. App. 1995) (finding that a
15 letter to the Internal Revenue Service alleging that the plaintiff may have committed tax fraud was
16 protected by the absolute privilege, because communications sent to regulatory agencies in order to
17 prompt enforcement of regulations are part of a judicial proceeding). Therefore, it is likely that the
18 Nevada Supreme Court will find that the absolute privilege protected Ms. Simmons' and GEICO's
19 communication to the DMV requesting suspension of Mr. Briones' license for non-payment of a
20 judgment, and this communication cannot support a claim for defamation.

21 Third, Nevada and many other jurisdictions have applied the absolute privilege beyond
22 defamation, slander, and libel claims and have held that all claims arising from protected
23 communications are barred by the privilege. *See, e.g., Hoover v. Van Stone*, 540 F. Supp. 1118,
24 1124 (D. Del. 1982) (holding that the purpose of the absolute privilege would be defeated if a party
25 could be held liable for a defamation claim masqueraded as another type of claim for relief); *see also*
26 *Ross v. Union Oil of Cal.*, No. 87-3819, 1988 WL 84093, at *3 (9th Cir. July 14, 1988) (dismissing
27 claim for intentional infliction of emotional distress based on application of absolute privilege);
28 *Blaurock v. Mattice Law Offices*, No. 64494, 2015 WL 3540903 (Nev. Ct. App. May 27, 2015)

(applying absolute privilege to dismiss claims for abuse of process and civil conspiracy). Given that Mr. Briones' claims for abuse of process and intentional infliction of emotional distress are based on the filing of the Petition for Judicial Review and the Notice of Appeal to the Nevada Supreme Court, (Compl. ¶¶ 25, 34; Opp'n to Mot. to Dismiss, at 4:22-24, 6:20-22), both filings constitute communications made during the course of judicial proceedings which are relevant to the subject matter of the proceedings. *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002) ("[C]ommunications uttered or published in the course of judicial proceedings are absolutely privileged.") (quoting *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983)). Therefore, it is likely that the Supreme Court will find that this Court abused its discretion by denying the Motion to Dismiss as to Mr. Briones' claims for abuse of process and intentional infliction of emotional distress.

Even if the Supreme Court does not apply the absolute privilege to claims of abuse of process or intentional infliction of emotional distress, it is likely that the Supreme Court will still find that it was an abuse of discretion to deny the Motion to Dismiss as to these claims. First, Mr. Briones cannot state a claim for abuse of process as a matter of law, because GEICO's and Ms. Simmons' filing of the Petition for Judicial Review and Notice of Appeal do not constitute a misuse of legal process. *Land Baron Inv., Inc. v. Bonnie Springs Family, LP*, 131 Nev. Adv. Op. 69, 356 P.3d 511, 520 (2015) (holding that "merely filing a complaint and proceeding to properly litigate the case" did not meet the requirement of a willful act of misuse of legal process). Second, an allegation that an appeal is frivolous or baseless also does not satisfy the essential element of a misuse of legal process. *Detenbeck v. Koester*, 886 S.W.2d 477, 481-82 (Tex. App. 1994) (finding no abuse of process despite allegations that litigation was brought without probable cause and with malicious intent, because court procedural rules provide a remedy of sanctions when groundless lawsuits are brought in bad faith). Similarly, filing appeals with an ulterior motive is insufficient to state a claim for abuse of process without an alleged misuse of legal process. Restatement (Second) of Torts § 682, cmt. b (1977); *Carlock v. RMP Fin.*, No. 03-CV-0688 W(AJB), 2003 WL 24207625, at *2 (S.D. Cal. Aug. 5, 2003). Finally, Mr. Briones' allegation that GEICO and Ms. Simmons have committed abuse of process because they allegedly refused to settle the Appeal and want to obtain an

1 interpretation of the Unsatisfied Judgment Statutes, (Ex. B, at 12:6-19), is unavailing. *Carlock*, 2003
2 WL 24207625 at *2 (holding that there is no authority “to suggest that the mere refusal to settle can
3 serve as a predicate for an abuse of process claim”). Therefore, it is likely that the Supreme Court
4 will find that this Court abused its discretion by denying the dismissal of the claim for abuse of
5 process.

6 Finally, it is likely that the Supreme Court will find that this Court abused its discretion by
7 denying dismissal of Mr. Briones’ claim for intentional infliction of emotional distress. Mr.
8 Briones’ claim is based on his subjective belief that GEICO has engaged in extreme and outrageous
9 conduct by appealing what GEICO and Ms. Simmons believe to be an erroneous decision by the
10 ALJ. (Opp. 6:5-6.) However, extreme and outrageous behavior is judged by an objective standard
11 — not the plaintiff’s personal beliefs. *Villagomes v. Lab. Corp. of Am.*, 783 F. Supp. 2d 1121, 1126
12 (D. Nev. 2011) (“The test of whether particular acts are sufficiently outrageous is objective, not
13 subjective.”).

14 Similarly, Mr. Briones claims that when GEICO and Ms. Simmons appealed the ALJ’s
15 decision, he suffered severe emotional distress because he feared losing his ability to drive, his
16 ability to travel to work, and his ability to provide for his family. (Opp’n to Mot. to Dismiss, at
17 6:20-26.) However, the fear of suffering the consequences of a legal and proper civil action is not
18 recoverable as emotional distress damages. *Cantu v. Resolution Trust Corp.*, 6 Cal. Rptr. 2d 151,
19 169 (Cal. Ct. App. 1992) (“Where . . . a party acts in good faith to pursue its own legal rights, such
20 conduct is privileged, even if emotional distress will result.”). A claim for intentional infliction of
21 emotional distress cannot be supported by “mere insults, indignities, threats, annoyances, petty
22 oppressions, and other trivialities.” Restatement (Second) of Torts § 46, cmt. d (1965); *see also*
23 *Switzer v. Rivera*, 174 F. Supp. 2d 1097, 1108 (D. Nev. 2001). Therefore, it is likely that the
24 Supreme Court will find that this court abused its discretion by denying dismissal of Mr. Briones’
25 claim for intentional infliction of emotional distress.

26 Based on the foregoing, it is clear that the Appeal and the Writ Petition are not frivolous, and
27 the stay is not sought solely for dilatory purposes.


28 ///

IV. CONCLUSION

For the foregoing reasons, GEICO respectfully requests that this Court stay all further proceedings in this action pending the outcome of the Appeal and the Writ Petition. A stay will preserve judicial resources and spare the Parties potentially unnecessary litigation costs and fees, as the Appeal and/or the Writ Petition may fully resolve all of Mr. Briones' claims as a matter of law.

DATED this 11th day of May, 2016.

BAILEY ♦ KENNEDY

By: 
DENNIS L. KENNEDY
SARAH E. HARMON
AMANDA L. STEVENS

Attorneys for Defendant
GOVERNMENT EMPLOYEES
INSURANCE COMPANY d/b/a GEICO

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 13th day of May, 2016, service of the foregoing **DEFENDANT GOVERNMENT EMPLOYEES INSURANCE COMPANY d/b/a GEICO'S MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME COURT APPEAL AND WRIT PETITION, ON APPLICATION FOR ORDER SHORTENING TIME** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

CLIFF W. MARCEK
CLIFF W. MARCEK, P.C.
700 South Third Street
Las Vegas, Nevada 89101

Email: cwmарcek@marceklaw.com

Attorneys for Plaintiff
JESUS MANUEL BRIONES



Employee of BAILEY ♦ KENNEDY

EXHIBIT A

EXHIBIT A

**DECLARATION OF SARAH E. HARMON IN SUPPORT OF DEFENDANT
GOVERNMENT EMPLOYEES INSURANCE COMPANY d/b/a GEICO'S
MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME
COURT APPEAL AND WRIT PETITION**

I, Sarah E. Harmon, declare as follows:

1. I am a partner of the law firm of Bailey ♦ Kennedy, counsel of record for Defendant Government Employees Insurance Company d/b/a GEICO ("GEICO") in *Briones v. Simmons*, Case No. A-16-730888-C, pending before this Court. I have personal knowledge of and am competent to testify to the facts contained in this declaration. I have made this declaration in support of GEICO's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition.

2. Defendant Geneva M. Simmons ("Ms. Simmons") was an insured of a GEICO affiliate.

3. GEICO has retained Bailey ♦ Kennedy to represent Ms. Simmons in her appeal before the Nevada Supreme Court in the case *Simmons v. Briones*, Case No. 69060 (the "Appeal").

