

In the Supreme Court of Nevada

FIRST TRANSIT, INC.; and JAY
FARRALES,

Appellants,

vs.

JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Respondents.

Electronically Filed
Jun 07 2017 04:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONSE TO ORDER TO SHOW CAUSE

This Court requested verification that the district court formally resolved appellants' tolling motion for new trial and motion to alter or amend the judgment. The district court now has. It entered the "Order Denying Defendants' Motion for New Trial" and the "Order Granting in Part and Denying in Part Defendants' Motion to Alter or Amend the Judgment" on June 6, 2017. Respondents served notices of entry on June 7, 2017. (*See Exhibit 1* (the orders are attached to an amended notice of appeal).) Because the district court entered the orders before dismissal of the appeal, any prior premature notices of appeal "shall be considered filed on the date and after entry of the order[.]" NRAP

4(a)(6).¹ As such, the prior notice of appeal is effective to perfect this appeal.

To avoid any possible question regarding this Court's jurisdiction, moreover, appellants have also filed another notice of appeal from the most recent order. (Exhibit 1.) The appeal may proceed.

Dated this 7th day of June, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

LEANN SANDERS (SBN 390)
ALVERSON, TAYLOR, MORTENSEN & SANDERS
7401 West Charleston Boulevard
Las Vegas, Nevada 89117
(702) 384-7000

Attorneys for Appellants

¹ Rule 4(a)(6) reads:

(6) Premature Notice of Appeal. ... The supreme court may dismiss as premature a notice of appeal filed after the oral pronouncement of a decision or order but before entry of the written judgment or order ... If, however, a written order or judgment ... is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the order [or] judgment....

CERTIFICATE OF SERVICE

I certify that on June 7, 2017, I submitted the foregoing “Response to Order to Show Cause” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

BENJAMIN P. CLOWARD
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101

MICAH S. ECHOLS
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145

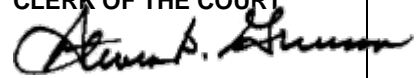
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

CHARLES H. ALLEN
CHARLES ALLEN LAW FIRM
950 East Paces Ferry Road
NE Suite 1625
Atlanta, Georgia 30326

/s/ Yolanda Griffin
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT 1

EXHIBIT 1



ANOA

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*Attorneys for Defendants
First Transit, Inc. and Jay Farrales*

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK CHERNIKOFF and ELAINE
CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,

Defendants.

Case No. A-13-682726-C
Dept. No. XXIII

AMENDED NOTICE OF APPEAL

Please take notice that defendants First Transit, Inc. and Jay Farrales hereby appeal to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Judgment Upon the Jury Verdict," filed March 8, 2016, notice of entry of which was served electronically on March 9, 2016 (Exhibit A);

1 3. “Amended Judgment Upon the Jury Verdict,” filed June 6,
2 2017, notice of entry of which was served electronically on June 7, 2017
3 (Exhibit B);

4 4. “Order Granting in Part and Denying in Part Defendants’
5 Motion to Retax Plaintiffs’ Costs; Order Denying Defendants First
6 Transit, Inc. and Jay Farrales’ Motion to Strike Plaintiffs’ Amended
7 Memorandum of Costs and Disbursements, and for Sanctions; Order
8 Denying Defendant Jay Farrales’ Motion for Fees and Costs,” filed
9 June 6, 2017, notice of entry of which was served electronically on June 7,
10 2017 (Exhibit C);

11 5. “Order Granting in Part and Denying in Part Defendants’
12 Motion to Alter or Amend the Judgment,” filed June 6, 2017, notice of
13 entry of which was served electronically on June 7, 2017 (Exhibit D);

14 6. “Order Denying Defendants’ Motion for New Trial,” filed June
15 6, 2017, notice of entry of which was served electronically of June 7, 2017
16 (Exhibit E); and

17 7. All rulings and interlocutory orders made appealable by any of
18 the foregoing.

19 Dated this 7th day of June, 2017.

20 LEWIS ROCA ROTHGERBER CHRISTIE LLP

21 BY: /s/ Joel D. Henriod

22 DANIEL F. POLSENBERG (SBN 2376)
23 JOEL D. HENRIOD (SBN 8492)
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25 Las Vegas, Nevada 89169
26 (702) 949-8200

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28 ALVERSON, TAYLOR, MORTENSEN & SANDERS
29 7401 West Charleston Boulevard
30 Las Vegas, Nevada 89117
31 (702) 384-7000

32 *Attorneys for Defendants First Transit, Inc.*
33 *and Jay Farrales*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 7th day of June, 2017, I caused a true and
3 correct copy of the foregoing "Amended Notice of Appeal" to be served *via* the
4 Court's electronic filing system and by courtesy email upon the following
5 counsel of record.

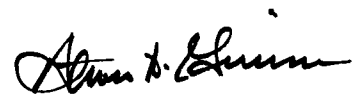
6 BENJAMIN P. CLOWARD
7 RICHARD HARRIS LAW FIRM
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12 CHARLES ALLEN LAW FIRM
13 950 East Paces Ferry Road
14 NE Suite 1625
15 Atlanta, Georgia 30326
16 CAllen@CharlesAllenLawFirm.com

17 /s/ Yolanda Griffin
18 An Employee of Lewis Roca Rothgerber Christie LLP
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

1 NEO
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
4 CLOWARD HICKS & BRASIER, PLLC
5 721 South 6th Street
6 Las Vegas, NV 89101
7 Telephone: (702) 628-9888
8 Facsimile: (702) 960-4118
9 Beloward@chblawyers.com
10 *Attorneys for Plaintiffs*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 JACK CHERNIKOFF and ELAINE
11 CHERNIKOFF,

12 Plaintiffs,

13 vs.

14 FIRST TRANSIT, INC. JAY
15 FARRALES; DOES 1-10, and ROES 1-10
16 inclusive,

17 Defendants.
18


CASE NO. A-13-682726-C
DEPT. NO. XXIII

NOTICE OF ENTRY OF ORDER

19 YOU WILL PLEASE TAKE NOTICE that the attached JUDGMENT UPON THE JURY
20 VERDICT was entered by this Court in the above-entitled matter on the 8th day of March, 2016.

