

**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, INDIVIDUAL
Appellants,

Electronically Filed
Nov 20 2018 10:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

UNITED AUTOMOBILE INSURANCE COMPANY,
Respondent.

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

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of November, 2018, I served the foregoing **Appendix to Respondent's Supplemental Answering Brief to Second Certified Question Volume 3** by electronically filing and serving the document listed above with the Nevada Supreme Court.

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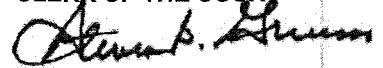
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APPENDIX

Date	DOCUMENT	Appendix Page Number
9/27/2018	Defendant's Motion for Relief from Judgment Pursuant to NRCp 60, <i>James Nalder v. Gary Lewis</i> , Case No. A549111	APPX 0299 – APPX 0319
9/26/2018	Defendant's Motion to Dismiss, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. A-18-772220-C	APPX 0320 – APPX 0348
10/17/2018	Defendant's Motion to Strike Defendant's Motion for Relief from Judgment, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. 07A549111	APPX 0349 – APPX 0353
11/01/2018	Opposition to Gary Lewis' Motion to Strike Motion to Set Aside Judgment, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. A-18-772220-C	APPX 0354 – APPX 0366
10/24/18	Third Party Complaint, <i>Cheyenne Nalder v. Gary Lewis v. United Automobile Insurance Company v. Gary Lewis v. United Automobile Insurance Company, et al.</i> , Case NoA-18-772220-C	APPX 0367 – APPX 0388



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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER, individually and as Guardian
ad Litem for CHEYENNE NALDER, a minor,

CASE NO.: A549111

DEPT. NO.: 6

Plaintiff,

vs.

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

Defendants.

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

Defendant, Gary Lewis, by and through his counsel Randall Tindall brings his Motion for Relief from Judgment Pursuant to NRCP 60, asking that this Court declare as void the Amended Judgment entered on March 28, 2018, because the underlying Judgment expired in 2014 and is not capable of being revived.

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

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
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Attorneys for Defendant

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the foregoing **DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** will come on for hearing before the above-entitled Court on the ____ day of October 31, 2018 at 9:00 a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

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POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court made a mistake of law based on incomplete/incorrect facts presented in an Ex Parte Motion to Amended Judgment, when entering the Order 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, 2104, six 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

1 to renew judgments. However, none of the authority cited in her Motion supports
2 misappropriating tolling provisions applicable to certain causes of action to extend the time to
3 renew a judgment, nor does any other authority. Pursuant to NRCP 60, the Court should declare
4 that the Amended Judgment is void and that the original Judgment has expired, and therefore is
5 not enforceable.
6

7 II.

8 STATEMENT OF FACTS

9 This case involves an accident which occurred on July 8, 2007. Cheyenne, who was then
10 a minor, claimed that she suffered injuries from the accident. On October 9, 2007, Cheyenne,
11 through her guardian ad litem, James Nalder, presumably a relative, filed a Complaint against
12 Gary Lewis ("Lewis"). See Complaint attached hereto as Exhibit "A."
13

14 Lewis did not respond to the Complaint and a default was taken against him. *Id.*
15 Eventually, a judgment was entered against him in the amount of \$3.5 million. See Judgment,
16 attached hereto as Exhibit "B." The Judgment was entered on June 3, 2008.¹ James Nalder as
17 guardian ad litem for Cheyenne is the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a
18 judgment expires by limitation in six (6) years. As such, the Judgment expired on June 3, 2014.
19

20 On March 22, 2018, nearly 10 years after the judgment was entered, and nearly four (4)
21 years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of
22 Cheyenne Nalder, Individually" ("Ex Parte Motion"). Her Motion did not advise the Court that
23 the Judgment she sought to amend had expired. Rather, it cited two statutes, NRS 11.280 and
24 11.300, without explaining why they were applicable to her request, and asked the Court to
25

26
27 ¹Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(C).
28

1 amend the Judgment to be in her name alone. In short, the Court was not put on notice that it was
2 being asked to ostensibly revive an expired judgment.

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

5 As the Judgment had expired and an Amended Judgment could not be issued to revive it.
6 Lewis brings the instant Motion pursuant to NRCPP 60(b), to void the Amended Judgment and
7 declare that the original Judgment has expired.
8

9 III.

10 ARGUMENT

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

12 Nevada law provides that the statute of limitations for execution upon a judgment is six
13 (6) years. NRS 11.190(1)(a). The judgment creditor may renew a judgment (and therefore the
14 statute of limitations), for an additional six years by following the procedure mandated by NRS
15 17.214. The mandated procedures were not followed. Therefore the Judgment expired.

16 NRS 17.214(1)(a) sets forth the procedure that must be followed to renew a judgment. A
17 document titled "Affidavit of Renewal" containing specific information outlined in the statute
18 must be filed with the clerk of court where the judgment is filed within 90 days before the date
19 the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014.
20 No such Affidavit of Renewal was filed by James Nalder, the judgment creditor. Cheyenne was
21 still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original
22 judgment was recorded, and the judgment debtor must be served. No evidence of recordation (if
23 such was required) or service on Lewis is present in the record.
24

25 The Nevada Supreme Court, in *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007), held
26 that judgment creditors must strictly comply with the procedure set forth in NRS 17.214 in order
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28

1 to validly renew a judgment. *Id.* at 405-408, 168 P.3d 717-719. There is no question that neither
2 Cheyenne nor her guardian ad litem did so. Therefore the Judgment expired.

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

4 In her Ex Parte Motion, Cheyenne suggested that the deadlines mandated by NRS 17.214
5 were somehow extended because certain statutes of limitation can be tolled for causes of action
6 under some circumstances. No such tolling applies to renewal of a judgment because renewal of
7 a judgment is not a cause of action.
8

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

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

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

21 Setting aside the fact that the deadline to renew a judgment is not an action to which
22 statutes of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS
23 17.214 were tolled by her minority are inapt for a few reasons. First, the tolling statute cited by
24 Cheyenne, NRS 11.280, does not universally toll all statutes of limitations while a plaintiff is a
25 minor. Rather, it is expressly limited to actions involving sales of probate estates.
26

27 Legal disability prevents running of statute. **NRS 11.260 and 11.270 shall not**
28 **apply to minors or others under any legal disability to sue at the time when**

1 **the right of action first accrues**, but all such persons may commence an action at
2 any time within 1 year after the removal of the disability.

3 Emphasis added. NRS 11.260 applies to actions to recover a estate sold by a guardian. NRS
4 11.270 applies to actions to recover estates sold by an executor or administrator. Neither of those
5 causes of action are at issue here. Therefore, NRS 11.280 would not authorize tolling the
6 deadline for the renewal of a judgment while a judgment creditor was a minor. This statute
7 would not apply in any instance because the judgment creditor, James, was not a minor, and so
8 did not have a legal disability.

9
10 On March 5, 2014, the deadline to file the Affidavit of Renewal, Cheyenne was still a
11 minor. The judgment creditor was her guardian ad litem, James Nalder. It was James Nalder, not
12 Cheyenne, who had the responsibility to file the Affidavit of Renewal by the March 5, 2014
13 deadline. The fact that Cheyenne, the real party in interest, was a minor, is not legally relevant.

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

21
22 If tolling of deadlines to amend judgments were sanctioned, title to real property owned
23 by anyone who had ever been a judgment debtor would be clouded, as a title examiner would not
24 know whether a judgment issued more than six years prior had expired pursuant to statute, or
25 was still valid, or could be revived when a real party in interest who was a minor reached the age
26 of majority. As the Court held in *Leven*, one of the primary reasons for the need to strictly
27 comply with NRS 17.214's recordation requirement is to "procure reliability of title searches for
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1 both creditors and debtors since any lien on real property created when a judgment is recorded
2 continues upon that judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance
3 with the notice requirement of NRS 17.124 is important to preserve the due process rights of the
4 judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a
5 Judgment, he may believe that the judgment has expired and he need take no further action to
6 defend himself against execution.
7

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

9 Cheyenne's Ex Parte Motion next cites NRS 11.300, which provides "if, when the cause
10 of action shall accrue against a person, the person is out of the State, the action may be
11 commenced within the time herein limited after the person's return to the State; and if after the
12 cause of action shall have accrued the person departs from the State, the time of the absence shall
13 not be part of the time prescribed for the commencement of the action." Cheyenne's argument
14 that the deadline to renew the Judgment are tolled by NRS 11.300 fails because, again, renewing
15 a judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar
16 statutes to Nevada regarding judgments, held in *F/S Manufacturing v. Kensmore*, 798 N.W.2d
17 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate
18 action to renew the judgment, the specific time period [provided to renew] cannot be tolled under
19 [the equivalent to NRS 11.300] based on a judgment debtor's absence from the state." *Id.* at 858.
20
21

22 In addition, applying Cheyenne's argument that the time to renew a judgment was tolled
23 because of the judgment debtor's absence from Nevada would have a similarly negative impact
24 on the ability for property owners to obtain clear title to their property. Nothing on a judgment
25 would reflect whether a judgment debtor was outside of the state and a facially expired judgment
26 was still valid. Therefore, essentially, a responsible title examiner would have to list any
27 judgment that had ever been entered against a property owner on the title insurance policy,
28

1 because he could not be sure that judgments older than six years for which no affidavit of
2 renewal had been filed were expired or the expiration was tolled.