4. On April 11, 2016, I filed Ms. Simmons' Opening Brief in the Nevada Supreme Court.

5. The issues presented for review in the Appeal are as follows:

- A. Did the Administrative Law Judge ("ALJ") err in determining that the Unsatisfied Judgment Statutes were ambiguous?
- B. Did the ALJ and the district court err by engaging in an analysis of the legislative intent of the Unsatisfied Judgment Statutes based solely on their personal interpretations of the purpose of the Statutes?
- C. Did the ALJ err in concluding that Ms. Simmons' judgment for costs and fees was not a "judgment" within the meaning of the Unsatisfied Judgment Statutes?
- D. Did the ALJ err in concluding that the jury's Verdict for Mr. Briones was a "judgment" within the meaning of the Unsatisfied Judgment Statutes?
- E. Did the ALJ err in dismissing and rescinding the suspension of Mr. Briones' driving privileges and vehicle registration?
- F. Did the district court err in concluding that Ms. Simmons' judgment for costs and fees was not a "judgment" within the meaning of the Unsatisfied Judgment Statutes?
- G. Did the district court err in denying Ms. Simmons' Petition for Judicial Review.

1 6. Ms. Simmons and Mr. Briones stipulated to a briefing schedule for the Appeal. Upon
2 the Nevada Supreme Court's approval of the stipulation, Mr. Briones' Answering Brief will be due
3 on June 2, 2016, and Ms. Simmons' Reply Brief will be due on July 26, 2016.

4 7. On May 10, 2016, I filed a Petition for Extraordinary Writ Relief in the Nevada
5 Supreme Court on behalf of GEICO in the case of *Government Employees Insurance Company d/b/a*
6 *GEICO v. Eighth Judicial District Court ex rel. County of Clark*, Case No. 70362 (the "Writ
7 Petition").

8 8. The Writ Petition seeks interlocutory review of this Court's May 5, 2016 Order
9 Regarding Motion to Dismiss issued in this current action.

10 9. In the Writ Petition, GEICO asserts that all of Mr. Briones' claims must be dismissed
11 as a matter of law. Specifically, GEICO contends that each of Mr. Briones' claims is barred by the
12 absolute privilege for communications which are made in anticipation of and/or during the course of
13 judicial and/or quasi-judicial proceedings and which relate to the subject matter of the proceedings.

14 10. Because each of Mr. Briones' claims is barred by the absolute privilege, the Writ
15 Petition asserts that this Court abused its discretion in denying GEICO's Motion to Dismiss as to Mr.
16 Briones' claims for abuse of process, defamation, and intentional infliction of emotional distress.

17 11. The Writ Petition also contends that Mr. Briones' claim for abuse of process should
18 have been dismissed as a matter of law, because GEICO did not misuse legal process by filing a
19 Petition for Judicial Review or a Notice of Appeal on behalf of Ms. Simmons.

20 12. The Writ Petition further contends that Mr. Briones' claim for intentional infliction of
21 emotional distress should have been dismissed as a matter of law, because Mr. Briones failed to
22 allege any facts in support of his conclusory allegations that: (i) GEICO engaged in extreme and
23 outrageous conduct by filing the Petition for Judicial Review and Notice of Appeal; or (2) Mr.
24 Briones has suffered severe emotional distress because he feared the loss of his driving privileges as
25 a result of Ms. Simmons' appeals of the ALJ's decision.

26 13. Based on my review of the Record on Appeal and the documents included in
27 Appellant's Appendix to the Opening Brief in the Appeal, neither Mr. Briones nor Ms. Simmons
28 ever asserted to either the ALJ presiding over the Department of Motor Vehicles ("DMV") hearing

1 or to the district court presiding over the Petition for Judicial Review that the Unsatisfied Judgment
2 Statutes were ambiguous.

3 14. Based on my review of the Record on Appeal and the documents included in
4 Appellant's Appendix to the Opening Brief in the Appeal, the ALJ and the underlying district court
5 erroneously interpreted the Unsatisfied Judgment Statutes based upon their own personal opinions as
6 to legislative intent.

7 15. Based on my review of the Record on Appeal and the documents included in
8 Appellant's Appendix to the Opening Brief in the Appeal, Mr. Briones alleged in the underlying
9 proceedings that the Unsatisfied Judgment Statutes only apply to judgments rendered against
10 uninsured tortfeasors responsible for motor vehicle accidents.

11 16. Based on my review of the legislative history of the Unsatisfied Judgment Statutes for
12 the Opening Brief in the Appeal, there is nothing in the legislative history of the Statutes which
13 supports Mr. Briones' interpretation of the Statutes.

14 17. Based on my review of the Record on Appeal and the documents included in
15 Appellant's Appendix to the Opening Brief in the Appeal, the ALJ stated during the DMV
16 proceedings that he believed that the legislature intended the Unsatisfied Judgment Statutes to only
17 assist persons unable to collect judgments for personal injury and/or property damages suffered as a
18 result of a car accident.

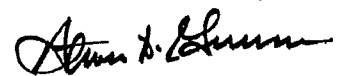
19 I declare under penalty of perjury, under the laws of the State of Nevada, that the foregoing is
20 true and correct.

21 EXECUTED on this 11th day of May, 2016.

22
23 
24 SARAH E. HARMON
25
26
27
28

EXHIBIT B

EXHIBIT B



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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JESUS BRIONES,

)

8

Plaintiff,

)

CASE NO. A-16-730888

9

vs.

)

DEPT. NO. XXVI

10

11

GOVERNMENT EMPLOYEES INSURANCE)
COMPANY, GENEVA M. SIMMONS,)

Transcript of Proceedings

12

Defendants.)

13

14

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

15

DEFENDANT GOVERNMENT EMPLOYEES INSURANCE COMPANY D.B.A.

GEICO'S MOTION TO DISMISS

16

TUESDAY, APRIL 12, 2016

17

18

APPEARANCES:

19

For the Plaintiff:

CLIFF MARCEK, ESQ.

20

For GEICO:

DENNIS L. KENNEDY, ESQ.

21

SARAH E. HARMON, ESQ.

22

RECORDED BY:

KERRY ESPARZA, DISTRICT COURT

23

TRANSCRIBED BY:

KRISTEN LUNKWITZ

24

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

25

1 THE COURT: -- if you believe that there are facts
2 that will come out that were said at a settlement
3 conference, --

4 MR. MARCEK: Right. The facts --

5 THE COURT: -- that show that they were --

6 MR. MARCEK: That they were not bringing this to
7 get paid because that's what the lawsuit would have been
8 about, to get paid the money that they owe for attorneys'
9 fees and costs. At the outset of that settlement
10 conference, the first thing out of Ms. Barker's mouth was:
11 No amount of money is going to settle this case. We want
12 to take this to the Supreme Court.

13 THE COURT: They want to get it -- a reading on
14 this statute.

15 MR. MARCEK: Yes. But they want to take -- but
16 they're not interested in getting paid.

17 THE COURT: Right.

18 MR. MARCEK: So had we come there and offered the
19 money, they wouldn't have taken it. That's an improper
20 purpose. That's --

21 THE COURT: Right.

22 MR. MARCEK: -- a willful act.

23 THE COURT: Okay.

24 MR. MARCEK: All right. So with respect to the
25 civil conspiracy claim, --

1 not aware of any law that precludes that type of
2 conspiracy. So, --

3 THE COURT: Right.

4 MR. MARCEK: You know, --

5 THE COURT: But it -- I don't know. It just --
6 the difference in this case to me seemed like -- yeah, this
7 is where it was all being done through her insurance
8 carrier. So, you know, I don't know that there's really
9 any kind of meeting of minds to form a conspiracy. It's
10 just done through her insurance policy.

11 Well, the argument -- other argument that they
12 made is that, at a minimum, --

13 MR. MARCEK: But there's no damage.

14 THE COURT: -- this is -- but this is premature
15 because we don't --

16 MR. MARCEK: Well they're claiming that --

17 THE COURT: -- get no.

18 MR. MARCEK: Well, premature, they really have not
19 made, and I was kind of waiting for some argument when I
20 filed this case, that well this whole thing is pending and
21 there's some law that prevents it from going forward. They
22 made no arguments to that effect. I mean, I was actually
23 uncertain, but I didn't want to miss the statute of
24 limitations. So --

25 THE COURT: Right.

1 allows for lay witnesses to testify and the last defamation
2 claim, in particular, just to remind the Court of the
3 dates, it was on September 4th, 2013 that Mr. Daily
4 [phonetic] sent a letter to the DMV with a judgment asking
5 that his license be revoked. Now had nothing happened,
6 there would have been no judicial proceedings of any
7 definition. He would have just had his license suspended.
8 The publication is to the DMV.

9 So, the letter was sent on September 4th. Briones
10 received a letter from the DMV January 30th, 2014, so four
11 months after that, and then he hired me and on February
12 25th, 2014, I requested a hearing which was granted.