21 DATED THIS 9th day of March, 2016.

23 CLOWARD HICKS & BRASIER, PLLC

24 
25 BENJAMIN P. CLOWARD, ESQ.
26 Nevada Bar No. 11087
27 721 South Sixth Street
28 Las Vegas, Nevada 89101
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of **CLOWARD HICKS &**
3 **BRASIER, PLLC** and that on the 9 day of March 2016, I caused the foregoing **NOTICE OF**
4 **ENTRY OF ORDER** to be served as follows:
5

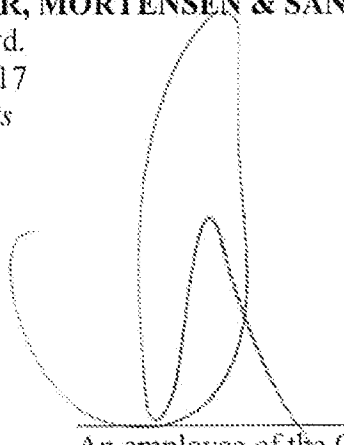
6 ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S.
7 Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class
8 postage was fully prepaid; and/or

9 ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or

10 ☒ pursuant to N.E.F.C.R. 9 by serving it via electronic service

11 to the attorneys listed below:
12

13 LEANN SANDERS, ESQ.
14 **ALVERSON, TAYLOR, MORTENSEN & SANDERS**
15 7401 W. Charleston Blvd.
16 Las Vegas, Nevada 89117
Attorneys for Defendants

17
18
19
20
21 
22 An employee of the CLOWARD HICKS & BRASIER, PLLC
23
24
25
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28


CLERK OF THE COURT

JGJV
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Fax (866) 639-0287
Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

**JACK CHERNIKOFF and ELAINE
CHERNIKOFF,**

Plaintiffs,

vs.

**FIRST TRANSIT, INC. JAY
FARRALES; DOES 1-10, and ROES 1-10
inclusive,**

Defendants.

CASE NO. A-13-682726-C
DEPT. NO. XXIII

JUDGMENT UPON THE JURY
VERDICT

This action came on for trial before the court and the jury, the Honorable Stefany A. Miley,
District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its
verdict.¹

¹ **Exhibit 1: Jury Verdict**

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input type="checkbox"/> Non-Jury Judgment Reached	<input checked="" type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 IT IS ORDERED AND ADJUDGED that Plaintiffs, JACK CHERNIKOFF and ELAINE
2 CHERNIKOFF, have and recover of Defendant, FIRST TRANSIT, INC., the following sum:

3 Pain and suffering, by Harvey Chernikoff: \$7,500,000.00

4 Greif, sorrow, loss of companionship, society,
5 Comfort, and loss of relationship suffered
6 by Plaintiffs, JACK CHERNIKOFF and
7 ELAINE CHERNIKOFF: + \$7,500,000.00

8 **Total Damages** **\$15,000,000.00**

9 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's past damages shall bear Pre-
10 Judgment interest in accordance with Lee v. Ball, 116 P.3d 64, (2005) at the rate of 3.25% per annum
11 plus 2%² from the date of service of the Summons and Complaint³ on June 7, 2013, through the date
12 of the verdict on February 29, 2016, as follows:

13 **PRE-JUDGMENT INTEREST ON PAST DAMAGES: 15,000,000.00**

14 06/07/13 through 02/29/16 = \$2,149,631.70
15 [(997 days) at (prime rate (3.25%) plus 2 percent = 5.25%)]
16 [Interest is approximately \$2,156.10 per day]

17 NOW, THEREFORE, Judgment Upon the Verdict in favor of the Plaintiffs are as follows:

18 JACK CHERNIKOFF and ELAINE CHERNIKOFF is hereby given Seventeen Million One
19 Hundred Forty-Nine Thousand, Six Hundred Thirty-One Dollars and 70/100 (\$17,149,631.70), which
20 shall bear interest at the current rate of 5.25% per day, until satisfied.

21 DATED THIS 8 day of March, 2016.

22 
23 DISTRICT COURT JUDGE

24 JUDGE STEFANY A. MILEY

25 Respectfully submitted:
26 CLOWARD HICKS & BRASIER, PLLC
27 BENJAMIN P. CLOWARD, ESQ.

28 ² Exhibit 2: Prime Rate as of January 1, 2013

³ Exhibit 3: Affidavit of Service upon the Defendant

EXHIBIT “1”

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JACK CHERNIKOFF and ELAINE
CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC. JAY
FARRALES; DOES 1-10, and ROES 1-10
inclusive,

Defendants.

CASE NO. A-13-682726-C
DEPT. NO. XXIII

VERDICT FORM

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 29 2016

5:21 PM

BY 
KATHERINE STREUBER, DEPUTY

VERDICT FORM

1
2 1. Do you find from a preponderance of the evidence that Defendant Jay Farrales
3 was negligent and that such negligence was a proximate cause of the death of Harvey
4 Chernikoff?

5 ANSWER: Yes ☒ No ☐

6
7 2. Do you find from a preponderance of the evidence that Defendant First Transit,
8 Inc. was negligent and that such negligence was a proximate cause of the death of Harvey
9 Chernikoff?

10 ANSWER: Yes ☒ No ☐

11 If you have answered "No" to questions #1 and #2 above, stop here, answer no further
12 questions, and have the foreperson sign and date this form.

13 3. Do you find from a preponderance of the evidence that Plaintiff Jack Chernikoff
14 was negligent and that such negligence was a proximate cause of the death of Harvey
15 Chernikoff?

16 ANSWER: Yes ☐ No ☒

17
18 4. Do you find from a preponderance of the evidence that Plaintiff Elaine
19 Chernikoff was negligent and that such negligence was a proximate cause of the death of
20 Harvey Chernikoff?

21 ANSWER: Yes ☐ No ☒

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1 5. Using one hundred percent (100%) as the total combined negligence which
2 acted as a proximate cause of the injuries complained of by Plaintiffs Jack Chernikoff and
3 Elaine Chernikoff, what percentage of the total combined negligence do you find from the
4 evidence is attributable to:

5 Jay Farrales 0 %
6 First Transit, Inc. 100 %
7 Jack Chernikoff 0 %
8 Elaine Chernikoff 0 %
9
10 Totaling 100%

11 7. Without regard to the above answers, we find that the total amount of the
12 Plaintiffs' damages are divided as follows:

13
14 Pain and suffering by HARVEY CHERNIKOFF \$ 7.5 million
15
16 Grief, sorrow, loss of companionship,
17 Society, comfort, and loss of relationship
18 suffered by Plaintiffs JACK CHERNIKOFF
19 and ELAINE CHERNIKOFF: \$ 7.5 MILLION
20
21 TOTAL \$ 15,000,000

22
23 Dated this 29 day of FEBRUARY, 2016.