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

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

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

9
10 Because the Ex Parte Motion was ex parte, it was not served on Lewis nor did he have an
11 opportunity to make the Court aware that the Judgment had already expired on its own terms,
12 and that Cheyenne's proposition that the deadline to renew the judgment was tolled was inapt.
13 The Ex Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not
14 been properly renewed. Had the Court been fully apprised of the facts, it likely would not have
15 granted the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, a
16 motion to set aside the amended judgment on the basis of mistake is timely as it is made within
17 six months of the entry of the judgment. This Court should rectify the mistake and void the
18 Amended Judgment in accordance with NRCP 60(b)(1).
19

20 ***2. The Amended Judgment is void***

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

CONCLUSION

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

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
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 September, 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:

David A. Stephens, Esq. Stephens, Gourley & Bywater 3636 North Rancho Drive Las Vegas, Nevada 89130	<input type="checkbox"/> Via First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand-Delivery <input checked="" type="checkbox"/> Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)
Thomas Christensen, Esq. Christensen Law Firm 1000 S. Valley View Blvd. Las Vegas, Nevada 89107	<input type="checkbox"/> Via First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand-Delivery <input checked="" type="checkbox"/> Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)

[Handwritten Signature]

An Employee of
Resnick & Louis, P.C.

A

APPX0309

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CLERK OF THE COURT

COMP
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THOMAS CHRISTENSEN, ESQ.,
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1000 S. Valley View Blvd.
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(702) 870-1000
Attorney for Plaintiff,
JAMES NALDER As Guardian Ad
Litem for minor, CHEYENNE NALDER

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER, individually)
and as Guardian ad Litem for)
CHEYENNE NALDER, a minor.)

Plaintiffs,)

vs.)

GARY LEWIS, and DOES I)
through V, inclusive ROES I)
through V)

Defendants.)

CASE NO: A549111
DEPT. NO: VI

COMPLAINT

COMES NOW the Plaintiff, JAMES NALDER as Guardian Ad Litem for CHEYENNE NALDER, a minor, by and through Plaintiff's attorney, DAVID F. SAMPSON, ESQ., of CHRISTENSEN LAW OFFICES, LLC, and for a cause of action against the Defendants, and each of them, alleges as follows:

1. Upon information and belief, that at all times relevant to this action, the Defendant, GARY LEWIS, was a resident of Las Vegas, Nevada.
2. That Plaintiffs, JAMES NALDER, individually and as Guardian Ad Litem for CHEYENNE NALDER, a minor, (hereinafter referred to as Plaintiffs) were at the time of the accident residents of the County of Clark, State of Nevada.

APPX0310



1 3. That the true names or capacities, whether individual, corporate, associate or otherwise, of
2 Defendants named as DOES I through V, inclusive, are unknown to Plaintiff, who therefore
3 sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon
4 alleges that each of the Defendants designated herein as DOE is responsible in some manner
5 for the events and happenings referred to and caused damages proximately to Plaintiff as herein
6 alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the true
7 names and capacities of DOES I through V, when the same have been ascertained, and to join
8 such Defendants in this action.
9

10
11 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of a
12 certain 1996 Chevy Pickup (hereinafter referred to as "Defendant" vehicle") at all time relevant
13 to this action.

14 5. On the 8th day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's
15 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder
16 was playing on private property; that Defendant, did carelessly and negligently operate
17 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder and that as a direct and
18 proximate result of the aforesaid negligence of Defendant, Gary Lewis, and each of the
19 Defendants, Plaintiff, Cheyenne Nalder sustained the grievous and serious personal injuries and
20 damages as hereinafter more particularly alleged.
21

22
23 6. At the time of the accident herein complained of, and immediately prior thereto,
24 Defendant, Gary Lewis in breaching a duty owed to the Plaintiffs, was negligent and careless,
25 inter alia, in the following particulars:

26 A. In failing to keep Defendant's vehicle under proper control;

27 B. In operating Defendant's vehicle without due caution for the rights of the Plaintiff;
28

1 C. In failing to keep a proper lookout for plaintiffs

2 D. The Defendant violated certain Nevada revised statutes and Clark County Ordinances,
3 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
4 trial.

5
6 7. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
7 and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained a
8 broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and
9 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
10 some of the same is chronic and may be permanent and disabling, all to her damage in an
11 amount in excess of \$10,000.00.

12
13 8. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
14 and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has been
15 caused to expend monies for medical and miscellaneous expenses as of this time in excess of
16 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses
17 and miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and
18 leave of Court will be requested to include said additional damages when the same have been
19 fully determined.

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

10. Plaintiff has been required to retain the law firm of CHRISTENSEN LAW OFFICES, LLC to prosecute this action, and is entitled to a reasonable attorney's fee.

CLAIM FOR RELIEF:

1. General damages in an amount in excess of \$10,000.00;
2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Special damages for loss of wages in an amount not yet ascertained and/or diminution of Plaintiff's earning capacity, plus possible future loss of earnings and/or diminution of Plaintiff's earning capacity in a presently unascertainable amount;
4. Costs of this suit;
5. Attorney's fees; and
6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 10 day of Oct, 2007.

CHRISTENSEN LAW OFFICES, LLC

BY:

DAVID F. SAMPSON, ESQ.,
Nevada Bar #2326
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiff

B

ORIGINAL

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Attorney for Plaintiff,

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER,
as Guardian ad Litem for
CHEYENNE NALDER, a minor.

Plaintiffs,

vs.

GARY LEWIS, and DOES I
through V, inclusive

Defendants.

CASE NO: A549111
DEPT. NO: VI

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:

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CLERK OF THE COURT
05-23-08 A09:04 RCVD

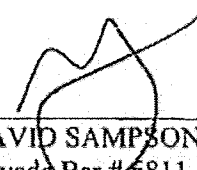
APPX0315

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
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C

Steven D. Grierson

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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:

...

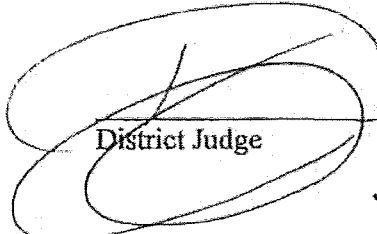
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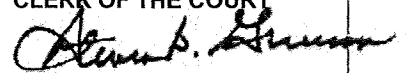
1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *mc*
2 \$ 3,434,444.63
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
5 2007, until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

6 DATED this 26 day of March, 2018.

7
8
9
10 
11 District Judge *mc*

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
24
25
26
27
28



1 MDSM
2 RANDALL TINDALL
3 Nevada Bar No. 6522
4 RESNICK & LOUIS, P.C.
5 8925 W. Russell Rd., Ste. 220
6 Las Vegas, Nevada 89148
7 Attorneys for Defendant

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 CHEYENNE NALDER,

11 Plaintiff,

12 Vs.

13 GARY LEWIS and DOES I through V,
14 inclusive,

15 Defendants.

CASE NO.: A-18-772220-C

DEPT. NO.: 29

16 DEFENDANT'S MOTION TO DISMISS

17 Defendant, Gary Lewis, by and through his counsel, Randall Tindall, hereby brings his
18 Motion to Dismiss Plaintiff's Complaint in its entirety. Plaintiff's personal injury claims have
19 been previously litigated and judgment entered. Plaintiff's request for a second amended
20 judgment should be dismissed because the original judgment expired in 2014, was not properly
21 renewed, and cannot be revived via an amended judgment more than four years after it expired.

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1 This Motion is made and based upon NRCP 12(b)(5), the papers and pleadings on file
2 herein, the Points and Authorities attached hereto, and such oral argument as the Court may
3 permit.

4 DATED this 26th day of September, 2018.

6 RESNICK & LOUIS, P.C.
7 _____

8 RANDALL TINDALL
9 Nevada Bar No. 6522
10 8925 W. Russell Rd., Ste. 220
11 Las Vegas, Nevada 89148
Attorneys for Defendant

12 **NOTICE OF MOTION**

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

15 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO DISMISS
16 will come on for hearing before the above-entitled Court on the ____ day of ^{October 31}_____, 2018
17 at ^{9:00}____ a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

18 DATED this 26th day of September, 2018

19 RESNICK & LOUIS, P.C.
20 _____

21 RANDALL TINDALL
22 Nevada Bar No. 6522
23 8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

24 //

25 //

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1 //

2
3 **POINTS AND AUTHORITIES**

4
5 **I.**

6 **INTRODUCTION**

7 Cheyenne Nalder, ("Cheyenne") alleges in her Complaint that she was injured in an
8 accident in 2007. Cheyenne was 11 years old at the time. She did not wait until she reached the
9 age of majority to pursue her claim for damages against the alleged at-fault driver, Gary Lewis
10 ("Lewis"). A guardian ad litem, James Nalder, was appointed to pursue her claim. He did so,
11 filing a complaint on her behalf and obtaining a Judgment for \$3.5 million. For unknown
12 reasons, no payments other than Lewis' \$15,000 auto insurance policy limit have been sought on
13 the Judgment. It is unknown what efforts James Nalder made to enforce the Judgment, if any.
14 What is known is that he did not renew the Judgment before it expired in 2014, while Cheyenne
15 was still a minor.
16

17 Despite the fact that Lewis' liability for any injuries Cheyenne may have sustained in the
18 2007 accident have already been adjudicated and judgment entered, Cheyenne now re-asserts
19 those claims in the instant Complaint. Those claims are subject to dismissal pursuant to the
20 doctrine of claim preclusion.
21