13 Now, again, had this process just worked its way
14 out, there would have been no conceivable judicial
15 proceedings in any way had his license -- from the date of
16 the publication, and we know someone got it at DMV. That's
17 a sufficient publication, but it sat there for four months.
18 There's -- there would have been no -- even in the broadest
19 interpretation of proceeding, there would have been none.
20 He just would have had his license revoked.

21 So, Your Honor, again, this is at the very
22 earliest stages of the case. I believe that we've plead
23 more than sufficient facts on those four claims for relief
24 and I request that the Court deny the Defendants' Motion
25 with respect to those four. Thank you.

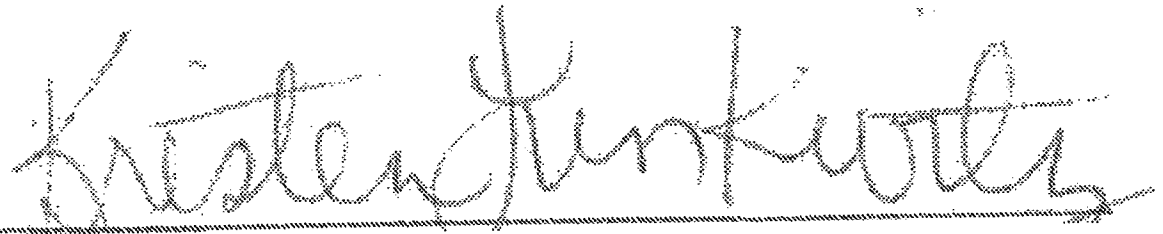
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

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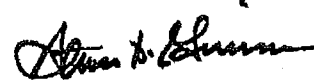
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EXHIBIT 4

EXHIBIT 4



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5 Attorney for Plaintiff
JESUS MANUEL BRIONES

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

10 JESUS BRIONES, an Individual;

11 Plaintiff,

12 v.

13 GENEVA M. SIMMONS, an Individual;
GOVERNMENT EMPLOYEES
14 INSURANCE COMPANY, a Maryland
Corporation, dba GEICO; DOES I through
15 X; and ROE CORPORATIONS XI through
16 XX,

17 Defendants.

Case No. : A- 16- 730888- C
Dept. No. : ~~XXVI~~

COMPLAINT FOR MONEY
DAMAGES

18 Plaintiff, JESUS MANUEL BRIONES, in the above-entitled action, by and through
19 his attorney, Cliff W. Marcek, Esq., and for his claim for relief against the Defendants, and
20 each of them, alleges as follows:

21 1. Plaintiff, JESUS MANUEL BRIONES (hereafter referred to as "Plaintiff" or
22 "Ms. BRIONES"), at all times herein mentioned, is and was a resident of Clark County, State
23 of Nevada.

24 2. At all times mentioned herein, Defendant GENEVA M. SIMMONS
25 (hereinafter referred to as "Defendant" or "Ms. SIMMONS"), was a resident of Clark
26 County, State of Nevada.
27
28

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1 3. GENERAL EMPLOYEES INSURANCE COMPANY doing business as
2 GEICO is a company existing under the laws of Maryland, and authorized to conduct
3 business in the State of Nevada.

4 4. Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH v.*
5 *Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), the identity of Defendants designated as
6 DOES I through X are unknown at the present time; however, it is alleged and believed these
7 Defendants were involved in the initiation, approval, support or execution of the wrongful
8 acts upon which this litigation is premised, or of similar actions directed against Plaintiffs
9 about which they are presently unaware. These Defendants are in some manner negligently,
10 vicariously or statutorily responsible for the events and happenings referred to and caused
11 damages proximately to Plaintiffs herein. As the specific identities of these parties are
12 revealed through the course of discovery, the DOE appellation will be replaced to identify
13 these parties by their true names and capacities.

14 5. Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH v.*
15 *Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), the identity of Defendants designated as ROE
16 CORPORATIONS XI through XX are unknown at the present time; however, it is alleged
17 and believed these Defendants were involved in the initiation, approval, support or execution
18 of the wrongful acts upon which this litigation is premised, or of similar actions directed
19 against Plaintiffs about which they are presently unaware. These Defendants are in some
20 manner negligently, vicariously or statutorily responsible for the events and happenings
21 referred to and caused damages proximately to the Plaintiff herein. As the specific identities
22 of these parties are revealed through the course of discovery, the ROE appellation will be
23 replaced to identify these parties by their true names and capacities.

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FACTS

6. On or about August 20, 2010, Mr. BRIONES and Ms. SIMMONS were involved in a parking lot accident in Las Vegas, Nevada where Mr. BRIONES was injured. As a result, Mr. BRIONES instituted an action against Ms. SIMMONS in the Eighth Judicial District Court, *Briones v. Simmons*, Case No. A-11-645923-C. Ms. SIMMONS was insured by GEICO and she was represented by Katherine Barker and Associates, a law firm owned and operated by GEICO.

7. On April 13, 2012, Ms. SIMMONS by and through defendant GEICO's in house counsel Katherine Barker (together "Defendants"), served an Offer of Judgment in the amount of \$2,750.00, inclusive of all costs and attorney's fees. On July 19, 2012, the arbitrator awarded Mr. BRIONES \$3,915.00 for medical bills and \$4,500.00 for pain and suffering. The arbitrator found Mr. BRIONES to be 50% at fault and reduced the award to \$4,207.50.

8. On August 14, 2012 Mr. BRIONES filed a Request for Trial de Novo. The case proceeded through the Short Trial Program. The jury awarded Mr. BRIONES \$2,042.00 in medical bills and \$1,250.00 for pain and suffering. The jury also found Mr. BRIONES to be 50% at fault and reduced the damages award to \$1,646.50.

9. Following the jury verdict, Defendants filed a Motion for Fees, Costs and Interest based on Nevada Arbitration Rule 20(B)(2)(a) which states that the party requesting the Trial De Novo must beat the arbitration award by 20%. Mr. BRIONES filed an opposition, but the arbitrator awarded Ms. SIMMONS attorneys fees in the amount of \$3,000 and costs in the amount of \$2,146.55 for a total judgment of \$5,146.55. An Order and Judgment was filed on June 27, 2013.

10. On September 4, 2013, Eric A. Daly, an attorney working for Katherine Barker and Associates, sent a letter to the Department of Motor Vehicles (hereafter "DMV") on behalf of the defendants requesting that Mr. BRIONES's driving privilege and vehicle registration be suspended under NRS 485.302(1), suspension for nonpayment of judgment.

1 11. On or around January 30, 2014, Mr. BRIONES received a notice from the
2 DMV that his driver's license and registration would be suspended beginning March 1, 2014
3 unless he started making payments on the judgment for attorney's fees and costs.

4 12. Mr. BRIONES requested a hearing by letter dated February 25, 2014.

5 13. The Hearing Officer, appointed by the DMV, held the pre-hearing conference
6 and set a briefing schedule.

7 14. On May 6, 2014, Plaintiff filed a Brief to Dismiss Citation to Suspend Driving
8 Privileges on the basis the statute does not apply to civil judgments for attorney's fees and
9 costs for failing to exceed an offer of judgment at trial.

10 15. The Defendants filed an Opposition to Plaintiff's Brief to Dismiss on May 13,
11 2014.

12 16. Upon review of the briefs and further research, the Hearing Officer for the
13 DMV determined the DMV's suspension of Mr. BRIONES's driving privilege and vehicle
14 registration was not appropriate and rescinded the suspension and dismissed the case.

15 17. On September 12, 2014, Ms. SIMMONS and GEICO filed a Petition for
16 Judicial Review in Department 32 of the Eighth Judicial District Court.

17 18. On September 17, 2015, Mr. BRIONES sent the defendants a letter asking
18 them to dismiss the Petition for Judicial Review because there was no legal basis to support
19 their interpretation of the statute. On September 30, 2105 the defendants responded to the
20 letter and did not dismiss the Petition.

21 19. The court set a briefing schedule and Mr. BRIONES incurred additional
22 attorney's fees to prepare a brief.

23 20. The Defendants filed their own brief.

24 21. The Petition was denied by Judge Rob Bare October 8, 2015, but he declined
25 to grant Mr. BRIONES request for sanctions under NRCP 11.

26 22. On October 22, 2015, Defendants appealed the matter to the Nevada Supreme
27 Court.
28

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23. The defendants do not want the money they got in a judgment but brought this case to harass and intimidate Mr. Briones.