24 Fredy A. Garcia
25 FOREPERSON
26
27
28

EXHIBIT “2”

PRIME INTEREST RATE

NRS 99.040(1) requires:

"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, . . ."

Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2015	3.25%	July 1, 2014	3.25%
January 1, 2014	3.25%	July 1, 2013	3.25%
January 1, 2013	3.25%	July 1, 2012	3.25%
January 1, 2012	3.25%	July 1, 2011	3.25%
January 1, 2011	3.25%	July 1, 2010	3.25%
January 1, 2010	3.25%	July 1, 2009	3.25%
January 1, 2009	3.25%	July 1, 2008	5.00%
January 1, 2008	7.25%	July 1, 2007	8.25%
January 1, 2007	8.25%	July 1, 2006	8.25%
January 1, 2006	7.25%	July 1, 2005	6.25%
January 1, 2005	5.25%	July 1, 2004	4.25%
January 1, 2004	4.00%	July 1, 2003	4.00%
January 1, 2003	4.25%	July 1, 2002	4.75%
January 1, 2002	4.75%	July 1, 2001	6.75%
January 1, 2001	9.50%	July 1, 2000	9.50%
January 1, 2000	8.25%	July 1, 1999	7.75%
January 1, 1999	7.75%	July 1, 1998	8.50%
January 1, 1998	8.50%	July 1, 1997	8.50%
January 1, 1997	8.25%	July 1, 1996	8.25%
January 1, 1996	8.50%	July 1, 1995	9.00%
January 1, 1995	8.50%	July 1, 1994	7.25%
January 1, 1994	6.00%	July 1, 1993	6.00%
January 1, 1993	6.00%	July 1, 1992	6.50%
January 1, 1992	6.50%	July 1, 1991	8.50%
January 1, 1991	10.00%	July 1, 1990	10.00%
January 1, 1990	10.50%	July 1, 1989	11.00%
January 1, 1989	10.50%	July 1, 1988	9.00%
January 1, 1988	8.75%	July 1, 1987	8.25%
January 1, 1987	Not Available		

*** Attorney General Opinion No. 98-20:**

If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a different rate of interest, unless the account is an open or store accounts as

EXHIBIT “3”

Electronically Filed
06/11/2013 09:54:24 AM

Allen D. Shuman

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

The Estate of Harvey Chernikoff, Deceased; by Jack Chernikoff as personal representative, individually and as heir; et al.

VS

Plaintiff(s)

First Transit, Inc. Laidlaw Transit Services, Inc dba First Transit , et al.

Defendant(s)

Case No.: A-13-682726-C

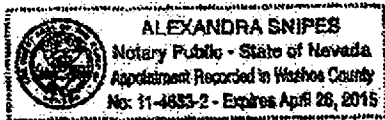
Dept. No.: XXIII

Date:

Time:

AFFIDAVIT OF SERVICE

I, Kelly Danner, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure on the 7th day of June, 2013 and served the same on the 7th day of June, 2013 at 2:35pm by serving the Defendant(s), First Transit, Inc. Laidlaw Transit Services, Inc. dba First Transit, by personally delivering and leaving a copy at Registered Agent: The Corporation Trust Company of Nevada, 311 South Division Street, Carson City, Nevada 89703 with Alena Duggan, Administrative Assistant, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.



