

**IN THE SUPREME COURT OF THE STATE OF NEVADA
CASE NO. 70504**

JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF CHEYANNE
NALDER; AND GARY LEWIS, INDIVIDUALLY,
Appellants,

v.

UNITED AUTOMOBILE INSURANCE COMPANY,
Respondent.

**APPENDIX TO RESPONDENT'S SUPPLEMENTAL
ANSWERING BRIEF TO SECOND CERTIFIED QUESTION
VOLUME II**

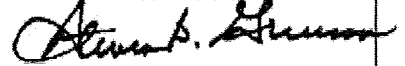
Ninth Circuit Case No. 13-17441
U.S.D.C. No. 2:09-cv-01348-RCJ-GWF

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APPENDIX

Date	DOCUMENT	Appendix Page Number
10/19/18	Notice of Entry of Order on Intervenor United Automobile Insurance Company's Motion to Intervene, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. A-18-77220-C	APPX 0112 – APPX 0115
12/12/2018	UAIC's Motion for Relief from Judgment Pursuant to NRQ 60, <i>James Nalder v. Gary Lewis</i> , Case No. 07A549111	APPX 0116 – APPX 0156
10/19/2018	UAIC's Motion to Dismiss Plaintiff's Complaint & Motion for Court to Deny Stipulation to Enter Judgment between Plaintiff and Lewis and/or, in the Alternative to Stay Same Pending Hearing on Motion to Dismiss, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. A-18-772220-C	APPX 0157 – APPX 0270
8/10/2018	Correspondence to Tommy Christensen, Esq. from Stephen Rogers, Esq.	APPX 0271 – APPX 0292
8/13/2018	Correspondence to Stephen Rogers, Esq. from Tommy Christensen	APPX 0293 – APPX 0294
9/12/2018	Stipulation to Enter Judgment, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. A-18-77220-C	APPX 0295 – APP 0298



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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,
Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,
Defendants.

CASE NO.: A-18-772220-C
DEPT. NO.: XXIX

**NOTICE OF ENTRY OF ORDER ON
INTERVENOR UNITED AUTOMOBILE
INSURANCE COMPANY'S MOTION TO
INTERVENE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached **ORDER ON INTERVENOR
UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was
entered by the Court on the 19th day of October, 2018.

DATED this 19th day of October, 2018.

ATKIN WINNER & SHERROD



Matthew J. Douglas
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Las Vegas, Nevada 89102
Attorneys for Intervenor United Automobile Ins. Co.

CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2018, the foregoing **NOTICE OF ENTRY OF ORDER ON INTERVENOR UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 - to all counsel on the service list ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☒ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

David Stephens, Esq.
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Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: A-18-772220-C
DEPT. NO.: 29

ORDER

Intervenor UNITED AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene came on for hearing on the Chambers Calendar before the Honorable Judge David Jones, on September 19, 2018, and upon review of and consideration of the proceedings and circumstances of this matter, the papers and pleadings on file, and for good cause appearing,

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1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Intervenor UNITED
2 AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene is GRANTED;


3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Intervenor
4 UNITED AUTOMOBILE INSURANCE COMPANY'S shall file its responsive pleading within
5 seven (7) days from the date of entry of this Order.

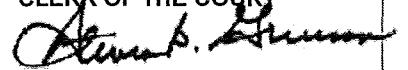
6 DATED this 11 day of October 2018

7
8 
DISTRICT COURT JUDGE

9 Submitted by:

10 ATKIN WINNER & SHERROD

11 
12 Matthew J. Douglas
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16 Attorneys for Intervenor UNITED
17 AUTOMOBILE INSURANCE COMPANY
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

CASE NO.: 07A549111
DEPT. NO.: XXIX

**UAIC'S MOTION FOR RELIEF FROM
JUDGMENT PURSUANT TO NRCP 60**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Motion for Relief from Judgment Pursuant to NRCP 60(b), asking that this Court declare as void the Amended Judgment entered on March 28, 2018, because the underlying Judgment expired on 2014 and is snot capable of being revived.

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ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

1 This Motion s made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities attached hereto, and such oral argument as the Court
3 may permit.

4 DATED this 19th day of October, 2018.

5 ATKIN WINNER & SHERROD

6
7
8 Matthew J. Douglas
9 Nevada Bar No. 11371
10 1117 South Rancho Drive
11 Las Vegas, Nevada 89102
12 *Attorneys for Intervenor UAIC*

13 **NOTICE OF MOTION**

14 TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:
15 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring
16 the foregoing **MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** for
17 hearing before the above-entitled Department XXIX on the 12 day of December, 2018,
18 at the hour of 9:00 a. m. in the forenoon of said date, or as soon thereafter as counsel can be
19 heard.

20 DATED this 19th day of October, 2018.

21 ATKIN WINNER & SHERROD

22
23
24 Matthew Douglas, Esq.
25 Nevada Bar No. 11371
26 1117 South Rancho Drive
27 Las Vegas, Nevada 89102
28 *Attorneys for Intervenor UAIC*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court made a mistake of law based on incomplete/incorrect facts presented in and Ex Parte Motion to Amended Judgment, when entering the Oder granting the Motion on March 28, 2018. The judgment which Plaintiff, Cheyenne Nalder ("Cheyenne") moved to amend was entered on June 3, 2008. The judgment creditor, Cheyenne's guardian ad litem, James Nalder, did not renew the Judgment as required By Nevada Law before it expired on June 3, 2014, six (6) years after it was entered.

The Amended Judgment ostensibly revived the expired Judgment, despite the fact that Cheyenne presented this Court with no legal support for such revival. Cheyenne's Motion proposes that tolling provisions applicable to causes of action are also applicable to the deadlines to renew judgments. However, none of the authority cited in her Motion supports misappropriating tolling provisions applicable to certain causes of action to extend the time to renew a judgment, nor does any other authority. Pursuant to NRCP 60, the Court should declare that the Amended Judgment is void and that the original judgment has expired, and therefore is not enforceable.

II.

STATEMENT OF FACTS

This case involves a July 8, 2007 accident, Cheyenne Nalder, ("Cheyenne") who was then a minor, alleged injuries. On October 9, 2007, Cheyenne's guardian ad litem, James Nalder, filed a Complaint against Gary Lewis ("Lewis"). See Complaint attached hereto as Exhibit "A."

UAIC, the putative insurer for Lewis, initially denied coverage due to a lapse in

1 coverage¹. Lewis did not respond to the Complaint and a default was taken against him. *Id.* On
2 June 3, 2008.² a judgment was entered against him in the amount of \$3.5 million. See Judgment
3 attached hereto as Exhibit "B". James Nalder as guardian ad litem for Cheyenne was the
4 judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless
5 it is timely renewed. As such, the Judgment expired on June 3, 2014.
6

7 On March 22, 2018 nearly 10 years after the Judgment was entered, and nearly four (4)
8 years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of
9 Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-
10 07-54911-C. *See* Exhibit "C." Her Motion did not advise the Court that the Judgment she sought
11 to amend had expired. Rather, it cited two statutes, NRS 11280 and 11.300, without explaining
12 why they were applicable to her request, and asked the Court to amend the Judgment to be in her
13 name alone. In short, the Court was not put on notice that it was being asked to ostensibly revive
14 an expired judgment. *Id.*
15

16 With an incomplete account of the issues presented, the Court granted Cheyenne's Ex
17 Parte Motion and issued an Amended Judgment on March 28, 2018 which was filed with a
18 Notice of Entry on May 18, 2018. *See* Exhibit "D."
19

20 As the judgment had expired and an Amended Judgment could not be issued to revive it.
21 UAIC brings the instant Motion pursuant to NRCP 60(b), as it has now been found to be the
22 insurer of Lewis under an implied policy and, thus, has an interest in this matter, and seeks to
23 avoid the Amended Judgment and declare that the original Judgment has expired.
24

25 ¹ Later, during the subsequent action against UAIC (which remains on appeal in the Ninth Circuit
26 for the U.S. Court of Appeals and, currently, on a 2nd certified question to the Nevada Supreme Court)
27 the Court found an ambiguity in the renewal statement for Lewis' policy and, accordingly, *implied* a
28 policy of insurance for Lewis' \$15,000 policy limits in December 2013. Importantly, the Ninth Circuit
has affirmed there was no "bad faith" on the part of UAIC. Regardless, per the orders of the Federal
District Court and Ninth Circuit, UAIC has now been found to be Lewis' insurer, under this implied
policy.

² Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(c).

III.

ARGUMENT

A. *The Judgment Expired on June 3, 2014*

Nevada law provides that the statute of limitations for execution upon a judgment is six(6) years. NRS 11.190(1)(b). The judgment creditor may renew a judgment (and therefore the statute of limitation) for an additional six years by following the procedure mandated by NRS 17.214. The mandated procedures were not followed. Therefore the judgment expired.

NRS 17.214(1)(a) sets forth the procedure that must ne followed to renew a judgment. A document titled "Affidavit of Renewal" containing specific information outlined in the statute must be filed with the clerk of the court where the judgment is filed within 90 days before the date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No such Affidavit of Renewal was filed by James Nalder, the judgement creditor. Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment was recorded, and the judgment debtor must be served. No evidence of recordation (if such was required) or service on Lewis is present in the record.

The Nevada Supreme Court, in *Leven v Frey*, 123 Nev.399,168 P.3d 712 (2007), held that judgment creditors must strictly comply with the procedure set forth in NRS 17.214 in order to validly renew a judgment. *Id.* At 405-408, 168 P.3d 717-719. There is no question that neither Cheyenne nor her guardian ad litem did so. Therefore the Judgment expired.

1. *The deadline to renew the Judgment was not tolled by any statute or rule*

In her Ex Parte Motion, Cheyenne suggested that the deadlines mandated by NRS 17.214 were somehow extended because certain statutes of information can be tolled for causes of action under some circumstances. No such tolling applies to renewal of a judgment because renewal of a judgment is not a cause of action.

The introduction to NRS 11.090, the statute of limitation law, states that it applies to:

1 "...actions other than those from the recovery of real property, unless further limited by specific
2 statute..." The list which follows includes various causes of action for which suit can be brought.
3 Nowhere in the list is renewing a judgment defined as or analogized to a cause of action.

4 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six
5 year "catch all" provision of NRS 11.090(1)(a). *Leven* at 403, 168 P.3d at 715 ("An action on a
6 judgment or its renewal must be commenced within six years under NRS 11.190 (1) (a); thus a
7 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS
8 17.214, provides for any tolling of the time period to renew a judgment.

9
10 ///

11 2. *The deadline to renew the Judgment was not tolled by Cheyenne's minority*

12 Setting aside the fact that the deadline to renew a judgment is not an action to which
13 statutes of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS
14 17.214 were tolled by her minority are inapt for a few reasons. First, the tolling statute cited by
15 Cheyenne, NRS 11.280, does not universally toll all statutes of limitations while a plaintiff is a
16 minor. Rather, it is expressly limited to actions involving sales of probate estates.

17
18 **Legal disability prevents running of statute. NRS 11.260 and 11.270 shall not**
19 **apply to minors or others under any legal disability to sue at the time when the**
20 **right of action first accrues, but all such persons may commence an action at any**
21 **time within 1 year after the removal of the disability.**

22 Emphasis added. NRS 11.260 applies to actions to recover an estate sold by a guardian. NRS
23 11.270 applies to actions to recover estates sold by an executor or administrator. Neither of those
24 causes of action are at issue here. Therefore, NRS 11.260 would not authorize tolling the
25 deadline for the renewal of a judgment while a judgment creditor was a minor. This statute
26 would not apply in any instance because the judgment creditor, James, was not a minor, and so
27 did not have a legal disability.

28 On March 5, 2014, the deadline to file the Affidavit of Renewal, Cheyenne was still a

1 minor. The judgment creditor was her guardian ad litem James Nalder. It was James Nalder, not
2 Cheyenne, who had the responsibility to file the Affidavit of Renewal by the March 5, 2014
3 deadline. The fact that Cheyenne, the real party in interest was a minor is not legally relevant.

4 As Cheyenne was not the judgment creditor at any time prior to the date of the issuance
5 of the Amended Judgment, anyone looking at the Judgment would believe that it expired on June
6 4, 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were
7 given credence, either the judgment never expired, because she was the real party in interest and
8 was a minor at the time, the Judgment would have otherwise expired, or the judgment did expire
9 but was revived upon her reaching the age of majority. To adopt this proposition would frustrate
10 the certainty NRS 17.214 was enacted to promote - the reliability of the title to real property.

11 If tolling of deadlines to amend judgments were sanctioned, title to real property owned
12 by anyone who had ever been a judgment debtor would be clouded, as a title examiner would not
13 know whether a judgment issued more that six years prior had expired pursuant to statute, or was
14 still valid, or could be revived when a real party in interest who was a minor reached the age of
15 majority. As the court held in *Leven*, one of the primary reasons for the need to strictly comply
16 with NRS 17.214's recordation requirement is to "procure reliability of the title searches for both
17 creditors and debtors since any lien on real property created when a judgment is recorded
18 continues upon that judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance
19 with the notice requirement of NRS 17.124 is important to preserve the due process rights of the
20 judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a
21 Judgment, he may believe that the judgment has expired and he need take no further action to
22 defend himself against execution.

23 3. *Lewis' residency in California did not toll the deadline to renew the Judgment*

24 Cheyenne's Ex Parte Motion next cites NRS 11.3000, which provides "If, when the cause
25 of action shall accrue against a person, the person is out of State, the action may be commenced
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1 within the time herein limited after the person's return to the State; and if after the cause of
2 action shall have accrued the person departs from the State, the time of the absence shall not be
3 part of the time prescribed for the commencement of the action." Cheyenne's argument that the
4 deadline to renew the Judgment are tolled by NRS 11.300 fails because, again renewing a
5 judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar
6 statutes to Nevada regarding judgments, held in *F/S Manufacturing v Kensmore*, 789 N.W.2d
7 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate
8 action to renew the judgment, the specific time period[provided to renew] cannot be tolled under
9 [the equivalent to NRS 11.300] based on a judgment debtor's absence for the state." *Id.* At 858.

10 In addition, applying Cheyenne's argument that the time to renew a judgment was tolled
11 because of the judgment debtor's absence from Nevada would have a similarly negative impact
12 on the ability for property owners to obtain clear title to their property. Nothing on a judgment
13 would reflect whether a judgment debtor was outside of the state and a facially expired judgment
14 was still valid. Therefore, essentially, a responsible title examiner would have to list any
15 judgment that had ever been entered against a property owner on the title insurance policy,
16 because he could not be sure the judgments older than six years for which no affidavit of renewal
17 had been filed were expired or the expiration was tolled.

18
19
20 ***B. The Court made an Error of Law, Likely Based on Mistake of Fact, When it Granted***
21 ***the Ex Parte Motion to Amend Judgment***

22 NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake
23 (NRCP 60(b)(1) or because a judgment is void (NRCP 60(b)(4). Both of these provisions apply.

24 ***1. The Court made a mistake of law when it granted the Amended Judgment***

25 Because the Ex Parte Motion was ex parte, it was not served on Lewis or UAIC nor did
26 Lewis or UAIC have an opportunity to make the Court aware that the Judgment had already
27 expired on its own terms, and that Cheyenne's position that the deadline to renew the judgment
28

1 was tolled was inapt. The Ex Parte Motion did not advise the Court that the Judgment had
2 expired in 2014 and had not been properly renewed. Had the court been fully apprised of the
3 facts, it likely would not have granted the Ex Parte Motion. Since the Amended Judgment was
4 entered on March 28, 2018, and the Notice of Entry not filed until May 18, 2018, a motion to set
5 aside the amended judgment on the basis of mistake is timely as it is made within six months of
6 the entry of the judgment. Accordingly, this Motion is timely and this Court should rectify the
7 mistake and void the Amended Judgment in accordance with NRCP 60(b)(1).
8

9 2. *The Amended Judgment is void.*

10 As demonstrated above, the Judgment expired. It was not renewed. There is no legal or
11 equitable basis for the Court to revive it. The six-month deadline does not apply to requests for
12 relief from a judgment because the judgment is void. Therefore, the instant motion is timely.
13 The Amended Judgment is void and, pursuant to NRCP 60(b)(4) this Court should declare it void
14 and unenforceable.
15


16 IV.

17 CONCLUSION

18 Since the Judgment expired in 2014, the Amended Judgment should not have been
19 issued. It should be voided, and the Court should declare that the Judgment has expired.

20 DATED this 19th day of October, 2018.

21 ATKIN WINNER & SHERROD

22 
23 _____
24 Matthew Douglas, Esq.
25 Nevada Bar No. 11371
26 1117 S. Rancho Drive
27 Las Vegas, Nevada 89102
28 Attorneys for UAIC

CERTIFICATE OF SERVICE

I certify that on this 14th day of October, 2018, the foregoing **UAIC'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served on the following by
☒ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9
☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☒ mailing by depositing with the
U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid,
addressed as follows:

David Stephens, Esq.
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, NV 89130

Randall Tindall, Esq.
Carissa Christensen, Esq.
RESNICK & LOUIS, P.C.
8925 West Russell Road Suite 220
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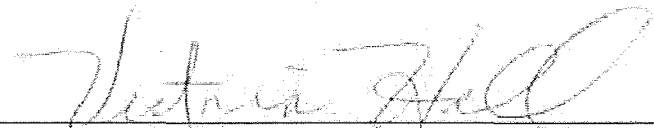

An employee of ATKIN WINNER & SHERROD

EXHIBIT “A”

FILED
 May 22 1 48 PM '09
E. Christensen
 CLERK OF THE COURT

1 **COM**
 2 THOMAS CHRISTENSEN, ESQ.
 3 Nevada Bar No. 2326
 4 DAVID F. SAMPSON, ESQ.
 5 Nevada Bar No. 6811
 6 CHRISTENSEN LAW OFFICES, LLC
 7 1000 S. Valley View Blvd.
 8 Las Vegas, Nevada 89107
 9 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

7 JAMES NALDER, Guardian Ad Litem for minor)
 8 Cheyanne Nalder, real party in interest, and)
 9 GARY LEWIS, Individually;)

9 Plaintiffs,)

10 vs.)

11 UNITED AUTOMOBILE INSURANCE CO,)
 12 DOES I through V, and ROE CORPORATIONS)
 13 I through V, inclusive)

13 Defendants.)

Case No.: A-09-590967-C
 Dept No.: II



COMPLAINT

16 COME NOW the Plaintiffs, James Nalder, Guardian Ad Litem for minor, Cheyanne
 17 Nalder, real party in interest in this matter, and Gary Lewis, by and through their attorneys of
 18 record, DAVID SAMPSON, ESQ., of the law firm of CHRISTENSEN LAW OFFICES, LLC,
 19 and for Plaintiffs' Complaint against the Defendants, and each of them, allege as follows:

20 1. That Plaintiff, James Nalder, Guardian Ad Litem for minor, Cheyanne Nalder real party
 21 in interest, was at all times relevant to this action a resident of the County of Clark, State of
 22 Nevada.

23

24



1 2. That Plaintiff, Gary Lewis, was at all times relevant to this action a resident of the
2 County of Clark, State of Nevada.

3 3. That Defendant, United Automobile Insurance Co. (hereinafter "UAI"), was at all times
4 relevant to this action an automobile insurance company duly authorized to act as an insurer in
5 the State of Nevada and doing business in Clark County, Nevada.

6 4. That the true names and capacities, whether individual, corporate, partnership, associate
7 or otherwise, of Defendants, DOES I through V and ROE CORPORATIONS I through V, are
8 unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs
9 are informed and believe and thereon allege that each of the Defendants designated herein as
10 DOE or ROE CORPORATION is responsible in some manner for the events and happenings
11 referred to and caused damages proximately to Plaintiffs as herein alleged, and that Plaintiffs
12 will ask leave of this Court to amend this Complaint to insert the true names and capacities of
13 DOES I through V and ROE CORPORATIONS I through V, when the same have been
14 ascertained, and to join such Defendants in this action.

15 5. That, at all times relevant hereto, Gary Lewis was the owner of a certain 1996 Chevy
16 Silverado with vehicle identification number 1GCEC19M6TE214944 (hereinafter "Plaintiff's
17 Vehicle").

18 6. That Gary Lewis had in effect on July 8, 2007, a policy of automobile insurance on the
19 Plaintiff's Vehicle with Defendant, UAI (the "Policy"); that the Policy provides certain
20 benefits to Cheyanne Nalder as specified in the Policy; and the Policy included liability
21 coverage in the amount of \$15,000.00/\$30,000.00 per occurrence (hereinafter the "Policy
22 Limits").
23
24

CHRISTENSEN
ATTORNEYS AT LAW
DENVER, CO

1 7. That Gary Lewis paid his monthly premium to UAI for the policy period of June 30,
2 2007 through July 31, 2007.

3 8. That on July 8, 2007 on Bartolo Rd in Clark County Nevada, Cheyanne Nalder was a
4 pedestrian in a residential area, Plaintiff's vehicle being operated by Gary Lewis when Gary
5 Lewis drove over top of Cheyanne Nalder causing serious personal injuries and damages to
6 Cheyanne Nalder.

7 9. That Cheyanne Nalder made a claim to UAI for damages under the terms of the Policy
8 due to her personal injuries.

9 10. That Cheyanne Nalder offered to settle his claim for personal injuries and damages
10 against Gary Lewis within the Policy Limits, and that Defendants, and each of them, refused to
11 settle the claim of Cheyanne Nalder against Gary Lewis within the Policy Limits and in fact
12 denied the claim all together indicating Gary Lewis did not have coverage at the time of the
13 accident.

14 11. That Plaintiff, Gary Lewis has duly performed all the conditions, provisions and terms
15 of the Policy relating to the loss sustained by Plaintiff, Cheyanne Nalder, and has furnished and
16 delivered to the Defendants, and each of them, full and complete particulars of said loss and
17 have fully complied with all of the provisions of the Policy relating to the giving of notice of
18 said loss, and have duly given all other notices required to be given by the Plaintiffs under the
19 terms of the Policy, including paying the monthly premium.