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

25 Finally, Cheyenne seeks a declaration from the Court that the statute of limitations to
26 enforce an Amended Judgment (and the second amended judgment she seeks in her Complaint)
27 was tolled because she was a minor and Lewis resides in California. Declaratory relief is not
28

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

5 In summary, the Court should dismiss the Complaint as there are no facts under which
6 Cheyenne is entitled to relief.
7

8 II.

9 STATEMENT OF FACTS

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

13 Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June
14 3, 2008, a judgment was entered against him in the amount of \$3.5 million.¹ *See* Judgment,
15 attached hereto as Exhibit "B." James Nalder as guardian ad litem for Cheyenne was the
16 judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless
17 it is timely renewed. As such, the Judgment expired on June 3, 2014.
18

19 On March 22, 2018, nearly 10 years after the Judgment was entered, and nearly four (4)
20 years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of
21 Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-07-
22 549111-C, which is also assigned to this Court. Her Motion did not advise the Court that the
23 Judgment she sought to amend had expired. The Court granted Cheyenne's Ex Parte Motion and
24 issued an Amended Judgment on March 28, 2018. *See* Exhibit "C." Contemporaneous with the
25

26
27 ¹Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(c).
28

1 filing of the instant motion, Lewis has filed a Motion for Relief from Judgment in Case No. A-
2 07-549111-C, detailing the reasons the Court should void the Amended Judgment.

3 On April 3, 2018, one day before the statute of limitations ran for Cheyenne to file a
4 personal injury claim (but ten years after she already obtained a judgment), she filed a Complaint
5 alleging identical injuries from the same accident. *See* Exhibit “A,” the 2007 Complaint, and the
6 2018 Complaint, attached as Exhibit “D.” In the 2018 Complaint, she does not explain why she
7 believes she is entitled to damages for the same injuries for which she received a judgment in
8 2008. *See* Exhibit “D.” However, the 2018 Complaint does acknowledge that she already
9 received a judgment against Lewis. *Id.* at p. 3, ll. 10 - 11.

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

15 III.

16 MOTION TO DISMISS STANDARD

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

23 In evaluating a motion to dismiss, courts primarily focus on the allegations in the
24 complaint. *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev. Adv.
25 Op. 76, 357 P.3d at 930 (2015) “the court is not limited to the four corners of the complaint.”
26 Citing 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure: Civil § 1357, at
27 376 (3d ed.2004). The *Baxter* Court also held that a court “may also consider unattached
28

1 evidence on which the complaint necessarily relies if: (1) the complaint refers to the document;
2 (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of
3 the document.” *Id.*, citing *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th
4 Cir.2011) (internal quotation omitted). The *Baxter* Court continued “[w]hile presentation of
5 matters outside the pleadings will convert the motion to dismiss to a motion for summary
6 judgment, Fed.R.Civ.P. 12(d); NRCp 12(b), such conversion is not triggered by a court's
7 ‘consideration of matters incorporated by reference or integral to the claim,’” *Id.*, citing 5B
8 Wright & Miller, *supra*, § 1357, at 376.

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

17 IV.

18 ARGUMENT

19 A. *The Doctrine of Claim Preclusion Mandates Dismissal of Plaintiff's Claims Related to* 20 *the July 8, 2007 Accident*

21 The October 9, 2007 Complaint filed by Cheyenne's guardian ad litem, James Nalder,
22 alleged personal injuries caused by the July 8, 2007 accident. *See* Complaint attached hereto as
23 Exhibit “A.” When Lewis did not respond to that Complaint, a Default was entered against him.
24 On June 3, 2008, a Judgment in the amount of \$3.5 million was entered against Lewis. *See*
25 Judgment, attached hereto as Exhibit “B.” Plaintiff acknowledged this in Paragraph 10 of her
26 2018 Complaint. Because the personal injury claims in the 2018 Complaint have already been
27 litigated, it should be dismissed.
28

1 Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In
2 2008, the Nevada Supreme Court set forth a three -part test to be applied to determine when
3 claim preclusion applies. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054–55, 194 P.3d
4 709, 713 (2008), holding modified by *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80
5 (2015) (the modification is not applicable to this case). According to the *Five Star* test, claim
6 preclusion applies when: (1) the parties or their privies are the same; (2) the final judgment is
7 valid; and (3) the new action is based on the same claims that were or could have been brought in
8 the first action. Cheyenne's claims for personal injury in the instant (2018) suit clearly meet the
9 *Five Star* factors for dismissal under the doctrine of claim preclusion.

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

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

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

22 As the *Five Star* Court noted, public policy supports claims preclusion in situations such
23 as this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a),
24 noting that "the purposes of claim preclusion are 'based largely on the ground that fairness to the
25 defendant, and sound judicial administration, require that at some point litigation over the
26 particular controversy come to an end' and that such reasoning may apply 'even though the
27 substantive issues have not been tried . . .'" *Id.* at 1058, 194 P.3d at 715. These policy reasons are
28

1 applicable here. Lewis is entitled to finality. A Judgment was already entered against him.
2 Renewing the Judgment was not Lewis' responsibility – that was the responsibility of
3 Cheyenne's guardian ad litem, James Nalder. Lewis should not be exposed to judgment being
4 entered against him a second time due to Nalder's failure to act.

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

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

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

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

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

24 Declaratory relief is only available if: "(1) a justiciable controversy exists between
25 persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable
26 interest in the controversy, and (3) the issue is ripe for judicial determination." *Cty. of Clark, ex*
27 *rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998), citing *Knittle v.*
28

1 *Progressive Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996). Here, declaratory relief
2 is not available because the issue as to whether the Amended Judgment or any future amended
3 judgment is enforceable, or whether the statute of limitations has expired, is not ripe.

4 The conditions under where a justiciable controversy exists were addressed by the
5 Nevada Supreme Court in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court
6 noted a justiciable controversy does not exist, where damage “. . . is merely apprehended or
7 feared. . .” *Id.* at 28-29, 189 P.2d at 365. As the Court in *Doe v. Bryan*, 102 Nev. 523, 728 P.2d
8 443 (1986) noted, “the requirement of an actual controversy has been construed as requiring a
9 concrete dispute admitting of an immediate and definite determination of the parties’ rights.” *Id.*
10 at 526, 728 P.2d at 444. Cheyenne’s concern that any effort to enforce the Amended Judgment
11 will be thwarted by a determination that the applicable statute of limitations bars such action is
12 “apprehended or feared” but not existing presently, because she has not taken any action to
13 enforce the Amended Judgment. Likewise, there is no “concrete dispute” that the statute of
14 limitations would bar an attempt by Cheyenne to collect on the Amended Judgment because she
15 has not tried. Unless and until Cheyenne actually tried to enforce the Amended Judgment, there
16 is no “immediate” need for a “definite” determination of the parties’ rights. Therefore, there is no
17 justiciable controversy regarding Cheyenne’s ability to seek to enforce the Amended Judgment at
18 this time.
19
20
21

22 “Ripeness focuses on the timing of the action rather than on the party bringing the action
23 . . . The factors to be weighed in deciding whether a case is ripe for judicial review include: (1)
24 the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for
25 review.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1224, 1230-31
26 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003)).
27
28

1 Cheyenne could seek to have a court address her statute of limitations concerns in an action to
2 execute on the Amended Judgment. There is no need for such a determination at this time.

3 Regardless as to whether Cheyenne's request for declaratory relief is appropriate at this
4 juncture, Cheyenne's request for declaratory relief should be dismissed because there is no valid
5 judgment to enforce. The original Judgment issued on June 3, 2008 expired on June 3, 2014. No
6 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an
7 Amended Judgment, entered on March 28, 2018. As demonstrated in Defendant's Motion for
8 Relief From Judgment Pursuant to NRCP 60, the Court should not have entered and Amended
9 Judgment, and no other amended judgments should be entered. Nevada law does not permit
10 renewal of expired judgments by amendment.
11

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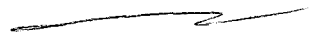
V.

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 26th day of September, 2018.

RESNICK & LOUIS, P.C.




RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
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 Resnick & Louis, P.C, and on the ____ day of September, 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	<input type="checkbox"/> Via First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand-Delivery <input checked="" type="checkbox"/> Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)
Thomas Christensen, Esq. Christensen Law Firm 1000 S. Valley View Blvd. Las Vegas, Nevada 89107	<input type="checkbox"/> Via First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand-Delivery <input checked="" type="checkbox"/> Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)


An Employee of
Resnick & Louis, P.C.

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FILED

2007 OCT -9 P 12:12

CLERK OF THE COURT

COMP
DAVID F. SAMPSON, ESQ.,
Nevada Bar #6811
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000
Attorney for Plaintiff,
JAMES NALDER As Guardian Ad
Litem for minor, CHEYENNE NALDER

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER, individually)
and as Guardian ad Litem for)
CHEYENNE NALDER, a minor.)

Plaintiffs,)

vs.)

GARY LEWIS, and DOES I)
through V, inclusive ROES I)
through V)

Defendants.)