State of Nevada, County of Washoe

SUBSCRIBED AND SWORN to before me on this

11th day of June 2013

Notary Public Alexandra Snipes

Affiant Kelly Dorman

R-057577

Legal Process Service

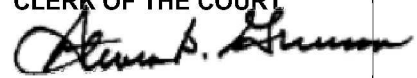
License # 604

Work Order No 1304659

01: 02: 03: 04: 05: 06: 07: 08: 09: 10: 11: 12: 13: 14: 15: 16: 17: 18: 19: 20: 21: 22: 23: 24: 25: 26: 27: 28: 29: 30: 31: 32: 33: 34: 35: 36: 37: 38: 39: 40: 41: 42: 43: 44: 45: 46: 47: 48: 49: 50: 51: 52: 53: 54: 55: 56: 57: 58: 59: 60: 61: 62: 63: 64: 65: 66: 67: 68: 69: 70: 71: 72: 73: 74: 75: 76: 77: 78: 79: 80: 81: 82: 83: 84: 85: 86: 87: 88: 89: 90: 91: 92: 93: 94: 95: 96: 97: 98: 99: 100: 101: 102: 103: 104: 105: 106: 107: 108: 109: 110: 111: 112: 113: 114: 115: 116: 117: 118: 119: 120: 121: 122: 123: 124: 125: 126: 127: 128: 129: 130: 131: 132: 133: 134: 135: 136: 137: 138: 139: 140: 141: 142: 143: 144: 145: 146: 147: 148: 149: 150: 151: 152: 153: 154: 155: 156: 157: 158: 159: 160: 161: 162: 163: 164: 165: 166: 167: 168: 169: 170: 171: 172: 173: 174: 175: 176: 177: 178: 179: 180: 181: 182: 183: 184: 185: 186: 187: 188: 189: 190: 191: 192: 193: 194: 195: 196: 197: 198: 199: 200: 201: 202: 203: 204: 205: 206: 207: 208: 209: 210: 211: 212: 213: 214: 215: 216: 217: 218: 219: 220: 221: 222: 223: 224: 225: 226: 227: 228: 229: 230: 231: 232: 233: 234: 235: 236: 237: 238: 239: 240: 241: 242: 243: 244: 245: 246: 247: 248: 249: 250: 251: 252: 253: 254: 255: 256: 257: 258: 259: 260: 261: 262: 263: 264: 265: 266: 267: 268: 269: 270: 271: 272: 273: 274: 275: 276: 277: 278: 279: 280: 281: 282: 283: 284: 285: 286: 287: 288: 289: 290: 291: 292: 293: 294: 295: 296: 297: 298: 299: 300: 301: 302: 303: 304: 305: 306: 307: 308: 309: 310: 311: 312: 313: 314: 315: 316: 317: 318: 319: 320: 321: 322: 323: 324: 325: 326: 327: 328: 329: 330: 331: 332: 333: 334: 335: 336: 337: 338: 339: 340: 341: 342: 343: 344: 345: 346: 347: 348: 349: 350: 351: 352: 353: 354: 355: 356: 357: 358: 359: 360: 361: 362: 363: 364: 365: 366: 367: 368: 369: 370: 371: 372: 373: 374: 375: 376: 377: 378: 379: 380: 381: 382: 383: 384: 385: 386: 387: 388: 389: 390: 391: 392: 393: 394: 395: 396: 397: 398: 399: 400: 401: 402: 403: 404: 405: 406: 407: 408: 409: 410: 411: 412: 413: 414: 415: 416: 417: 418: 419: 420: 421: 422: 423: 424: 425: 426: 427: 428: 429: 430: 431: 432: 433: 434: 435: 436: 437: 438: 439: 440: 441: 442: 443: 444: 445: 446: 447: 448: 449: 450: 451: 452: 453: 454: 455: 456: 457: 458: 459: 460: 461: 462: 463: 464: 465: 466: 467: 468: 469: 470: 471: 472: 473: 474: 475: 476: 477: 478: 479: 480: 481: 482: 483: 484: 485: 486: 487: 488: 489: 490: 491: 492: 493: 494: 495: 496: 497: 498: 499: 500: 501: 502: 503: 504: 505: 506: 507: 508: 509: 510: 511: 512: 513: 514: 515: 516: 517: 518: 519: 520: 521: 522: 523: 524: 525: 526: 527: 528: 529: 530: 531: 532: 533: 534: 535: 536: 537: 538: 539: 540: 541: 542: 543: 544: 545: 546: 547: 548: 549: 550: 551: 552: 553: 554: 555: 556: 557: 558: 559: 560: 561: 562: 563: 564: 565: 566: 567: 568: 569: 570: 571: 572: 573: 574: 575: 576: 577: 578: 579: 580: 581: 582: 583: 584: 585: 586: 587: 588: 589: 590: 591: 592: 593: 594: 595: 596: 597: 598: 599: 600: 601: 602: 603: 604: 605: 606: 607: 608: 609: 610: 611: 612: 613: 614: 615: 616: 617: 618: 619: 620: 621: 622: 623: 624: 625: 626: 627: 628: 629: 630: 631: 632: 633: 634: 635: 636: 637: 638: 639: 640: 641: 642: 643: 644: 645: 646: 647: 648: 649: 650: 651: 652: 653: 654: 655: 656: 657: 658: 659: 660: 661: 662: 663: 664: 665: 666: 667: 668: 669: 670: 671: 672: 673: 674: 675: 676: 677: 678: 679: 680: 681: 682: 683: 684: 685: 686: 687: 688: 689: 690: 691: 692: 693: 694: 695: 696: 697: 698: 699: 700: 701: 702: 703: 704: 705: 706: 707: 708: 709: 710: 711: 712: 713: 714: 715: 716: 717: 718: 719: 720: 721: 722: 723: 724: 725: 726: 727: 728: 729: 730: 731: 732: 733: 734: 735: 736: 737: 738: 739: 740: 741: 742: 743: 744: 745: 746: 747: 748: 749: 750: 751: 752: 753: 754: 755: 756: 757: 758: 759: 760: 761: 762: 763: 764: 765: 766: 767: 768: 769: 770: 771: 772: 773: 774: 775: 776: 777: 778: 779: 780: 781: 782: 783: 784: 785: 786: 787: 788: 789: 790: 791: 792: 793: 794: 795: 796: 797: 798: 799: 800: 801: 802: 803: 804: 805: 806: 807: 808: 809: 810: 811: 812: 813: 814: 815: 816: 817: 818: 819: 820: 821: 822: 823: 824: 825: 826: 827: 828: 829: 830: 831: 832: 833: 834: 835: 836: 837: 838: 839

EXHIBIT B

EXHIBIT B

**Marquis Aurbach Coffing**

Micah S. Echols, Esq.

Nevada Bar No. 8437

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*Attorneys for Plaintiffs,**Jack Chernikoff and Elaine Chernikoff***DISTRICT COURT****CLARK COUNTY, NEVADA**JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,

Defendants.

Case No.: A682726

Dept. No.: XXIII

NOTICE OF ENTRY OF AMENDED JUDGMENT

PLEASE TAKE NOTICE that on the 6th day of June, 2017, an Amended Judgment Upon the Jury Verdict was entered in the above-captioned matter. A copy of said Order is attached hereto.

Dated this 7th day of June, 2017.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols

Micah S. Echols, Esq.

Nevada Bar No. 8437

10001 Park Run Drive

Las Vegas, Nevada 89145

*Attorneys for Plaintiffs,**Jack Chernikoff and Elaine Chernikoff*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF AMENDED JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of June, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

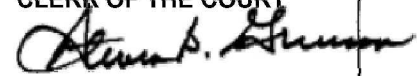
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/s/ Leah Dell

Leah Dell, an employee of
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¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1



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*Attorneys for Plaintiffs,
Jack Chernikoff and Elaine Chernikoff*

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Case No.: A682726
Dept. No.: XXIII

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,

Defendants.

AMENDED JUDGMENT UPON THE JURY VERDICT

This action came on for trial before the Court and the jury, the Honorable Stefany A. Miley, District Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.¹

¹ Exhibit 1: Jury Verdict.