20 12. That Plaintiff, Cheyanne Nalder, is a third party beneficiary under the Policy as well as a
21 Judgment Creditor of Gary Lewis and is entitled to pursue action against the Defendants directly
22 under Hall v. Enterprise Leasing Co., West, 122 Nev. 685, 137 P.3d 1104, 1109 (2006), as well as
23 Denham v. Farmers Insurance Company, 213 Cal.App.3d 1061, 262 Cal.Rptr. 146 (1989).

24



1 13. That Cheyanne Nalder conveyed to UAI her willingness to settle her claim against Gary
2 Lewis at or within the policy limits of \$15,000.00 provided they were paid in a commercially
3 reasonable manner.

4 14. That Cheyanne Nalder and Gary Lewis cooperated with UAI in its investigation
5 including but not limited to providing a medical authorization to UAI on or about August 2,
6 2007.

7 15. That on or about August 6, 2007 UAI mailed to Plaintiff, Cheyanne Nalders' attorney,
8 Christensen Law Offices, a copy of "Renewal Policy Declaration Monthly Nevada Personal
9 Auto Policy" for Gary Lewis with a note that indicated "There was a gap in coverage".

10 16. That on or about October 10, 2007 UAI mailed to Plaintiff, Cheyanne Nalders'
11 attorney, Christensen Law Offices, a letter denying coverage.

12 17. That on or about October 23, 2007, Plaintiff, Cheyanne Nalder provided a copy of the
13 complaint filed against UAI's insured Gary Lewis.

14 18. That on or about November 1, 2007, UAI mailed to Plaintiff, Cheyanne Nalders'
15 attorney, Christensen Law Offices, another letter denying coverage.

16 19. That UAI denied coverage stating Gary Lewis had a "lapse in coverage" due to non-
17 payment of premium.

18 20. That UAI denied coverage for non-renewal.

19 21. That UAI mailed Gary Lewis a "renewal statement" on or about June 11, 2007 that
20 indicated UAI's intention to renew Gary Lewis' policy.

21 22. That upon receiving the "renewal statement", which indicated UAI's intention to renew
22 Gary Lewis' policy, Gary Lewis made his premium payment and procured insurance coverage
23 with UAI.

24



23. That UAI was required under the law to provide insurance coverage under the policy Gary Lewis had with UAI for the loss suffered by Cheyenne Nalder, and was under an obligation to defend Gary Lewis and to indemnify Gary Lewis up to and including the policy limit of \$15,000.00, and to settle Cheyenne's claim at or within the \$15,000.00 policy limit when given an opportunity to do so.

24. That UAI never advised Lewis that Nalder was willing to settle Nalder's claim against Lewis for the sum of \$15,000.00.

25. UAI did not timely evaluate the claim nor did it tender the policy limits.

26. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Nalder, was forced to seek the services of an attorney to pursue his rights under her claim against Lewis.

27. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Cheyenne Nalder, was forced to file a complaint on October 9, 2007 against Gary Lewis for her personal injuries and damages suffered in the July 8, 2007 automobile accident.

28. The filing of the complaint caused additional expense and aggravation to both Cheyenne Nalder and Gary Lewis.

29. Cheyenne Nalder procured a Judgment against Gary Lewis in the amount of \$3,500,000.00.

30. UAI refused to protect Gary Lewis and provide Gary Lewis with a legal defense to the lawsuit filed against Gary Lewis by Cheyenne Nalder.

31. That Defendants, and each of them, are in breach of contract by their actions which include, but are not limited to:

- 1 a. Unreasonable conduct in investigating the loss;
- 2 b. Unreasonable failure to provide coverage for the loss;
- 3 c. Unreasonable delay in making payment on the loss;
- 4 d. Failure to make a prompt, fair and equitable settlement for the loss;
- 5 e. Unreasonably compelling Plaintiffs to retain an attorney before making payment
- 6 on the loss.

7 32. As a proximate result of the aforementioned breach of contract, Plaintiffs have suffered
8 and will continue to suffer in the future, damages in the amount of \$3,500,000.00 plus
9 continuing interest.

10 33. As a further proximate result of the aforementioned breach of contract, Plaintiffs have
11 suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of
12 pocket expenses, all to their general damage in excess of \$10,000.00.

13 34. As a further proximate result of the breach of contract, Plaintiffs were compelled to
14 retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for
15 their attorney's fees reasonably and necessarily incurred in connection therewith.

16 35. That Defendants, and each of them, owed a duty of good faith and fair dealing implied
17 in every contract.

18 36. That Defendants, and each of them, were unreasonable by refusing to cover the true
19 value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits
20 when they had an opportunity to do so, and wrongfully denying coverage.

21 37. That as a proximate result of the aforementioned breach of the implied covenant of
22 good faith and fair dealing, Plaintiffs have suffered and will continue to suffer in the future,
23 damages in the amount of \$3,500,000.00 plus continuing interest.

24



1 38. That as a further proximate result of the aforementioned breach of the implied covenant
2 of good faith and fair dealing, Plaintiffs have suffered anxiety, worry, mental and emotional
3 distress, and other incidental damages and out of pocket expenses, all to their general damage
4 in excess of \$10,000.00.

5 39. That as a further proximate result of the aforementioned breach of the implied covenant
6 of good faith and fair dealing, Plaintiffs were compelled to retain legal counsel to prosecute this
7 claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and
8 necessarily incurred in connection therewith.

9 40. That Defendants, and each of them, acted unreasonably and with knowledge that there
10 was no reasonable basis for its conduct, in its actions which include but are not limited to:
11 wrongfully refusing to cover the value of the claim of Cheyanne Nalder, wrongfully failing to
12 settle within the Policy Limits when they had an opportunity to do so and wrongfully denying
13 the coverage.

14 41. That as a proximate result of the aforementioned bad faith, Plaintiffs have suffered and
15 will continue to suffer in the future, damages in the amount of \$3,500,000.00 plus continuing
16 interest.

17 42. That as a further proximate result of the aforementioned bad faith, Plaintiffs have
18 suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of
19 pocket expenses, all to their general damage in excess of \$10,000.00.

20 43. That as a further proximate result of the aforementioned bad faith, Plaintiffs were
21 compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are
22 liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

23

24

.7



1 44. That Defendants, and each of them, violated NRS 686A.310 by their actions, including
2 but not limited to: wrongfully refusing to cover the value of the claim of Cheyanne Nalder,
3 wrongfully failing to settle within the Policy Limits when they had an opportunity to do so and
4 wrongfully denying coverage.

5 45. That NRS 686A.310 requires that insurance carriers conducting business in Nevada
6 adopt and implement reasonable standards for the prompt investigation and processing of
7 claims arising under insurance policies, and requires that carriers effectuate the prompt, fair and
8 equitable settlements of claims in which liability of the insurer has become reasonably clear.

9 46. That UAI did not adopt and implement reasonable standards for the prompt
10 investigation and processing of claims arising under its insurance policies, and did not
11 effectuate the a prompt, fair and/or equitable settlement of Nalder's claim against Lewis in
12 which liability of the insurer was very clear, and which clarity was conveyed to UAI.

13 47. That NAC 686A.670 requires that an insurer complete an investigation of each claim
14 within 30 days of receiving notice of the claim, unless the investigation cannot be reasonably
15 completed within that time.

16 48. That UAI received notice of Nalder's claim against Lewis, at the very latest, on or
17 before August 6, 2007. That it was more than reasonable for UAI to complete its investigation of
18 Nalder's claim against Lewis well within 30 days of receiving notice of the claim.

19 49. That UAI did not offer the applicable policy limits.

20 50. That UAI did failed to investigate the claim at all and denied coverage.

21 51. That as a proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs
22 have suffered and will continue to suffer in the future, damages in the amount of \$3,500,000.00
23 plus continuing interest.

24



1 52. That as a further proximate result of the aforementioned violation of NRS 686A.310,
2 Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental
3 damages and out of pocket expenses, all to their general damage in excess of \$10,000.00.

4 53. That as a further proximate result of the aforementioned violation of NRS 686A.310,
5 Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and
6 each of them, are liable for their attorney's fees reasonably and necessarily incurred in
7 connection therewith.

8 54. That the Defendants, and each of them, have been fraudulent in that they have stated
9 that they would protect Gary Lewis in the event he was found liable in a claim. All of this
10 was done in conscious disregard of Plaintiffs' rights and therefore Plaintiffs are entitled to
11 punitive damages in an amount in excess of \$10,000.00.

12 WHEREFORE, Plaintiffs, pray for judgment against Defendants, and each of them, as
13 follows:

14 1. Payment for the excess verdict rendered against Lewis which remains unpaid in
15 an amount in excess of \$3,500,000.00;

16 2. General damages for mental and emotional distress and other incidental
17 damages in an amount in excess of \$10,000.00;

18 3. Attorney's fees and costs of suit incurred herein; and

19 4. Punitive damages in an amount in excess of \$10,000.00;

20
21 ///

22 ///

23 ///

24

1 5. For such other and further relief as this Court deems just and proper.

2
3 DATED this 17 day of April, 2009.

4 CHRISTENSEN LAW OFFICES, LLC.

5 By: 

6 Thomas Christensen, Esq.
7 David F. Sampson, Esq.
8 Nevada Bar No. 6811
9 1000 South Valley View Blvd
10 Las Vegas, Nevada 89107
11 Attorneys for Plaintiffs



EXHIBIT “B”

1 JUDGE

2 DAVID F. SAMPSON, ESQ.,

3 Nevada Bar #6811

4 THOMAS CHRISTENSEN, ESQ.,

5 Nevada Bar #2326

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,

10 JAMES NALDER As Guardian Ad

11 Litem for minor, CHEYENNE NALDER

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JAMES NALDER, individually)

13 and as Guardian ad Litem for)

14 CHEYENNE NALDER, a minor.)

15 Plaintiffs,)

16 vs.)

CASE NO: A549111

DEPT. NO: VI

17 GARY LEWIS, and DOES I)

18 through V, inclusive ROES I)

19 through V)

20 Defendants.)

21 **NOTICE OF ENTRY OF JUDGMENT**

22 PLEASE TAKE NOTICE that a Judgment against Defendant, GARY LEWIS, was
23 entered in the above-entitled matter on June 2, 2008. A copy of said Judgment is attached
24 hereto.

25 DATED this 5 day of June, 2008.

26 CHRISTENSEN LAW OFFICES, LLC

27 By: _____

DAVID F. SAMPSON, ESQ.

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorneys for Plaintiff

FILED

AUG 26 11 00 AM '08

CLERK OF DISTRICT COURT

CERTIFICATE OF SERVICE

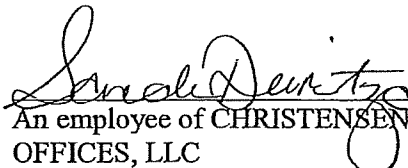
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW
OFFICES, LLC., and that on this 5th June day of ~~March~~, 2008, I served a copy of the
foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class
postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
number(s) shown below and in the confirmation sheet filed herewith. Consent to
service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
facsimile transmission is made in writing and sent to the sender via facsimile within
24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Gary Lewis
5049 Spencer St. #D
Las Vegas, NV 89119


An employee of CHRISTENSEN LAW
OFFICES, LLC

1 JMT

2 THOMAS CHRISTENSEN, ESQ.,

3 Nevada Bar #2326

4 DAVID F. SAMPSON, ESQ.,

5 Nevada Bar #6811

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,


CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JAMES NALDER,)

13 as Guardian ad Litem for)

14 CHEYENNE NALDER, a minor.)

15 Plaintiffs,)

16 vs.)

CASE NO: A549111

DEPT. NO: VI

17 GARY LEWIS, and DOES I)

18 through V, inclusive)

19 Defendants.)

20 JUDGMENT

21 In this action the Defendant, GARY LEWIS, having been regularly served with the
22 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
23 legal time for answering having expired, and no answer or demurrer having been filed, the
24 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
25 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
26 follows:

27 ...

28 ...

...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5
6 DATED THIS 2 day of ^{June}May, 2008.

7
8 
9 DISTRICT JUDGE

10
11
12 Submitted by:
13 CHRISTENSEN LAW OFFICES, LLC.

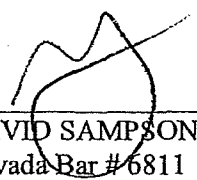
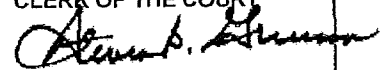
14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar #6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “C”



1 MTN
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & BYWATER
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

11
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DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendants.

07-A-549111
CASE NO.: ~~A549111~~
DEPT NO.: XXIX

EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF
CHEYENNE NALDER, INDIVIDUALLY

Date: N/A

Time: N/A

NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her name as she has now reached the age of majority. Judgment was entered in the name of the guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now moves this court to issue the judgment in her name alone (See Exhibit 2) so that she may pursue collection of the same. Cheyenne turned 18 on April 4, 2016. In addition, Defendant Gary Lewis, has been absent from the State of Nevada since at least February 2010.

/ / / /

1 Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of
2 \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

3 Dated this 19 day of March, 2018.

4 STEPHENS GOURLEY & BYWATER

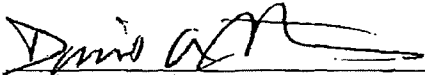
6
7 
8 David A. Stephens, Esq.
9 Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT “1”

APPX0145

1 JMT
2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326
4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,

Clark
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JAMES NALDER,)
10 as Guardian ad Litem for)
11 CHEYENNE NALDER, a minor.)
12 Plaintiffs,)

13 vs.)

CASE NO: A549111

DEPT. NO: VI

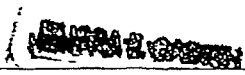
14 GARY LEWIS, and DOES I)
15 through V, inclusive)
16 Defendants.)

JUDGMENT

18
19 In this action the Defendant, GARY LEWIS, having been regularly served with the
20 Summons and having failed to appear and answer the Plaintiffs complaint filed herein, the
21 legal time for answering having expired, and no answer or demurrer having been filed, the
22 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
23 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
24 follows:
25
26 ...
27 ...
28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 DISTRICT JUDGE

10
11
12 Submitted by:
13 CHRISTENSEN LAW OFFICES, LLC.

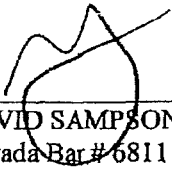
14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar # 6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “2”

1 **JMT**
2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbglawfirm.com
11 Attorney for Cheyenne Nalder

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11
12 CHEYENNE NALDER,
13 Plaintiff,

14 vs.

15 GARY LEWIS,
16 Defendant.

CASE NO: A549111
DEPT. NO: XXIX

17 **AMENDED JUDGMENT**

18
19 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
20 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
21 answering having expired, and no answer or demurrer having been filed, the Default of said
22 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
23 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:
24
25 ...
26 ...
27 ...
28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63
3 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
4 2007, until paid in full.
5

6 DATED this _____ day of March, 2018.
7
8
9

10 _____
District Judge
11

12 Submitted by:
STEPHENS GOURLEY & BYWATER
13

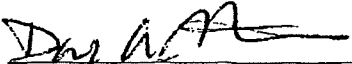
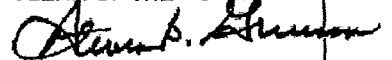
14 
DAVID A. STEPHENS, ESQ.
15 Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
16 3636 North Rancho Dr
17 Las Vegas, Nevada 89130
Attorneys for Plaintiff
18
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26
27
28

EXHIBIT “D”



1 **NOE**
David A. Stephens, Esq.
2 Nevada Bar No. 00902
Stephens & Bywater
3 3636 North Rancho Drive
Las Vegas, Nevada 89130
4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder
6

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.
14

Case No. 07A549111

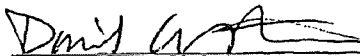
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26th day of March, 2018, the Honorable David
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

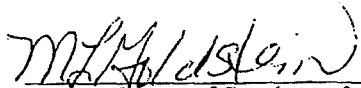
20 STEPHENS & BYWATER

21
22 
23 David A. Stephens, Esq.
Nevada Bar No. 00902
24 3636 North Rancho Drive
Las Vegas, Nevada 89130
25 Attorney for Brittany Wilson
26
27
28

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,
and that on the 15th day of May, 2018, I served a true copy of the foregoing **NOTICE OF
ENTRY OF AMENDED JUDGMENT**, by depositing the same in a sealed envelope upon
which first class postage was fully prepaid, and addressed as follows:

Gary Lewis
733 S. Minnesota Ave.
Glendora, California 91740


An employee of Stephens & Bywater

Steven D. Grierson

JMT
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
3636 North Rancho Dr
Las Vegas, Nevada 89130
Attorneys for Plaintiff
T: (702) 656-2355
F: (702) 656-2776
E: dstephens@sbgllawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS,
Defendant.

07A549111
CASE NO: ~~A549111~~
DEPT. NO: XXIX

AMENDED JUDGMENT

In this action the Defendant, Gary Lewis, having been regularly served with the Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for answering having expired, and no answer or demurrer having been filed, the Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:

...

...

...

...

1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

19 AMENDED JUDGMENT

20 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
21 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
22 answering having expired, and no answer or demurrer having been filed, the Default of said
23 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
24 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:

25 ...

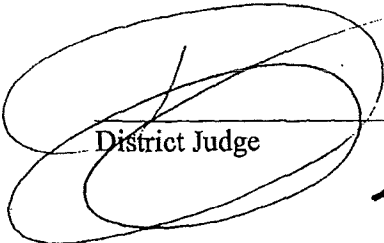
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27 ...

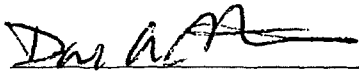
28 ...

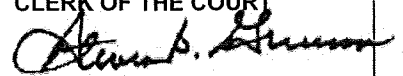
1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *mc*
2 ~~\$3,500,000.00~~ **\$ 3,434,444.63**
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
5 2007, until paid in full.

6 DATED this 26 day of March, 2018.

7
8
9
10 
11 District Judge *me*

12 Submitted by:
13 STEPHENS GOURLEY & BYWATER

14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
21
22
23
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25
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27
28



MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYANNE NALDER,
Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,
Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,
Intervenor.

CASE NO.: A-18-772220-C
DEPT. NO.: XXIX

**UAIC'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT & MOTION
FOR COURT TO DENY STIPULATION
TO ENTER JUDGMENT BETWEEN
PLAINTIFF AND LEWIS AND/OR, IN
THE ALTERNATIVE TO STAY SAME
PENDING HEARING ON MOTION TO
DISMISS**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Motion to Dismiss Plaintiff's Complaint in its entirety and Motion for Court to Deny Entry of Stipulation to Enter Judgment as between Plaintiff and Lewis and/or, in the alternative, to Stay same pending hearing on the instant Motion. Plaintiff's personal injury claims have been previously litigated, and judgment entered. Plaintiff's request for a second amended judgment should be dismissed because the original judgment expired in 2014, was not properly renewed, and cannot be revived via an amended judgment more than four years after it expired. Moreover, Plaintiff and Lewis' collusive attempt to enter a stipulated judgment should be denied or, alternatively, stayed, pending resolution of this Motion as UAIC has standing to oppose this Complaint and stipulation as intervenor.

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3 This Motion is made and based upon the papers and pleadings on file herein, the
4 Memorandum of Points and Authorities attached hereto, and such oral argument as the Court
5 may permit.

6 DATED this 19th day of October, 2018.

7 ATKIN WINNER & SHERROD

8
9
10 Matthew J. Douglas
11 Nevada Bar No. 11371
12 1117 South Rancho Drive
13 Las Vegas, Nevada 89102
14 Attorneys for Intervenor UAIC

15 NOTICE OF MOTION

16 TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:
17 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring
18 the foregoing Motion to Dismiss and Motion to Deny Stipulated Judgment and/or, stay same
19 stipulated judgment, for hearing before the above-entitled Court Department 29 on the 12 day
20 of December, 2018, at the hour of 9:00 a. m. in the forenoon of said date, or as soon
21 thereafter as counsel can be heard.

22 DATED this 19th day of October, 2018.

23 ATKIN WINNER & SHERROD

24
25 Matthew Douglas, Esq.
26 Nevada Bar No. 11371
27 117 South Rancho Drive
28 Las Vegas, Nevada 89102
Attorneys for Intervenor UAIC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS

I.

INTRODUCTION

Cheyenne Nalder, ("Cheyenne") alleges in her Complaint that she was injured in an accident in 2007. Cheyenne was 11 years old at the time. She did not wait until she reached the age of majority to pursue her claim for damages against the alleged at-fault driver, Gary Lewis ("Lewis"). Guardian ad litem, James Nalder, was appointed to pursue her claim. He did so, filing a complaint on her behalf and obtaining a Judgment for \$3.5 million. Nalder filed suit against UAIC (as Lewis' insurer), eventually obtained an assignment from Lewis and ultimately received Lewis' \$15,000 auto policy limit on the Judgment. That case remains on Appeal before the United States Court of Appeals for the Ninth Circuit and, the Nevada Supreme Court on a certified question of law wherein the viability of said expired judgment is before those courts. It is unknown what efforts James Nalder made to enforce the Judgment prior to this action, if any. What is known is that he did not renew the Judgment before it expired in 2014 while Cheyenne was still a minor.

Despite the fact that Lewis' liability for any injuries Cheyenne may have sustained in the 2007 accident have already been adjudicated and judgment entered, Cheyenne now re-asserts those claims in the instant Complaint. Those claims are subject to dismissal pursuant to the doctrine of claim preclusion.

Cheyenne also seeks a second amended judgment from the Court. Seeking an amended judgment is not a cause of action; rather; it is a motion. Cheyenne's request for a second amended judgment should be dismissed and she should be directed to file a motion.