CASE NO: A549111
DEPT. NO: VI

COMPLAINT

COMES NOW the Plaintiff, JAMES NALDER as Guardian Ad Litem for CHEYENNE NALDER, a minor, by and through Plaintiff's attorney, DAVID F. SAMPSON, ESQ., of CHRISTENSEN LAW OFFICES, LLC, and for a cause of action against the Defendants, and each of them, alleges as follows:

1. Upon information and belief, that at all times relevant to this action, the Defendant, GARY LEWIS, was a resident of Las Vegas, Nevada.
2. That Plaintiffs, JAMES NALDER, individually and as Guardian Ad Litem for CHEYENNE NALDER, a minor, (hereinafter referred to as Plaintiffs) were at the time of the accident residents of the County of Clark, State of Nevada.

APPX0333



1 3. That the true names or capacities, whether individual, corporate, associate or otherwise, of
2 Defendants named as DOES I through V, inclusive, are unknown to Plaintiff, who therefore
3 sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon
4 alleges that each of the Defendants designated herein as DOE is responsible in some manner
5 for the events and happenings referred to and caused damages proximately to Plaintiff as herein
6 alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the true
7 names and capacities of DOES I through V, when the same have been ascertained, and to join
8 such Defendants in this action.
9

10
11 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of a
12 certain 1996 Chevy Pickup (hereinafter referred to as "Defendant" vehicle") at all time relevant
13 to this action.

14 5. On the 8th day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's
15 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder
16 was playing on private property; that Defendant, did carelessly and negligently operate
17 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder and that as a direct and
18 proximate result of the aforesaid negligence of Defendant, Gary Lewis, and each of the
19 Defendants, Plaintiff, Cheyenne Nalder sustained the grievous and serious personal injuries and
20 damages as hereinafter more particularly alleged.
21

22
23 6. At the time of the accident herein complained of, and immediately prior thereto,
24 Defendant, Gary Lewis in breaching a duty owed to the Plaintiffs, was negligent and careless,
25 inter alia, in the following particulars:

26 A. In failing to keep Defendant's vehicle under proper control;

27 B. In operating Defendant's vehicle without due caution for the rights of the Plaintiff;
28

1 C. In failing to keep a proper lookout for plaintiffs

2 D. The Defendant violated certain Nevada revised statutes and Clark County Ordinances,
3 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
4 trial.
5

6 7. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
7 and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained a
8 broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and
9 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
10 some of the same is chronic and may be permanent and disabling, all to her damage in an
11 amount in excess of \$10,000.00.
12

13 8. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
14 and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has been
15 caused to expend monies for medical and miscellaneous expenses as of this time in excess of
16 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses
17 and miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and
18 leave of Court will be requested to include said additional damages when the same have been
19 fully determined.
20

21 9. Prior to the injuries complained of herein, Plaintiff, Cheyenne Nalder, was an able-bodied
22 male, capable of being gainfully employed and capable of engaging in all other activities for
23 which Plaintiff was otherwise suited. By reason of the premises, and as a direct and proximate
24 result of the negligence of the said Defendants, and each of them, Plaintiff, Cheyenne Nalder,
25 was caused to be disabled and limited and restricted in her occupations and activities, and/or
26 diminution of Plaintiff's earning capacity and future loss of wages, all to her damage in a sum
27
28

not yet presently ascertainable, the allegations of which Plaintiff prays leave of Court to insert herein when the same shall be fully determined.

10. Plaintiff has been required to retain the law firm of CHRISTENSEN LAW OFFICES, LLC to prosecute this action, and is entitled to a reasonable attorney's fee.

CLAIM FOR RELIEF:

1. General damages in an amount in excess of \$10,000.00;
2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Special damages for loss of wages in an amount not yet ascertained and/or diminution of Plaintiff's earning capacity, plus possible future loss of earnings and/or diminution of Plaintiff's earning capacity in a presently unascertainable amount;
4. Costs of this suit;
5. Attorney's fees; and
6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 10 day of Oct, 2007.

CHRISTENSEN LAW OFFICES, LLC
BY: [Signature]
DAVID F. SAMPSON, ESQ.,
Nevada Bar #2326
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiff

B

ORIGINAL

JMT
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
DAVID F. SAMPSON, ESQ.,
Nevada Bar #6811
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000
Attorney for Plaintiff,

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER,
as Guardian ad Litem for
CHEYENNE NALDER, a minor.
Plaintiffs,

vs.

CASE NO: A549111
DEPT. NO: VI

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

JUDGMENT

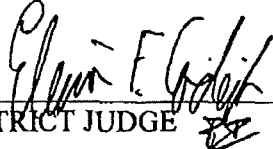
In this action the Defendant, GARY LEWIS, having been regularly served with the
Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
legal time for answering having expired, and no answer or demurrer having been filed, the
Default of said Defendant, GARY LEWIS, in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

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CLERK OF THE COURT
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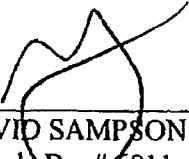
APPX0338

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

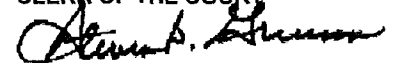
6 DATED THIS 7 day of May, 2008.

7
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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
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28

C



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:

...

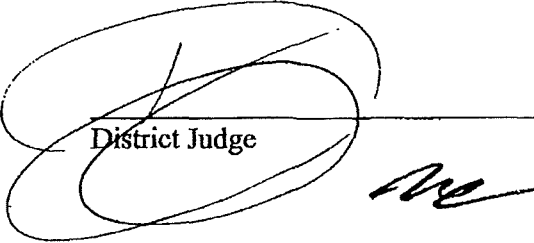
...

...

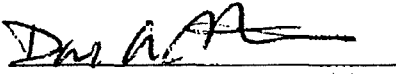
...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *me*
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 
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
24
25
26
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28

D

APPX0343

Steven D. Grlerson

1 **COMP**
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,

CASE NO.: A-549441 A-18-772220-C

10 Plaintiff,

DEPT NO.: XXXX Department 29

11 vs.

12 GARY LEWIS and DOES I through V,
13 inclusive,

14 Defendants.

15 **COMPLAINT**

16 Date: n/a
17 Time: n/a

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

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

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

27 3. That the true names or capacities, whether individual, corporate, associate or
28 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 and/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 ///

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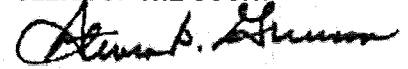
28 ///

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



MSTR
E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
T: (702) 384-8000
F: (702) 446-8164
breen@breen.com

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER

Plaintiff,

vs.

CASE NO:07A549111

DEPT. NO: XXIX

GARY LEWIS,

Defendant.

**DEFENDANT'S MOTION TO STRIKE DEFENDANT'S MOTION
FOR RELIEF FROM JUDGMENT**

Defendant, Gary Lewis, by and through his counsel, E. Breen Arntz, Esq., hereby brings his Motion to Strike Defendant's Motion for Relief from Judgment (that was filed without authority from Gary Lewis) by Randall Tindall, Esq. See Exhibit 1, attached hereto.

This motion is made and based upon the papers and pleadings on file herein, the Points and Authorities attached hereto and any oral argument that may be permitted by the Court.



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APPX0349

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL

PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO STRIKE
DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT will come on for hearing before
the above-entitled Court on the 12 day of Dec., 2018 at 9:00 a.m. in Department
29 of the Eighth Judicial District Court in Clark County, Nevada.

Dated this 17th day of October, 2018.


E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
T: (702) 384-8000
F: (702) 446-8164
breen@breen.com

POINTS AND AUTHORITIES

Defendant, Gary Lewis, was left high and dry by his insurance company, UAIC, back in
2007 when he was sued by Cheyenne Nalder and UAIC did not defend him, resulting in a large
judgment against him in case 07A549111. As a result of UAIC's failure, it became the Defendant
in a lawsuit brought by Nalder and Lewis against it. That case is currently on appeal in the 9th
circuit. The instant lawsuit is brought by Nalder against Lewis and UAIC has hired Randall
Tindall to file pleadings on behalf of Gary Lewis. Tindall is the third attorney UAIC has hired to
defend Lewis, but the first to disregard his ethical duties of communication with his client and
complying with his client's reasonable requests regarding representation. See NRPC 1.2, 1.4 and
3.3.

///

1 The Motion filed by Tindall has been filed without authority and against the express wishes of the
2 client and should be stricken.

3
4 
5 E. BREEN ARNTZ, ESQ.
6 Nevada Bar No. 3853
7 5545 Mountain Vista Ste. E
8 Las Vegas, Nevada 89120
9 T: (702) 384-8000
10 F: (702) 446-8164
11 breen@breen.com

12 **CERTIFICATE OF SERVICE**


13 Pursuant to NRCP 5(b), I certify that I am an employee of E. BREEN ARNTZ, ESQ.

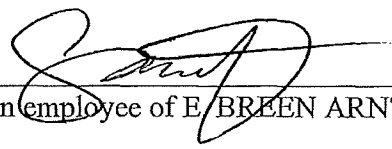
14 and that on this 17th day of October, 2018, I served a copy of the foregoing Defendant's **Motion**
15 **to Strike** Defendant's Motion for Relief of Judgment and Motion to Dismiss as follows:

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

18 ☒ E-Served through the Court's e-service system.

19 Randall Tindall, Esq.
20 Resnick & Louis
21 8925 W. Russell Road, Suite 225
22 Las Vegas, NV 89148
23 rtindall@rlattorneys.com

24 David A. Stephens, Esq.
25 Stephens, Gourley & Bywater
26 3636 North Rancho Drive
27 Las Vegas, NV 89130
28 

29 
30 An employee of E. BREEN ARNTZ, ESQ.