1 IT IS ORDERED AND ADJUDGED that Plaintiffs, JACK CHERNIKOFF and ELAINE
2 CHERNIKOFF, have and recover of Defendant FIRST TRANSIT, INC. the following sums:

3 Pain and suffering by Harvey Chernikoff: \$7,500,000.00
4 Grief, sorrow, loss of companionship, society,
5 Comfort, and loss of relationship suffered by
6 Plaintiffs, JACK CHERNIKOFF and ELAINE
CHERNIKOFF: + \$7,500,000.00
7 **Total Damages** **\$15,000,000.00**

8
9 IT IS FURTHER ORDERED AND ADJUDGED that Harvey Chernikoff's past damages
10 shall bear Pre-Judgment interest in accordance with Lee v. Ball, 121 Nev. 391, 116 P.3d 64
11 (2005) and NRS 17.130 at the rate of 3.50% per annum plus 2% from the date of service of the
12 Summons and Complaint on June 7, 2013, through the entry of the Judgment on March 8, 2016:

13 **PRE-JUDGMENT INTEREST ON PAST DAMAGES: \$7,500,000.00**

14 06/07/13 through 03/08/16 = \$1,135,787.67

15 [(1,006 days) at (prime rate (3.50%) plus 2 percent = 5.50%)]

16 [Pre-Judgment Interest is approximately \$1,130.14 per day]

17 **PLAINTIFFS' TOTAL JUDGMENT**

18 Plaintiffs' total judgment is as follows:

19 **Total Damages:** **\$15,000,000.00**

20 **Prejudgment Interest:** **\$1,135,787.67**

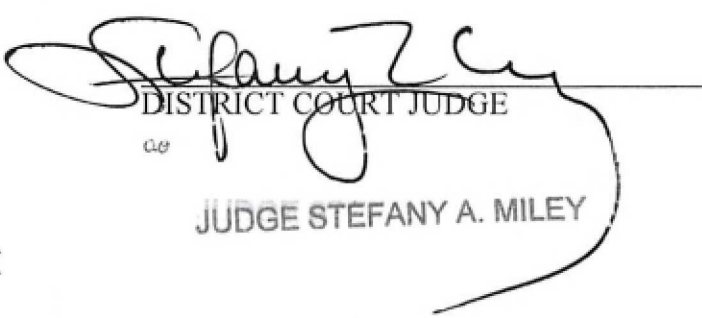
21 **TOTAL JUDGMENT** **\$16,135,787.67**

22
23 NOW, THEREFORE, Judgment Upon the Verdict in favor of the Plaintiffs are as
24 follows:

25 JACK CHERNIKOFF and ELAINE CHERNIKOFF are hereby awarded Sixteen Million,
26 One Hundred Third-Six Thousand, Nine Hundred Seventeen Dollars and 81/100
27 (\$16,135,787.67) against Defendant FIRST TRANSIT, INC., which shall bear post-judgment
28

1 interest at the adjustable legal rate from the date of the entry of judgment (March 8, 2016) until
2 fully satisfied.²


3
4 Dated this 6th day of June, 2017.

5
6 
DISTRICT COURT JUDGE
7

JUDGE STEFANY A. MILEY

8 Respectfully submitted by:

9 RICHARD HARRIS LAW FIRM

10
11 By 
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18 *Attorneys for Plaintiffs,*
19 *Jack Chernikoff and Elaine Chernikoff*

20
21
22
23
24
25
26
27 ² The legal interest rate according to NRS 17.130 was 5.50% at the time of the entry of the judgment on
28 March 8, 2016 and has adjusted to 5.75% as of January 1, 2017.

1 Approved³ as to form and content:

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By 

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12 *Attorneys for Defendants,*

13 *First Transit, Inc. and Jay Farrales*

14
15 [CASE NO. A682726—AMENDED JUDGMENT UPON THE JURY VERDICT]
16
17
18
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27 ³ Defendants believe that this order expresses the Court's reasoning and conclusions. However,
28 defendants do not necessarily agree with, or acquiesce to, the reasoning, findings of fact, or conclusions of law articulated in the order.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **AMENDED JUDGMENT UPON THE JURY**
3 **VERDICT** was submitted electronically for filing and/or service with the Eighth Judicial
4 District Court on the 6th day of May, 2017. Electronic service of the foregoing document shall
5 be made in accordance with the E-Service List as follows:¹

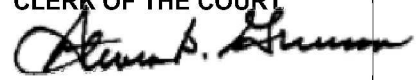
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22 /s/ Leah Dell
23 Leah Dell, an employee of
24 Marquis Aurbach Coffing
25
26

27 ¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
28 consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT C

EXHIBIT C

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CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,

Defendants.

Case No.: A682726

Dept. No.: XXIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 6th day of June, 2017, an Order Granting in Part and Denying in Part Defendants' Motion to Retax Plaintiffs' Costs; Order Denying Defendants First Transit, Inc. and Jay Farrales' Motion to Strike Plaintiffs' Amended Memorandum of Costs and Disbursements, and for Sanctions; Order Denying Defendant Jay Farrales' Motion for Fees and Costs was entered in the above-captioned matter. A copy of said Order is attached hereto.

Dated this 7th day of June, 2017.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols

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*Attorneys for Plaintiffs,**Jack Chernikoff and Elaine Chernikoff*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of June, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

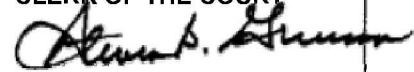
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Leah Dell, an employee of
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Exhibit 1



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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK CHERNIKOFF and ELAINE
CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10 and ROES 1-10, inclusive,

Defendants.

Case No.: A-13-682726-C
Dept. No.: XXIII

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION
TO RETAX PLAINTIFFS' COSTS; ORDER DENYING DEFENDANTS FIRST
TRANSIT, INC. AND JAY FARRALES' MOTION TO STRIKE PLAINTIFFS'
AMENDED MEMORANDUM OF COSTS AND DISBURSEMENTS, AND FOR
SANCTIONS; ORDER DENYING DEFENDANT JAY FARRALES' MOTION FOR
FEES AND COSTS**

WHEREAS Defendants FIRST TRANSIT, INC. and JAY FARRALES' Motion to Retax
Plaintiffs' Costs, and Motion to Strike Plaintiffs' Amended Memorandum of Costs, came for
hearing before the Honorable Stefany Miley on August 2, 2016 at 9:30 a.m., and Defendant JAY


1 FARRALES' Motion for Fees and Costs came for hearing before the Honorable Stefany Miley
2 on August 16, 2016 at 9:30 a.m., with Plaintiffs JACK AND ELAINE CHERNIKOFF appearing
3 through their counsel of record BENJAMIN CLOWARD, ESQ., of CLOWARD HICKS &
4 BRASIER; Defendants FIRST TRANSIT, INC. and JAY FARRALES, appearing through their
5 counsel of record, LEANN SANDERS, ESQ., of the law firm of ALVERSON, TAYLOR,
6 MORTENSEN AND SANDERS, and DANIEL POLSENBERG, ESQ., of the law firm LEWIS,
7 ROCA, ROTHGERBER, CHRISTIE LLP; and with the Court having reviewed the pleadings,
8 having heard oral arguments, and having issued a minute order on September 13, 2016 rules as
9 follows:

10 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED** as follows:

- 11 (1) Plaintiffs requested a total of \$102,450.97 in costs based upon their March 15,
12 2016 memorandum of costs; their April 12, 2016 amended memorandum of costs;
13 and their March 15, 2016 motion for costs.
- 14 (2) Defendant JAY FARRALES requested a total of \$30,578.43 in costs and
15 \$189,107.50 in attorney fees based upon his March 15, 2015 memorandum of
16 costs and his March 31, 2016 motion for costs and attorney fees. Alternatively,
17 JAY FARRALES requested \$17,116.50 in costs and \$78,836.50 in costs.
- 18 (3) In the hearing on August 2, 2016, the Court awarded Plaintiffs the following
19 costs: (a) Clerk's Fees—\$486.90; (b) Photocopies, Fax, Telephone, and
20 Postage—\$533.77; (c) Copies of Medical Records—\$172.25; (d) Deposition
21 Transcript Fees—\$5,309.75; (e) Parking During Trial—\$332.29; and (f) Runner
22 Fees—\$225.54, while reserving a decision on expert fees, process service fees,
23 and other miscellaneous costs.
- 24 (4) FIRST TRANSIT, INC. and JAY FARRALES' Motion to Retax Plaintiffs' Costs
25 is **GRANTED in part and DENIED in part**. Defendants' Motion is granted
26 with regard to costs associated with jury consulting, post-trial juror interviews,
27 food, focus groups, and trial dinners, striking the same.

- 1 (5) Per the Court's September 13, 2013 Minute Order, Plaintiffs' expert fees are
2 capped at \$1,500.00 each, for a total of \$3,000.00. Plaintiffs are entitled
3 reimbursement of \$433.00 for a roundtrip airline ticket between Atlanta and Las
4 Vegas. Plaintiffs are entitled to reimbursement of \$9,797.35 paid to Litigation
5 Services for trial support.
- 6 (6) FIRST TRANSIT, INC. and JAY FARRALES' Motion to Strike Plaintiffs'
7 Amended Memorandum of Cost is **DENIED**. The Court specifically allowed
8 Plaintiffs the opportunity to supplement their memorandum of costs and
9 considered the costs issues on the merits.
- 10 (7) JAY FARRALES' Motion for Fees and Costs is **DENIED**. The Court determines
11 that the joint offer of judgment issued by both Defendants was not more favorable
12 than the jury verdict in favor of Plaintiffs. The Court also determines that JAY
13 FARRALES was not a prevailing party, and is not entitled to an award of costs.
- 14 (8) Plaintiffs are hereby awarded the total sum of \$20,290.85 in costs against
15 Defendant FIRST TRANSIT, INC., with post-judgment interest running at the
16 legal rate until fully satisfied.

17 Dated this 6th day of June, 2017.

18
19 
20 DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

21 Submitted by:

22 LEWIS ROCA ROTHGERBER CHRISTIE LLP

23
24 By 

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1 APPROVED AS TO FORM AND CONTENT:

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Attorneys for Plaintiffs

13
14 [CASE NO. 682726—ORDER GRANTING IN PART AND DENYING IN PART
15 DEFENDANTS' MOTION TO RETAX PLAINTIFFS' COSTS; ORDER DENYING
16 DEFENDANTS FIRST TRANSIT, INC. AND JAY FARRALES' MOTION TO STRIKE
PLAINTIFFS' AMENDED MEMORANDUM OF COSTS AND DISBURSEMENTS, AND
FOR SANCTIONS; ORDER DENYING DEFENDANT JAY FARRALES' MOTION FOR
FEES AND COSTS]

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **ORDER GRANTING IN PART AND DENYING**
3 **IN PART DEFENDANTS' MOTION TO RETAX PLAINTIFFS' COSTS; ORDER**
4 **DENYING DEFENDANTS FIRST TRANSIT, INC. AND JAY FARRALES' MOTION**
5 **TO STRIKE PLAINTIFFS' AMENDED MEMORANDUM OF COSTS AND**
6 **DISBURSEMENTS, AND FOR SANCTIONS; ORDER DENYING DEFENDANT JAY**
7 **FARRALES' MOTION FOR FEES AND COSTS** was submitted electronically for filing
8 and/or service with the Eighth Judicial District Court on the 6th day of May, 2017. Electronic
9 service of the foregoing document shall be made in accordance with the E-Service List as
10 follows:¹

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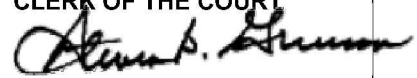
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28 consents to electronic service in accordance with NRCP 5(b)(2)(D).

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/s/ Leah Dell
Leah Dell, an employee of
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EXHIBIT D

EXHIBIT D

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CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1–10; and ROES 1–10, inclusive,

Defendants.

Case No.: A682726

Dept. No.: XXIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 6th day of June, 2017, an Order Granting in Part and Denying in Part Defendants' Motion to Alter or Amend the Judgment was entered in the above-captioned matter. A copy of said Order is attached hereto.

Dated this 7th day of June, 2017.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols

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*Attorneys for Plaintiffs,**Jack Chernikoff and Elaine Chernikoff*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of June, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

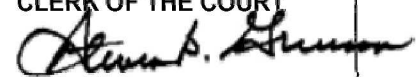
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/s/ Leah Dell

Leah Dell, an employee of
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¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1



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*Attorneys for Plaintiffs,
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DISTRICT COURT

CLARK COUNTY, NEVADA

JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,

Defendants.

Case No.: A682726
Dept. No.: XXIII

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO ALTER OR AMEND THE
JUDGMENT**

Hearing Date: August 16, 2016
Hearing Time: 9:30 a.m.