FIRST CLAIM FOR RELIEF
(Abuse of Process)

24. Mr. BRIONES incorporates and realleges paragraphs 1 through 23 as though the same were fully set forth herein.

25. Defendants misused the legal process by requesting the DMV suspend Plaintiff's license for lack of payment of an Order and Judgment for attorney's fees and costs when the law clearly does not allow for it under NRS 485.302(1).

26. The Defendants have an ulterior motive in continuing to pursue this case even to the Nevada Supreme Court. They have brought this case to harass Mr. Briones. They have made it clear they are not interested in receiving the money owed by Mr. BRIONES but continue to prosecute the claim to suspend his driver's license and to create new law in Nevada that if others bring claims against GEICO and do not exceed offers of judgment, that not only will they owe money to the defendant, but they will have their driving licenses revoked which in turn would make it more difficult for the plaintiff and others to make a living and support their families.

27. Defendants acted with malice, oppression, fraud and conscious disregard for the rights of Plaintiff and other potential claimants in that their ulterior purpose in misusing the legal process was to send a message to deter people from bringing lawful claims against GEICO insureds. As a result, the plaintiff is entitled to punitive damages.

28. As a proximate result of Defendants misuse of the legal process, Plaintiff suffered damages in excess of \$10,000.

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SECOND CLAIM FOR RELIEF
(Civil Conspiracy)

29. Plaintiff incorporates and realleges paragraphs 1 through 28 as though the same were fully set forth herein.

30. Defendants' knowingly and willfully conspired and agreed among themselves to have Plaintiff's driving privileges and registration suspended.

31. Their actions were to promote an unlawful purpose and done with the intent to cause harm and damage to the plaintiff.

THIRD CLAIM FOR RELIEF
(Emotional Distress)

32. Plaintiff incorporates and realleges paragraphs 1 through 31 as through the same were fully set forth herein.

33. The Defendants' conduct was extreme and outrageous with the intent to cause severe emotional distress.

34. The Defendants' willfully and maliciously continuously acted to use state power to deny Plaintiff from having the ability to drive his car, travel to his job and generally take care of his family.

35. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer emotional distress.

FOURTH CLAIM FOR RELIEF
(Defamation)

36. Plaintiff incorporates and realleges Paragraphs 1 through 35 as though the same were fully set forth herein.

37. The Defendants, and each of them, made false statements of fact to third parties and the DMV that Plaintiff had suffered a "judgment" covered under NRS 485.

38. The false statement caused Plaintiff to suffer damages to his reputation, damages for emotional distress, presumed damages and attorney's fees and costs.

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1 39. These actions by the Defendants were willful, malicious, fraudulent and done
2 with oppression entitling Plaintiff to an award of punitive damages.

3 **FIFTH CLAIM FOR RELIEF**
4 *(Malicious Prosecution)*

5 40. Plaintiff incorporates and realleges Paragraphs 1 through 39 as though the
6 same were fully set forth herein.

7 41. The Defendants had no probable cause to have Plaintiff's driving privileges
8 and vehicle registration suspended.

9 42. The Defendants continue to maliciously harass Mr. BRIONES even after the
10 Hearing Officer for the DMV rescinded the suspension, and a District Court Judge denied the
11 Petition for Judicial Review. The defendants, and each of them, have appealed the matter to
12 the Nevada Supreme Court with no intention to collect the judgment but with the motive to
13 stop people from making lawful claims against GEICO insureds in fear of losing their driving
14 privileges.

15 43. The matter has he judicially determined in the favor of the plaintiff at the
16 administrative hearing at the DMV and by the District Court.

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1 44. The plaintiff has suffered general and special damages including damages for
2 attorney's fees ~~and costs~~ and damages for emotional distress.

3 WHEREFORE, Mr. BRIONES prays for judgment against the Defendants as
4 follows:

- 5 1. For an award of special and general damages;
6 2. For an award of punitive damages;
7 3. For an award of attorney's fees;
8 4. For an award of costs; and
9 5. For such other and further relief as the Court deems just and proper.

10 Dated this 27 day of January, 2016.

11 CLIFF W. MARCEK, P.C.

12 
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20 Attorney for Plaintiff
21 JESUS MANUEL BRIONES
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EXHIBIT 5

EXHIBIT 5


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Attorneys for Defendants

GOVERNMENT EMPLOYEES INSURANCE
COMPANY d/b/a GEICO and GENEVA M.
SIMMONS

DISTRICT COURT

CLARK COUNTY, NEVADA

JESUS BRIONES, an Individual,

Plaintiff,

vs.

GENEVA M. SIMMONS, an Individual;
GOVERNMENT EMPLOYEES INSURANCE
COMPANY, a Maryland Corporation, dba
GEICO; DOES I through X; and ROE
CORPORATIONS XI through XX,

Defendants.

Case No. A-16-730888-C
Dept. No. XXVI

**DEFENDANT GENEVA M. SIMMONS' JOINDER TO DEFENDANT GOVERNMENT
EMPLOYEES INSURANCE COMPANY d/b/a GEICO'S MOTION FOR STAY PENDING
RESOLUTION OF NEVADA SUPREME COURT APPEAL AND WRIT PETITION**

Date of Hearing: August 2, 2016

Time of Hearing: 9:00 a.m.

Defendant Geneva M. Simmons ("Ms. Simmons") was served via publication on May 12, 2016. (Aff. of Publication (May 12, 2016).) Plaintiff Jesus Briones ("Mr. Briones") has alleged claims against Ms. Simmons for abuse of process, civil conspiracy, intentional infliction of

1 emotional distress, defamation, and malicious prosecution. (Compl.) These are the same claims,
2 based on the *exact same factual allegations* as Mr. Briones has alleged against Defendant
3 Government Employees Insurance Company d/b/a GEICO ("GEICO"). (*Id.*) Therefore, in the
4 interest of judicial efficiency and economy, Ms. Simmons joins GEICO's Motion for Stay Pending
5 Resolution of Nevada Supreme Court Appeal and Writ Petition ("Motion for Stay").

6 Ms. Simmons is the Appellant in the appeal (*Simmons v. Briones*, Case No. 69060) which is
7 the subject of the Motion for Stay (the "Appeal"). (Mot. for Stay, 1:28-2:1.) Each of Mr. Briones'
8 claims for relief is dependent upon and inter-related with the resolution of the issues on Appeal. (*Id.*
9 at 13:25-14:23.) Thus, Mr. Briones' claims are premature and should not be resolved until the
10 Nevada Supreme Court has rendered a decision in Ms. Simmons' Appeal. (*Id.* at 15:3-16:13.)
11 "Courts have often held that it is appropriate for one court to stay an action in order to avoid a waste
12 of judicial resources if a similar issue is pending in another action and will be dispositive" of the
13 issues. *Allstate Ins. Co. v. Titusville Total Health Care*, 848 So.2d 1166, 1167 (Fla. Dist. Ct. App.
14 2003); *see also Jowers v. Compton*, 82 Nev. 95, 96, 411 P.2d 479, 479 (1966) (staying a Nevada will
15 contest pending the outcome of another will contest in California, involving a prior will by the same
16 decedent).

17 Because there is a significant risk that Ms. Simmons may erroneously be held liable in this
18 Court for conduct which the Supreme Court determines to have been proper, the object of Ms.
19 Simmons' Appeal will be defeated, and Ms. Simmons will suffer irreparable harm, if a stay pending
20 the outcome of the Appeal is denied. (Mot. for Stay, 14:24-15:2, 17:7-18:8.) Mr. Briones, on the
21 other hand, will suffer little to no prejudice by a temporary stay pending resolution of the Appeal, as
22 the Appeal will be fully briefed by July 26, 2016, and Mr. Briones was aware of the issues on
23 Appeal when he commenced this action. (*Id.* at 19:2-18.) In fact, Mr. Briones has admitted that he
24 was uncertain if this action could be commenced prior to the resolution of the Appeal, and he only
25 proceeded with his claims in order to avoid statute of limitations issues. (*Id.* at 19:6-9 & Ex. B, at
26 15:18-24.)

27 Finally, Ms. Simmons is likely to prevail on the merits of the Appeal. Her Appeal is based
28 solely on questions of law, and the well-settled rules of statutory interpretation clearly support her

1 interpretation of NRS 485.035, NRS 485.301(1), and NRS 485.302(1) (collectively, the “Unsatisfied
2 Judgment Statutes”). (*Id.* at 19:27-23:12.) However, even if the Supreme Court determines that the
3 judgment fell outside the scope of the Unsatisfied Judgment Statutes, Mr. Briones’ claims would still
4 fail as a matter of law because there is a great likelihood that the Supreme Court will determine that
5 Ms. Simmons’ appeals were not brought in bad faith and were not frivolous or vexatious. (*Id.* at
6 23:13-17.)