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EXHIBIT 1

October 16, 2018

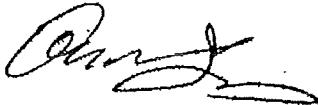
Randall Tindall, Esq.
Resnick and Louis, P.C.
8925 W. Russell Rd., Ste 220
Las Vegas NV 89148
FAX: 702-997-8478
rtindall@rlattorneys.com

Re: Stop telling the Court you represent me.

Dear Mr. Tindall :

You have never communicated with me and I have never retained you to represent me. I am writing to make it very clear to you that I do not want you to make any representations or communications on my behalf without first getting my authority to do so in connection with the lawsuits that are currently pending in Nevada. I left Nevada at the end of 2008. I believe the actions you have taken on my behalf are fraudulent, improper and inaccurate. You already know all of this because Steve Rogers, who was previously hired by UAIC to represent me, also was told this and then did not file anything on my behalf. I have had the issues explored by my own counsel and I do not agree that your actions are in my best interest. My attorney defending me in these two cases is Breen Amtz. My attorney representing me against UAIC is Thomas Christensen. Please communicate with him regarding my desires. Please withdraw your three motions filed on my behalf and discontinue making any representations to the court that you are acting on my behalf. You are not.

Thank you.



Gary Lewis

cc: breen@breen.com
thomasc@injuryhelpnow.com

1 **OPPS**
2 **RESNICK & LOUIS, P.C.**
3 **RANDALL TINDALL**
4 Nevada Bar No. 6522
5 rtindall@rlattorneys.com
6 8925 West Russell Road, Suite 220
7 Las Vegas, NV 89148
8 Telephone: (702) 997-3800
9 Facsimile: (702) 997-3800
10 *Attorneys for Defendant*

11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**
14

15 **CHEYENNE NALDER,**

16 Plaintiff,

17 v.

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

20 Defendants.

CASE NO.: A-18-772220-C

DEPT: 19

**OPPOSITION TO GARY LEWIS'
MOTION TO STRIKE MOTION TO
SET ASIDE JUDGMENT**

21 Defendant, Gary Lewis, by and through his counsel, Randall Tindall of the law firm of
22 Resnick & Louis, P.C., opposes Gary Lewis' motion to strike, as follows:

23 I, Randall Tindall, and my firm, Resnick & Louis, P.C., was retained by Mr. Lewis'
24 insurance carrier, UAIC, to defend Mr. Lewis in this lawsuit, and one regarding an older, 2007
25 case on the same issues. That case currently is pending before Judge E. Johnson. Mr. Lewis has
26 a \$3,500,000 stipulated judgement pending in Your Honor's court, but it apparently has not yet
27 been entered. Mr. Lewis has two other counsel, Breen Arntz and Tom Christensen.

28 In what appears to be one of the most serious cases of gamesmanship I have seen, Mr.
Mr. Christensen has filed against me and Resnick & Louis, P.C. a third-party complaint.

1 According to paragraph 82, attached as Exhibit A, Mr. Lewis filed against me with the State Bar
2 an ethics complaint. Also according to paragraph 82, to the State Bar dismissed it. According to
3 what Tom Christensen argued before Judge David Jones on the day Judge Jones recused, the
4 State Bar immediately dismissed the ethics complaint because it recognized that it was being
5 made in an attempt to create a hammer to influence the litigation, and it was not going to allow
6 that. This motion to strike is frivolous.

7
8 *A. The motion must be denied because it violates EDCR 2.20(c) and EDCR 2.20(i).*

9 EDCR 2.20(c) reads:

10 A party filing a motion must also serve with it a memorandum of points and
11 authorities in support of each ground thereof. The absence of such
12 memorandum may be construed as an admission that the motion is no
13 meritorious, as cause for its denial or as a waiver of all grounds not so
14 supported.

15 EDCR 2.20(i) reads, in pertinent part:

16 A memorandum which consists of bare citations to statutes, rules or case
17 authority does not comply with this rule and the court may decline to consider
18 it.

19 Although Mr. Arntz has written the title "POINTS AND AUTHORITIES" there actually
20 are none. Or, if his vague reference to "see" a few ethical rules is considered compliance with
21 EDCR 2.20(c), it certainly still violates EDCR 2.20(i). There is no indication about what those
22 rules read and no explanation about how they allegedly were violated. The court should deny
23 this frivolous motion for this reason alone.

24 //

25 //

26 //

27 //

1 *B. The ethical rules Mr. Arntz cites do not provide authority to strike the motion that has*
2 *been filed. Mr. Tindall has been expressly authorized, pursuant to the insurance contract, to*
3 *defend Mr. Lewis in this lawsuit.*

4 Mr. Arntz vaguely refers to NRPC 1.2, 1.4 and 3.3. None of those apply to the situation.

5 NRPC 1.2 has no provision that allows the court to strike the motion. It actually provides
6 authorization for me to represent Mr. Lewis. It reads, in pertinent part: "A lawyer may take such
7 action on behalf of the client as is impliedly authorized to carry out the representation." In this
8 case, the representation actually is EXPRESSLY authorized, however. The express authority is
9 the insurance contract into which Mr. Lewis entered. The pertinent provision is attached as
10 Exhibit B, which reads at [page 2, in Part I – LIABILITY, second paragraph: "We will defend
11 any suit or settle any claim for damages as we think appropriate." Of course, "We" is noted in
12 the definitions section to mean "the Company providing this insurance." The company
13 providing Mr. Lewis' insurance had duly retained me and Resnick & Louis, P.C. to defend the
14 suit and claim for damages.

15 NRPC 1.4 has no provision that allows the court to strike the motion. Further, as can be
16 seen from Exhibit C, Mr. Lewis has requested that I never contact him.

17 NRPC 3.3 address candor toward the tribunal. Mr. Arntz' motion does not set forth any
18 alleged violation of this rule.

19 DATED this 1st day of November, 2018.

20
21
22 **RESNICK & LOUIS, P.C.**

23 */s/ Randall Tindall*

24 **RANDALL TINDALL**
25 Nevada Bar No. 6522
26 8925 West Russell Road, Suite 220
27 Las Vegas, Nevada 89148
28 *Attorneys for Defendant*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing OPPOSITION TO MOTION TO STRIKE was served this 1st day of November, 2018, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.


☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).



An Employee of Resnick & Louis, P.C.

A



1 TPC

2 Thomas Christensen, Esq.
3 Nevada Bar No. 2326
4 1000 S. Valley View Blvd.
5 Las Vegas, Nevada 89107
6 T: (702) 870-1000
7 F: (702) 870-6152
8 courtnotices@injuryhelpnow.com
9 Attorney for Third Party Plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 Cheyenne Nalder)
11 Plaintiff,)

12 vs.)

13 Gary Lewis,)
14 Defendant.)

15 United Automobile Insurance Company,)
16 Intervenor,)

17 Gary Lewis,)
18 Third Party Plaintiff,)

19 vs.)

20 United Automobile Insurance Company,)
21 Randall Tindall, Esq. and Resnick & Louis, P.C.,)
22 and DOBS I through V,)
23 Third Party Defendants.)

24 THIRD PARTY COMPLAINT

25 Comes now Cross-claimant/Third-party Plaintiff, GARY LEWIS, by and through his
26 attorney, Thomas Christensen, Esq. and for his Cross-Claim/Third party complaint against the
27 cross-defendant/third party defendants, United Automobile Insurance Co., Randall Tindall,
28 Esq., and Resnick & Louis, P.C., for acts and omissions committed by them and each of them,

1 80. Gary Lewis himself and his attorneys, Thomas Christensen, Esq. and E. Breen
2 Arntz, Esq., have requested that Tindall withdraw the pleadings filed fraudulently by Tindall.
3

4 81. Tindall has refused to comply and continues to violate ethical rules regarding
5 Gary Lewis.

6 82. Gary Lewis filed a bar complaint against Tindall, but State Actors Daniel Hooge
7 and Phil Pattee dismissed the complaint claiming they do not enforce the ethical rules if there is
8 litigation pending.

9 83. This is a false statement as Dave Stephens was investigated by this same state
10 actor Phil Pattee while he was currently representing the client in ongoing litigation.
11

12 84. The court herein signed an order granting intervention while still failing to sign
13 the judgment resolving the case.

14 85. UAIC, and each of the defendants, and each of the state actors, by acting in
15 concert, intended to accomplish an unlawful objective for the purpose of harming Gary Lewis.

16 86. Gary Lewis sustained damage resulting from defendants' acts in incurring
17 attorney fees, litigation costs, loss of claims, delay of claims, judgment against him and as more
18 fully set forth below.
19

20 87. Defendants and each of them acting under color of state law deprived plaintiff of
21 rights, privileges, and immunities secured by the Constitution or laws of the United States.

22 88. Gary Lewis has duly performed all the conditions, provisions and terms of the
23 agreements or policies of insurance with UAIC relating to the claim against him, has furnished
24 and delivered to UAIC full and complete particulars of said loss and has fully complied with all
25 the provisions of said policies or agreements relating to the giving of notice as to said loss, and
26 has duly given all other notices required to be given by Gary Lewis under the terms of such
27 policies or agreements.
28

B



UNITED AUTOMOBILE INSURANCE COMPANY

NEVADA PERSONAL AUTOMOBILE POLICY

United Automobile Insurance Company
P.O. Box 14950
Las Vegas, NV 89114 - 4950

WARNING:

Any person who knowingly files a statement of claim containing any misrepresentation or any false, incomplete or misleading information may be guilty of a criminal act punishable under state or federal law, or both, and may be subject to civil penalties and MAY LEAD TO THE DENIAL OF A CLAIM.