Finally, Cheyenne seeks a declaration from the court that the statute of limitations to enforce an Amended Judgment (and the second amended judgment she seeks in her Complaint)

1 was tolled because she was a minor and Lewis resides in California. Declaratory Relief is not
2 appropriate in this matter because there is no justiciable controversy and the issues upon which
3 Cheyenne requests declaratory relief are unripe. In addition, since the Amended Judgment should
4 not have been issued. The original judgment expired in 2014 and was not subject to revival, there
5 is nothing for Cheyenne to enforce.
6

7 In summary, the court should dismiss the Complaint as there are no facts under which
8 Cheyenne is entitled to relief. UAIC has intervened as the insurer for Lewis, per a 2013 Federal
9 Court order finding an implied policy of insurance existed between Lewis and UAIC for the
10 above-noted loss and, as it appears Lewis is attempting to collude with Plaintiff in this action,
11 UAIC has an interest to protect.
12

13 Moreover, as this Court can plainly see, in a collusive attempt to try and prevent UAIC
14 from contesting this action, Plaintiff and Lewis filed, on September 13, 2018, a stipulation to
15 enter judgment. *See* Exhibit "F." UAIC had previously filed its Motion to Intervene in this cause
16 nearly a month prior, on August 16, 2018, and, thus, this sham stipulation was obviously filed in
17 attempt to pre-empt UAIC's Motion to dismiss this action by filing same before UAIC
18 intervention had been granted. The court should see through this sham and deny the stipulation
19 or, in the alternative, stay same pending resolution of this Motion and other issues as UAIC has
20 standing and, an interest, as Lewis insurer, to contest this matter.
21

22 II.

23 STATEMENT OF FACTS

24 This case involves a July 8, 2007 accident, Cheyenne Nalder, ("Cheyenne") who was
25 then a minor, alleged injuries. On October 9, 2007, Cheyenne's guardian ad litem, James Nalder,
26 filed a Complaint against Gary Lewis ("Lewis"). See Complaint attached hereto as Exhibit "A."
27

28 UAIC, the putative insurer for Lewis, initially denied coverage due to a lapse in

1 coverage¹. Lewis did not respond to the Complaint and a default was taken against him. *Id.* On
2 June 3, 2008, a judgment was entered against him in the amount of \$3.5 million with a Notice of
3 Entry filed August 26, 2018.² See Judgment attached hereto as Exhibit "B." James Nalder as
4 guardian ad litem for Cheyenne was the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a
5 judgment expires in six (6) years, unless it is timely renewed. As such, the Judgment expired on
6 June 3, 2014 as no timely renewal was filed.
7

8 On March 22, 2018 nearly 10 years after the Judgment was entered, and nearly four (4)
9 years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of
10 Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-
11 07-54911-C, which is also assigned to this Court. See Exhibit "C." Her Motion did not advise the
12 Court that the Judgment she sought to amend had expired. *Id.* The Court granted Cheyenne's Ex
13 Parte Motion and issued an Amended Judgment on March 28, 2018. See Exhibit "D."
14 Contemporaneous with the filing of the instant motion, UAIC will be moving, in the original
15 case, Case No. A-07-549111-C, for Motion for Relief from Judgment, detailing the reasons the
16 Court should void the Amended Judgment.
17

18 On April 3, 2018, one day before the statute of limitations ran for Cheyenne to file a
19 personal injury claim (but ten years after she already obtained a judgment), she filed a Complaint
20 alleging identical injuries from the same accident. See Exhibit "A," the 2007 Complaint, and the
21 2018 Complaint, attached as Exhibit "E." In the 2018 Complaint, she does not explain why she
22 believes she is entitled to damages for the same injuries for which she received a judgment in
23
24

25 ¹ Later, during the subsequent action against UAIC (which remains on appeal in the Ninth Circuit
26 for the U.S. Court of Appeals and, currently, on a 2nd certified question to the Nevada Supreme Court)
27 the Court found an ambiguity in the renewal statement for Lewis' policy and, accordingly, *implied* a
28 policy of insurance for Lewis' \$15,000 policy limits in December 2013. Importantly, the Ninth Circuit
has affirmed there was no "bad faith" on the part of UAIC. Regardless, per the orders of the Federal
District Court and Ninth Circuit, UAIC has now been found to be Lewis' insurer, under this implied
policy.

² Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(c).

1 2008. *See* Exhibit “E.” However, the 2018 Complaint does acknowledge that she already
2 received a judgment against Lewis. *Id.* At p.3,11.10-11.

3 Finally, the 2018 Complaint seeks an amended judgment to add interest to the 2008
4 judgment, and declaratory relief that the statute of limitations to enforce the judgment was tolled
5 because she was a minor and Lewis was a resident of California.

6 As the judgment had expired and an Amended Judgment could not be issued to revive it
7 and this action is improper. UAIC brings the instant Motion to dismiss, as it has now been found
8 to be the insurer of Lewis under an implied policy and, thus, has an interest in this matter, and
9 seeks to avoid the Amended Judgment and declare that the original Judgment has expired.

10 III.

11 MOTION TO DISMISS STANDARD

12 A party is entitled to dismissal when a plaintiff fails “to state a claim up which relief can
13 be granted.” NRCP 12(b)(5). The Nevada Supreme Court has Declared that the dismissal of a
14 complaint is appropriate where “it appears beyond a doubt that [the plaintiff] could prove no set
15 of facts which, if true, would entitle [the plaintiff] to relief *Bra Stew, LLC v. City of N. Las*
16 *Vegas*, 124 Nev. 224, 228, 181 P. 3d 670,672 (2008).

17 In evaluating a motion to dismiss, courts primarily focus on the allegations in the
18 complaint. *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev Adv. Op.
19 76,357 P 3d at 930 (2015) “the court is not limited to the four corners of the complaint.” Citing
20 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure: Civil § 1357, at 376 (3d
21 ed. 2004). The *Baxter* Court also held that courts “may also consider unattached evidence on
22 which the complaint necessarily relies if (1) the complaint refers to the document; (2) the
23 document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the
24 document.” *Id.*, citing *United States v. Corinthian Colleges* 655 F. 3d 984, 999 (9th Cir. 2011)
25 (internal quotation omitted). The *Baxter* Court continued “while presentation of matters outside
26
27
28

1 the pleadings will convert the motion to dismiss to a motion for summary judgment,
2 Fed.R.Civ.P. 12(d); NRCP 12 (b), such conversion is not triggered by a court's consideration of
3 matters incorporated by reference or integral to the claim," *Id.* Citing 5B Wright & Miller, *supra*,
4 §1357, at 376.

5 While Intervenor's Motion to Dismiss does rely on certain documents which were not
6 attached to the Complaint, those documents are either incorporated by reference (the Judgment
7 and Amended Judgment) or integral to the claim (the Complaint in the 2007 case). Therefore,
8 this Court should consider this matter a motion to dismiss and not convert it to a motion for
9 summary judgment. As discussed below, there is no doubt that there are no facts pursuant to
10 which Cheyenne is entitled to the relief her 2018 Complaint seeks.

11 IV.

12 ARGUMENT

13 A. *The Doctrine of Claim Preclusion Mandates Dismissal of Plaintiff's Claims Related to* 14 *the July 8, 2007 Accident*

15 The October 9, 2007 Complaint filed by Cheyenne's guardian ad litem, James Nalder,
16 alleged personal injuries caused by the July 8, 2007 accident. See Complaint attached hereto as
17 Exhibit "A." When Lewis did not respond to that Complaint, a Default was entered against him.
18 On June 3, 2008, a Judgment in the amount of \$3.5 million was entered against Lewis. *See*
19 Judgment, attached hereto as Exhibit "B." Plaintiff acknowledged this in Paragraph 10 of her
20 2018 Complaint. Because the personal injury claims in the 2018 Complaint have already been
21 litigated, it should be dismissed.

22 Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In
23 2008, the Nevada Supreme Court set forth a three-part test to be applied to determine when claim
24 preclusion applies. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713
25 (2008), holding modified by *Weddell v Sharp* 151 Nev. Adv. Op.28, 3520 P.3d 80 (2015)(the
26
27
28

1 modification is not applicable to this case); (2) the final judgment is valid; and (3) the new action
2 is based on the same claims that were or could have been brought in the first action. Cheyenne's
3 claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for
4 dismissal under the doctrine of claim preclusion.

5 First, the parties are the same. The only difference between the 2007 suit and the 2018
6 suits is that Cheyenne is now an adult, so her claims need not be litigated via a guardian ad litem.

7 Second, the final judgment is valid. There is no question that the Judgment issued in 2008
8 was valid until it expired in 2014. It could have been renewed, and if so, would have still been
9 valid today. However, it was not renewed. Cheyenne's (or rather her guardian ad litem's) failure
10 to fully execute on the Judgment while it was valid does not open the door for her to re-litigate
11 her claims.
12

13 Third, the same claims are involved in both actions. A review of the 2008 Complaint and
14 the 2018 Complaint reveal that the personal injury claims are identical.
15

16 As the *Five Star* Court noted, public policy support claims preclusion in situations such
17 as this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a),
18 noting that "the purposes of claim preclusion are 'based largely on the ground that fairness to the
19 defendant, and sound judicial administration require that at some point litigation over the
20 particular controversy come an end; and that such reasoning may apply even though the
21 substantive issues have not been tried ... *Id.* At 1058, 194 P.3d at 715, These policy reasons are
22 applicable here. Lewis and UAIC are entitled to finality. A Judgment was already entered against
23 Lewis. Renewing the Judgment was not Lewis' responsibility-that was the responsibility of
24 Cheyenne's guardian ad litem, James Nalder. Lewis should not be exposed to judgment being
25 entered against him a second time due to Nalder's failure to act.
26

27 Cheyenne's personal injury claims are the very type to which claims preclusion applies.
28 The public policy considerations supporting claims preclusion cited with approval the court in

1 *Five Star* apply to this action. The claims for personal injuries alleged in the Complaint should
2 be dismissed.

3 ***B. Plaintiff's Request for A Second Amended Judgment Should Be Dismissed Because it is***
4 ***not a Cause of Action***

5 Regarding Cheyenne's request that the Court enter another amended judgment, adding
6 interest accrued through April 3, 2018, it is unclear why this was included in a Complaint.
7 Seeking to amend judgment is not a cause of action. Cheyenne has demonstrated that she knows
8 how to properly petition the Court to amend a judgment, as she has already done so once. This
9 claim is inappropriately included in the Complaint, and should be dismissed.

10 ***C. Cheyenne's Request for Declaratory Relief Should Be Dismissed.***

11 Cheyenne does not ask for relief relative to enforcing an amended judgment, which is a
12 cause of action. Rather, she asks the Court to declare that the statute of limitations on her original
13 judgment was tolled because she was a minor and because the judgment debtor lived in another
14 State: California. Presumably, Plaintiff means the statute of limitations to enforce the judgment,
15 but that is not clear.

16 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons
17 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in
18 the controversy, and (3) the issue is ripe for judicial determination." *City. Of Clark, ex rel. Univ.*
19 *Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d, 764, 756 (1998), citing *Knittle v.*
20 *Progressive Casualty Ins. Co.*, 112 Nev. 8,10,908 P. 2d,724,725 (1996). Here, declaratory relief
21 is not available because the issue as to whether the Amended Judgment or any future amended
22 judgment is enforceable, or whether the statute of limitations has expired, is not ripe.

23 The conditions under where a justiciable controversy exists were addressed by the Nevada
24 Supreme Court in *Kress v Corey*, 65 Nev. 1, 189 P,2d 352 (1948), where the Court noted a
25 justiciable controversy does not exist, where damage "... is merely apprehended or feared..." *Id.*

1 At 28-29, 189 P.2d at 366. As the Court in *Doe v Bryan*, 102 Nev.523.728 P.2d 433 (1986)
2 noted, “the requirement of an actual controversy has been construed as requiring a concrete
3 dispute admitting of an immediate and definite determination of the parties’ rights.” *Id.* At 526,
4 728 P.2d at 444. Cheyenne’s concern that any effort to enforce the Amended Judgment will be
5 thwarted by a determination that the applicable statute of limitations bars such action is
6 “apprehended or feared” but not existing presently, because she has not taken any action to
7 enforce the Amended Judgment.
8

9 Likewise, there is no “concrete dispute” that the statute of limitations would bar an attempt
10 by Cheyenne to collect on the Amended Judgment because she has not tried. Unless and until
11 Cheyenne actually tried to enforce the Amended Judgment, there is no ‘immediate’ need for a
12 “definite” determination of the parties’ rights. Therefore, there is no justiciable controversy
13 regarding Cheyenne’s ability to seek to enforce the Amended Judgment at this time.
14

15 “Ripeness focuses on the timing of the action rather than on the party bringing the
16 action... The factors to be weighed in deciding whether a case is ripe for judicial review include:
17 (1) the hardship of the parties of withholding judicial review, and (2) the suitability of the issues
18 for review.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1244, 1230-31
19 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003).
20 In the unpublished decision in *Cassady v. Main*, 2016 WL412835, a copy of which is attached
21 hereto as Exhibit “E.” the Nevada Supreme Court noted that the plaintiff in that case would
22 suffer no harm if declaratory relief were not considered, because he could file a complaint
23 seeking direct redress for complaints. *Id.* At *2. Similarly here, Cheyenne could seek to have a
24 court address her statute of limitations concerns in an action to execute on the Amended
25 Judgment. There is no need for such a determination at this time.
26

27 Regardless as to whether Cheyenne’s request for declaratory relief is appropriate at this
28 juncture, Cheyenne’s request for declaratory relief should be dismissed because there is no valid

1 judgment to enforce. The original Judgment issued on June 3, 2008 expired on June 3, 2014. No
2 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an
3 Amended Judgment, entered on March 28, 2018. As demonstrated in Intervenor's Motion for
4 Relief From Judgment Pursuant to NRCP 60, the Court should not have entered and Amended
5 Judgment, and no other amended judgments should be entered. Nevada law does not permit
6 renewal of expired judgments by amendment.
7

8 Nor is the deadline to file the appropriate documents to renew a judgment tolled by any
9 statute or rule. The time limit to renew the Judgment was not tolled by Cheyenne's minority
10 because her guardian ad litem, and adult, was the judgment creditor. The time limit to renew the
11 Judgment was not tolled by the judgment creditor's absence from the state because the
12 requirement that a judgment be renewed is not a cause of action to which such tolling provisions
13 might apply. Because no valid judgment exists, Cheyenne's request for declaratory relief
14 regarding the tolling of the time to enforce a judgment should be dismissed as a matter of law.
15

16
17 V.

18 **MOTION TO DENY THE STIPULATION TO ENTER JUDGMENT AND OR, IN THE**
19 **ALTERNATIVE, TO STAY SAME**

20
21 As this Court knows, an Intervenor is allowed to come in and contest a matter where it
22 has interest to protect. Here, UAIC, as the insurer for Lewis, has an interest in preventing a new
23 judgment from being entered against him and/or having declarations made about the validity of
24 an expired judgment which is currently on appeal before the Ninth Circuit and the Nevada
25 Supreme Court on a second certified question. *See* UAIC's Motion to Intervene herein, with
26 attached exhibits, Exhibit "G." Despite filing its Motion to Intervene on August 16, 2018,
27 Plaintiff and Lewis attempted to enter a collusive and sham "stipulation to enter judgment, which
28 they filed on September 13, 2018. *See* Exhibits "F" and "G." This clear attempt to pre-empt

1 UAIC's right to contest this action should be denied or, alternatively, stayed.

2 NRCP 24(a)(2) provides for the intervention of right under the following circumstances:

3 Upon timely application anyone shall be permitted to intervene an action: . . . (2)
4 when the applicant claims an interest relating to the property or transaction which
5 is the subject of the action and he is so situated that the disposition of the action
6 may as a practical matter impair or impede his ability to protect that interest,
7 unless the applicant's interest is adequately represented by existing parties.

8 Once a party intervenes, said party is afforded all the rights of a party to the
9 action. *Las Vegas Police Protective Ass'n Metro, Inc. v Eight Jud. Dist. Court*, 122 Nev.
10 230, 130 P.2d 182 (2006).

11 UAIC has been granted intervention. Moreover, it is clear UAIC has an interest to
12 protect and has all the rights afforded to it of any party – including the right to contest
13 any judgment on the action. Accordingly, UAIC has the right to contest this action with
14 the present Motion to dismiss. As such, Plaintiff and Lewis sham attempt to try and
15 quickly enter a “stipulated judgment” prior to UAIC's intervention should be seen for
16 what it is – a ruse intended to deny UAIC the right to contest this action. Accordingly, as
17 UAIC filed its Motion to intervene prior to this attempted “stipulated judgment”, UAIC
18 prays this court deny same stipulation or, alternatively, stay same pending resolution.

19 VI.

20 UAIC also asks this Court to consider, based on all of the above, that there has been
21 an attempt at a fraud upon the Court and hold an evidentiary hearing on this issue.

22 UAIC argues that the circumstances set forth in this matter show clear conflict of interest
23 and attempts at perpetrating a fraud upon the court by Plaintiff. Plaintiff is represented by Mr.
24 Christensen. Mr. Christensen also purports to be counsel for Lewis and has informed UAIC's
25 first retained counsel for Lewis that he may not appear and attempt to defend this action. Indeed,
26 Breen Arntz, Esq. has stated to retained defense counsel and, this office, that Mr. Christensen
27 retained him to defend Lewis. Now, after learning of all of this and trying to intervene to protect
28

1 Lewis and, its own interests, UAIC was told by Plaintiff it cannot intervene. So, per Plaintiff,
2 UAIC's retained defense counsel cannot defend this case and – *UAIC cannot either*. Then, while
3 UAIC's Motion to intervene is pending, new counsel for Nalder and Mr. Arntz for Lewis attempt
4 to file a stipulation for judgment to try and quickly avoid any attempt to contest this sham action.
5 This is clearly an attempt at a fraud upon the court solely to benefit Plaintiff and her counsel —
6 and same should not be tolerated.³

8 In *NC-DSH, Inc. v Garner*, 125 Nev. 647 (2009) the Nevada Supreme Court set forth the
9 definition of a fraud upon the Court in considering motion for relief from judgment under NRC
10 60. In *NC-DSH, Inc.* the lawyer for a plaintiff's malpractice case forged settlement documents
11 and disappeared with the settlement funds. *Id.* In allowing the Plaintiff's Rule 60 motion to set
12 aside the dismissal (and settlement) the Court set forth the following definition for such a fraud,
13 as follows:

15 “The most widely accepted definition, which we adopt, holds that the concept
16 embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of
17 the court itself, or is a fraud perpetrated by officers of the court so that the judicial
18 machinery cannot perform in the usual manner its impartial task of adjudging cases ...
19 and relief should be denied in the absence of such conduct.

18 *Id.* at 654.

19 In the case at bar it seems clear that Plaintiff's counsel (Mr. Christensen) is attempting
20 just such a fraud. That is, besides the original judgment being expired and, the effect of its
21 expiration on appeal before both the Nevada Supreme Court and the U.S. Court of Appeals for
22 the Ninth Circuit, Plaintiff still attempted this ‘amendment of judgment’ and, then, filed this new
23 action. Moreover, Mr. Christensen (Plaintiff's additional Counsel) represents **both the**
24 **Plaintiff/judgment-creditor and Defendant/judgment-debtor**. Further, in his role as counsel
25 for Plaintiff and Defendant, Mr. Christensen is attempting, as an officer of the court, to prevent
26 UAIC from exercising its contractual and legal duty to defend Mr. Lewis and defend this farce of
27
28

³ Indeed, perhaps this should be reported to the State bar.

1 lawsuit by telling UAIC's first retained counsel to not to appear or file anything to defend Lewis.
2 Additionally, Plaintiff has sought to deny UAIC a chance to intervene and, now, MR. Artzn is
3 retained for Lewis and he and Plaintiff file a "stipulation for judgment." UAIC pleads this clearly
4 **a fraud perpetrated by officers of the court so that the judicial machinery cannot perform**
5 **in the usual manner its impartial task of adjudging cases.** In other words, Mr. Christensen,
6 Counsel for Plaintiff, is seeking on the one hand to enforce an invalid judgment and, with the
7 other, prevent anyone from contesting it – **by representing both sides. This is the definition of**
8 **a conflict of interest.** After all, Plaintiff's is attempting to improperly "fix" an expired multi-
9 million judgment, while at the same time Counsel for Plaintiff is also claiming to represent the
10 judgment-debtor (Lewis) and arising retained counsel not to vacate the amended judgment or
11 contest this action. How could this possibly benefit Mr. Lewis? Is having a multi-million dollar
12 judgment against him which had expired be resurrected by an improper amendment of the
13 judgment to his benefit? Is preventing anyone from vacating or setting aside this improper
14 amended judgment to his benefit? In short, it does not – **it only benefits Plaintiff and her**
15 **counsel.** UAIC argues this is clear fraud and collusive conduct and, at the very least, the Court
16 should therefore exercise its equitable power and allow UAIC's intervention and, thereafter, hold
17 an evidentiary hearing on this fraud.
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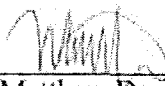
VII.

CONCLUSION

In her 2018 Complaint, Plaintiff sets forth no facts which, if true, would entitle her to the relief she seeks. Her Complaint should be dismissed in its entirety. Additionally, UAIC seeks an order denying Plaintiff and Lewis' "stipulation for entry of judgment" and/or, alternatively, staying same.

DATED this 19th day of October, 2018.

ATKIN WINNER & SHERROD


Matthew Douglas, Esq.
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for UAIC

CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2018, the foregoing UAIC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT & MOTION FOR COURT TO DENY STIPULATION TO ENTER JUDGMENT BETWEEN PLAINTIFF AND LEWIS AND/OR, IN THE ALTERNATIVE TO STAY SAME PENDING HEARING ON MOTION TO DISMISS was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☒ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

David Stephens, Esq.
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, NV 89130

Randall Tindall, Esq.
Carissa Christensen, Esq.
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8925 West Russell Road Suite 220
Las Vegas, NV 89148

E. Breen Arntz, Esq.
5545 S. Mountain Vista Street, Suite F
Las Vegas, NV 89120



An employee of ATKIN WINNER & SHERROD

EXHIBIT “A”

1 COM
 2 THOMAS CHRISTENSEN, ESQ.
 3 Nevada Bar No. 2326
 4 DAVID F. SAMPSON, ESQ.
 5 Nevada Bar No. 6811
 6 CHRISTENSEN LAW OFFICES, LLC
 7 1000 S. Valley View Blvd.
 8 Las Vegas, Nevada 89107
 9 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

7 JAMES NALDER, Guardian Ad Litem for minor)
 8 Cheyanne Nalder, real party in interest, and)
 9 GARY LEWIS, Individually;)
 10 Plaintiffs,)

10 vs.)