7 Contemporaneously with the filing of this Joinder, Ms. Simmons also filed a joinder to
8 GEICO’s Petition for Extraordinary Writ Relief (“Writ Petition”). Mr. Briones’ claims for relief
9 against GEICO are based on the exact same factual allegations as the claims for relief alleged against
10 Ms. Simmons; therefore, the issues presented for review in the Writ Petition apply equally to the
11 claims alleged against Ms. Simmons.

12 Each of Mr. Briones’ claims for relief is barred by the absolute litigation privilege, which
13 applies to communications made in anticipation of and/or during the course of judicial and quasi-
14 judicial proceedings and which relate to the subject matter of the proceedings. (*Id.* at 16:19-17:4.)
15 Thus, the object of the Writ Petition (the absolute immunity provided by the litigation privilege)
16 would be defeated if Mr. Briones were permitted to proceed with his claims pending the outcome of
17 the Writ Petition. Moreover, Ms. Simmons will suffer irreparable harm if she is forced to answer
18 and litigate claims for which she possesses an absolute immunity. Many jurisdictions have
19 recognized that the denial of a motion to dismiss based on an absolute privilege should be heard and
20 decided on interlocutory review because the absolute immunity would be rendered meaningless if
21 the aggrieved party were forced to litigate the barred claims before appellate relief could be sought.
22 *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985). (*Id.* at 18:10-26.)

23 Again, Mr. Briones will suffer little to no harm or prejudice by a temporary stay pending the
24 outcome of the Writ Petition. If the Writ Petition is granted, Mr. Briones avoids incurring
25 unnecessary costs and fees litigating claims which cannot be maintained as a matter of law. If the
26 Writ Petition is denied, Mr. Briones is permitted to proceed with discovery on his claims. (*Id.* at
27 19:19-24.) Finally, Ms. Simmons is likely to prevail on the merits of the Writ Petition. The absolute
28 litigation privilege bars not only Mr. Briones’ claim for defamation, but also his other claims for

1 relief, as his claims for abuse of process and intentional infliction of emotional distress arise from a
2 protected communication made in a judicial or quasi-judicial proceeding (the filing of a petition for
3 judicial review and the filing of a notice of appeal). (*Id.* at 23:19-25:11.) Moreover, Mr. Briones
4 has failed to allege — and cannot allege — that Ms. Simmons misused legal process by filing a
5 petition for judicial review or a notice of appeal. The mere filing of a complaint, even if meritless or
6 for an improper motive, is not a willful act of misuse of legal process. *Land Baron Inv., Inc. v.*
7 *Bonnie Springs Family, LP*, 131 Nev. Adv. Op. 69, 356 P.3d 511, 520 (2015); Mot. for Stay, 25:12-
8 26:5.) Mr. Briones also has failed to state a claim for intentional infliction of emotional distress,
9 because his claim is improperly based on: (i) his subjective belief that Ms. Simmons has engaged in
10 extreme and outrageous conduct; and (ii) his fear of suffering the consequences of a legal and proper
11 civil action. (Mot. for Stay, 26:6-25.)

12 For the foregoing reasons, Ms. Simmons respectfully requests that all proceedings in this
13 Court be stayed pending the outcome of her Appeal and the Writ Petition.

14 DATED this 24th day of May, 2016.

15 BAILEY ♦ KENNEDY

16
17 By: /s/ Sarah E. Harmon

DENNIS L. KENNEDY

SARAH E. HARMON

18 AMANDA L. STEVENS

19 *Attorneys for Defendants*
20 GOVERNMENT EMPLOYEES
21 INSURANCE COMPANY d/b/a GEICO
22 and GENEVA M. SIMMONS
23
24
25
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27
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 24th day of May, 2016, service of the foregoing **DEFENDANT GENEVA M. SIMMONS JOINDER TO DEFENDANT GOVERNMENT EMPLOYEES INSURANCE COMPANY d/b/a GEICO'S MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME COURT APPEAL AND WRIT PETITION** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

CLIFF W. MARCEK
CLIFF W. MARCEK, P.C.
700 South Third Street
Las Vegas, Nevada 89101

Email: cwmarcek@marceklaw.com

Attorneys for Plaintiff
JESUS MANUEL BRIONES

/s/ Jennifer Kennedy
Employee of BAILEY ♦ KENNEDY

Josephine Baltazar

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Case title: Jesus Briones, Plaintiff(s)vs.Geneva Simmons, Defendant(s)
Document title: Defendant Geneva M. Simmons' Joinder to Defendant Government Employees Insurance Company d/b/a GEICO's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition
Document code: JMOT Filing Type: EFS
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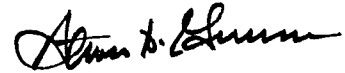
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EXHIBIT 6

EXHIBIT 6



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Attorney for Plaintiff
JESUS MANUEL BRIONES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JESUS BRIONES, an Individual

Plaintiff,

v.

GENEVA M. SIMMONS, an Individual;
GOVERNMENT EMPLOYEES
INSURANCE COMPANY, a Maryland
Corporation, dba GEICO; DOES I through
X; and ROE CORPORATIONS XI
through XX,

Defendants.

Case No. A-16-730888-C
Dept No. XXV

**PLAINTIFF'S OPPOSITION TO
DEFENDANT GOVERNMENT
EMPLOYEES INSURANCE
COMPANY d/b/a GEICO'S
MOTION FOR STAY**

**Date of Hearing: July 26, 2016
Time of Hearing: 10:00 A.M.**

COMES NOW, Plaintiff Jesus Briones, by and through his attorney Cliff W. Marcek, Esq. and hereby submits this Opposition to Defendant Government Employees Insurance Company d/b/a GEICO'S Motion for Stay. This Opposition is made and based on the Points and Authorities attached hereto, the Affidavit of Cliff W. Marcek, Esq., and any other oral or documentary evidence that may be introduced at time of hearing.

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POINTS AND AUTHORITIES

A. STATEMENT OF FACTS AND PROCEDURE

On September 4, 2013, Defendants sent a letter to the Department of Motor Vehicles ("DMV") requesting that Mr. Briones' driving privileges be suspended pursuant to NRS 485. On January 30, 2014, the DMV notified Mr. Briones that his driver's license and registration would be suspended on March 1, 2014, if he failed to begin making payments on the June 27, 2013 judgment. Mr. Briones requested a hearing to challenge the suspension. Ultimately, the ALJ determined that the suspension of driving privileges was not appropriate and dismissed the case.

On September 12, 2014, Defendants filed a Petition for Judicial Review in the Eighth Judicial District Court. Mr. Briones filed a response and requested sanction against Defendants pursuant to NRCP 11. The Honorable Judge Rob Bare denied both the Petition for Judicial Review and the request for sanctions. On October 22, 2015, Defendants appealed the matter to the Nevada Supreme Court.

B. STATEMENT OF LAW AND ANALYSIS

1. Standard

In deciding whether to issue a stay, the district court should generally consider the following factors: "(1) whether the object of the appeal or writ petition will be defeated if the stay is...denied; (2) whether the appellant/petitioner will suffer irreparable or serious injury if the stay...is denied; (3) whether the respondent/real party in interest will suffer irreparable or serious injury if the stay...is granted; and (4) whether the appellant/petitioner is likely to prevail on the merits in the appeal or writ petition" NRAP 8 (C); *State v. Robles-Nieves*, 129 Nev. Adv. Op. 55,306 P.3d 399, 401 (2013); *Fritz Hansen A/S v. Eighth Jud. Dist. Ct. ex. rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P. 3d 982, 986 (2000). If "one or more factors are especially strong they may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P. 3d 36, 38 (2004). Here, factors (2) and (4) dictate that this action should not be stayed pending resolution of both the Appeal and the Writ Petition.

2. **GEICO Will Not Suffer Irreparable Harm if the Case is Allowed To Move Forward.**

First, Mr. Briones was required to file this case after receipt of the January 30, 2014 DMV letter based on the expiration of two-year statute of limitations. (NRS 11.190). The Complaint was filed January 27, 2016.

Second, Even if the Nevada Supreme Court were to accept Defendants skewed statutory interpretation of NRS 485 that would be the time to dismiss the case, not now. Mr. Briones should not be denied his day in Court, and, this case can go forward concurrently with the appeal.

Thus, GEICO will not suffer irreparable harm if the case is allowed to move forward.

3. **GEICO is Not Likely To Prevail on the Merits of the Appeal and Writ Petition.**

First, NRS 485 was enacted to ensure operators of motor vehicles within Nevada obtain liability insurance, even just the minimum requirements, so that in the event of an accident, the injured person can be indemnified. "The purpose of this law, as far as possible, is to assure that motor vehicles have continuous liability insurance." *Nationwide Mut. Ins. Co. v. Liberty Mut. Ins. Co.*, 401 N.Y.S.2d 675 (N.Y.Sup. Ct. 1976).