AGREEMENT

We agree with you, in return for your premium payment, to insure you subject to the terms of this policy. These policy provisions, along with your application, the declarations page and any applicable endorsements will constitute your policy of insurance. We will insure you for the coverages and Limits of Liability for which a premium is shown in the Declarations of this policy.

DEFINITIONS USED THROUGHOUT THIS POLICY

- (1) "We," "us," and "our" mean the Company providing this insurance.
 - (2) "You" and "your" mean the Policyholder named in the Declarations and spouse if living in the same household.
 - (3) "Bodily injury" means bodily injury, sickness, disease or death.
 - (4) "Property damage" means damage to or destruction of tangible property, including loss of its use.
 - (5) "Car" means a licensed and registered automobile of the private passenger type designed for use upon a public road. "Car" also means a vehicle with a load capacity of 1,500 pounds or less of the pick-up or van type not used in any business. This definition shall not include:
 - (a) motorcycles, scooters, mopeds;
 - (b) midget cars;
 - (c) golf mobiles;
 - (d) tractors;
 - (e) farm machinery;
 - (f) any vehicle operated on rails or crawler treads;
 - (g) or any vehicle used as a residence or premises.
 - (h) go carts
 - (6) "Utility trailer" means a vehicle designed to be towed by a private passenger car.
 - (7) "Your insured car" means:
 - (a) the car owned by you described in the Declarations.
 - (b) a car you acquire during the policy period.
 1. "Replacement Car": The car must replace the car described in the Declarations. It will have the same coverages as the car it replaced with the exception of Car Damage Coverage. If you want coverage to apply to the replacement car you must notify us within 30 days of the date you acquire it.
When you ask us to add Car Damage Coverage for the replacement car, such coverage will be in effect no earlier than the time and day on which you ask us to add the coverage. If you ask us to add Car Damage Coverage in writing, the coverage will not be in effect until 12:01 AM, on the day following the date of the postmark shown on the envelope containing your request. If a postage meter is used on the envelope containing your request to add Car Damage Coverage, coverage will be in effect no earlier than the time and day your request is received by us. All insurance for the car being replaced is ended when you take delivery of the replacement car.
 2. "Newly Acquired Additional Car": When you ask us to add an additional car, not previously owned by you, a relative, or a resident, acquired by you while this policy is in effect, you must notify us of the newly acquired additional car within 14 days of date it was acquired to have liability coverage apply.
 3. "Substitute Car": any substitute car or utility trailer not owned by you, a relative, or a resident being temporarily used by you with the express permission of the owner. The car must be a substitute for another car covered which is withdrawn from normal use due to breakdown, repair, servicing, loss or destruction.
- For purposes of this policy, any car leased by you under a written agreement for a continuous period of at least six months shall be deemed to be owned by you.
- (8) "Non-owned car" means a car used by you with the express permission of the owner and not owned by, furnished, or available for the regular use of you, a relative or a resident.
 - (9) "Private passenger car" means a car of the private passenger type with not less than four wheels. This definition shall not include a van or pick-up truck.
 - (10) "Auto business" means the business or occupation of selling, leasing, repairing, servicing, delivering, testing, storing or parking cars.
 - (11) "Business" includes trade, profession, or occupation, or any use where compensation of any type is received.
 - (12) "Relative" means a person living in your household and related to you by blood, marriage or adoption, including a ward or foster child.
 - (13) "Resident" means a person, other than a relative, living in your household.
 - (14) "Occupying" means in, on, getting into or out of.
 - (15) "State" means the District of Columbia and any state of the United States of America.
 - (16) "Racing" means preparation for any racing, speed, demolition or stunting contest or activity. Racing also includes participation in the event itself, whether or not such event, activity or contest is organized.
 - (17) "Crime" means any felony and or misdemeanor and any act of eluding the police.
 - (18) "Diminution in value" means the actual loss in market or resale value of property which results from a loss.

(19) "Loss" means sudden, direct, and accidental loss or damage.

(20) "Regular use" means authorized use of a car without being required to ask permission each time it is used or recurring use of a car.

(21) "Compensatory money damages" means any money required to be paid to compensate a person for economic or non-economic damages resulting from bodily injury or property damage.

(22) "Punitive or Exemplary damages" means any money required to be paid for any purpose other than compensatory money damages for bodily injury or property damage.

PART 1 - LIABILITY

COVERAGE A - LIABILITY COVERAGE INSURING AGREEMENT

We will pay damages for bodily injury or property damage for which an insured person is legally liable because of the ownership or use of your insured car or a non-owned car. The bodily injury or property damage must be caused by an auto accident.

We will defend any suit or settle any claim for damages as we think appropriate. We will not defend or settle any suit or claim after we reach our limit of liability. We have no duty to defend any suit or settle any claim for bodily injury or property damage not covered under this policy.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part, "insured person" means:

- (1) you, a relative or resident.
- (2) any person using your insured car with your express or implied permission.
- (3) any other person or organization but only with respect to legal liability for acts or omissions of:
 - (a) a person covered under this Part while using your insured car; or
 - (b) you while using a car other than your insured car. The car must not be owned or hired by that person or organization.

As used in this Part, "insured person" means with respect to a non-owned car only you, a relative or a resident.

ADDITIONAL PAYMENTS

We will pay, in addition to our limit of liability:

- (1) all costs we incur in the settlement of a claim or defense of a suit.
- (2) all costs assessed against you in our defense of a suit.
- (3) interest on damages awarded in a suit we defend accruing after a judgment is entered. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
- (4) Any other reasonable expenses incurred at our request

EXCLUSIONS

We do not provide coverage for bodily injury or property damage:

- (1) resulting from the ownership or use of a vehicle when used to carry persons or property for a charge. This includes rental of your insured car to others. This exclusion does not apply to shared expense car pools.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes, but is not limited to, mail, newspaper, floral and food delivery.
- (3) caused intentionally by or at the direction of an insured person.
- (4) for which a person is an insured under a nuclear energy liability insurance policy. This exclusion applies even if the limits of that policy are exhausted.
- (5) to an employee of an insured person arising in the course of employment by an insured person. Coverage does apply to a domestic employee unless workers' compensation benefits are required or available for that employee.
- (6) resulting from the ownership or use of a vehicle by any person while that person is employed or otherwise engaged in a business, unless we were told of this use before an accident, and an additional premium was charged.
- (7) to property owned or being transported by an insured person.
- (8) to property rented to, used by or in the care of an insured person, except a residence or private garage.
- (9) resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels.
- (10) arising out of the ownership or use of any vehicle, other than your insured car, which is owned by or available for regular use by you, a relative or resident.
- (11) resulting from the use of any vehicle for racing.
- (12) assumed by an insured person under any contract or agreement.
- (13) arising out of the ownership, maintenance or use of a car when rented or leased to others by any insured person.
- (14) incurred while the car is used for towing a trailer designed for use with other than a private passenger car.
- (15) For any amount in excess of the minimum financial responsibility laws of the state where the accident occurs or the State of

C

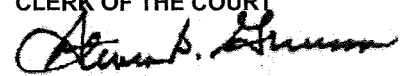
Randall Tindall

From: Gary Lewis <gsl6971@yahoo.com>
Sent: Friday, October 19, 2018 5:56 PM
To: Randall Tindall
Cc: breen@breen.com; Thomas Christensen
Subject: cease communication

Mr Tindall I ask that all communication with me directly cease! All communication should be done through Tom Christensen.

Thank you,

Gary Lewis



1 TPC

2 Thomas Christensen, Esq.
3 Nevada Bar No. 2326
4 1000 S. Valley View Blvd.
5 Las Vegas, Nevada 89107
6 T: (702) 870-1000
7 F: (702) 870-6152
8 courtnotices@injuryhelpnow.com
9 Attorney for Third Party Plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 Cheyenne Nalder)

11 Plaintiff,)

12 vs.)

CASE NO. A-18-772220-C

DEPT NO. XXIX

13 Gary Lewis,)

14 Defendant.)

15 United Automobile Insurance Company,)

16 Intervenor,)

17 Gary Lewis,)

18 Third Party Plaintiff,)

19 vs.)

20 United Automobile Insurance Company,)

21 Randall Tindall, Esq. and Resnick & Louis, P.C.,)

22 and DOES I through V,)

23 Third Party Defendants.)

24 THIRD PARTY COMPLAINT

25 Comes now Cross-claimant/Third-party Plaintiff, GARY LEWIS, by and through his
26 attorney, Thomas Christensen, Esq. and for his Cross-Claim/Third party complaint against the
27 cross-defendant/third party defendants, United Automobile Insurance Co., Randall Tindall,
28 Esq., and Resnick & Louis, P.C., for acts and omissions committed by them and each of them,

1 as a result of the finding of coverage on October 30, 2013 and more particularly states as
2 follows:
3

4 1. That Gary Lewis was, at all times relevant to the injury to Cheyenne Nalder, a
5 resident of the County of Clark, State of Nevada. That Gary Lewis then moved his residence to
6 California at the end of 2008 and has had no presence for purposes of service of process in
7 Nevada since that date.