11 UNITED AUTOMOBILE INSURANCE CO,)
 12 DOES I through V, and ROE CORPORATIONS)
 13 I through V, inclusive)
 14 Defendants.)

Case No.:
 Dept No:

FILED
 May 22 1 48 PM '09
E. J. Smith
 CLERK OF THE COURT

Case No.: A-09-590967-C
 Dept No.: II



COMPLAINT

16 COME NOW the Plaintiffs, James Nalder, Guardian Ad Litem for minor, Cheyanne
 17 Nalder, real party in interest in this matter, and Gary Lewis, by and through their attorneys of
 18 record, DAVID SAMPSON, ESQ., of the law firm of CHRISTENSEN LAW OFFICES, LLC,
 19 and for Plaintiffs' Complaint against the Defendants, and each of them, allege as follows:

20 1. That Plaintiff, James Nalder, Guardian Ad Litem for minor, Cheyanne Nalder real party
 21 in interest, was at all times relevant to this action a resident of the County of Clark, State of
 22 Nevada.
 23
 24

1 2. That Plaintiff, Gary Lewis, was at all times relevant to this action a resident of the
2 County of Clark, State of Nevada.

3 3. That Defendant, United Automobile Insurance Co. (hereinafter "UAI"), was at all times
4 relevant to this action an automobile insurance company duly authorized to act as an insurer in
5 the State of Nevada and doing business in Clark County, Nevada.

6 4. That the true names and capacities, whether individual, corporate, partnership, associate
7 or otherwise, of Defendants, DOES I through V and ROE CORPORATIONS I through V, are
8 unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs
9 are informed and believe and thereon allege that each of the Defendants designated herein as
10 DOE or ROE CORPORATION is responsible in some manner for the events and happenings
11 referred to and caused damages proximately to Plaintiffs as herein alleged, and that Plaintiffs
12 will ask leave of this Court to amend this Complaint to insert the true names and capacities of
13 DOES I through V and ROE CORPORATIONS I through V, when the same have been
14 ascertained, and to join such Defendants in this action.

15 5. That, at all times relevant hereto, Gary Lewis was the owner of a certain 1996 Chevy
16 Silverado with vehicle identification number 1GCEC19M6TE214944 (hereinafter "Plaintiff's
17 Vehicle").

18 6. That Gary Lewis had in effect on July 8, 2007, a policy of automobile insurance on the
19 Plaintiff's Vehicle with Defendant, UAI (the "Policy"); that the Policy provides certain
20 benefits to Cheyanne Nalder as specified in the Policy; and the Policy included liability
21 coverage in the amount of \$15,000.00/\$30,000.00 per occurrence (hereinafter the "Policy
22 Limits").

23

24



1 7. That Gary Lewis paid his monthly premium to UAI for the policy period of June 30,
2 2007 through July 31, 2007.

3 8. That on July 8, 2007 on Bartolo Rd in Clark County Nevada, Cheyanne Nalder was a
4 pedestrian in a residential area, Plaintiff's vehicle being operated by Gary Lewis when Gary
5 Lewis drove over top of Cheyanne Nalder causing serious personal injuries and damages to
6 Cheyanne Nalder.

7 9. That Cheyanne Nalder made a claim to UAI for damages under the terms of the Policy
8 due to her personal injuries.

9 10. That Cheyanne Nalder offered to settle his claim for personal injuries and damages
10 against Gary Lewis within the Policy Limits, and that Defendants, and each of them, refused to
11 settle the claim of Cheyanne Nalder against Gary Lewis within the Policy Limits and in fact
12 denied the claim all together indicating Gary Lewis did not have coverage at the time of the
13 accident.

14 11. That Plaintiff, Gary Lewis has duly performed all the conditions, provisions and terms
15 of the Policy relating to the loss sustained by Plaintiff, Cheyanne Nalder, and has furnished and
16 delivered to the Defendants, and each of them, full and complete particulars of said loss and
17 have fully complied with all of the provisions of the Policy relating to the giving of notice of
18 said loss, and have duly given all other notices required to be given by the Plaintiffs under the
19 terms of the Policy, including paying the monthly premium.

20 12. That Plaintiff, Cheyanne Nalder, is a third party beneficiary under the Policy as well as a
21 Judgment Creditor of Gary Lewis and is entitled to pursue action against the Defendants directly
22 under Hall v. Enterprise Leasing Co., West, 122 Nev. 685, 137 P.3d 1104, 1109 (2006), as well as
23 Denham v. Farmers Insurance Company, 213 Cal.App.3d 1061, 262 Cal.Rptr. 146 (1989).

24



1 13. That Cheyanne Nalder conveyed to UAI her willingness to settle her claim against Gary
2 Lewis at or within the policy limits of \$15,000.00 provided they were paid in a commercially
3 reasonable manner.

4 14. That Cheyanne Nalder and Gary Lewis cooperated with UAI in its investigation
5 including but not limited to providing a medical authorization to UAI on or about August 2,
6 2007.

7 15. That on or about August 6, 2007 UAI mailed to Plaintiff, Cheyanne Nalders' attorney,
8 Christensen Law Offices, a copy of "Renewal Policy Declaration Monthly Nevada Personal
9 Auto Policy" for Gary Lewis with a note that indicated "There was a gap in coverage".

10 16. That on or about October 10, 2007 UAI mailed to Plaintiff, Cheyanne Nalders'
11 attorney, Christensen Law Offices, a letter denying coverage.

12 17. That on or about October 23, 2007, Plaintiff, Cheyanne Nalder provided a copy of the
13 complaint filed against UAI's insured Gary Lewis.

14 18. That on or about November 1, 2007, UAI mailed to Plaintiff, Cheyanne Nalders'
15 attorney, Christensen Law Offices, another letter denying coverage.

16 19. That UAI denied coverage stating Gary Lewis had a "lapse in coverage" due to non-
17 payment of premium.

18 20. That UAI denied coverage for non-renewal.

19 21. That UAI mailed Gary Lewis a "renewal statement" on or about June 11, 2007 that
20 indicated UAI's intention to renew Gary Lewis' policy.

21 22. That upon receiving the "renewal statement", which indicated UAI's intention to renew
22 Gary Lewis' policy, Gary Lewis made his premium payment and procured insurance coverage
23 with UAI.
24



23. That UAI was required under the law to provide insurance coverage under the policy Gary Lewis had with UAI for the loss suffered by Cheyenne Nalder, and was under an obligation to defend Gary Lewis and to indemnify Gary Lewis up to and including the policy limit of \$15,000.00, and to settle Cheyenne's claim at or within the \$15,000.00 policy limit when given an opportunity to do so.

24. That UAI never advised Lewis that Nalder was willing to settle Nalder's claim against Lewis for the sum of \$15,000.00.

25. UAI did not timely evaluate the claim nor did it tender the policy limits.

26. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Nalder, was forced to seek the services of an attorney to pursue his rights under her claim against Lewis.

27. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Cheyenne Nalder, was forced to file a complaint on October 9, 2007 against Gary Lewis for her personal injuries and damages suffered in the July 8, 2007 automobile accident.

28. The filing of the complaint caused additional expense and aggravation to both Cheyenne Nalder and Gary Lewis.

29. Cheyenne Nalder procured a Judgment against Gary Lewis in the amount of \$3,500,000.00.

30. UAI refused to protect Gary Lewis and provide Gary Lewis with a legal defense to the lawsuit filed against Gary Lewis by Cheyenne Nalder.

31. That Defendants, and each of them, are in breach of contract by their actions which include, but are not limited to:

- 1 a. Unreasonable conduct in investigating the loss;
- 2 b. Unreasonable failure to provide coverage for the loss;
- 3 c. Unreasonable delay in making payment on the loss;
- 4 d. Failure to make a prompt, fair and equitable settlement for the loss;
- 5 e. Unreasonably compelling Plaintiffs to retain an attorney before making payment
- 6 on the loss.

7 32. As a proximate result of the aforementioned breach of contract, Plaintiffs have suffered
8 and will continue to suffer in the future, damages in the amount of \$3,500,000.00 plus
9 continuing interest.

10 33. As a further proximate result of the aforementioned breach of contract, Plaintiffs have
11 suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of
12 pocket expenses, all to their general damage in excess of \$10,000.00.

13 34. As a further proximate result of the breach of contract, Plaintiffs were compelled to
14 retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for
15 their attorney's fees reasonably and necessarily incurred in connection therewith.

16 35. That Defendants, and each of them, owed a duty of good faith and fair dealing implied
17 in every contract.

18 36. That Defendants, and each of them, were unreasonable by refusing to cover the true
19 value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits
20 when they had an opportunity to do so, and wrongfully denying coverage.

21 37. That as a proximate result of the aforementioned breach of the implied covenant of
22 good faith and fair dealing, Plaintiffs have suffered and will continue to suffer in the future,
23 damages in the amount of \$3,500,000.00 plus continuing interest.

24



1 38. That as a further proximate result of the aforementioned breach of the implied covenant
2 of good faith and fair dealing, Plaintiffs have suffered anxiety, worry, mental and emotional
3 distress, and other incidental damages and out of pocket expenses, all to their general damage
4 in excess of \$10,000.00.

5 39. That as a further proximate result of the aforementioned breach of the implied covenant
6 of good faith and fair dealing, Plaintiffs were compelled to retain legal counsel to prosecute this
7 claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and
8 necessarily incurred in connection therewith.

9 40. That Defendants, and each of them, acted unreasonably and with knowledge that there
10 was no reasonable basis for its conduct, in its actions which include but are not limited to:
11 wrongfully refusing to cover the value of the claim of Cheyanne Nalder, wrongfully failing to
12 settle within the Policy Limits when they had an opportunity to do so and wrongfully denying
13 the coverage.

14 41. That as a proximate result of the aforementioned bad faith, Plaintiffs have suffered and
15 will continue to suffer in the future, damages in the amount of \$3,500,000.00 plus continuing
16 interest.

17 42. That as a further proximate result of the aforementioned bad faith, Plaintiffs have
18 suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of
19 pocket expenses, all to their general damage in excess of \$10,000.00.

20 43. That as a further proximate result of the aforementioned bad faith, Plaintiffs were
21 compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are
22 liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

23

24

7



1 44. That Defendants, and each of them, violated NRS 686A.310 by their actions, including
2 but not limited to: wrongfully refusing to cover the value of the claim of Cheyanne Nalder,
3 wrongfully failing to settle within the Policy Limits when they had an opportunity to do so and
4 wrongfully denying coverage.

5 45. That NRS 686A.310 requires that insurance carriers conducting business in Nevada
6 adopt and implement reasonable standards for the prompt investigation and processing of
7 claims arising under insurance policies, and requires that carriers effectuate the prompt, fair and
8 equitable settlements of claims in which liability of the insurer has become reasonably clear.

9 46. That UAI did not adopt and implement reasonable standards for the prompt
10 investigation and processing of claims arising under its insurance policies, and did not
11 effectuate the a prompt, fair and/or equitable settlement of Nalder's claim against Lewis in
12 which liability of the insurer was very clear, and which clarity was conveyed to UAI.

13 47. That NAC 686A.670 requires that an insurer complete an investigation of each claim
14 within 30 days of receiving notice of the claim, unless the investigation cannot be reasonably
15 completed within that time.

16 48. That UAI received notice of Nalder's claim against Lewis, at the very latest, on or
17 before August 6, 2007. That it was more than reasonable for UAI to complete its investigation of
18 Nalder's claim against Lewis well within 30 days of receiving notice of the claim.

19 49. That UAI did not offer the applicable policy limits.

20 50. That UAI did failed to investigate the claim at all and denied coverage.

21 51. That as a proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs
22 have suffered and will continue to suffer in the future, damages in the amount of \$3,500,000.00
23 plus continuing interest.

24



52. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of \$10,000.00.

53. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

54. That the Defendants, and each of them, have been fraudulent in that they have stated that they would protect Gary Lewis in the event he was found liable in a claim. All of this was done in conscious disregard of Plaintiffs' rights and therefore Plaintiffs are entitled to punitive damages in an amount in excess of \$10,000.00.

WHEREFORE, Plaintiffs, pray for judgment against Defendants, and each of them, as follows:

1. Payment for the excess verdict rendered against Lewis which remains unpaid in an amount in excess of \$3,500,000.00;
2. General damages for mental and emotional distress and other incidental damages in an amount in excess of \$10,000.00;
3. Attorney's fees and costs of suit incurred herein; and
4. Punitive damages in an amount in excess of \$10,000.00;

///

///

///

1 5. For such other and further relief as this Court deems just and proper.

2
3 DATED this 17 day of April, 2009.

4 CHRISTENSEN LAW OFFICES, LLC.

5 By: 

6 Thomas Christensen, Esq.
7 David F. Sampson, Esq.
8 Nevada Bar No. 6811
9 1000 South Valley View Blvd
10 Las Vegas, Nevada 89107
11 Attorneys for Plaintiffs
12
13
14
15
16
17
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19
20
21
22
23
24



EXHIBIT “B”

1 **JUDG**

2 DAVID F. SAMPSON, ESQ.,

3 Nevada Bar #6811

4 THOMAS CHRISTENSEN, ESQ.,

5 Nevada Bar #2326

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,

10 JAMES NALDER As Guardian Ad

11 Litem for minor, CHEYENNE NALDER

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JAMES NALDER, individually)

13 and as Guardian ad Litem for)

14 CHEYENNE NALDER, a minor.)

15 Plaintiffs,)

16 vs.)

CASE NO: A549111

DEPT. NO: VI

17 GARY LEWIS, and DOES I)

18 through V, inclusive ROES I)

19 through V)

20 Defendants.)

21 **NOTICE OF ENTRY OF JUDGMENT**

22 PLEASE TAKE NOTICE that a Judgment against Defendant, GARY LEWIS, was

23 entered in the above-entitled matter on June 2, 2008. A copy of said Judgment is attached

24 hereto.

25 DATED this 5 day of June, 2008.

26 CHRISTENSEN LAW OFFICES, LLC

27 By: DAVID F. SAMPSON, ESQ.

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorneys for Plaintiff

APPX0185

CERTIFICATE OF SERVICE

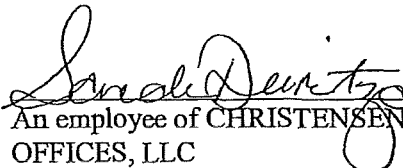
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW
OFFICES, LLC., and that on this 5th June day of June, 2008, I served a copy of the
foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class
postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
number(s) shown below and in the confirmation sheet filed herewith. Consent to
service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
facsimile transmission is made in writing and sent to the sender via facsimile within
24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Gary Lewis
5049 Spencer St. #D
Las Vegas, NV 89119


An employee of CHRISTENSEN LAW
OFFICES, LLC

1 **JMT**

2 THOMAS CHRISTENSEN, ESQ.,

3 Nevada Bar #2326

4 DAVID F. SAMPSON, ESQ.,

5 Nevada Bar #6811

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,


CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JAMES NALDER,)

13 as Guardian ad Litem for)

14 CHEYENNE NALDER, a minor.)

15 Plaintiffs,)

16 vs.)

CASE NO: A549111

DEPT. NO: VI

17 GARY LEWIS, and DOES I)

18 through V, inclusive)

19 Defendants.)

20 JUDGMENT


21 In this action the Defendant, GARY LEWIS, having been regularly served with the
22 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
23 legal time for answering having expired, and no answer or demurrer having been filed, the
24 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
25 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
26 follows:

27 ...

28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 _____
DISTRICT JUDGE

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11
12
13 Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

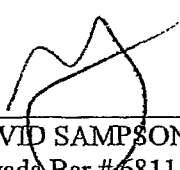
14
15
16 BY: 
17 DAVID SAMPSON
18 Nevada Bar #6811
19 1000 S. Valley View
20 Las Vegas, Nevada 89107
21 Attorney for Plaintiff
22
23
24
25
26
27
28

EXHIBIT “C”

Steven D. Grierson

1 MTN
David A. Stephens, Esq.
2 Nevada Bar No. 00902
STEPHENS, GOURLEY & BYWATER
3 3636 North Rancho Drive
Las Vegas, Nevada 89130
4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

07-A-549111
CASE NO.: A549111

10 Plaintiff,

DEPT NO.: XXIX

11 vs.

12 GARY LEWIS,

13 Defendants.

14 EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF
15 CHEYENNE NALDER, INDIVIDUALLY
16

17 Date: N/A

18 Time: N/A

19 NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY
20 & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her
21 name as she has now reached the age of majority. Judgment was entered in the name of the
22 guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now
23 moves this court to issue the judgment in her name alone (See Exhibit 2) so that she may pursue
24 collection of the same. Cheyenne turned 18 on April 4, 2016. In addition, Defendant Gary Lewis,
25 has been absent from the State of Nevada since at least February 2010.

26
27
28 / / / /

1 Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of
2 \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

3 Dated this 19 day of March, 2018.

4 STEPHENS GOURLEY & BYWATER


6
7 
8 David A. Stephens, Esq.
9 Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT “1”

1 JMT
2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326
4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,

CRF
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JAMES NALDER,)
10 as Guardian ad Litem for)
11 CHEYENNE NALDER, a minor.)
12)
13 Plaintiffs,)
14)
15 vs.)
16)
17 GARY LEWIS, and DOES I)
18 through V, inclusive)
19)
20 Defendants.)

CASE NO: A549111
DEPT. NO: VI

JUDGMENT

21 In this action the Defendant, GARY LEWIS, having been regularly served with the
22 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
23 legal time for answering having expired, and no answer or demurrer having been filed, the
24 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
25 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
26 follows:
27
28

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 DISTRICT JUDGE

10
11
12 Submitted by:
13 CHRISTENSEN LAW OFFICES, LLC.


14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar #6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
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EXHIBIT "2"

1 **JMT**
2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbgllawfirm.com
11 Attorney for Cheyenne Nalder

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11
12 CHEYENNE NALDER,
13 Plaintiff,
14 vs.
15 GARY LEWIS,
16 Defendant.

CASE NO: A549111
DEPT. NO: XXIX

17 **AMENDED JUDGMENT**

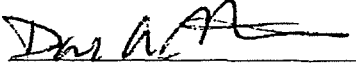
18
19 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
20 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
21 answering having expired, and no answer or demurrer having been filed, the Default of said
22 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
23 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:
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25 ...
26 ...
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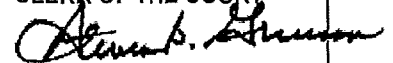
1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
5 2007, until paid in full.

6 DATED this _____ day of March, 2018.

7
8
9
10 _____
District Judge

11
12 Submitted by:
STEPHENS GOURLEY & BYWATER

13
14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
17 3636 North Rancho Dr
Las Vegas, Nevada 89130
18 Attorneys for Plaintiff
19
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21
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23
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28



1 **NOE**
David A. Stephens, Esq.
2 Nevada Bar No. 00902
Stephens & Bywater
3 3636 North Rancho Drive
Las Vegas, Nevada 89130
4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.
14

Case No. 07A549111

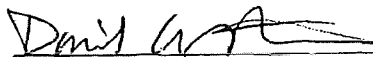
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26th day of March, 2018, the Honorable David
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

20 STEPHENS & BYWATER

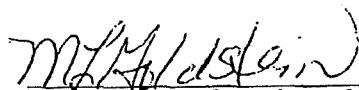


23 David A. Stephens, Esq.
Nevada Bar No. 00902
24 3636 North Rancho Drive
Las Vegas, Nevada 89130
25 Attorney for Brittany Wilson
26
27
28

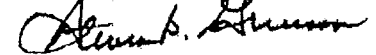
CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,
and that on the 18th day of May, 2018, I served a true copy of the foregoing **NOTICE OF**
ENTRY OF AMENDED JUDGMENT, by depositing the same in a sealed envelope upon
which first class postage was fully prepaid, and addressed as follows:

Gary Lewis
733 S. Minnesota Ave.
Glendora, California 91740



An employee of Stephens & Bywater



1 **JMT**
2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbglawfirm.com
11 Attorney for Cheyenne Nalder

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11
12 CHEYENNE NALDER,
13
14 Plaintiff,
15
16 vs.
17
18 GARY LEWIS,
19
20 Defendant.

CASE NO: 07A549111
DEPT. NO: XXIX

17 **AMENDED JUDGMENT**

18
19 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
20 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
21 answering having expired, and no answer or demurrer having been filed, the Default of said
22 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
23 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:
24
25 ...
26 ...
27 ...
28 ...

1 **JMT**

2 **DAVID A. STEPHENS, ESQ.**

3 Nevada Bar No. 00902

4 **STEPHENS GOURLEY & BYWATER**

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 *Attorney for Cheyenne Nalder*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **CHEYENNE NALDER,**

15 Plaintiff,

16 vs.

17 **GARY LEWIS,**

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

19 **AMENDED JUDGMENT**

20 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
21 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
22 answering having expired, and no answer or demurrer having been filed, the Default of said
23 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
24 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:

25 ...

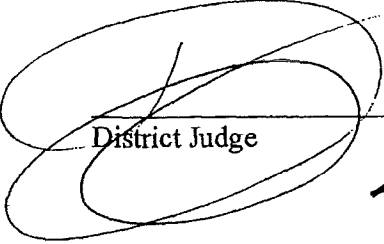
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1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *mc*
2 ~~\$3,500,000.00~~ *\$3,434,444.63*
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
5 2007, until paid in full.

6 DATED this *26* day of March, 2018.

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11 District Judge *mc*

12 Submitted by:
13 STEPHENS GOURLEY & BYWATER


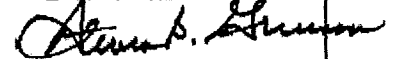
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15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “E”



COMP
David A. Stephens, Esq.
Nevada Bar No. 00902
STEPHENS, GOURLEY & BYWATER
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: A549111 A-18-772220-C

DEPT NO.: XXXX Department 29

COMPLAINT

Date: n/a
Time: n/a

COMES NOW the Plaintiff, CHEYENNE NALDER, by and through Plaintiff's attorney,
DAVID A. STEPHENS, ESQ., of STEPHENS & BYWATER, and for a cause of action against the
Defendants, and each of them, alleges as follows:

1. Upon information and belief, that at the time of the injury the Defendant, GARY
LEWIS, was a resident of Las Vegas, Clark County, Nevada, and that on or about December 2008
GARY LEWIS moved out of state and has not been present or resided in the jurisdiction since that
time.