The statute is clear on its purpose. NRS 485 was enacted to ensure individuals would practice safety and financial responsibility while operating motor vehicles. The plain language of Chapter 485 is to require liability insurance to compensate people who are injured or whose property has been damaged by someone negligently operating a motor vehicle. It is not designed for insurance companies to suspend someone's license for a civil judgment for attorney's fees because the injured Plaintiff did not exceed the arbitration award at trial.

Both the ALJ and the district court have interpreted that the statute does not apply to judgments of attorney's fees and costs. The district court held that reading the statute as a

1 whole, did not include a judgment of attorney's fees and costs and properly rescinded Mr.
2 Briones' driving privilege suspension.

3 Second, many other states have similar statutory schemes enacted into state law
4 regarding motor vehicle financial responsibility. However, no state has interpreted their statutes
5 consistent with GEICO Insurance's erroneous interpretation. Defendants exhaustive research
6 into other states statutory schemes regarding motor vehicle financial responsibility shows that
7 no state, with almost identical statutes as Nevada's, has interpreted the statute as GEICO
8 Insurance would like the court to.

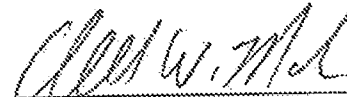
9 Thus, GEICO is not likely to prevail on the merits of the appeal and writ petition.

10 **C. CONCLUSION**

11 For the foregoing reasons, Mr. Briones respectfully requests that this Court deny
12 GEICO's Motion to Stay.

13
14 Dated this 9 day of June, 2016.

15 CLIFF W. MARCEK, P.C.

16 

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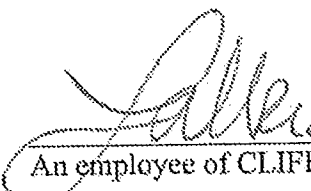
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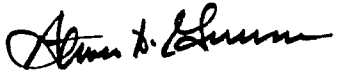
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EXHIBIT 7

EXHIBIT 7


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GOVERNMENT EMPLOYEES INSURANCE

10 COMPANY d/b/a GEICO and GENEVA M.

SIMMONS

DISTRICT COURT

CLARK COUNTY, NEVADA

14 JESUS BRIONES, an Individual,

15 Plaintiff,

16 vs.

17 GENEVA M. SIMMONS, an Individual;
GOVERNMENT EMPLOYEES INSURANCE
18 COMPANY, a Maryland Corporation, dba
GEICO; DOES I through X; and ROE
19 CORPORATIONS XI through XX,

20 Defendants.

Case No. A-16-730888-C
Dept. No. XXVI

22 **DEFENDANTS GOVERNMENT EMPLOYEES INSURANCE COMPANY d/b/a GEICO**
23 **AND GENEVA M. SIMMONS' REPLY IN SUPPORT OF MOTION FOR STAY PENDING**
RESOLUTION OF NEVADA SUPREME COURT APPEAL

24 **Date of Hearing: August 2, 2016**

25 **Time of Hearing: 9:00 a.m.**

26 Defendants Government Employees Insurance Company d/b/a GEICO ("GEICO") and
27 Geneva M. Simmons¹ ("Ms. Simmons") respectfully request that this Court stay all proceedings in

28 ¹ Ms. Simmons filed a Joinder to the Motion for Stay on May 24, 2016.

1 this action pending the resolution of Ms. Simmons' appeal in *Simmons v. Briones*, Case No. 69060,
2 filed in the Nevada Supreme Court on October 22, 2015 (the "Appeal").²

3 This Reply is based upon all pleadings and papers on file herein, the following memorandum
4 of points and authorities, and any oral argument heard by the Court.

5 DATED this 26th day of July, 2016.

6 BAILEY ♦ KENNEDY

7 By: /s/ Sarah E. Harmon

8 DENNIS L. KENNEDY

9 SARAH E. HARMON

10 AMANDA L. STEVENS

11 *Attorneys for Defendants*
12 GOVERNMENT EMPLOYEES
13 INSURANCE COMPANY d/b/a GEICO
14 and GENEVA M. SIMMONS
15
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27 ² Since the filing of the Motion for Stay on May 13, 2016, the Nevada Supreme Court has denied GEICO's
28 Petition for Extraordinary Writ Relief (Case No. 70362). Therefore, GEICO and Ms. Simmons now move solely to stay
this action pending resolution of the Appeal.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jesus Briones (“Mr. Briones”) admits and/or has failed to dispute that: (1) the object of the Appeal will be defeated if a stay is denied; (2) GEICO and Ms. Simmons will suffer irreparable harm if they are forced to litigate Mr. Briones’ claims before the Appeal is resolved; and (3) Mr. Briones will suffer no harm or prejudice if a stay is entered pending resolution of the Appeal. Specifically, Mr. Briones admits that he commenced this action prior to the resolution of the Appeal merely because of statute of limitation concerns. (Opp’n, at 3:3-5.) Now that he has preserved potential claims against GEICO and Ms. Simmons, Mr. Briones fails to assert that he will suffer any harm or prejudice if this action is stayed pending the resolution of the Appeal. (*Id.* at 3:3-4:9.) Furthermore, Mr. Briones does not dispute that his claims are inextricably linked with and entirely dependent upon the issues raised in the Appeal. (*Id.*) Finally, Mr. Briones admits that if the Supreme Court determines that Ms. Simmons’ judgment for costs and fees against Mr. Briones falls within the scope of NRS 485.035, NRS 485.301(1), and NRS 485.302(1) (collectively, the “Unsatisfied Judgment Statutes”), all of his claims alleged in this action must be dismissed. (*Id.* at 3:6-7.)

The only issue that Mr. Briones contests is whether Ms. Simmons is likely to prevail on the merits of the Appeal. (*Id.* at 3:12-4:9.) However, Mr. Briones’ argument pertaining to this factor relies on unsupported conclusions of law, a mischaracterization of NRS Chapter 485, and a New York statutory scheme that is not even remotely similar to Nevada’s Unsatisfied Judgment Statutes. (*Id.* at 3:14-26.) Mr. Briones’ argument regarding the likelihood of prevailing on the merits also fails to refute any of the legal arguments or legal authorities set forth in GEICO’s Motion to Stay. (Mot. to Stay, at 19:25-23:17; Opp’n at 4:3-8.)

Therefore, GEICO and Ms. Simmons respectfully request that the Court enter an Order staying this Action pending resolution of the Appeal. Ms. Simmons is likely to prevail on the merits of the Appeal, and the issues on appeal are likely to result in the dismissal of all of Mr. Briones’ claims in this action. Mr. Briones suffers no harm by entry of the temporary stay; however, GEICO and Ms. Simmons will be irreparably harmed if this case proceeds and they are held to inconsistent

1 judgments rendered by this Court and the Nevada Supreme Court. Thus, entry of the stay is
2 necessary and proper.

3 II. ARGUMENT

4 Mr. Briones does not dispute that the object of the Appeal will be defeated if the stay is
5 denied. (Opp'n, at 2:26-27.) Mr. Briones also does not dispute that he will suffer little to no harm if
6 the stay is granted. (*Id.*) Mr. Briones opposes the Motion for Stay on two grounds: (1) GEICO and
7 Ms. Simmons will not suffer irreparable harm if the stay is denied; and (2) Ms. Simmons is not
8 likely to prevail on the merits of the Appeal. (*Id.*) However, Mr. Briones fails to provide any factual
9 assertions or legal authorities in support of his contentions. Therefore, the undisputed facts and legal
10 authorities set forth in GEICO's Motion for Stay demonstrate that this Court should enter an Order
11 staying this action pending resolution of the Appeal.

12 A. GEICO and Ms. Simmons Will Suffer Irreparable Harm if the Action Is Not Stayed Pending Resolution of the Appeal.

13
14 If the Motion for Stay is denied, GEICO and Ms. Simmons are at risk of being held liable in
15 this action for conduct which the Supreme Court may ultimately determine was proper under the
16 law. The claims alleged in this action are entirely dependent upon the issues presented for review in
17 the Appeal — primarily, whether Ms. Simmons' judgment against Mr. Briones falls within the scope
18 of the Unsatisfied Judgment Statutes. (Mot. for Stay, at Ex. A, at ¶ 5.) If the Supreme Court finds
19 that Ms. Simmons' judgment falls within the scope of the Statutes, then Mr. Briones will be unable
20 to prove at least one essential element for each of his claims for relief. In fact, Mr. Briones readily
21 admits that if the Supreme Court resolves the Appeal in favor of Ms. Simmons, this action should be
22 dismissed. (Opp'n, at 3:6-7.)