8 2. That United Automobile Insurance Company, hereinafter referred to as "UAIC",
9 was at all times relevant to this action an insurance company doing business in Las Vegas,
10 Nevada.
11

12 3. That third-party defendant, Randall Tindall, hereinafter referred to as "Tindall,"
13 was and is at all times relevant to this action an attorney licensed and practicing in the State of
14 Nevada. At all times relevant hereto, third-party Defendant, Resnick & Louis, P.C. was and is a
15 law firm, which employed Tindall and which was and is doing business in the State of Nevada.
16

17 4. That the true names and capacities, whether individual, corporate, partnership,
18 associate or otherwise, of Defendants, DOES I through V, are unknown to cross-claimant, who
19 therefore sues said Defendants by such fictitious names. cross-claimant is informed and
20 believes and thereon alleges that each of the Defendants designated herein as DOE is
21 responsible in some manner for the events and happenings referred to and caused damages
22 proximately to cross-claimant as herein alleged, and that cross-claimant will ask leave of this
23 Court to amend this cross-claim to insert the true names and capacities of DOES I through V,
24 when the same have been ascertained, and to join such Defendants in this action.
25

26 5. Gary Lewis ran over Cheyenne Nalder (born April 4, 1998), a nine-year-old girl
27 at the time, on July 8, 2007.

28 6. This incident occurred on private property.

1 7. Lewis maintained an auto insurance policy with United Auto Insurance
2 Company ("UAIC"), which was renewable on a monthly basis.
3

4 8. Before the subject incident, Lewis received a statement from UAIC instructing
5 him that his renewal payment was due by June 30, 2007.

6 9. The renewal statement also instructed Lewis that he remit payment prior to the
7 expiration of his policy "[t]o avoid lapse in coverage."

8 10. The statement provided June 30, 2007 as the effective date of the policy.

9 11. The statement also provided July 31, 2007 as the expiration date of the policy.

10 12. On July 10, 2007, Lewis paid UAIC to renew his auto policy. Lewis's policy
11 limit at this time was \$15,000.00.
12

13 13. Following the incident, Cheyenne's father, James Nalder, extended an offer to
14 UAIC to settle Cheyenne's injury claim for Lewis's policy limit of \$15,000.00.

15 14. UAIC never informed Lewis that Nalder offered to settle Cheyenne's claim.

16 15. UAIC never filed a declaratory relief action.

17 16. UAIC rejected Nalder's offer.

18 17. UAIC rejected the offer without doing a proper investigation and claimed that
19 Lewis was not covered under his insurance policy and that he did not renew his policy by June
20 30, 2007.
21

22 18. After UAIC rejected Nalder's offer, James Nalder, on behalf of Cheyenne, filed a
23 lawsuit against Lewis in the Nevada state court.

24 19. UAIC was notified of the lawsuit but declined to defend Lewis or file a
25 declaratory relief action regarding coverage.
26

27 20. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a
28 default judgment against Lewis for \$3,500,000.00.

1 21. Notice of entry of judgment was filed on August 26, 2008.

2 22. On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of
3 contract, an action on the judgment, breach of the implied covenant of good faith and fair
4 dealing, bad faith, fraud, and violation of NRS 686A.310.
5

6 23. Lewis assigned to Nalder his right to "all funds necessary to satisfy the
7 Judgment." Lewis left the state of Nevada and located in California prior to 2010. Neither Mr.
8 Lewis nor anyone on his behalf has been subject to service of process in Nevada since 2010.
9

10 24. Once UAIC removed the underlying case to federal district court, UAIC filed a
11 motion for summary judgment as to all of Lewis's and Nalder's claims, alleging Lewis did not
12 have insurance coverage on the date of the subject collision.

13 25. The federal district court granted UAIC's summary judgment motion because it
14 determined the insurance contract was not ambiguous as to when Lewis had to make payment to
15 avoid a coverage lapse.

16 26. Nalder and Lewis appealed to the Ninth Circuit. The Ninth Circuit reversed and
17 remanded the matter because Lewis and Nalder had facts to show the renewal statement was
18 ambiguous regarding the date when payment was required to avoid a coverage lapse.
19

20 27. On remand, the district court entered judgment in favor of Nalder and Lewis and
21 against UAIC on October 30, 2013. The Court concluded the renewal statement was ambiguous
22 and therefore, Lewis was covered on the date of the incident because the court construed this
23 ambiguity against UAIC.

24 28. The district court also determined UAIC breached its duty to defend Lewis, but
25 did not award damages because Lewis did not incur any fees or costs in defense of the Nevada
26 state court action.
27
28

1 29. Based on these conclusions, the district court ordered UAIC to pay the policy
2 limit of \$15,000.00.

3
4 30. UAIC made three payments on the judgment: on June 23, 2014; on June 25, 2014;
5 and on March 5, 2015, but made no effort to defend Lewis or relieve him of the judgment
6 against him.

7 31. UAIC knew that a primary liability insurer's duty to its insured continues from
8 the filing of the claim until the duty to defend has been discharged.

9 32. UAIC did an unreasonable investigation, did not defend Lewis, did not attempt to
10 resolve or relieve Lewis from the judgment against him, did not respond to reasonable
11 opportunities to settle and did not communicate opportunities to settle to Lewis.

12
13 33. Both Nalder and Lewis appealed to the Ninth Circuit, which ultimately led to
14 certification of the first question to the Nevada Supreme Court, namely, whether an insurer that
15 breaches its duty to defend is liable for all foreseeable consequential damages to the breach.

16 34. After the first certified question was fully briefed and pending before the Nevada
17 Supreme Court, UAIC embarked on a new strategy putting their interests ahead of Lewis's in
18 order to defeat Nalder's and Lewis's claims against UAIC.

19
20 35. UAIC mischaracterized the law and brought new facts into the appeal process that
21 had not been part of the underlying case. UAIC brought the false, frivolous and groundless
22 claim that neither Nalder nor Lewis had standing to maintain a lawsuit against UAIC without
23 filing a renewal of the judgment pursuant to NRS 17.214.

24 36. Even though UAIC knew at this point that it owed a duty to defend Gary Lewis,
25 UAIC did not undertake to investigate the factual basis or the legal grounds or to discuss this
26 with Gary Lewis, nor did it seek declaratory relief on Lewis's behalf regarding the statute of
27 limitations on the judgment.
28

1 37. All of these actions would have been attempts to protect Gary Lewis.

2 38. UAIC, instead, tried to protect themselves and harm Lewis by filing a motion to
3 dismiss Gary Lewis' and Nalder's appeal with the Ninth Circuit for lack of standing.
4

5 39. This was not something brought up in the trial court, but only in the appellate
6 court for the first time.

7 40. This action could leave Gary Lewis with a valid judgment against him and no
8 cause of action against UAIC.

9 41. UAIC ignored all of the tolling statutes and presented new evidence into the
10 appeal process, arguing Nalder's underlying \$3,500,000.00 judgment against Lewis is not
11 enforceable because the six-year statute of limitation to institute an action upon the judgment or
12 to renew the judgment pursuant to NRS 11.190(1)(a) expired.
13

14 42. As a result, UAIC contends Nalder can no longer recover damages above the
15 \$15,000.00 policy limit for breach of the contractual duty to defend. UAIC admits the Nalder
16 judgment was valid at the time the Federal District Court made its decision regarding damages.
17

18 43. The Ninth Circuit concluded the parties failed to identify Nevada law that
19 conclusively answers whether a plaintiff can recover consequential damages based on a
20 judgment that is over six years old and possibly expired.

21 44. The Ninth Circuit was also unable to determine whether the possible expiration of
22 the judgment reduces the consequential damages to zero or if the damages should be calculated
23 from the date when the suit against UAIC was initiated, or when the judgment was entered by
24 the trial court.

25 45. Both the suit against UAIC and the judgment against UAIC entered by the trial
26 court were done well within even the non-tolled statute of limitations.
27
28

1 46. Even though Nalder believed the law is clear that UAIC is bound by the
2 judgment, regardless of its continued validity against Lewis, Nalder took action in Nevada and
3 California to demonstrate the continued validity of the underlying judgment against Lewis.
4

5 47. These Nevada and California state court actions are further harming Lewis and
6 Nalder but were undertaken to demonstrate that UAIC has again tried to escape responsibility
7 by making misrepresentations to the Federal and State Courts and putting their interests ahead
8 of their insured's.
9

10 48. Cheyenne Nalder reached the age of majority on April 4, 2016.

11 49. Nalder hired David Stephens to obtain a new judgment. First David Stephens
12 obtained an amended judgment in Cheyenne's name as a result of her reaching the age of
13 majority.
14

15 50. This was done appropriately by demonstrating to the court that the judgment was
16 still within the applicable statute of limitations.
17

18 51. A separate action was then filed with three distinct causes of action pled in the
19 alternative. The first, an action on the amended judgment to obtain a new judgment and have
20 the total principal and post judgment interest reduced to judgment so that interest would now
21 run on the new, larger principal amount. The second alternative action was one for declaratory
22 relief as to when a renewal must be filed base on when the statute of limitations, which is
23 subject to tolling provisions, is running on the judgment. The third cause of action was, should
24 the court determine that the judgment is invalid, Cheyenne brought the injury claim within the
25 applicable statute of limitations for injury claims - 2 years after her majority.
26

27 52. Nalder also retained California counsel, who filed a judgment in California, which
28 has a ten year statute of limitations regarding actions on a judgment. Nalder maintains that all
of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the

1 judgment; but out of an abundance of caution and to maintain the judgment against Lewis, she
2 brought them to demonstrate the actual way this issue should have been litigated in the State
3 Court of Nevada, not at the tail end of an appeal.
4

5 53. UAIC did not discuss with its insured, GARY LEWIS, his proposed defense, nor
6 did it coordinate it with his counsel Thomas Christensen, Esq.