2. That Plaintiff, CHEYENNE NALDER, was at the time of the accident, a resident of
the County of Clark, State of Nevada

3. That the true names or capacities, whether individual, corporate, associate or
otherwise, of Defendants names as DOES 1 through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this
9 action.

10 5. On the 8th day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's
11 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder,
12 was playing on the private property; that Defendant, did carelessly and negligently operate
13 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder, and that as a direct and proximate
14 result of the aforesaid negligence of Defendant, Gary Lewis, and each of the Defendants, Plaintiff,
15 Cheyenne Nalder, sustained the grievous and serious personal injuries and damages as hereinafter
16 more particularly alleged.

17 6. At the time of the accident herein complained of, and immediately prior thereto,
18 Defendant, Gary Lewis, in breaching a duty owed to Plaintiffs, was negligent and careless, inter
19 alia, in the following particulars:

- 20 A. In failing to keep Defendant's vehicle under proper control;
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;
22 C. In failing to keep a proper lookout for plaintiffs
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of
9 Court will be requested to include said additional damages when the same have been fully
10 determined.

11 9. Prior to the injuries complained of herein, Plaintiff, Cheyenne Nalder, was an able-
12 bodied female, capable of being gainfully employed and capable of engaging in all other activities
13 for which Plaintiff was otherwise suited. By reason of the premises, and as a direct and proximate
14 result of the negligence of the said Defendants, and each of them, Plaintiff, Cheyenne Nalder, was
15 caused to be disabled and limited and restricted in her occupations and activities, and/or suffered a
16 diminution of Plaintiff's earning capacity and future loss of wages, all to her damage in a sum not
17 yet presently ascertainable, the allegations of which Plaintiff prays leave of Court to insert here
18 when the same shall be fully determined.

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer
28 on February 5, 2015. This payment extends any statute of limitation.

1 15. After reaching the age of majority an amended judgment was entered in Cheyenne
2 Nalder's name.

3 16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment
4 against Gary Lewis including the full damages assessed in the original judgment plus interest and
5 minus the one payment made.

6 17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of
7 limitations on the judgments expire.

8 18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to
9 prosecute this action, and is entitled to a reasonable attorney's fee.

10 CLAIM FOR RELIEF;

11 1. General damages in an amount in excess of \$10,000.00;

12 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently
14 unascertainable amount;

15 3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of
16 Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's
17 earning capacity in a presently unascertainable amount;

18 4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of
19 \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20 5. A declaration that the statute of limitations on the judgment is still tolled as a result of
21 the Defendant's continued absence from the state.

22 4. Costs of this suit;

23 5. Attorney's fees; and

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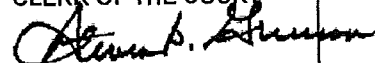
6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 3rd day of April, 2018.

STEPHENS GOURLEY & BYWATER

/s David A. Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT “F”



1 STPJ (CIV)
2 David A. Stephens, Esq.
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4 Stephens & Bywater
5 3636 North Rancho Drive
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Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

14 **STIPULATION TO ENTER JUDGMENT**

15 Date: n/a
16 Time: n/a

17 Gary Lewis, through his attorney, E. Breen Arntz, Esq., and Cheyenne Nalder, through her
18 attorney, David A. Stephens, Esq., to hereby stipulate as follows:

- 19 1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.
- 20 2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the
21 present.
- 22 3. Gary Lewis has been a resident and subject to service of process in California from 2010
23 to the present.
- 24 4. Plaintiff obtained a judgment against GARY LEWIS which was entered on August 26,
25 2008. Because the statute of limitations on the 2008 judgment had been tolled as a result of GARY
26 LEWIS' absence from the State of Nevada pursuant to NRS 11.300, Plaintiff obtained an amended
27 judgment that was entered on May 18, 2018.
- 28 5. Plaintiff filed an action on the judgment under *Mandlebaum v. Gregovich*, 50 P. 849, 851

1 (Nev. 1897), in the alternative, with a personal injury action should the judgment be invalid.

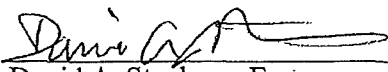
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.

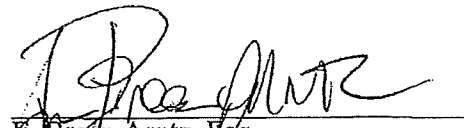
4 7. Cheyenne Nalder is willing to allow judgment to enter in the amount of the judgment plus
5 interest minus the payment of \$15,000.00 and without additional damages, attorney fees or costs.
6 Plaintiff is also willing to accept the judgment so calculated as the resulting judgment of the
7 alternatively pled injury claim. Plaintiff will not seek additional attorney fees from Defendant.

8 8. The parties stipulate to a judgment in favor of Cheyenne Nalder in the sum of
9 \$3,500,000.00, plus interest through September 4, 2018 of \$2,211,820.41 minus \$15,000.00 paid for
10 a total judgment of \$5,696,820.41, with interest thereon at the legal rate from September 4, 2018, until
11 paid in full.

12 9. The attached judgment may be signed and entered by the Court.

13 Dated this 12 day of September, 2018

14
15 
16 David A. Stephens, Esq.
17 Nevada Bar No. 00902
18 Stephens & Bywater
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

14
15 
16 E. Breon Arntz, Esq.
17 Nevada Bar No. 03853
18 5545 Mountain Vista, #E
Las Vegas, NV 89120
Attorney for Gary Lewis

1 JMT (CIV)
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 Stephens & Bywater, P.C.
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6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sdblawnfirm.com
10 Attorney for Cheyenne Nalder

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS,

17 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

18 JUDGMENT

19 Date: n/a
20 Time: n/a

21 Pursuant to the stipulation of the parties, and good cause appearing therefore,

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff Cheyenne Nalder
23 have and recover judgment from Defendant Gary Lewis in the sum of three million five hundred
24 thousand dollars, (\$3,500,000.00), plus prejudgment interest through September 4, 2018 in the sum
25 of two million two hundred eleven thousand eight hundred twenty and 41/100 dollars,
26 (\$2,211,820.41), minus fifteen thousand dollars, (\$15,000.00), previously paid to Cheyenne Nalder,

27 ///

28 ///

///

1 for a total judgment of five million six hundred ninety six thousand eight hundred twenty and 41/100
2 dollars, (\$5,696,820.41), with interest thereon at the legal rate from September 4, 2018, until paid in
3 full.

4 DATED this _____ day of September, 2018.

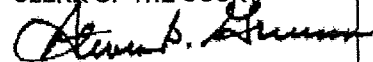
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7 _____
8 DISTRICT JUDGE

9 Submitted by:

10 STEPHENS & BYWATER, P.C.

11
12 _____
13 DAVID A. STEPHENS, ESQ.
14 Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT “G”



MATTHEW J. DOUGLAS
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ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: A-18-772220-C
DEPT. NO.: 29

UAIC'S MOTION TO INTERVENE

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby submits this Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached hereto, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this 16 day of August, 2018.

ATKIN WINNER & SHERROD



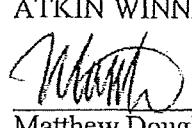
Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor

NOTICE OF MOTION

TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring
the foregoing Motion to Intervene for hearing before the above-entitled Court on the 19 day of
September, 2018, at the hour of In Chambers .m. in the forenoon of said date, or as soon
thereafter as counsel can be heard.

DATED this 16th day of August, 2018.

ATKIN WINNER & SHERROD


Matthew Douglas, Esq.
Nevada Bar No. 11371
117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF

MOTION FOR INTERVENTION

I.

Introduction & Factual Background

Although this action was only recently filed, this matter actually has a long history that
dates back eleven (11) years, to July 2007 when the loss underlying this action occurred.
Proposed Intervenor will not re-state the entire history as it is adequately set forth in Order
Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals
for the Ninth Circuit, which was filed on January 11, 2018. *A copy of the Order certifying the
second question of law is attached hereto as Exhibit 'A.'* Rather, the salient points are that
Plaintiff's causes of action are premised on a judgment which had been entered against Gary

1 Lewis on August 26, 2008. After obtaining the judgment, Counsel for Plaintiff¹ then filed an
2 action against Mr. Lewis' insurer, United Automobile Insurance Company ("UAIC"), Proposed
3 Intervenor herein. Despite the prohibition against direct actions against an insurer, Plaintiff failed
4 to obtain an assignment prior to filing that action against UAIC and, only later, during the
5 litigation obtained an assignment from Lewis.

6
7 In any event, that action - on coverage for the 2008 judgment by Nalder against UAIC -
8 has proceeded in the United States District Court for the District of Nevada and, the United
9 States Court of Appeals for the Ninth Circuit, since 2009. During the pendency of those appeals
10 it was observed that Plaintiff had failed to renew her 2008 judgment against Lewis pursuant to
11 Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for
12 action to execute on such a judgment would be six (6) years, unless renewed under N.R.S.
13 17.214. Upon realizing the judgment had never been timely renewed, UAIC filed a Motion to
14 Dismiss the Appeal for Lack of Standing with the Ninth Circuit on March 14, 2017. On
15 December 27, 2017 the Ninth Circuit certified a second question to the Nevada Supreme Court -
16 specifically certifying the following question:

17
18 "Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a
19 separate judgment against its insured, does the insurer's liability expire when the statute of
20 limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life
21 of the judgment?"

22 On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified
23 question and ordered Appellants to file their Opening brief within 30 days, or by March 26,
24 2018. *A copy of the Order accepting the second certified question is attached hereto as Exhibit*
25 *'B.'* In accepting the certified question, the Nevada Supreme Court rephrased the question as
26 follows:

27
28 ¹ At that time, in 2008, Ms. Nalder was a minor so the judgment was entered in favor of her
through her Guardian Ad Litem and, father, James Nalder.

1 In an action against an insurer for breach of the duty to defend its insured, can the
2 plaintiff continue to seek consequential damages in the amount of a default
3 judgment obtained against the insured when the judgment against the insured was
4 not renewed and the time for doing so expired while the action against the insurer
5 was pending?

6 On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC
7 has yet to file its Response Brief and, accordingly, the above-quoted question and, issue, remains
8 pending before the Nevada Supreme Court.

9 Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained
10 additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on
11 March 22, 2018 seeking, innocently enough, to "amend" the 2008 expired judgment to be in the
12 name of Cheyenne Nalder individually. *A copy of the Ex Parte Motion is attached hereto as*
13 *Exhibit 'C.'* Thereafter, this Court obviously not having been informed of the above-noted
14 Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of
15 entry on May 18, 2018. *A copy of the filed Amended Judgment is attached hereto as Exhibit 'D.'*

16 Furthermore, Plaintiff then initiated this "new" action in a thinly veiled attempt to have
17 this Court rule on issues pending before the Nevada Supreme Court and "fix" their expired
18 judgment. This intent appears clearly evidenced by paragraph five (5) of Plaintiff's prayer for
19 relief herein which states Plaintiff is seeking this Court to make "a declaration that the statute of
20 limitations on the judgment on the judgment is still tolled as a result of Defendant's continued
21 absence from the state." *A copy of Plaintiff's Complaint is attached hereto as Exhibit 'E.'*

22 Plaintiff then apparently served Lewis and, on July 17, 2018, sent a letter to UAIC's counsel
23 with a copy of a "three Day notice to Plead", and, as such, threatening default of Lewis on this
24 "new" action. *A copy of Plaintiff's letter and three day notice is attached hereto as Exhibit 'F.'*

25 Upon learning of this new action and, given the United States District Court's ruling that
26 Gary Lewis is an insured under an *implied* UAIC policy for the loss belying these judgments
27 and, present action, UAIC immediately sought to engage counsel to appear on Lewis' behalf in
28

1 the present action. *A copy of the Judgment of the U.S. District Court finding coverage and*
2 *implying an insurance policy is attached hereto as Exhibit 'G.'* Following retained defense
3 Counsel's attempts to communicate with Mr. Lewis to defend him in this action and, potentially,
4 vacate this improper amendment to an expired judgment – retained defense counsel was sent a
5 letter by Tommy Christensen, Esq. – the Counsel for Plaintiff judgment-creditor in the above-
6 referenced action and appeal – stating in no uncertain terms that Counsel could not communicate
7 with Mr. Lewis, nor appear and defend him in this action. *A copy of Tommy Christensen's letter*
8 *of August 13, 2018 is attached hereto as Exhibit 'H.'*

10 Despite the apparent contradiction of counsel representing both the judgment-creditor and
11 judgment-debtor in the same action, it is also clear that Mr. Christensen's letter has caused the
12 need for UAIC to intervene in the present action and, this Motion follows.

14 II.

15 ARGUMENT

- 16 A. The insurer UAIC must be permitted to intervene in this action because it has an
17 interest to protect given UAIC's duty to defend LEWIS per the October 30, 2013
18 Order of the U.S. District court.

19 NRCP 24(a)(2) provides for the intervention of right under the following circumstances:

20 Upon timely application anyone shall be permitted to intervene an action: . . . (2)
21 when the applicant claims an interest relating to the property or transaction which
22 is the subject of the action and he is so situated that the disposition of the action
23 may as a practical matter impair or impede his ability to protect that interest,
24 unless the applicant's interest is adequately represented by existing parties.

25 The named Defendant LEWIS has been found to be an insured per the United States District
26 Court Order under an implied policy of insurance with UAIC policy at the time of the accident
27 underlying the judgments for which Plaintiff seeks relief in the present action, *Exhibit 'G.'*
28 When UAIC became informed of the present action and attempted to retain counsel to defend
LEWIS, UAIC was informed by Counsel for Plaintiff that he would not allow retained defense

1 counsel to file any motion to defend LEWIS or vacate the amended judgment. *Exhibit "H"*
2 Without the ability of retained defense counsel to appear and mount a defense on LEWIS'
3 behalf, it is apparent that UAIC cannot provide him an effective defense. As long as UAIC is
4 obligated to provide such a defense, and to potentially pay any judgment against LEWIS,
5 UAIC's interests are clearly at stake in this action. Therefore, pursuant to NRCP 24(a)(2), UAIC
6 should be allowed to intervene in this action.
7

8 Intervention is governed by NRCP 24 and NRS 12.130. Although strikingly similar,
9 NRCP 24 requires "timely application" to intervene whereas NRS 12.130 merely requires
10 intervention at the district court level. *Stephens v. First National Bank*, 64 Nev. 292, 182 P.2d
11 146 (1947). NRS 12.130(1)(c), however, specifically provides that intervention may be made as
12 provided by the Nevada Rules of Civil Procedure. As such, given this mandate, the procedural
13 rule will be specifically addressed in the instant Motion.
14

15 NRCP 24(a)(2) imposes four (4) requirements for the intervention of right: (1) the
16 application must be timely; (2) it must show an interest in the subject matter of the action; (3) it
17 must show that the protection of the interest may be impaired by the disposition of the action;
18 and (4) it must show that the interest is not adequately represented by an existing party. *State*
19 *Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 888 P.2d 911 (1995).²
20

21 When determining the timeliness of an application for intervention, it is not the length of
22 the delay by the intervenor that is of primary importance, per se, but the extent of prejudice to the
23 rights of existing parties resulting from the delay. *Lawler v. Ginocchio*, 94 Nev. 623, 584 P.2d 667
24 (1978). This determination is, of course, within the sound discretion of the court. *Id.* Here, this
25

26 ² The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be
27 permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2)
28 when the applicant claims an interest relating to the property or transaction which is the subject of the
action and he is so situated that the disposition of the action may as a practical matter impair or impede
his ability to protect that interest, unless the applicant's interest is adequately represented by existing
parties.

1 matter is newly filed, LEWIS was only recently served, no default has been taken, no discovery
2 has progressed, and the matter has had no dispositive rulings made nor trial date set; as such,
3 UAIC'S intervention in the instant matter will not delay the trial proceedings and, thus, should
4 be considered timely.

5
6 Furthermore, as outlined above, it is clear that UAIC's Petition meets the other three
7 requirements for intervention as of right based upon the clear fact that UAIC has a significant
8 interest in the action as the insurer for LEWIS under the aforementioned U.S. District Court Order.
9 By dint of this fact UAIC could potentially be responsible for any damages LEWIS is found
10 liable for. This substantial interest serves to satisfy the two remaining requirements as protection
11 of the interest will be impaired by disposition of this action as any judgment entered against
12 LEWIS - without his ability to defend it - would necessarily impair UAIC. Finally, that as there is
13 currently no defendant defending this cause - UAIC's interest is not sufficiently protected.

14
15 Moreover, it also true that these very issues - the validity of the 2008 judgment against
16 Lewis - are also at issue in a case involving UAIC before the Nevada Supreme Court, as set for
17 above. The fact that Plaintiff now seeks this Court to make declarations about the validity to the
18 2008 judgment not only would appear to infringe upon issues before the Nevada Supreme Court
19 and, Ninth Circuit, but also may directly affect UAIC's interests, adding further good cause to
20 show UAIC is an interested third party whom should be allowed to intervene.

21
22 The final requirement under N.R.C.P. 24(c) is that the Motion to intervene "shall be
23 accompanied by a pleading setting forth the claim or defense for which intervention is sought.
24 Accordingly, *attached hereto as Exhibit "I"*, is a copy of UAIC's proposed responsive pleading
25 to this action, a Motion to Dismiss.

26 ///

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28 ///

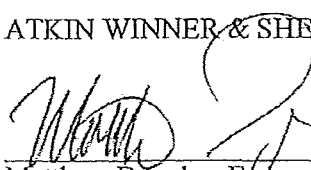
III.

CONCLUSION

Based on the foregoing, it is necessary for UAIC to intervene in this matter to protect its interests and LEWIS'.

DATED this 16th day of AUGUST, 2018.

ATKIN WINNER & SHERROD


Matthew Douglas, Esq.
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for UAIC

CERTIFICATE OF SERVICE

I certify that on this 16th day of August, 2018, the foregoing MOTION TO INTERVENE was served on the following by ☒ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

PLAINTIFFS' COUNSEL

David A. Stephens, Esq.
STEPHENS, GOURLEY & BYWATER
3636 N. Rancho Dr.
Las Vegas, Nevada 89130



An employee of ATKIN WINNER & SHERROD

EXHIBIT “A”

FILED

JAN 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 70504

JAMES NALDER, Guardian
Ad Litem on behalf of
Cheyanne Nalder; GARY
LEWIS, individually,
Plaintiffs-Appellants,

v.

UNITED AUTOMOBILE
INSURANCE COMPANY,
Defendant-Appellee.

No. 13-17441

D.C. No.
2:09-cv-01348-RCJ-GWF

ORDER CERTIFYING
QUESTION TO THE
NEVADA SUPREME
COURT

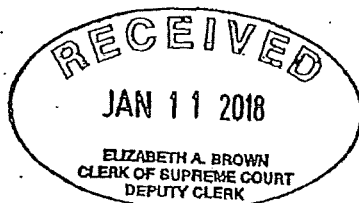
Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Argued and Submitted January 6, 2016
San Francisco, California

Filed December 27, 2017

Before: Diarmuid F. O'Scannlain and
William A. Fletcher, Circuit Judges.*

* This case was submitted to a panel that included Judge Kozinski,
who recently retired.



18 APPX02262

SUMMARY**

Certified Question to Nevada Supreme Court

The panel certified the following question of law to the Nevada Supreme Court:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

ORDER

Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure, we certify to the Nevada Supreme Court the question of law set forth in Part II of this order. The answer to this question may be determinative of the cause pending before this court, and there is no controlling precedent in the decisions of the Nevada Supreme Court or the Nevada Court of Appeals.

Further proceedings in this court are stayed pending receipt of an answer to the certified question. Submission remains withdrawn pending further order. The parties shall notify the Clerk of this court within one week after the

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Nevada Supreme Court accepts or rejects the certified question, and again within one week after the Nevada Supreme Court renders its opinion.

I

Plaintiffs-appellants, James Nalder, guardian ad litem for Cheyanne Nalder, and Gary Lewis will be the appellants before the Nevada Supreme Court. Defendant-appellee, United Automobile Insurance Company ("UAIC"), a Florida corporation with its principal place of business in Florida, will be the respondent.

The names and addresses of counsel for the parties are as follows:

Thomas Christensen, Christensen Law Offices, LLC, 1000 South Valley View Boulevard, Las Vegas, Nevada 89107, and Dennis M. Prince, Eglet Prince, 400 South Seventh Street, Suite 400, Las Vegas, Nevada 89101, for appellants.

Thomas E. Winner, Susan M. Sherrod and Matthew J. Douglas, Atkin Winner & Sherrod, 1117 South Rancho Drive, Las Vegas, Nevada 89102, for respondent.

II

The question of law to be answered is:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the

statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

The Nevada Supreme Court may rephrase the question as it deems necessary.

III

A

This is the second order in this case certifying a question to the Nevada Supreme Court. We recount the facts essentially as in the first order.

On July 8, 2007, Gary Lewis ran over Cheyanne Nalder. Lewis had taken out an auto insurance policy with UAIC, which was renewable on a monthly basis. Before the accident, Lewis had received a statement instructing him that his renewal payment was due by June 30, 2007. The statement also specified that "[t]o avoid lapse in coverage, payment must be received prior to expiration of your policy." The statement listed June 30, 2007, as the policy's effective date and July 31, 2007, as its expiration date. Lewis did not pay to renew his policy until July 10, 2007, two days after the accident.

James Nalder ("Nalder"), Cheyanne's father, made an offer to UAIC to settle her claim for \$15,000, the policy limit. UAIC rejected the offer, arguing Lewis was not covered at the time of the accident because he did not renew the policy by June 30. UAIC never informed Lewis that Nalder was willing to settle.

Nalder sued Lewis in Nevada state court and obtained a \$3.5 million default judgment. Nalder and Lewis then filed the instant suit against UAIC in state court, which UAIC removed to federal court. Nalder and Lewis alleged breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and breach of section 686A.310 of the Nevada Revised Statutes. UAIC moved for summary judgment on the basis that Lewis had no insurance coverage on the date of the accident. Nalder and Lewis argued that Lewis was covered on the date of the accident because the renewal notice was ambiguous as to when payment had to be received to avoid a lapse in coverage, and that this ambiguity had to be construed in favor of the insured. The district court found that the contract could not be reasonably interpreted in favor of Nalder and Lewis's argument and granted summary judgment in favor of UAIC.