1 **ORDER GRANTING IN PART AND DENYING IN PART**
2 **DEFENDANTS' MOTION TO ALTER OR AMEND THE JUDGMENT**

3 Defendants, First Transit, Inc. ("First Transit") and Jay Farrales' ("Mr. Farrales")
4 (collectively "Defendants"), motion to alter or amend the judgment under NRCp 59(e) and the
5 associated supplement having come before this Court on August 16, 2016, and the Court having
6 heard and considered the arguments of counsel, pleadings and papers submitted by the parties,
7 and good cause appearing:

8 1. IT IS HEREBY ORDERED that Defendants' motion to alter or amend the
9 judgment is GRANTED in part and DENIED in part.

10 2. Defendants' motion to alter or amend judgment raised the following issues:
11 (a) the \$100,000 cap on damages under NRS 41.035; and (b) prejudgment interest on Jack and
12 Elaine Chernikoff's loss of consortium claim.

13 a. **Cap on Damages.** The Court rejects Defendants' argument that First
14 Transit is an arm of the State of Nevada entitled to a cap on damages under NRS 41.035. Just
15 because First Transit has contracted with the Regional Transportation Commission (RTC), a
16 political subdivision of the state under NRS 41.0305, does not give First Transit the same rights
17 as the RTC. The Court analyzes this issue under the three-prong test outlined in *Simonian v.*
18 *Univ. & Cmty. Coll. Sys.*, 122 Nev. 187, 128 P.2d 1057 (2006): (1) whether First Transit was
19 subject to the approval and control of the Governor, the legislature, and other agencies of the
20 government; (2) whether First Transit was treated as the State or a state agency throughout the
21 Nevada Revised Statutes; and (3) whether First Transit possessed certain sovereign powers. In
22 applying these tests to the facts of this case, the Court concludes that First Transit does not
23 satisfy any of these factors. In fact, the contract between First Transit and the RTC states that
24 First Transit is an independent contractor. First Transit retained full control and supervision of
25 the services performed. First Transit also has full control over employment and compensation.
26 First Transit is solely responsible for wage and hour, working conditions, payment of
27 employment taxes, etc. First Transit is solely responsible for the acts of its employees. First
28 Transit is also required to indemnify and hold the RTC harmless. The RTC does not have to

1 indemnify First Transit. The judgment against First Transit does not affect the Nevada State
2 Treasury, which was one of the underlying legislative purposes for NRS 41.035. Therefore, the
3 Court concludes that First Transit is not an arm of the government and is not entitled to the cap
4 on damages outlined in NRS 41.035.

5 **b. Prejudgment Interest.** Prejudgment interest on the loss of consortium
6 claim was not allocated between past and future damages and is, therefore, disallowed. Jury
7 Instruction No. 22 talks about future damages, and there was testimony at trial about Harvey's
8 mother continuing to grieve. So, there was evidence of future emotional distress. Since the jury
9 verdict form did not distinguish between Jack and Elaine Chernikoff's past and future damages,
10 prejudgment interest on their \$7.5 million award of damages must be eliminated. *See, e.g.,*
11 *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005); *Stickler v. Quilici*,
12 98 Nev. 595, 655 P.2d 527 (1982).

13 IT IS SO ORDERED.

14 Dated this 6th day of June, 2017.

15
16
17 Respectfully submitted by:

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19 [CASE NO. A682726—ORDER GRANTING IN PART AND DENYING IN PART
20 DEFENDANTS' MOTION TO ALTER OR AMEND THE JUDGMENT]
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27 ¹ Defendants believe that this order expresses the Court's reasoning and conclusions. However,
28 defendants do not necessarily agree with, or acquiesce to, the reasoning, findings of fact, or conclusions of law articulated in the order.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **ORDER GRANTING IN PART AND DENYING**
3 **IN PART DEFENDANTS' MOTION TO ALTER OR AMEND THE JUDGMENT** was
4 submitted electronically for filing and/or service with the Eighth Judicial District Court on the
5 6th day of May, 2017. Electronic service of the foregoing document shall be made in accordance
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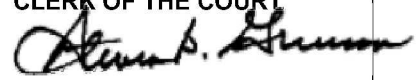
23 /s/ Leah Dell

24 Leah Dell, an employee of
25 Marquis Aurbach Coffing

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27 ¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
28 consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT E

EXHIBIT E

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*Attorneys for Plaintiffs,**Jack Chernikoff and Elaine Chernikoff***DISTRICT COURT****CLARK COUNTY, NEVADA**JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,

Defendants.

A-13-682726-C

Case No.: ~~A682726~~

Dept. No.: XXIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 6th day of June, 2017, an Order Denying Defendants' Motion for New Trial was entered in the above-captioned matter. A copy of said Order is attached hereto.

Dated this 7th day of June, 2017.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of June, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

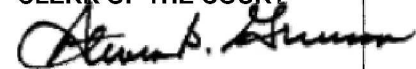
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¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1



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*Attorneys for Plaintiffs,
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DISTRICT COURT

CLARK COUNTY, NEVADA

JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Plaintiffs,

vs.

FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,

Defendants.

Case No.: A682726
Dept. No.: XXIII

**ORDER DENYING DEFENDANTS'
MOTION FOR NEW TRIAL**

Hearing Date: August 16, 2016
Hearing Time: 9:30 a.m.

1 **ORDER DENYING DEFENDANTS' MOTION FOR NEW TRIAL**

2 Defendants, First Transit, Inc. ("First Transit") and Jay Farrales' ("Mr. Farrales")
3 (collectively "Defendants"), motion for new trial and the associated supplement having come
4 before this Court on August 16, 2016, and the Court having heard and considered the arguments
5 of counsel, pleadings and papers submitted by the parties, and good cause appearing:

6 1. IT IS HEREBY ORDERED that Defendants' motion for new trial and the
7 associated supplement are hereby DENIED.

8 2. Defendants' motion for new trial raised the following issues: (a) the omission of
9 Harvey Chernikoff on the verdict form in a comparative negligence analysis of NRS 41.141;
10 (b) the applicable standard of care and the duty to perform the Heimlich maneuver; (c) attorney
11 misconduct; (d) passion and prejudice as influencing the \$15 million verdict; (e) the jury's
12 manifest disregard of the Court's instructions; and (f) alternatively, remittitur of the damages to
13 \$100,000. The Court DENIES each of these arguments.