23 Mr. Briones also contends that this case should proceed until the Appeal is resolved, and, if
24 the Supreme Court determines that Ms. Simmons' judgment falls within the scope of the Unsatisfied
25 Judgment Statutes, then the case could be dismissed at that time. (*Id.* at 3:6-10.)³ However,

26 ³ It appears that Mr. Briones has confused GEICO's Motion for Stay with a motion to dismiss. Specifically, Mr.
27 Briones contends that he "should not be denied his day in [c]ourt," and that this Court should wait until the Supreme
28 Court determines whether Ms. Simmons' judgment falls within the scope of the Unsatisfied Judgment Statutes before it
dismisses this action. (Opp'n, at 3:6-10.) However, at this time, GEICO and Ms. Simmons seek only to stay — not
dismiss — this action pending the resolution of the Appeal. (*See generally* Mot. for Stay.) A stay does not deprive Mr.

1 continuing to litigate potentially baseless claims is an unnecessary waste of judicial resources. Mr.
2 Briones admits that he only commenced this action prior to the resolution of the Appeal because of
3 statute of limitation concerns. (*Id.* at 3:3-5.) Now that the Complaint has been filed, Mr. Briones
4 has failed to assert that he will suffer any harm or prejudice if the action is stayed pending the
5 outcome of the Appeal.

6 Given that Mr. Briones has failed to offer anything more than a conclusory assertion that
7 “GEICO will not suffer irreparable harm if the case is allowed to move forward,” (*Id.* at 3:11), the
8 Defendants respectfully request that this action be stayed pending resolution of the Appeal. GEICO
9 and Ms. Simmons will suffer irreparable harm if this action proceeds and they are found liable for
10 conduct which the Supreme Court determines was proper under the Unsatisfied Judgment Statutes.
11 Moreover, the Defendants should not be forced to expend significant time and resources litigating
12 claims that may have to be dismissed as a matter of law.

13 **B. Ms. Simmons Is Likely to Prevail on the Merits of the Appeal.**

14 Based on the plain language of the Unsatisfied Judgment Statutes and/or the well-accepted
15 rules of statutory interpretation, it is clear that Ms. Simmons is likely to prevail on the merits of the
16 Appeal. (Mot. for Stay, at 19:25-23:17.) Mr. Briones has failed to dispute any of the arguments set
17 forth in the Motion for Stay. Rather, Mr. Briones offers the conclusory assertion that Chapter 485 of
18 the Nevada Revised Statutes was enacted to ensure that motor vehicle operators obtain liability
19 insurance to indemnify persons injured in accidents. (Opp’n, at 3:14-16.) In support of this
20 assertion regarding the purpose of *Nevada* legislation, Mr. Briones relies on the *New York Supreme*
21 *Court’s* interpretation of *New York* law. (*Id.* at 3:16-18.) This legal authority is inapposite.

22 First, in *Nationwide Mutual Insurance Company v. Liberty Mutual Insurance Company*, 401
23 N.Y.S.2d 675 (N.Y. Sup. Ct. 1976), the court examined the purpose of Article VI of New York’s
24 Financial Security Act in order to determine if a motor vehicle could be sold merely by surrender of
25 possession of a car. *Id.* at 677. Under Section 312 of the Financial Security Act, a motor vehicle
26 cannot be registered in New York without proof of financial security, which includes proof of

27 _____
28 Briones of his “day in court”; it merely delays his “day” until the Supreme Court decides issues potentially dispositive of
his claims.

1 insurance, among other things. N.Y. Veh. & Traf. Law, Title III, Article VI, § 312(1)(a). Therefore,
2 the New York Supreme Court determined that “[t]he purpose of Article VI, The Financial Security
3 Act, is to assure, so far as possible, that there will be no certificate of registration outstanding
4 without concurrent and continuous liability insurance.” 401 N.Y.S.2d at 677.

5 It is presumed that Mr. Briones relies upon *Nationwide Mutual Insurance Company* because
6 the Nevada Supreme Court referenced this case in *State, Department of Motor Vehicles v. Lawlor*,
7 101 Nev. 616, 707 P.2d 1140 (1985). However, *Lawlor* concerned NRS 485.185 — Nevada’s
8 compulsory insurance law — not the Unsatisfied Judgment Statutes. *Id.* at 618, 707 P.2d at 1141.
9 The Supreme Court cited *Nationwide Mutual Insurance Company* in support of its holding that the
10 *purpose of NRS 485.185* was “to assure that motor vehicles have continuous liability insurance.” *Id.*
11 Mr. Briones mistakenly attributes this quote from *Lawlor* to *Nationwide Mutual Insurance*
12 *Company*, (Opp’n at 3:16-18), and erroneously tries to extend the purpose of this one statute to NRS
13 Chapter 485 as a whole. (*Id.* at 3:14-26.)

14 In addition to identifying NRS 485.185 as Nevada’s compulsory insurance law, *Lawlor* also
15 clarifies that NRS 485.190 through NRS 485.300 constitute Nevada’s financial responsibility law.
16 101 Nev. at 619, 707 P.2d at 1142. After an accident, the financial responsibility law requires the
17 suspension of driving privileges of any uninsured driver — before liability has even been determined
18 — until the uninsured driver can provide sufficient security to satisfy any claims arising from the
19 accident and provide proof of future financial responsibility. *Id.*

20 Any motor vehicle owner or operator who violates Nevada’s compulsory insurance law
21 (NRS 485.185) or Nevada’s financial responsibility law (NRS 485.190 through NRS 485.300) may
22 be penalized with the revocation of their driving privileges. *Id.* NRS 485.326 is the “enforcement
23 companion” to NRS 485.185, and NRS 485.200 provides the penalties for violation of the financial
24 responsibility laws. *Id.* at 617-18 & n.4, 707 P.2d at 1141 & n.4. To the extent that Mr. Briones
25 contends that the purpose of NRS 485.301 and NRS 485.302 is merely to punish uninsured drivers
26 and/or to provide incentives to maintain liability insurance, (Opp’n, at 3:19-24), such an
27 interpretation would render the Unsatisfied Judgment Statutes superfluous. “When interpreting a
28 statute, this court must give its terms their plain meaning, considering its provisions as a whole so as

1 to read them ‘in a way that would not render words or phrases superfluous or make a provision
2 nugatory.’” *S. Nev. Homebuilders Ass’n v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173
3 (2005) (quoting *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497, 502, 797 P.2d 946, 949
4 (1990), *overruled on other grounds by Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259
5 (2000)). Moreover, “it is the duty of this court, when possible, to interpret provisions within a
6 common statutory scheme ‘harmoniously with one another in accordance with the general purpose
7 of those statutes’ and to avoid unreasonable or absurd results, thereby giving effect to the
8 Legislature’s intent.” *Id.* (quoting *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136
9 (2001)).

10 Given the NRS Chapter 485 already includes a compulsory insurance law, financial
11 responsibility law, and enforcement provisions requiring suspension of driving privileges for the
12 violation of either of these provisions, NRS 485.301(1) and NRS 485.302(1) must serve a different
13 purpose. *See Banegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 228, 19 P.3d 245, 249 (2001)
14 (rejecting a party’s construction of a statute because the suggested legislative intent was already
15 covered by other sections or subsections of the chapter). Based on their plain and unambiguous
16 language, it is clear that the purpose of the Unsatisfied Judgment Statutes is to “protect the public
17 from the financial irresponsibility of those who, regardless of their competency to drive, have had
18 judgments entered against them as a result of motor vehicle accidents.” *Commw., Dep’t of Transp.,*
19 *Bureau of Traffic Safety v. Rodgers*, 341 A.2d 917, 920 (Pa. Commw. Ct. 1975) (analyzing a
20 statutory scheme similar to Nevada’s Unjustified Judgment Statutes). This is why the Unsatisfied
21 Judgment Statutes are included in a section of NRS Chapter 485 titled “Nonpayment of Judgment.”
22 Therefore, the well-accepted rules of statutory construction demonstrate that Mr. Briones’
23 unsupported interpretation of the Unsatisfied Judgment Statutes must be rejected.

24 Moreover, Mr. Briones contends that the Unsatisfied Judgment Statutes were “not designed
25 for insurance companies to suspend someone’s license for a civil judgment for attorney’s fees
26 because the injured Plaintiff did not exceed the arbitration award at trial.” (Opp’n, at 3:24-26.) This
27 is a complete mischaracterization of the facts of this case. First, Ms. Simmons did not seek to
28 suspend Mr. Briones’ license merely because he failed to exceed the arbitration award at trial.