We held that summary judgment "with respect to whether there was coverage" was improper because the "[p]laintiffs came forward with facts supporting their tenable legal position." *Nalder v. United Auto. Ins. Co.*, 500 F. App'x 701, 702 (9th Cir. 2012). But we affirmed "[t]he portion of the order granting summary judgment with respect to the [Nevada] statutory arguments." *Id.*

On remand, the district court granted partial summary judgment to each party. First, the court found the renewal statement ambiguous, so it construed this ambiguity against UAIC by finding that Lewis was covered on the date of the accident. Second, the court found that UAIC did not act in bad faith because it had a reasonable basis to dispute coverage. Third, the court found that UAIC breached its duty to defend Lewis but awarded no damages "because [Lewis] did not incur any fees or costs in defending the underlying

action" as he took a default judgment. The court ordered UAIC "to pay Cheyanne Nalder the policy limits on Gary Lewis's implied insurance policy at the time of the accident." Nalder and Lewis appeal.

B

Nalder and Lewis claim on appeal that they should have been awarded consequential and compensatory damages resulting from the Nevada state court judgment because UAIC breached its duty to defend. Thus, assuming that UAIC did not act in bad faith but did breach its duty to defend Lewis, one question before us is how to calculate the damages that should be awarded. Nalder and Lewis claim they should have been awarded the amount of the default judgment (\$3.5 million) because, in their view, UAIC's failure to defend Lewis was the proximate cause of the judgment against him. The district court, however, denied damages because Lewis chose not to defend and thus incurred no attorneys' fees or costs. Because there was no clear state law and the district court's opinion in this case conflicted with another decision by the U.S. District Court for the District of Nevada on the question of whether liability for breach of the duty to defend included all losses consequential to an insurer's breach, we certified that question to the Nevada Supreme Court in an order dated June 1, 2016. In that order, we also stayed proceedings in this court pending resolution of the certified question by the Nevada Supreme Court.

After that certified question had been fully briefed before the Nevada Supreme Court, but before any ruling or oral argument, UAIC moved this court to dismiss the appeal for lack of standing. UAIC argues that the six-year life of the

default judgment had run and that the judgment had not been renewed, so the judgment is no longer enforceable. Therefore, UAIC contends, there are no longer any damages above the policy limit that Nalder and Lewis can seek because the judgment that forms the basis for those damages has lapsed. For that reason, UAIC argues that the issue on appeal is moot because there is no longer any basis to seek damages above the policy limit, which the district court already awarded.

In a notice filed June 13, 2017, the Nevada Supreme Court stayed consideration of the question already certified in this case until we ruled on the motion to dismiss now pending before us.

IV

In support of its motion to dismiss, UAIC argues that under Nev. Rev. Stat. § 11.190(1)(a), the six-year statute of limitations during which Nalder could enforce his default judgment against Lewis expired on August 26, 2014, and Nalder did not renew the judgment. Therefore, says UAIC, the default judgment has lapsed, and because it is no longer enforceable, it no longer constitutes an injury for which Lewis or Nalder may seek damages from UAIC.

In response, Nalder and Lewis do not contest that the six-year period of the statute of limitations has passed and that they have failed to renew the judgment, but they argue that UAIC is wrong that the issue of consequential damages is mooted. First, they make a procedural argument that a lapse in the default judgment, if any, may affect the amount of damages but does not affect liability, so the issue is inappropriate to address on appeal before the district court

has evaluated the effect on damages. Second, they argue that their suit against UAIC is itself "an action upon" the default judgment under the terms of Nev. Rev. Stat. § 11.190(1)(a) and that because it was filed within the six-year life of the judgment it is timely. In support of this argument, they point out that UAIC has already paid out more than \$90,000 in this case, which, they say, acknowledges the validity of the underlying judgment and that this suit is an enforcement action upon it.

Neither side can point to Nevada law that definitively answers the question of whether plaintiffs may still recover consequential damages based on the default judgment when six years passed during the pendency of this suit. Nalder and Lewis reach into the annals of Nevada case law to find an opinion observing that at common law "a judgment creditor may enforce his judgment by the process of the court in which he obtained it, or he may elect to use the judgment, as an original cause of action, and bring suit thereon, and prosecute such suit to final judgment." *Mandlebaum v. Gregovich*, 50 P. 849, 851 (Nev. 1897); *see also Leven v. Frey*, 168 P.3d 712, 715 (Nev. 2007) ("An action on a judgment or its renewal must be commenced within six years." (emphasis added)). They suggest they are doing just this, "us[ing] the judgment, as an original cause of action," to recover from UAIC. But that precedent does not resolve whether a suit against an insurer who was not a party to the default judgment is, under Nevada law, an "action on" that judgment.

UAIC does no better. It also points to *Leven* for the proposition that the Nevada Supreme Court has strictly construed the requirements to renew a judgment. *See Leven*, 168 P.3d at 719. Be that as it may, Nalder and Lewis do not

rely on any laxity in the renewal requirements and argue instead that the instant suit is itself a timely action upon the judgment that obviates any need for renewal. UAIC also points to Nev. Rev. Stat. § 21.010, which provides that "the party in whose favor judgment is given may, at any time before the judgment expires, obtain the issuance of a writ of execution for its enforcement as prescribed in this chapter. The writ ceases to be effective when the judgment expires." That provision, however, does not resolve this case because Nalder and Lewis are not enforcing a writ of execution, which is a direction to a sheriff to satisfy a judgment. See Nev. Rev. Stat. § 21.020.

Finally, apart from Nalder and Lewis's argument that it is inappropriate to address on appeal the effect of the statute of limitations on the size of damages they may collect, neither side squarely addresses whether the expiration of the judgment in fact reduces the consequential damages for UAIC's breach of the duty to defend. Does the judgment's expiration during the pendency of the suit reduce the consequential damages to zero as UAIC implies, or should the damages be calculated based on when the default judgment was still enforceable, as it was when the suit was initiated? Neither side provides Nevada law to answer the question, nor have we discovered it.

V

It appears to this court that there is no controlling precedent of the Nevada Supreme Court or the Nevada Court of Appeals with regard to the issue of Nevada law raised by the motion to dismiss. We thus request the Nevada Supreme Court accept and decide the certified question. "The written opinion of the [Nevada] Supreme Court stating the law

governing the question[] certified . . . shall be res judicata as to the parties." Nev. R. App. P. 5(h).

If the Nevada Supreme Court accepts this additional certified question, it may resolve the two certified questions in any order it sees fit, because Nalder and Lewis must prevail on both questions in order to recover consequential damages based on the default judgment for breach of the duty to defend.

The clerk of this court shall forward a copy of this order, under official seal, to the Nevada Supreme Court, along with copies of all briefs and excerpts of record that have been filed with this court.

IT IS SO ORDERED.

Respectfully submitted, Dáimuid F. O'Scannlain and
William A. Fletcher, Circuit Judges.

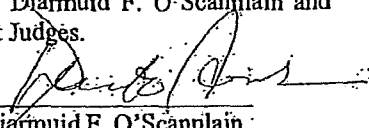

Dáimuid F. O'Scannlain
Circuit Judge

EXHIBIT “B”

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES NALDER, GUARDIAN AD
LITEM ON BEHALF OF CHEYANNE
NALDER; AND GARY LEWIS,
INDIVIDUALLY,
Appellants,
vs.
UNITED AUTOMOBILE INSURANCE
COMPANY,
Respondent.

No. 70504

FILED

FEB 23 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER ACCEPTING SECOND CERTIFIED QUESTION AND
DIRECTING SUPPLEMENTAL BRIEFING*

The United States Ninth Circuit Court of Appeals previously certified a legal question to this court under NRAP 5, asking us to answer the following question:

Whether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred by the insured in mounting a defense, or is the insurer liable for all losses consequential to the insurer's breach?

Because no clearly controlling Nevada precedent answers that legal question and the answer could determine part of the federal case, we accepted that certified question and directed the parties to file briefs addressing that question. After briefing had been completed, respondent United Automobile Insurance Company informed this court that it had filed a motion to dismiss in the federal case. We then stayed our consideration of the certified question because a decision by the Ninth Circuit granting the motion to dismiss would render the question before this court advisory.

The Ninth Circuit has now certified another legal question to this court under NRAP 5. The new question, which is related to the motion to dismiss pending in the Ninth Circuit, asks us to answer the following:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

That question is focused on the insurer's liability, but elsewhere in the Ninth Circuit's certification order, it makes clear that the court is concerned with whether the plaintiff in this scenario can continue to seek the amount of the separate judgment against the insured as consequential damages caused by the insurer's breach of the duty to defend its insured when the separate judgment was not renewed as contemplated by NRS 11.190(1)(a) and NRS 17.214 during the pendency of the action against the insurer. We therefore choose to accept the Ninth Circuit's invitation to "rephrase the question as [we] deem necessary." Consistent with language that appears elsewhere in the certification order, we rephrase the question as follows:

In an action against an insurer for breach of the duty to defend its insured, can the plaintiff continue to seek consequential damages in the amount of a default judgment obtained against the insured when the judgment against the insured was not renewed and the time for doing so expired while the action against the insurer was pending?

As no clearly controlling Nevada precedent answers this legal question and the answer may determine the federal case, we accept this certified question as rephrased. See NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).

Appellants shall have 30 days from the date of this order to file and serve a supplemental opening brief. Respondent shall have 30 days from the date the supplemental opening brief is served to file and serve a supplemental answering brief. Appellants shall then have 20 days from the date the supplemental answering brief is served to file and serve any supplemental reply brief. The supplemental briefs shall be limited to addressing the second certified question and shall comply with NRAP 28, 28.2, 31(c), and 32. See NRAP 5(g)(2). To the extent that there are portions of the record that have not already been provided to this court and are necessary for this court to resolve the second certified question, the parties may submit a joint appendix containing those additional documents. See NRAP 5(d). Given the relationship between the two certified questions, we lift the stay as to the first certified question.

It is so ORDERED.¹

Douglas C.J.
Douglas

Gibbons J.
Gibbons

Hardesty J.
Hardesty

Cherry J.
Cherry

Pickering J.
Pickering

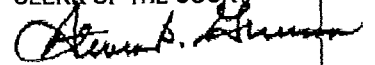
Stiglich J.
Stiglich

¹As the parties have already paid a filing fee when this court accepted the first certified question, no additional filing fee will be assessed at this time.

The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Eglet Prince
Christensen Law Offices, LLC
Atkin Winner & Sherrod
Cole, Scott & Kissane, P.A.
Lewis Roca Rothgerber Christie LLP/Las Vegas
Pursiano Barry Bruce Lavelle, LLP
Laura Anne Foggan
Mark Andrew Boyle
Matthew L. Sharp, Ltd.
Clerk, United States Court of Appeals for the Ninth Circuit

EXHIBIT “C”



1 MTN
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & BYWATER
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendants.

07-A-549111
CASE NO.: A549111

DEPT NO.: XXIX

19 EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF
20 CHEYENNE NALDER, INDIVIDUALLY

21 Date: N/A

22 Time: N/A


23 NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY
24 & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her
25 name as she has now reached the age of majority. Judgment was entered in the name of the
26 guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now
27 moves this court to issue the judgment in her name alone (See Exhibit 2) so that she may pursue
28 collection of the same. Cheyenne turned 18 on April 4, 2016. In addition, Defendant Gary Lewis,
has been absent from the State of Nevada since at least February 2010.

/ / / /

1 Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of
2 \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

3 Dated this 19 day of March, 2018.

4
5 STEPHENS GOURLEY & BYWATER

6
7 

8 David A. Stephens, Esq.
9 Nevada Bar No. 00902
10 3636 North Rancho Drive
11 Las Vegas, Nevada 89130
12 Attorneys for Plaintiff
13
14
15
16
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EXHIBIT “1”

1 JMT
2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326
4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,

Chris [Signature]
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JAMES NALDER,)
10 as Guardian ad Litem for)
11 CHEYENNE NALDER, a minor.)
12)
13 Plaintiffs,)
14)
15 vs.)
16)
17 GARY LEWIS, and DOES I)
18 through V, inclusive)
19)
20 Defendants.)
21)

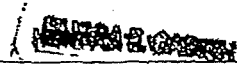
CASE NO: A549111
DEPT. NO: VI

JUDGMENT

22 In this action the Defendant, GARY LEWIS, having been regularly served with the
23 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
24 legal time for answering having expired, and no answer or demurrer having been filed, the
25 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
26 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
27 follows:
28

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5 DATED THIS 2 ^{June} day of ~~May~~, 2008.

8 
9 DISTRICT JUDGE

10
11
12 Submitted by:
13 CHRISTENSEN LAW OFFICES, LLC.

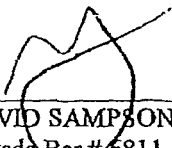
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15 BY: 
16 DAVID SAMPSON
17 Nevada Bar # 6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “2”

1 JMT
2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbgllawfirm.com
11 Attorney for Cheyenne Nalder

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

11
12 CHEYENNE NALDER,
13 Plaintiff,
14 vs.
15 GARY LEWIS,
16 Defendant.

CASE NO: A549111
DEPT. NO: XXIX

17 AMENDED JUDGMENT

18
19 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
20 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
21 answering having expired, and no answer or demurrer having been filed, the Default of said
22 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
23 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:
24
25 ...
26 ...
27 ...
28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63
3 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
4 2007, until paid in full.
5

6 DATED this _____ day of March, 2018.
7
8
9

10 _____
District Judge
11

12 Submitted by:
STEPHENS GOURLEY & BYWATER
13

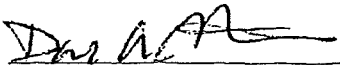
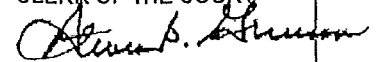
14 
DAVID A. STEPHENS, ESQ.
15 Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
16 3636 North Rancho Dr
17 Las Vegas, Nevada 89130
Attorneys for Plaintiff
18
19
20
21
22
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28

EXHIBIT “D”



1 **NOE**
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 Stephens & Bywater
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.
14

Case No. 07A549111

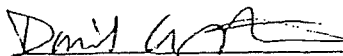
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26th day of March, 2018, the Honorable David
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

20 STEPHENS & BYWATER

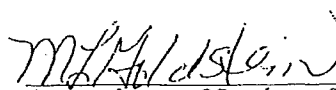
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22 
23 David A. Stephens, Esq.
24 Nevada Bar No. 00902
25 3636 North Rancho Drive
26 Las Vegas, Nevada 89130
27 Attorney for Brittany Wilson
28

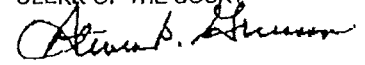
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,
and that on the 18th day of May, 2018, I served a true copy of the foregoing **NOTICE OF**
ENTRY OF AMENDED JUDGMENT, by depositing the same in a sealed envelope upon
which first class postage was fully prepaid, and addressed as follows:

Gary Lewis
733 S. Minnesota Ave.
Glendora, California 91740


An employee of Stephens & Bywater



1 JMT
2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbgllawfirm.com
11 Attorney for Cheyenne Nalder

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

11
12 CHEYENNE NALDER,
13 Plaintiff,
14 vs.
15 GARY LEWIS,
16 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

17 AMENDED JUDGMENT

18
19 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
20 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
21 answering having expired, and no answer or demurrer having been filed, the Default of said
22 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
23 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:
24
25 ...
26 ...
27 ...
28 ...

1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbgllawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

19 AMENDED JUDGMENT

20 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
21 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
22 answering having expired, and no answer or demurrer having been filed, the Default of said
23 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
24 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:

25 ...

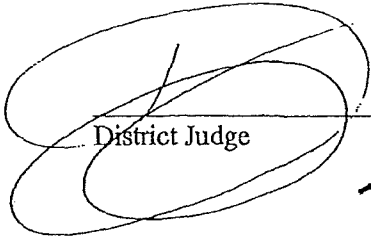
26 ...

27 ...

28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *mc*
2 \$ 3,434,444.63
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
5 2007, until paid in full.

6 DATED this *26* day of March, 2018.

7
8
9
10  District Judge
11 *me*

12 Submitted by:
13 STEPHENS GOURLEY & BYWATER


14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
21
22
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28

EXHIBIT “E”

Steven D. Grierson

1 **COMP**
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & BYWATER
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS and DOES I through V,
17 inclusive,

18 Defendants.

CASE NO.: A-549111 A-18-772220-C

DEPT NO.: XXXX Department 29

19 **COMPLAINT**

20 Date: n/a
21 Time: n/a

22 COMES NOW the Plaintiff, CHEYENNE NALDER, by and through Plaintiff's attorney,
23 DAVID A. STEPHENS, ESQ., of STEPHENS & BYWATER, and for a cause of action against the
24 Defendants, and each of them, alleges as follows:

25 1. Upon information and belief, that at the time of the injury the Defendant, GARY
26 LEWIS, was a resident of Las Vegas, Clark County, Nevada, and that on or about December 2008
27 GARY LEWIS moved out of state and has not been present or resided in the jurisdiction since that
28 time.

29 2. That Plaintiff, CHEYENNE NALDER, was at the time of the accident, a resident of
30 the County of Clark, State of Nevada

31 3. That the true names or capacities, whether individual, corporate, associate or
32 otherwise, of Defendants names as DOES I through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this
9 action.

10 5. On the 8th day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's
11 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder,
12 was playing on the private property; that Defendant, did carelessly and negligently operate
13 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder, and that as a direct and proximate
14 result of the aforesaid negligence of Defendant, Gary Lewis, and each of the Defendants, Plaintiff,
15 Cheyenne Nalder, sustained the grievous and serious personal injuries and damages as hereinafter
16 more particularly alleged.

17 6. At the time of the accident herein complained of, and immediately prior thereto,
18 Defendant, Gary Lewis, in breaching a duty owed to Plaintiffs, was negligent and careless, inter
19 alia, in the following particulars:

- 20 A. In failing to keep Defendant's vehicle under proper control;
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;
22 C. In failing to keep a proper lookout for plaintiffs
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of
9 Court will be requested to include said additional damages when the same have been fully
10 determined.

11 9. Prior to the injuries complained of herein, Plaintiff, Cheyenne Nalder, was an able-
12 bodied female, capable of being gainfully employed and capable of engaging in all other activities
13 for which Plaintiff was otherwise suited. By reason of the premises, and as a direct and proximate
14 result of the negligence of the said Defendants, and each of them, Plaintiff, Cheyenne Nalder, was
15 caused to be disabled and limited and restricted in her occupations and activities, and/or suffered a
16 diminution of Plaintiff's earning capacity and future loss of wages, all to her damage in a sum not
17 yet presently ascertainable, the allegations of which Plaintiff prays leave of Court to insert here
18 when the same shall be fully determined.

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer
28 on February 5, 2015. This payment extends any statute of limitation.

1 15. After reaching the age of majority an amended judgment was entered in Cheyenne
2 Nalder's name.

3 16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment
4 against Gary Lewis including the full damages assessed in the original judgment plus interest and
5 minus the one payment made.

6 17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of
7 limitations on the judgments expire.

8 18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to
9 prosecute this action, and is entitled to a reasonable attorney's fee.

10 CLAIM FOR RELIEF;

11 1. General damages in an amount in excess of \$10,000.00;

12 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently
14 unascertainable amount;

15 3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of
16 Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's
17 earning capacity in a presently unascertainable amount;

18 4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of
19 \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20 5. A declaration that the statute of limitations on the judgment is still tolled as a result of
21 the Defendant's continued absence from the state.

22 4. Costs of this suit;

23 5. Attorney's fees; and

24 ///

25

26 ///

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28 ///

6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 3rd day of April, 2018.

STEPHENS GOURLEY & BYWATER

/s/ David A. Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT “F”

STEPHENS & BYWATER, P.C.

ATTORNEYS AT LAW

David A. Stephens email: dstephens@sgblawfirm.com

Gordon E. Bywater email: gbywater@sgblawfirm.com

July 17, 2018

VIA REGULAR U.S. MAIL

Thomas E. Winner, Esq.
Atkin Winner & Sherrod
1117 S. Rancho Drive
Las Vegas, Nevada 89102

RE: Cheyenne Nalder vs. Gary Lewis

Dear Tom:

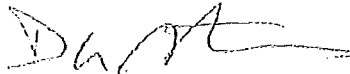
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

I recognize that you have not appeared in this matter. I served Mr. Lewis some time ago and he has never filed an answer. Thus, as a courtesy to you, who I understand to be representing Mr. Lewis in related cases, I am providing this Three Day Notice to you in addition to Mr. Lewis.

I appreciate your consideration.

Sincerely,

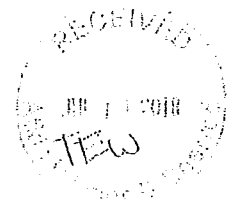
STEPHENS & BYWATER



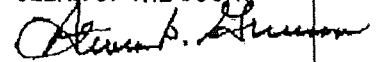
David A. Stephens, Esq.

DAS:mlg
enclosure

3636 N. Rancho Drive, Las Vegas, Nevada 89130
Telephone: (702) 656-2355 | Facsimile: (702) 656-2776
Website: www.sgblawfirm.com



APPX0263



1 TDNP (CIV)
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & BYWATER
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15 CHEYENNE NALDER,

CASE NO.: A-18-772220-C

16 Plaintiff,

DEPT NO.: XXIX

17 vs.

18 GARY LEWIS and DOES I through V,
19 inclusive,

20 Defendants.
21

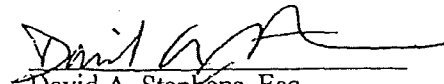
22 THREE DAY NOTICE TO PLEAD

23 Date: n/a
24 Time: n/a

25 To: Gary Lewis, Defendant

26 PLEASE TAKE NOTICE that the Plaintiff intends to take a default and default judgment
27 against you if you have not answered or otherwise filed a response of pleading within three (3) days
28 of the date of this notice.

Dated this 17 day of July 2018.