14 a. **The Verdict Form.** At the time the verdict form was settled, the Court
15 notes that there was considerable discussion on comparative negligence and how it should be
16 presented on the verdict form. Defense counsel initially argued that the jury should consider
17 both Harvey's and his parents' comparative negligence, while plaintiffs argued that neither's
18 negligence could be considered. Ultimately, the verdict form included only comparative
19 negligence as to Harvey's parents, Jack and Elaine Chernikoff, because of Harvey's diminished
20 capacities. Defense counsel Mr. Alverson acquiesced that both should not be on the verdict
21 form. Although defendants assert that defense counsel Ms. Sanders then retracted that position,
22 and this Court ruled on the merits of counsel's objection to Harvey's omission, the attempted
23 retraction was procedurally ineffective. The Court treats Mr. Alverson's acquiescence as a
24 waiver on the issue of whether Harvey should have been included on the verdict form. *See, e.g.,*
25 *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009); *Eberhard Mfg. Co. v. Baldwin*, 97
26 Nev. 271, 628 P.2d 681 (1981).

27 b. **The Standard of Care.** With respect to the common carrier jury
28 instructions (Instruction Nos. 32 and 34), the Court concludes that it was appropriate to give

1 these instructions because First Transit specifically contracted to provide paratransit services.
2 First Transit knew that it would be transporting individuals with disabilities. Although there is
3 no duty to perform the Heimlich maneuver in Nevada, *Lee v. GNLV Corp.*, 117 Nev. 291, 22
4 P.3d 209 (2001) does not stand for the proposition that First Transit could simply disregard
5 Harvey while he died. Additionally, First Transit had policies to scan the bus regularly, and the
6 testimony and video evidence presented at trial demonstrated that the bus was not regularly
7 scanned. The Court also treats any challenge to these jury instruction issues as waived because,
8 although the Court recognizes that defendants disagreed that there was even a basis for a
9 common-carrier instruction, Defendants offered as an alternative to plaintiffs' common-carrier
10 instructions the very instructions of which they now complain and have otherwise failed to
11 properly object. See NRCP 51(c); *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 194
12 P.3d 1214 (2008); *Pearson v. Pearson*, 110 Nev. 293, 871 P.2d 343 (1994).

13 **c. Attorney Misconduct.** In their motion for new trial, Defendants argued
14 that Plaintiffs' counsel committed misconduct by (A) abusing the jury instruction on a
15 heightened standard of care; (B) referring to this case as a multi-million dollar case in voir dire;
16 (C) telling the jury that it was required to give Plaintiffs what they asked for; (D) arguing for
17 recovery based upon the value of Harvey's life; (E) vilifying Defendants for defending the
18 lawsuit; (F) requesting justice and punishment, rather than compensation; (G) playing on local
19 prejudices; and (H) improperly appealing to the jurors' sympathies. The Court has reviewed
20 each of the statements offered by Defendants as claimed instances of attorney misconduct under
21 the standards in *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008) and subsequent case law on
22 attorney misconduct. The Court notes that Defendants did not contemporaneously object to any
23 of these claimed instances of attorney misconduct, although the Court probably would have
24 sustained an objection in some instances. The Court treats Defendants' failure to object as a
25 waiver of the issue. Having presided at the jury trial and being familiar with the evidence
26 presented to the jury, the Court does not find that the verdict would have been different but for
27 the claimed instances of attorney misconduct. Defendants have not satisfied their burden to
28

1 demonstrate plain error or irreparable and fundamental error. The Court also rejects any
2 characterization of these claimed errors under an NRCP 59(a) new trial standard.

3 **d. Passion and Prejudice.** The Court reiterates that, having presided at the
4 trial and being familiar with the evidence, the \$15 million verdict was not excessive. From the
5 video shown at trial, there are at least 50 seconds where Harvey is choking and going through
6 stages of being in distress. The expert testimony presented confirms that choking is an
7 excruciating death, for which there is awareness, helplessness, and fear involved. Even the
8 defense expert, Dr. MacQuarrie, testified that when someone chokes, he experiences “panic,
9 complete panic.” The Court does not find that the \$7.5 million award to Harvey was excessive.
10 *See, e.g., Stackiewicz v. Nissan Motor Corp.*, 100 Nev. 443, 686 P.2d 925 (1984). The Court
11 also does not find that the \$7.5 million award to Jack and Elaine Chernikoff was excessive.
12 Harvey’s family members testified for long periods of time, showed pictures, and demonstrated a
13 close family relationship. The defense did not object to the content of this testimony, which the
14 Court considers a waiver of the excessiveness arguments now presented. *See Bridges v. State*,
15 116 Nev. 752, 6 P.3d 1000 (2000). The Court does not only consider the parents’ life
16 expectancy in evaluating the alleged excessiveness of their recovery; as people get older, the
17 value of life becomes more important, so life expectancy is not a sole consideration.

18 **e. Jury’s Manifest Disregard of the Court’s Instructions.** Having
19 reviewed Defendants’ specific challenges to the Court’s instructions given to the jury, the Court
20 concludes that Defendants have not satisfied their burden under NRCP 59(a) to demonstrate that
21 the jury manifestly disregarded the Court’s instructions. Defendants cannot demonstrate that the
22 jury disregarded the Court’s instructions to the level that it would have been impossible for the
23 jury to reach its verdict. *See Weaver Bros. v. Misskelley*, 98 Nev. 232, 645 P.2d 438 (1982);
24 *Eikelberger v. Tolotti*, 94 Nev. 58, 574 P.2d 277 (1978); *M&R Inv. Co. v. Anzalotti*, 105 Nev.
25 224, 773 P.2d 729 (1989).

26 ///

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IT IS SO ORDERED.

Dated this 6 day of June, 2017.

~~DISTRICT COURT JUDGE~~

JUDGE STEFANY A. MILEY

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¹ Defendants recognize that this order expresses the Court's reasoning and conclusions. However, defendants do not necessarily agree with, or acquiesce to, the reasoning, findings of fact, or conclusions of law articulated in the order.

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10 [CASE NO. A682726—ORDER DENYING DEFENDANTS' MOTION FOR NEW TRIAL]
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **ORDER DENYING DEFENDANTS' MOTION**
3 **FOR NEW TRIAL** was submitted electronically for filing and/or service with the Eighth
4 Judicial District Court on the 6th day of May, 2017. Electronic service of the foregoing
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27 ¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
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