1 Rather, she sought to suspend his license and registration because *he has failed to satisfy a*
2 *judgment* rendered in a personal injury action arising out of a motor vehicle accident – an accident
3 for which Mr. Briones was found to be *50-percent liable*. Second, other jurisdictions which have
4 adopted nearly identical unsatisfied judgment statutes have suspended an owner's or operator's
5 license and registration for the non-payment of judgments rendered in *subrogation actions brought*
6 *by insurers*. See, e.g., *Tomai-Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228, 1231 (4th
7 Cir. 1985); *Smith v. Commw., Dep't of Transp., Bureau of Driver Licensing*, 892 A.2d 36, 37 (Pa.
8 Commw. Ct. 2006). Therefore, persons injured in motor vehicle accidents are not the only persons
9 or entities which may utilize the Unsatisfied Judgment Statutes.

10 Finally, Mr. Briones contends that “no state has interpreted [its] statutes consistent with
11 [GEICO's and Ms. Simmons'] erroneous interpretation.” (Opp'n, at 4:3-8.) However, this does not
12 mean that Ms. Simmons is unlikely to succeed on the merits of the Appeal. This is an issue of first
13 impression, both in Nevada, and in the other states which have adopted similar unsatisfied judgment
14 statutes. This is likely due to the unique factual circumstances giving rise to such judgments. An
15 analogous case would require: (1) a motor vehicle accident in which the plaintiff is found to be
16 equally liable with or more liable than the defendant; (2) a plaintiff that has rejected an offer or
17 judgment and/or an arbitration award and chosen to proceed with a trial de novo; (3) a jury award
18 that is less than the offer of judgment and/or arbitration award; (4) a defendant incurring costs and
19 fees in excess of the award to the plaintiff, such that a final judgment is entered in favor of the
20 defendant; and (5) a plaintiff who refuses to pay a valid judgment entered against him. (Compl. ¶¶
21 6-9.)

22 Regardless of the fact that no jurisdiction has directly addressed these factual circumstances,
23 the application of similar statutory schemes in other jurisdictions is instructive and persuasive.⁴
24 GEICO's Motion for Stay referenced several cases in which unsatisfied judgment statutes had been
25 held applicable to unpaid judgments rendered: (1) against insured drivers, *Wilfong v. Wilkins*, 318

26
27 ⁴ The Unsatisfied Judgment Statutes are based on the Uniform Vehicle Code. *Nev., Dep't of Motor Vehicles v.*
28 *Turner*, 89 Nev. 514, 516-17, 515 P.2d 1265, 1266 (1973). Many other jurisdictions have adopted the Uniform Vehicle
Code, in whole or in part, and have enacted unsatisfied judgment statutes which are substantially similar or virtually
identical to Nevada's Unjustified Judgment Statutes.

1 S.E.2d 540, 540-42 (N.C. Ct. App. 1984); (2) against owners of vehicles who lent their car to the
2 ultimate tortfeasor but were completely innocent of fault themselves, *MacQuarrie v. McLaughlin*,
3 294 F. Supp. 176, 177-78 (D. Mass. 1968); (3) in favor of insurers in subrogation actions, *Tomai-*
4 *Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228, 1231, 1238 (4th Cir. 1985); *Smith v.*
5 *Commw., Dep't of Transp., Bureau of Driver Licensing*, 892 A.2d 36, 37-38, 40-41 (Pa. Commw.
6 Ct. 2006); and (4) for both personal injury and/or property damages as well as costs and fees, where
7 the unsatisfied judgment statute had a monetary floor requirement which could not be satisfied
8 unless the separate award for costs and fees was added to the award for personal injury and/or
9 property damages, *Steinberg v. Mealey*, 33 N.Y.S.2d 650, 651-54 (N.Y. App. Div. 1942). (Mot. for
10 Stay, at 22:8-23.) Mr. Briones fails to refute or even address any of these cases. (Opp'n at 4:3-8.)

11 Whether the Supreme Court relies upon the plain and unambiguous terms of the Unsatisfied
12 Judgment Statutes, the well-accepted rules of statutory interpretation which require all of the statutes
13 in Chapter 485 to be read in harmony without rendering any of them meaningless and mere
14 surplusage, or application of similar statutes in analogous cases in other jurisdictions, it is clear that
15 Ms. Simmons is likely to succeed on the merits of her Appeal.

16 III. CONCLUSION

17 For the foregoing reasons, GEICO and Ms. Simmons respectfully request that this Court stay
18 all further proceedings in this action pending the outcome of the Appeal. A stay will preserve
19 judicial resources and spare the Parties potentially unnecessary litigation costs and fees, as the
20 Appeal may fully resolve all of Mr. Briones' claims as a matter of law.

21 DATED this 26th day of July, 2016.

22 BAILEY ♦ KENNEDY

23
24 By: /s/ Sarah E. Harmon

25 DENNIS L. KENNEDY

SARAH E. HARMON

26 AMANDA L. STEVENS

27 *Attorneys for Defendants*

GOVERNMENT EMPLOYEES

INSURANCE COMPANY d/b/a GEICO

28 and GENEVA M. SIMMONS

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 26th day of July, 2016, service of the foregoing **DEFENDANTS GOVERNMENT EMPLOYEES INSURANCE COMPANY d/b/a GEICO AND GENEVA M. SIMMONS' REPLY IN SUPPORT OF MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME COURT APPEAL** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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EFO \$3.50EFS \$5.50
SO \$3.50

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D3E5453343AE368C62DA5870CBD553276BCE4CFDD0FBEDF47
mail.tylerhost.net

EXHIBIT 8

EXHIBIT 8

IN THE SUPREME COURT OF THE STATE OF NEVADA

GOVERNMENT EMPLOYEES
INSURANCE COMPANY, D/B/A GEICO,
A MARYLAND CORPORATION; AND
GENEVA M. SIMMONS,
Petitioners,

No. 70362

FILED

JUN 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE GLORIA
STURMAN, DISTRICT JUDGE,
Respondents,
and
JESUS BRIONES, AN INDIVIDUAL,
Real Party in Interest.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying in part a motion to dismiss in a tort action.

Having considered the petition and supporting documents, we are not persuaded that petitioner has met its burden of demonstrating that writ relief is warranted at this time. NRS 34.160; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004); *Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 578-79, 97 P.3d 1132, 1134 (2004) (recognizing that this court generally declines to entertain writ petitions challenging district court orders denying motions to dismiss). Accordingly, we

ORDER the petition DENIED.

[Signature: Douglas], J.
Douglas

[Signature: Cherry], J.
Cherry

[Signature: Gibbons], J.
Gibbons

cc: Hon. Gloria Sturman, District Judge
Bailey Kennedy
Cliff W. Marcek, P.C.
Eighth District Court Clerk

Josephine Baltazar

From: efiling@nvcourts.nv.gov
Sent: Monday, June 20, 2016 11:52 AM
To: BKfederaldownloads
Subject: Notification of Electronic Filing in GOV'T EMPLOYEES INS. CO. VS. DIST. CT. (BRIONES), No. 70362

Supreme Court of Nevada
NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Jun 20 2016 11:46 a.m.

Case Title: GOV'T EMPLOYEES INS. CO. VS. DIST. CT. (BRIONES)
Docket Number: 70362
Case Category: Original Proceeding

Document Category: Filed Order Denying Petition For Writ of Mandamus. "ORDER the petition DENIED." NNP16D-MD/MC/MG.
Submitted by: Issued by Court
Official File Stamp: Jun 20 2016 10:03 a.m.
Filing Status: Accepted and Filed

Docket Text: Filed Order Denying Petition For Writ of Mandamus. "ORDER the petition DENIED." NNP16D-MD/MC/MG.

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

Clerk's Office has electronically mailed notice to:
Amanda Stevens

Cliff Marcek
Dennis Kennedy
Sarah Harmon

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.

EXHIBIT 9

EXHIBIT 9

A-16-730888-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Other Negligence

COURT MINUTES

July 29, 2016

A-16-730888-C

Jesus Briones, Plaintiff(s)

vs.

Geneva Simmons, Defendant(s)

July 29, 2016

3:00 AM

Motion For Stay

HEARD BY: Sturman, Gloria

COURTROOM: Chambers

COURT CLERK: Linda Denman

JOURNAL ENTRIES

- MINUTE ORDER - ADVANCE DECISION

Given that the Nevada Supreme Court issued a ruling on the Defendant's Writ Petition, COURT ORDERED Geico's Motion for Stay Pending Appeal and Joinder thereto by Geneva M. Simmons MOOT and REMOVED from the civil motion calendar on August 2, 2016.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: BAILEY KENNEDY and CLIFF W. MARCEK, P.C./ Id 7/29/16