24
25 
26 David A. Stephens, Esq.
27 Nevada Bar No. 00902
28 Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Plaintiff

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CERTIFICATE OF MAILING

I hereby certify that service of this THREE DAY NOTICE TO PLEAD was made this 7th
day of July, 2018, by depositing a copy thereof in the U.S. Mail, first class postage prepaid,
addressed to:

Gary Lewis
733 Minnesota Avenue
Glendora, CA 91740

Thomas E. Winner, Esq.
Atkin Winner Shorrod
1117 S. Rancho Drive
Las Vegas, NV 89102

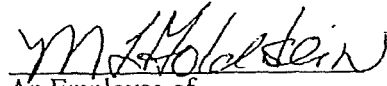

An Employee of
Stephens Gourley & Bywater

EXHIBIT “G”

AO450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

DISTRICT OF

Nevada

Nalder et al.,

Plaintiffs,

V.

United Automobile Insurance Company,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: 2:09-cv-01348-RCJ-GWF

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

☐ **Notice of Acceptance with Offer of Judgment.** A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED

The Court grants summary judgment in favor of Nalder and finds that the insurance renewal statement contained an ambiguity and, thus, the statement is construed in favor of coverage during the time of the accident. The Court denies summary judgment on Nalder's remaining bad-faith claims.

The Court grants summary judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant. The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewis's implied insurance policy at the time of the accident.

October 30, 2013

Date



/s/ Lance S. Wilson

Clerk

/s/ Summer Rivera

(By) Deputy Clerk

APPX0267

EXHIBIT “H”



CHRISTENSEN LAW
www.injuryhelpnow.com

August 13, 2018

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 S. Third Street
Las Vegas, Nevada 89101

VIA Fax: (702)384-1460
Email: srogers@rmcmlaw.com

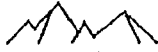
Re: Gary Lewis

Dear Stephen:

I am in receipt of your letter dated Friday, August 10, 2018. I was disappointed that you have chosen to disregard my request that you communicate with me and not directly with my client. You say you have "been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions." Would you be so kind as to provide me with all communications written or verbal or notes of communications you have had with UAIC, their attorneys and/or Mr. Lewis from your first contact regarding this matter to the present?

Please confirm that UAIC seeks now to honor the insurance contract with Mr. Lewis and provide a defense for him and pay any judgment that may result? This is the first indication I am aware of where UAIC seeks to defend Mr. Lewis. I repeat, please do not take any actions, including requesting more time or filing anything on behalf of Mr. Lewis without first getting authority from Mr. Lewis through me. Please only communicate through this office with Mr. Lewis. If you have already filed something or requested an extension without written authority from Mr. Lewis, he requests that you immediately reverse that action. Please also only communicate with UAIC that any attempt by them to hire any other attorneys to take action on behalf of Mr. Lewis must include notice to those attorneys that they must first get Mr. Lewis' consent through my office before taking any action including requesting extensions of time or filing any pleadings on his behalf.

Regarding your statement that Mr. Lewis would not be any worse off if you should lose your motions. That is not correct. We agree that the validity of the judgment is unimportant at this stage of the claims handling case. UAIC, however, is arguing that Mr. Lewis' claims handling case should be dismissed because they claim the judgment is not valid. If you interpose an insufficient improper defense that delays the inevitable entry of judgment against Mr. Lewis and the Ninth Circuit dismisses the appeal then Mr. Lewis will have a judgment against him and no claim against UAIC. In addition, you will cause additional damages and expense to both parties for which, ultimately, Mr. Lewis would be responsible.



CHRISTENSEN LAW
www.injuryhelpnow.com

Could you be mistaken about your statement that "the original judgment expired and cannot be revived?" I will ask your comment on just one legal concept -- Mr. Lewis' absence from the state. There are others but this one is sufficient on its own. There are three statutes applicable to this narrow issue: NRS 11.190; NRS 11.300 and NRS 17.214.

NRS 11.190 Periods of limitation. ... actions .. may only be commenced as follows:

1. Within 6 years:

(a) ... an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

NRS 11.300 Absence from State suspends running of statute. If, ... after the cause of action shall have accrued the person (defendant) departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action.

NRS 17.214 Filing and contents of affidavit; recording affidavit; notice to judgment debtor; successive affidavits.

1. A judgment creditor or a judgment creditor's successor in interest may renew a judgment which has not been paid by:

(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation.

These statutes make it clear that both an action on the judgment or an optional renewal is still available through today because Mr. Lewis has been in California since late 2008. If you have case law from Nevada contrary to the clear language of these statutes please share it with me so that I may review it and discuss it with my client.

Your prompt attention is appreciated. Mr. Lewis does not wish you to file any motions until and unless he is convinced that they will benefit Mr. Lewis -- not harm him and benefit UAIC. Mr. Lewis would like all your communications to go through my office. He does not wish to have you copy him on correspondence with my office. Please do not communicate directly with Mr. Lewis.

Very truly yours,

Tommy Christensen
CHRISTENSEN LAW OFFICE, LLC



Attorneys At Law
Stephen H. Rogers
Rebecca L. Mastrangelo
Daniel E. Carvalho
Bert Mitchell*
Imran Anwar
Charles A. Michalek
Dawn L. Davis^
Marissa R. Temple
Will C. Mitchell
Kimberly C. Beal
*Of Counsel
^Also admitted in AZ

August 10, 2018

Via Email: thomasc@injuryhelpnow.com

Tommy Christensen, Esq.
Christensen Law Office, LLC
1000 South Valley View Blvd.
Las Vegas, Nevada 89107

Re: Cheyenne Nalder v. Gary Lewis
Court Case Nos.: A-07-549111-C and A-18-772220-C

Dear Tommy:

In response to your recent correspondence, it is my understanding that you and Dennis represent Mr. Lewis with regard to his claims against UAIC. I have been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions. Please advise if you are now also acting as Mr. Lewis' personal counsel with regard to my defense of Ms. Nalder's 2018 actions. If so, I will include you on all correspondence and meetings with Mr. Lewis.

As for your question about the legal issues presented by Ms. Nalder's 2018 actions, and whether the defenses I propose would cause Mr. Lewis any "problems," I do not believe they would. Ms. Nalder moved to amend an expired \$3.5 million judgment against him, and also filed a complaint for damages for the personal injuries which were previously adjudicated and to add interest through April 8, 2018, increasing the amount of the judgment to nearly \$5.6 million. My advice as Mr. Lewis' defense counsel is that we should attempt to protect him by moving to void the Amended Judgment and Dismiss the new Complaint.

Regarding the motion to void the Amended Judgment, Ms. Nalder's proposition that her guardian ad litem's responsibility to renew the judgment was tolled while she was a minor, and while Mr. Lewis was out of state, is legally unsupported. Attached is a draft of our proposed Motion for Relief from Judgment which sets forth the legal arguments. Presumably, Mr. Lewis would prefer not having this judgment against him. This motion is supported by the law, and should prove successful. If not, Mr. Lewis would be in no worse position than he is now.

Regarding Ms. Nalder's 2018 Complaint, the personal injury claims appear to be subject to dismissal pursuant to the doctrine of claim preclusion, as judgment has already been entered on the claims. That Ms. Nalder's guardian ad litem did not take the appropriate steps to renew the judgment was not Mr. Lewis' responsibility. Mr. Lewis should not be placed in legal jeopardy because of the

Tommy Christensen, Esq.
Cheyenne Nalder v. Gary Lewis
Page 2 of 2


guardian ad litem's failure to act. Ms. Nalder's request for another amended judgment in her 2018 Complaint is procedurally inappropriate, since a request for an amended judgment is not a cause of action. Her request for declaratory relief does not meet the criteria. Overall, all of her claims regarding the validity of further amended judgments suffer from the same problems as the Amended Judgment - the original Judgment expired and cannot be revived. Attached is a copy of our proposed Motion to Dismiss the 2018 Complaint. Mr. Lewis' interests would be protected if the 2018 Complaint were dismissed, as, presumably, he would prefer not having to risk litigating Ms. Nalder's personal injury claims and potential exposure to an increased judgment. He would not be in any worse position than he is now if the Motion to Dismiss were denied.

In your letter, on Mr. Lewis' behalf, you instruct me not to file motions such as those attached. It is not clear to me why you have done so. I expect this letter and the attached motions answer any questions or concerns you may have. If you have specific concerns that I have not addressed, please advise. Otherwise, please confirm that Mr. Lewis will cooperate with his defense by agreeing to allow us to protect him by filing the attached motions, or, if not, why not.

Your prompt attention is appreciated. (Note: This letter is copied to Mr. Lewis so that he can participate with his counsel in our efforts to defend him his interests).

Sincerely,

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

Dictated by Stephen Rogers, Esq.
Signed in his absence 

Stephen H. Rogers, Esq.

SHR:TLHK/cm

Attachments

cc: Gary Lewis

M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 080918 J vpd

1 MDSM
STEPHEN H. ROGERS, ESQ.
2 Nevada Bar No. 5755
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
3 700 South Third Street
Las Vegas, Nevada 89101
4 Phone (702) 383-3400
Fax (702) 384-1460
5 Email: srogers@rmcmlaw.com
Attorneys for Defendant
6
7

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10
11 CHEYENNE NALDER,
12 Plaintiff,

CASE NO.: A-18-772220-C
DEPT. NO.: 29

13 vs.

14 GARY LEWIS and DOES I through V inclusive
15 Defendants.

16
17 DEFENDANT'S MOTION TO DISMISS

18 Defendant, Gary Lewis, by and through his counsel, Stephen H. Rogers, Esq., of the law firm
19 of Rogers, Mastrangelo, Carvalho & Mitchell, hereby brings his Motion to Dismiss Plaintiff's
20 Complaint in its entirety. Plaintiff's personal injury claims have been previously litigated and
21 judgment entered. Plaintiff's request for a second amended judgment should be dismissed because
22 the original judgment expired in 2014, was not properly renewed, and cannot be revived via an
23 amended judgment more than four years after it expired.

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1 This Motion is made and based upon the papers and pleadings on file herein, the Points and
2 Authorities attached hereto, and such oral argument as the Court may permit.

3 DATED this ____ day of August, 2018.

4 ROGERS, MASTRANGELO, CARVALHO &
5 MITCHELL

6
7 Stephen H. Rogers, Esq.
8 Nevada Bar No. 5755
9 700 South Third Street
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant

12 NOTICE OF MOTION

13 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

14 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO DISMISS

15 will come on for hearing before the above-entitled Court on the ____ day of ____, 2018

16 at ____ a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

17 DATED this ____ day of August, 2018.

18 ROGERS, MASTRANGELO, CARVALHO &
19 MITCHELL

20 Stephen H. Rogers, Esq.
21 Nevada Bar No. 5755
22 700 South Third Street
23 Las Vegas, Nevada 89101
24 Attorneys for Defendant

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1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Cheyenne Nalder, ("Cheyenne") alleges in her Complaint that she was injured in an accident
5 in 2007. Cheyenne was 11 years old at the time. She did not wait until she reached the age of
6 majority to pursue her claim for damages against the alleged at-fault driver, Gary Lewis ("Lewis").
7 A guardian ad litem, James Nalder, was appointed to pursue her claim. He did so, filing a complaint
8 on her behalf and obtaining a Judgment for \$3.5 million. For unknown reasons, no payments other
9 than Lewis' \$15,000 auto insurance policy limit have been sought on the Judgment. It is unknown
10 what efforts James Nalder made to enforce the Judgment, if any. What is known is that he did not
11 renew the Judgment before it expired in 2014, while Cheyenne was still a minor.

12 Despite the fact that Lewis' liability for any injuries Cheyenne may have sustained in the
13 2007 accident have already been adjudicated and judgment entered, Cheyenne now re-asserts those
14 claims in the instant Complaint. Those claims are subject to dismissal pursuant to the doctrine of
15 claim preclusion.

16 Cheyenne also seeks a second amended judgment from the Court. Seeking an amended
17 judgment is not a cause of action; rather, it is a motion. Cheyenne's request for a second amended
18 judgment should be dismissed and she should be directed to file a motion.

19 Finally, Cheyenne seeks a declaration from the Court that the statute of limitations to enforce
20 an Amended Judgment (and the second amended judgment she seeks in her Complaint) was tolled
21 because she was a minor and Lewis resides in California. Declaratory relief is not appropriate in this
22 matter because there is no justiciable controversy and the issues upon which Cheyenne requests
23 declaratory relief are unripe. In addition, since the Amended Judgment should not have been issued.
24 The original judgment expired in 2014 and was not subject to revival, there is nothing for Cheyenne
25 to enforce.

26 In summary, the Court should dismiss the Complaint as there are no facts under which
27 Cheyenne is entitled to relief.

1 II.

2 STATEMENT OF FACTS

3 This case involves a July 8, 2007 accident. Cheyenne Nalder, ("Cheyenne") who was then
4 a minor, alleged injuries. On October 9, 2007, Cheyenne's guardian ad litem, James Nalder, filed
5 a Complaint against Gary Lewis ("Lewis"). See Complaint attached hereto as Exhibit "A."

6 Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June 3,
7 2008, a judgment was entered against him in the amount of \$3.5 million.¹ See Judgment, attached
8 hereto as Exhibit "B." James Nalder as guardian ad litem for Cheyenne was the judgment creditor.
9 *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless it is timely renewed.
10 As such, the Judgment expired on June 3, 2014.

11 On March 22, 2018, nearly 10 years after the Judgment was entered, and nearly four (4) years
12 after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne
13 Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-07-549111-C,
14 which is also assigned to this Court. Her Motion did not advise the Court that the Judgment she
15 sought to amend had expired. The Court granted Cheyenne's Ex Parte Motion and issued an
16 Amended Judgment on March 28, 2018. See Exhibit "C." Contemporaneous with the filing of the
17 instant motion, Lewis has filed a Motion for Relief from Judgment in Case No. A-07-549111-C,
18 detailing the reasons the Court should void the Amended Judgment.

19 On April 3, 2018, one day before the statute of limitations ran for Cheyenne to file a personal
20 injury claim (but ten years after she already obtained a judgment), she filed a Complaint alleging
21 identical injuries from the same accident. See Exhibit "A," the 2007 Complaint, and the 2018
22 Complaint, attached as Exhibit "D." In the 2018 Complaint, she does not explain why she believes
23 she is entitled to damages for the same injuries for which she received a judgment in 2008. See
24 Exhibit "D." However, the 2018 Complaint does acknowledge that she already received a judgment
25 against Lewis. *Id.* at p. 3, ll. 10 - 11.

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28 ¹Judgments are entered when filed, not when a Notice of Entry is made. NRCF 58(c).

1 Finally, the 2018 Complaint seeks an amended judgment to add interest to the 2008
2 judgment, and declaratory relief that the statute of limitations to enforce the judgment was tolled
3 because she was a minor and Lewis was a resident of California.

4 III.

5 MOTION TO DISMISS STANDARD

6 A defendant is entitled to dismissal when a plaintiff fails "to state a claim up which relief can
7 be granted." NRCP 12(b)(5). The Nevada Supreme Court has declared that the dismissal of a
8 complaint is appropriate where "it appears beyond a doubt that [the plaintiff] could prove no set of
9 facts which, if true, would entitle [the plaintiff] to relief." *Biza Stew, LLC v. City of N. Las Vegas*,
10 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

11 In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint.
12 *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev. Adv. Op. 76, 357 P.3d
13 at 930 (2015) "the court is not limited to the four corners of the complaint." Citing 5B Charles Alan
14 Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d ed.2004). The
15 *Baxter* Court also held that courts "may also consider unattached evidence on which the complaint
16 necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the
17 plaintiff's claim; and (3) no party questions the authenticity of the document." *Id.*, citing *United*
18 *States v. Carpathian Colleges*, 655 F.3d 984, 999 (9th Cir.2011) (internal quotation omitted). The
19 *Baxter* Court continued "while presentation of matters outside the pleadings will convert the
20 motion to dismiss to a motion for summary judgment, Fed.R.Civ.P. 12(d); NRCP 12(b), such
21 conversion is not triggered by a court's 'consideration of matters incorporated by reference or integral
22 to the claim,'" *Id.*, citing 5B Wright & Miller, *supra*, § 1357, at 376.

23 While Defendant's Motion to Dismiss does rely on certain documents which were not
24 attached to the Complaint, those documents are either incorporated by reference (the Judgment and
25 Amended Judgment) or integral to the claim (the Complaint in the 2007 case). Therefore, this Court
26 should consider this matter a motion to dismiss and not convert it to a motion for summary
27 judgment. As stated below, there is no doubt that there are no facts pursuant to which Cheyenne
28 is entitled to the relief her 2018 Complaint seeks.

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IV.

ARGUMENT

A. *The Doctrine of Claim Preclusion Mandates Dismissal of Plaintiff's Claims Related to the July 8, 2007 Accident*

The October 9, 2007 Complaint filed by Cheyenne's guardian ad litem, James Nalder, alleged personal injuries caused by the July 8, 2007 accident. See Complaint attached hereto as Exhibit "A." When Lewis did not respond to that Complaint, a Default was entered against him. On June 3, 2008, a Judgment in the amount of \$3.5 million was entered against Lewis. See Judgment, attached hereto as Exhibit "B." Plaintiff acknowledged this in Paragraph 10 of her 2018 Complaint. Because the personal injury claims in the 2018 Complaint have already been litigated, it should be dismissed.

Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In 2008, the Nevada Supreme Court set forth a three-part test to be applied to determine when claim preclusion applies. *Five Star Capital Corp. v. Ruby*, 134 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Shapira*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015) (the modification is not applicable to this case). According to the *Five Star* test, claim preclusion applies when: (1) the parties or their privies are the same; (2) the final judgment is valid; and (3) the new action is based on the same claims that were or could have been brought in the first action. Cheyenne's claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for dismissal under the doctrine of claim preclusion.

First, the parties are the same. The only difference between the 2007 suit and the 2018 suits is that Cheyenne is now an adult, so her claims need not be litigated via a guardian ad litem.

Second, the final judgment is valid. There is no question that the Judgment issued in 2008 was valid until it expired in 2014. It could have been renewed, and, if so, would have still been valid today. However, it was not renewed. Cheyenne's (or rather her guardian ad litem's) failure to fully execute on the Judgment while it was valid does not open the door for her to re-litigate her claims.

Third, the same claims are involved in both actions. A review of the 2008 Complaint and the 2018 Complaint reveal that the personal injury claims are identical.

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1 As the *Five Star* Court noted, public policy supports claims preclusion in situations such as
2 this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a), noting
3 that "the purposes of claim preclusion are 'based largely on the ground that fairness to the defendant,
4 and sound judicial administration, require that at some point litigation over the particular controversy
5 come to an end' and that such reasoning may apply 'even though the substantive issues have not
6 been tried . . .'" *Id.* at 1058, 194 P.3d at 715. These policy reasons are applicable here. Lewis is
7 entitled to finality. A Judgment was already entered against him. Renewing the Judgment was not
8 Lewis' responsibility – that was the responsibility of Cheyenne's guardian ad litem, James Nalder.
9 Lewis should not be exposed to judgment being entered against him a second time due to Nalder's
10 failure to act.

11 Cheyenne's personal injury claims are the very type to which claims preclusion applies. The
12 public policy considerations supporting claims preclusion cited with approval by the Court in *Five*
13 *Star* apply to this action. The claims for personal injuries alleged in the Complaint should be
14 dismissed.

15 ***B. Plaintiff's Request for A Second Amended Judgment Should Be Dismissed Because it is***
16 ***not a Cause of Action***

17 Regarding Cheyenne's request that the Court enter another amended judgment, adding
18 interest accrued through April 3, 2018, it is unclear why this was included in a Complaint. Seeking
19 to amend a judgment is not a cause of action. Cheyenne has demonstrated that she knows how to
20 properly petition the Court to amend a judgment, as she has already done so once. This claim is
21 inappropriately included in the Complaint, and should be dismissed.

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1 C. *Cheyenne's Request for Declaratory Relief Should Be Dismissed*

2 Cheyenne does not ask for relief relative to enforcing an amended judgment, which is a cause
3 of action. Rather, she asks the Court to declare that the statute of limitations on her original judgment
4 was tolled because of she was a minor and because the judgment debtor lived in another State:
5 California. Presumably, Plaintiff means the statute of limitations to enforce the judgment, but that
6 is not clear.

7 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons
8 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the
9 controversy, and (3) the issue is ripe for judicial determination." *Cty. of Clark, ex rel. Univ. Med.*
10 *Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998), citing *Knittle v. Progressive*
11 *Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996). Here, declaratory relief is not available
12 because the issue as to whether the Amended Judgment or any future amended judgment is
13 enforceable, or whether the statute of limitations has expired, is not ripe.

14 The conditions under where a justiciable controversy exists were addressed by the Nevada
15 Supreme Court in *Kress v. Coney*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a
16 justiciable controversy does not exist, where damage "... is merely apprehended or feared. ..." *Id.*
17 at 28-29, 189 P.2d at 365. As the Court in *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986) noted,
18 "'the requirement of an actual controversy has been construed as requiring a concrete dispute
19 admitting of an immediate and definite determination of the partes' rights.'" *Id.* at 526, 728 P.2d at
20 444. Cheyenne's concern that any effort to enforce the Amended Judgment will be thwarted by a
21 determination that the applicable statute of limitations bars such action is "apprehended or feared"
22 but not existing presently, because she has not taken any action to enforce the Amended Judgment.

23 Likewise, there is no "concrete dispute" that the statute of limitations would bar an attempt
24 by Cheyenne to collect on the Amended Judgment because she has not tried. Unless and until
25 Cheyenne actually tried to enforce the Amended Judgment, there is no "immediate" need for a
26 "definite" determination of the parties' rights. Therefore, there is no justiciable controversy regarding
27 Cheyenne's ability to seek to enforce the Amended Judgment at this time.

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1 “Ripeness focuses on the timing of the action rather than on the party bringing the action .
2 . . The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the
3 hardship to the parties of withholding judicial review, and (2) the suitability of the issues for
4 review.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1224, 1230-31
5 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003)). In
6 the unpublished decision in *Cassady v. Main*, 2016 WL 412835, a copy of which is attached hereto
7 as Exhibit “E,” the Nevada Supreme Court noted that the plaintiff in that case would suffer no harm
8 if declaratory relief were not considered, because he could file a complaint seeking direct redress for
9 complaints . *Id.* at *2. Similarly here, Cheyenne could seek to have a court address her statute of
10 limitations concerns in an action to execute on the Amended Judgment. There is no need for such
11 a determination at this time.

12 Regardless as to whether Cheyenne’s request for declaratory relief is appropriate at this
13 juncture, Cheyenne’s request for declaratory relief should be dismissed because there is no valid
14 judgment to enforce. The original Judgment entered on June 3, 2008 expired on June 3, 2014. No
15 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an Amended
16 Judgment, entered on March 28, 2018. As demonstrated in Defendant’s Motion for Relief From
17 Judgment Pursuant to NRCP 60, the Court should not have entered an Amended Judgment, and no
18 other amended judgments should be entered. Nevada law does not permit renewal of expired
19 judgments by amendment.

20 Nor is the deadline to file the appropriate documents to renew a judgment tolled by any
21 statute or rule. The time limit to renew the Judgment was not tolled by Cheyenne’s minority because
22 her guardian ad litem, an adult, was the judgment creditor. The time limit to renew the Judgment was
23 not tolled by the judgment creditor’s absence from the state, because the requirement that a judgment
24 be renewed is not a cause of action to which such tolling provisions might apply. Because no valid
25 judgment exists, Cheyenne’s request for declaratory relief regarding the tolling of the time to enforce
26 a judgment should be dismissed as a matter of law.

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V.

CONCLUSION

In her 2018 Complaint, Plaintiff sets forth no facts which, if true, would entitle her to the relief she seeks. Her Complaint should be dismissed in its entirety.

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO &
MITCHELL

Stephen H. Rogers, Esq.
Nevada Bar No. 5755
700 South Third Street
Las Vegas, Nevada 89101
Attorneys for Defendant

DRAFT

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R., I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the ____ day of August, 2018, a true and correct copy of the foregoing **DEFENDANT'S MOTION TO DISMISS** was served upon the following counsel of record as indicated below:

David A. Stephens, Esq.
Stephens, Gourley & Bywater
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@sgblawfirm.com
Attorneys for Plaintiff

☐ Via First Class, U.S. Mail, Postage
Prepaid
☐ Via Facsimile
☐ Via Hand-Delivery
☒ Via Electronic Service Pursuant to
Rule 9 of the N.E.F.C.R.
(Administrative Order 14-2)

An Employee of
Rogers, Mastrangelo, Carvalho & Mitchell

1 MREL
2 STEPHEN H. ROGERS, ESQ.
3 Nevada Bar No. 5755
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL
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10 Attorneys for Defendant

long 6 page 3

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS and DOES I through V inclusive

17 Defendants.

CASE NO.: 07A549111

DEPT. NO.: 29

18 DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60

19 Defendant, Gary Lewis, by and through his counsel, Stephen H. Rogers, Esq., of the law firm
20 of Rogers, Mastrangelo, Carvalho & Mitchell, hereby brings his Motion for Relief from Judgment
21 Pursuant to NRCP 60, asking that this Court declare as void the Amended Judgment entered on
22 March 28, 2018, because the underlying Judgment expired in 2014 and is not capable of being
23 revived.

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1 This Motion is made and based upon the papers and pleadings on file herein, the Points and
2 Authorities attached hereto, and such oral argument as the Court may permit.

3 DATED this ____ day of August, 2018.

4 ROGERS, MASTRANGELO, CARVALHO &
5 MITCHELL

6
7 Stephen H. Rogers, Esq.
8 Nevada Bar No. 5755
9 700 South Third Street
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant

12 **NOTICE OF MOTION**

13 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

14 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION FOR RELIEF
15 FROM JUDGMENT PURSUANT TO NRCF 50 will come on for hearing before the above-
16 entitled Court on the ____ day of _____, 2018 at ____ a.m. in Department XXIX of the
17 Eighth Judicial District Court, Clark County, Nevada.

18 DATED this ____ day of August, 2018.

19 ROGERS, MASTRANGELO, CARVALHO &
20 MITCHELL

21 Stephen H. Rogers, Esq.
22 Nevada Bar No. 5755
23 700 South Third Street
24 Las Vegas, Nevada 89101
25 Attorneys for Defendant

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1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 This Court made a mistake of law based on incomplete/incorrect facts presented in an Ex
5 Parte Motion to Amended Judgment, when entering the Order granting the Motion on March 28,
6 2018. The Judgment which Plaintiff, Cheyenne Nalder ("Cheyenne") moved to amend was entered
7 on June 3, 2008. The judgment creditor, Cheyenne's guardian ad litem, James Nalder, did not renew
8 the Judgment as required by Nevada law before it expired on June 3, 2104, six years after it was
9 entered.

10 The Amended Judgment ostensibly revived the expired Judgment, despite the fact that
11 Cheyenne presented this Court with no legal support for such revival. Cheyenne's Motion proposes
12 that tolling provisions applicable to causes of action are also applicable to the deadlines to renew
13 judgments. However, none of the authority cited in her Motion supports misappropriating tolling
14 provisions applicable to certain causes of action to extend the time to renew a judgment, nor does
15 any other authority. Pursuant to NRCP 60, the Court should declare that the Amended Judgment is
16 void and that the original judgment has expired, and therefore is not enforceable.

17 II.

18 STATEMENT OF FACTS

19 This case involves an accident which occurred on July 8, 2007. Cheyenne, who was then a
20 minor, claimed that she suffered injuries from the accident. On October 9, 2007, Cheyenne, through
21 her guardian ad litem, James Nalder, presumably a relative, filed a Complaint against Gary Lewis
22 ("Lewis"). See Complaint attached hereto as Exhibit "A."

23 Lewis did not respond to the Complaint and a default was taken against him. *Id.* Eventually,
24 a judgment was entered against him in the amount of \$3.5 million. See Judgment, attached hereto

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1 as Exhibit "B." The Judgment was entered on June 3, 2008.¹ James Nalder as guardian ad litem for
2 Cheyenne is the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires by
3 limitation in six (6) years. As such, the Judgment expired on June 3, 2014.

4 On March 22, 2018, nearly 10 years after the judgment was entered, and nearly four (4) years
5 after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne
6 Nalder, Individually" ("Ex Parte Motion"). Her Motion did not advise the Court that the Judgment
7 she sought to amend had expired. Rather, it cited two statutes, NRS 11.280 and 11.300, without
8 explaining why they were applicable to her request, and asked the Court to amend the Judgment to
9 be in her name alone. In short, the Court was not put on notice that it was being asked to ostensibly
10 revive an expired judgment.

11 With an incomplete account of the issues presented, the Court granted Cheyenne's Ex Parte
12 Motion and issued an Amended Judgment on March 28, 2018. *See* Exhibit "C."

13 As the Judgment had expired and an Amended Judgment could not be issued to revive it,
14 Lewis brings the instant Motion pursuant to NRCPP 60(b), to void the Amended Judgment and
15 declare that the original Judgment has expired.

16 III.

17 ARGUMENT

18 A. *The Judgment Expired on June 3, 2014*

19 Nevada law provides that the statute of limitations for execution upon a judgment is six (6)
20 years. NRS 11.190(1)(a). The judgment creditor may renew a judgment (and therefore the statute
21 of limitations), for an additional six years by following the procedure mandated by NRS 17.214. The
22 mandated procedures were not followed. Therefore the Judgment expired.

23 NRS 17.214(1)(a) sets forth the procedure that must be followed to renew a judgment. A
24 document titled "Affidavit of Renewal" containing specific information outlined in the statute must
25 be filed with the clerk of court where the judgment is filed within 90 days before the date the
26 judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No
27

28 ¹Judgments are entered when filed, not when a Notice of Entry is made. NRCPP 58(C).

1 such Affidavit of Renewal was filed by James Nalder, the judgment creditor. Cheyenne was still a
2 minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment
3 was recorded, and the judgment debtor must be served. No evidence of recordation (if such was
4 required) or service on Lewis is present in the record.

5 The Nevada Supreme Court, in *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007), held that
6 judgment creditors must strictly comply with the procedure set forth in NRS 17.214 in order to
7 validly renew a judgment. *Id.* at 405-408, 168 P.3d 717-719. There is no question that neither
8 Cheyenne nor her guardian ad litem did so. Therefore the Judgment expired.

9 *1. The deadline to renew the Judgment was not tolled by any statute or rule*

10 In her Ex Parte Motion, Cheyenne suggested that the deadlines mandated by NRS 17.214
11 were somehow extended because certain statutes of limitation can be tolled for causes of action
12 under some circumstances. No such tolling applies to renewal of a judgment because renewal of a
13 judgment is not a cause of action.

14 The introduction to NRS 11.090, the statute of limitation law, states that it applies to: "...
15 . actions other than those for the recovery of real property, unless further limited by specific statute
16 . . ." The list which follows includes various causes of action for which suit can be brought.
17 Nowhere in the list is renewing a judgment defined as or analogized to a cause of action.

18 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six-
19 year "catch all" provision of NRS 11.090(1)(a). *Leven* at 403, 168 P.3d at 715 ("An action on a
20 judgment or its renewal must be commenced within six years under NRS 11.190(1)(a); thus a
21 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS
22 17.214, provides for any tolling of the time period to renew a judgment.

23 *2. The deadline to renew the Judgment was not tolled by Cheyenne's minority*

24 Setting aside the fact that the deadline to renew a judgment is not an action to which statutes
25 of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS 17.214 were
26 tolled by her minority are inapt for a few reasons. First, the tolling statute cited by Cheyenne, NRS
27 11.280, does not universally toll all statutes of limitations while a plaintiff is a minor. Rather, it is
28 expressly limited to actions involving sales of probate estates.

1 Legal disability prevents running of statute. NRS 11.260 and 11.270 shall not apply
2 to minors or others under any legal disability to sue at the time when the right
3 of action first accrues, but all such persons may commence an action at any time
4 within 1 year after the removal of the disability.

5 Emphasis added. NRS 11.260 applies to actions to recover a estate sold by a guardian. NRS 11.270
6 applies to actions to recover estates sold by an executor or administrator. Neither of those causes of
7 action are at issue here. Therefore, NRS 11.280 would not authorize tolling the deadline for the
8 renewal of a judgment while a judgment creditor was a minor. This statute would not apply in any
9 instance because the judgment creditor, James, was not a minor, and so did not have a legal
10 disability.

11 On March 5, 2014, the deadline to file the Affidavit of Renewal, Cheyenne was still a minor.
12 The judgment creditor was her guardian ad litem, James Nalder. It was James Nalder, not Cheyenne,
13 who had the responsibility to file the Affidavit of Renewal by the March 5, 2014 deadline. The fact
14 that Cheyenne, the real party in interest, was a minor, is not legally relevant.

15 As Cheyenne was not the judgment creditor at any time prior to the date of the issuance of
16 the Amended Judgment, anyone looking at the Judgment would believe that it expired on June 4,
17 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were given
18 credence, either the judgment never expired, because she was the real party in interest and was a
19 minor at the time, the Judgment would have otherwise expired or the judgment did expire but was
20 revived upon her reaching the age of majority. To adopt this proposition would frustrate the certainty
21 NRS 17.214 was enacted to promote – the reliability of title to real property.

22 If tolling of deadlines to amend judgments were sanctioned, title to real property owned by
23 anyone who had ever been a judgment debtor would be clouded, as a title examiner would not know
24 whether a judgment issued more than six years prior had expired pursuant to statute, or was still
25 valid, or could be revived when a real party in interest who was a minor reached the age of majority.
26 As the Court held in *Leven*, one of the primary reasons for the need to strictly comply with NRS
27 17.214's recordation requirement is to "procure reliability of title searches for both creditors and
28 debtors since any lien on real property created when a judgment is recorded continues upon that
judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance with the notice

1 requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor.
2 *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe
3 that the judgment has expired and he need take no further action to defend himself against execution.

4 3. *Lewis' residency in California did not toll the deadline to renew the Judgment*

5 Cheyenne's Ex Parte Motion next cites NRS 11.300, which provides "if, when the cause of
6 action shall accrue against a person, the person is out of the State, the action may be commenced
7 within the time herein limited after the person's return to the State; and if after the cause of action
8 shall have accrued the person departs from the State, the time of the absence shall not be part of the
9 time prescribed for the commencement of the action." Cheyenne's argument that the deadline to
10 renew the Judgment are tolled by NRS 11.300 fails because, again, renewing a judgment is not a
11 cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada
12 regarding judgments, held in *F/S Manufacturing v. Kensmore*, 798 N.W.2d 853 (N.D. 2011),
13 "Because the statutory procedure for renewal by affidavit is not a separate action to renew the
14 judgment, the specific time period [provided to renew] cannot be tolled under [the equivalent to NRS
15 11.300] based on a judgment debtor's absence from the state." *Id.* at 858.

16 In addition, applying Cheyenne's argument that the time to renew a judgment was tolled
17 because of the judgment debtor's absence from Nevada would have a similarly negative impact on
18 the ability for property owners to obtain clear title to their property. Nothing on a judgment would
19 reflect whether a judgment debtor was outside of the state and a facially expired judgment was still
20 valid. Therefore, essentially, a responsible title examiner would have to list any judgment that had
21 ever been entered against a property owner on the title insurance policy, because he could not be sure
22 that judgments older than six years for which no affidavit of renewal had been filed were expired or
23 the expiration was tolled.

24 B. *The Court Made an Error of Law, Likely Based on Mistake of Fact, When it Granted the*
25 *Ex Parte Motion to Amend Judgment*

26 NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake (NRCP
27 60(b)(1)) or because a judgment is void (NRCP 60(b)(4)). Both of these provisions apply.

28 1. *The Court made a mistake of law when it granted the Amended Judgment*

1 Because the Ex Parte Motion was ex parte, it was not served on Lewis nor did he have an
2 opportunity to make the Court aware that the Judgment had already expired on its own terms, and
3 that Cheyenne's proposition that the deadline to renew the judgment was tolled was inapt. The Ex
4 Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not been
5 properly renewed. Had the Court been fully apprised of the facts, it likely would not have granted
6 the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, a motion to set
7 aside the amended judgment on the basis of mistake is timely as it is made within six months of the
8 entry of the judgment. This Court should rectify the mistake and void the Amended Judgment in
9 accordance with NRCp 60(b)(1).

10 2. *The Amended Judgment is void*

11 As demonstrated above, the Judgment expired. It was not renewed. There is no legal or
12 equitable basis for the Court to revive it. The six month deadline does not apply to requests for relief
13 from a judgment because the judgment is void. Therefore, the instant motion is timely. The
14 Amended Judgment is void and, pursuant to NRCp 60(b)(4) this Court should declare it void and
15 unenforceable.

16 IV.

17 CONCLUSION

18 Since the Judgment expired in 2014, the Amended Judgment should not have been issued.
19 It should be voided, and the Court should declare that the Judgment has expired.

20 DATED this ____ day of August, 2018.

21 ROGERS, MASTRANGELO, CARVALHO &
22 MITCHELL

23 _____
24 Stephen H. Rogers, Esq.
25 Nevada Bar No. 5755
26 700 South Third Street
27 Las Vegas, Nevada 89101
28 Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R., I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the ____ day of August, 2018, a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served upon the following counsel of record as indicated below:

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Prepaid
____ Via Facsimile
____ Via Hand-Delivery
☒ Via Electronic Service Pursuant to
Rule 9 of the N.E.F.C.R.
(Administrative Order 14-2)

An Employee of
Rogers, Mastrangelo, Carvalho & Mitchell



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August 13, 2018

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Las Vegas, Nevada 89101

VIA Fax: (702)384-1460
Email: srogers@rmcmclaw.com

Re: Gary Lewis

Dear Stephen:

I am in receipt of your letter dated Friday, August 10, 2018. I was disappointed that you have chosen to disregard my request that you communicate with me and not directly with my client. You say you have "been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions." Would you be so kind as to provide me with all communications written or verbal or notes of communications you have had with UAIC, their attorneys and/or Mr. Lewis from your first contact regarding this matter to the present?

Please confirm that UAIC seeks now to honor the insurance contract with Mr. Lewis and provide a defense for him and pay any judgment that may result? This is the first indication I am aware of where UAIC seeks to defend Mr. Lewis. I repeat, please do not take any actions, including requesting more time or filing anything on behalf of Mr. Lewis without first getting authority from Mr. Lewis through me. Please only communicate through this office with Mr. Lewis. If you have already filed something or requested an extension without written authority from Mr. Lewis, he requests that you immediately reverse that action. Please also only communicate with UAIC that any attempt by them to hire any other attorneys to take action on behalf of Mr. Lewis must include notice to those attorneys that they must first get Mr. Lewis' consent through my office before taking any action including requesting extensions of time or filing any pleadings on his behalf.

Regarding your statement that Mr. Lewis would not be any worse off if you should lose your motions. That is not correct. We agree that the validity of the judgment is unimportant at this stage of the claims handling case. UAIC, however, is arguing that Mr. Lewis' claims handling case should be dismissed because they claim the judgment is not valid. If you interpose an insufficient improper defense that delays the inevitable entry of judgment against Mr. Lewis and the Ninth Circuit dismisses the appeal then Mr. Lewis will have a judgment against him and no claim against UAIC. In addition, you will cause additional damages and expense to both parties for which, ultimately, Mr. Lewis would be responsible.



CHRISTENSEN LAW
www.injuryhelpnow.com

Could you be mistaken about your statement that "the original judgment expired and cannot be revived?" I will ask your comment on just one legal concept -- Mr. Lewis' absence from the state. There are others but this one is sufficient on its own. There are three statutes applicable to this narrow issue: NRS 11.190; NRS 11.300 and NRS 17.214.

NRS 11.190 Periods of limitation. ... actions ... may only be commenced as follows:

1. Within 6 years:

(a) ... an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

NRS 11.300 Absence from State suspends running of statute. If, ... after the cause of action shall have accrued the person (defendant) departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action.

NRS 17.214 Filing and contents of affidavit; recording affidavit; notice to judgment debtor; successive affidavits.

1. A judgment creditor or a judgment creditor's successor in interest may renew a judgment which has not been paid by:

(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation.

These statutes make it clear that both an action on the judgment or an optional renewal is still available through today because Mr. Lewis has been in California since late 2008. If you have case law from Nevada contrary to the clear language of these statutes please share it with me so that I may review it and discuss it with my client.

Your prompt attention is appreciated. Mr. Lewis does not wish you to file any motions until and unless he is convinced that they will benefit Mr. Lewis -- not harm him and benefit UAIC. Mr. Lewis would like all your communications to go through my office. He does not wish to have you copy him on correspondence with my office. Please do not communicate directly with Mr. Lewis.

Very truly yours,

Tommy Christensen
CHRISTENSEN LAW OFFICE, LLC



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2 David A. Stephens, Esq.
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4 Stephens & Bywater
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6 Las Vegas, Nevada 89130
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Email: dstephens@sdblwfir.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

STIPULATION TO ENTER JUDGMENT

Date: n/a
Time: n/a

Gary Lewis, through his attorney, E. Breen Arntz, Esq., and Cheyenne Nalder, through her attorney, David A. Stephens, Esq., to hereby stipulate as follows:

1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.
2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the present.
3. Gary Lewis has been a resident and subject to service of process in California from 2010 to the present.
4. Plaintiff obtained a judgment against GARY LEWIS which was entered on August 26, 2008. Because the statute of limitations on the 2008 judgment had been tolled as a result of GARY LEWIS' absence from the State of Nevada pursuant to NRS 11.300, Plaintiff obtained an amended judgment that was entered on May 18, 2018.
5. Plaintiff filed an action on the judgment under *Mandlebaum v. Gregovich*, 50 P. 849, 851

1 (Nev. 1897), in the alternative, with a personal injury action should the judgment be invalid.

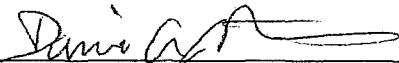
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.

4 7. Cheyenne Nalder is willing to allow judgment to enter in the amount of the judgment plus
5 interest minus the payment of \$15,000.00 and without additional damages, attorney fees or costs.
6 Plaintiff is also willing to accept the judgment so calculated as the resulting judgment of the
7 alternatively pled injury claim. Plaintiff will not seek additional attorney fees from Defendant.

8 8. The parties stipulate to a judgment in favor of Cheyenne Nalder in the sum of
9 \$3,500,000.00, plus interest through September 4, 2018 of \$2,211,820.41 minus \$15,000.00 paid for
10 a total judgment of \$5,696,820.41, with interest thereon at the legal rate from September 4, 2018, until
11 paid in full.

12 9. The attached judgment may be signed and entered by the Court.

13 Dated this 12 day of September, 2018

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16 David A. Stephens, Esq.
17 Nevada Bar No. 00902
18 Stephens & Bywater
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

14
15 

16 E. Breen Arntz, Esq.
17 Nevada Bar No. 03853
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10 Attorney for Cheyenne Nalder

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

19 Case No. A-18-772220-C

20 Dept. No. XXIX

21
22 JUDGMENT

23 Date: n/a
24 Time: n/a

25 Pursuant to the stipulation of the parties, and good cause appearing therefore,

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff Cheyenne Nalder
27 have and recover judgment from Defendant Gary Lewis in the sum of three million five hundred
28 thousand dollars, (\$3,500,000.00), plus prejudgment interest through September 4, 2018 in the sum
of two million two hundred eleven thousand eight hundred twenty and 41/100 dollars,
(\$2,211,820.41), minus fifteen thousand dollars, (\$15,000.00), previously paid to Cheyenne Nalder,

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1 for a total judgment of five million six hundred ninety six thousand eight hundred twenty and 41/100
2 dollars, (\$5,696,820.41), with interest thereon at the legal rate from September 4, 2018, until paid in
3 full.

4 DATED this _____ day of September, 2018.

5
6
7 _____
8 DISTRICT JUDGE

9 Submitted by:

10 STEPHENS & BYWATER, P.C.

11
12 _____
13 DAVID A. STEPHENS, ESQ.
14 Nevada Bar No. 00902
15 3636 North Rancho Drive
16 Las Vegas, Nevada 89130
17 Attorneys for Plaintiff
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