7 54. UAIC hired attorney Stephen Rogers, Esq. to represent GARY LEWIS,
8 misinforming him of the factual and legal basis of the representation. This resulted in a number
9 of improper contacts with a represented client.
10

11 55. Thomas Christensen explained the nature of the conflict and Lewis's concern
12 regarding a frivolous defense put forth on his behalf. If the state court judge is fooled into an
13 improper ruling that then has to be appealed in order to get the correct law applied damage
14 could occur to Lewis during the pendency of the appeal.

15 56. A similar thing happened in another case with a frivolous defense put forth by
16 Lewis Brisbois. The trial judge former bar counsel, Rob Bare, dismissed a complaint
17 erroneously which wasn't reversed by the Nevada Supreme Court until the damage from the
18 erroneous decision had already occurred.
19

20 57. UAIC's strategy of delay and misrepresentation was designed to benefit UAIC
21 but harm GARY LEWIS.

22 58. In order to evaluate the benefits and burdens to Lewis and likelihood of success of
23 the course of action proposed by UAIC and each of the Defendants, Thomas Christensen asked
24 for communication regarding the proposed course of action and what research supported it. It
25 was requested that this communication go through Thomas Christensen's office because that
26 was Gary Lewis's desire, in order to receive counsel prior to embarking on a course of action.
27
28

1 59. Christensen informed Stephen Rogers, Esq. that when Gary Lewis felt the
2 proposed course by UAIC was not just a frivolous delay and was based on sound legal research
3 and not just the opinion of UAIC's counsel, that it could be pursued.
4

5 60. Stephen Rogers, Esq. never adequately responded to requests.

6 61. Instead, UAIC obtained confidential client communications and then misstated
7 the content of these communications to the Court. This was for UAIC's benefit and again
8 harmed Gary Lewis.

9 62. UAIC, without notice to Lewis or any attorney representing him, then filed two
10 motions to intervene, which were both defective in service on the face of the pleadings.
11

12 63. In the motions to intervene, UAIC claimed that they had standing because they
13 would be bound by and have to pay any judgment entered against Lewis.

14 64. In the motions to intervene, UAIC fraudulently claimed that Lewis refused
15 representation by Stephen Rogers.

16 65. David Stephens, Esq., counsel for Nalder in her 2018 action, through diligence,
17 discovered the filings on the court website. He contacted Matthew Douglas, Esq., described the
18 lack of service, and asked for additional time to file an opposition.
19

20 66. These actions by UAIC and counsel on its behalf are a violation of NRPC 3.5A.

21 67. David Stephens thereafter filed oppositions and hand-delivered courtesy copies to
22 the court. UAIC filed replies. The matter was fully briefed before the in chambers "hearing,"
23 but the court granted the motions citing in the minuted order that "no opposition was filed."

24 68. The granting of UAIC's Motion to Intervene after judgment is contrary to NRS
25 12.130, which states: Intervention: Right to intervention; procedure, determination and costs;
26 exception. 1. Except as otherwise provided in subsection 2: (a) **Before the trial ...**
27
28

1 69. These actions by State Actor David Jones ignore due process, the law, the United
2 States and Nevada constitutional rights of the parties. The court does the bidding of insurance
3 defense counsel and clothes defense counsel in the color of state law in violation of 42 USCA
4 section 1983.
5

6 70. David Stephens and Breen Arntz worked out a settlement of the action and
7 signed a stipulation. This stipulation was filed and submitted to the court with a judgment prior
8 to the "hearing" on UAIC's improperly served and groundless motions to intervene.
9

10 71. Instead of signing the judgment and ending the litigation, the court asked for a
11 wet signed stipulation as a method of delaying signing the stipulated judgment.

12 72. This request was complied with prior to the September 19, 2018 "hearing" on the
13 Motion to Intervene. The judge, without reason, failed to sign the judgment resolving the case.

14 73. Instead, the judge granted the Motion to Intervene, fraudulently claiming, in a
15 minute order dated September 26, 2018, that no opposition had been filed.

16 74. Randall Tindall, Esq. filed unauthorized pleadings on behalf of Gary Lewis on
17 September 26, 2018.
18

19 75. UAIC hired Tindall to further its strategy to defeat Nalder and Lewis' claims.
20 Tindall agreed to the representation despite his knowledge and understanding that this strategy
21 amounted to fraud and required him to act against the best interests of his "client" Lewis.

22 76. Tindall mischaracterized the law and filed documents designed to mislead the
23 Court and benefit UAIC, to the detriment of Gary Lewis.

24 77. These three filings by Randall Tindall, Esq. are almost identical to the filings
25 proposed by UAIC in their motion to intervene.
26

27 78. Gary Lewis was not consulted and he did not consent to the representation.

28 79. Gary Lewis did not authorize the filings by Randall Tindall, Esq.

1 80. Gary Lewis himself and his attorneys, Thomas Christensen, Esq. and E. Breen
2 Arntz, Esq., have requested that Tindall withdraw the pleadings filed fraudulently by Tindall.
3

4 81. Tindall has refused to comply and continues to violate ethical rules regarding
5 Gary Lewis.

6 82. Gary Lewis filed a bar complaint against Tindall, but State Actors Daniel Hooge
7 and Phil Pattee dismissed the complaint claiming they do not enforce the ethical rules if there is
8 litigation pending.

9 83. This is a false statement as Dave Stephens was investigated by this same state
10 actor Phil Pattee while he was currently representing the client in ongoing litigation.
11

12 84. The court herein signed an order granting intervention while still failing to sign
13 the judgment resolving the case.

14 85. UAIC, and each of the defendants, and each of the state actors, by acting in
15 concert, intended to accomplish an unlawful objective for the purpose of harming Gary Lewis.
16

17 86. Gary Lewis sustained damage resulting from defendants' acts in incurring
18 attorney fees, litigation costs, loss of claims, delay of claims, judgment against him and as more
19 fully set forth below.

20 87. Defendants and each of them acting under color of state law deprived plaintiff of
21 rights, privileges, and immunities secured by the Constitution or laws of the United States.

22 88. Gary Lewis has duly performed all the conditions, provisions and terms of the
23 agreements or policies of insurance with UAIC relating to the claim against him, has furnished
24 and delivered to UAIC full and complete particulars of said loss and has fully complied with all
25 the provisions of said policies or agreements relating to the giving of notice as to said loss, and
26 has duly given all other notices required to be given by Gary Lewis under the terms of such
27 policies or agreements.
28

1 89. That Gary Lewis had to sue UAIC in order to get protection under the policy.
2 That UAIC, and each of them, after being compelled to pay the policy limit and found to have
3 failed to defend its insured, now fraudulently claims to be defending him when in fact it is
4 continuing to delay investigating and processing the claim; not responding promptly to requests
5 for settlement; doing a one-sided investigation, and have compelled Gary Lewis to hire counsel
6 to defend himself from Nalder, Tindall and UAIC. All of the above are unfair claims
7 settlement practices as defined in N.R.S. 686A.310 and Defendant has been damaged in an
8 amount in excess of Ten Thousand Dollars (\$10,000.00) as a result of UAIC's delay in settling
9 and fraudulently litigating this matter.
10

11
12 90. That UAIC failed to settle the claim within the policy limits when given the
13 opportunity to do so and then compounded that error by making frivolous and fraudulent claims
14 and represented to the court that it would be bound by any judgment and is therefore responsible
15 for the full extent of any judgment against Gary Lewis in this action.
16

17 91. UAIC and Tindall's actions have interfered with the settlement agreement Breen
18 Arntz had negotiated with David Stephens and have caused Gary Lewis to be further damaged.
19

20 92. The actions of UAIC and Tindall, and each of them, in this matter have been
21 fraudulent, malicious, oppressive and in conscious disregard of Gary Lewis' rights and therefore
22 Gary Lewis is entitled to punitive damages in an amount in excess of Ten Thousand Dollars
23 (\$10,000.00).
24

25 93. Upon information and belief, at all times relevant hereto, that all Defendants, and
26 each of them, whether individual, corporate, associate or otherwise, were the officers, directors,
27 brokers, agents, contractors, advisors, servants, partners, joint venturers, employees and/or
28 alter-egos of their co-Defendants, and were acting within the scope of their authority as such

1 agents, contractors, advisors, servants, partners, joint venturers, employees and/or alter-egos
2 with the permission and consent of their co-Defendant.

3
4 94. That during their investigation of the claim, UAIC, and each of them, threatened,
5 intimidated and harassed Gary Lewis and his counsel.

6 95. That the investigation conducted by UAIC, and each of them, was done for the
7 purpose of denying coverage and not to objectively investigate the facts.

8 96. UAIC, and each of them, failed to adopt and implement reasonable standards for
9 the prompt investigation and processing of claims.

10 97. That UAIC, and each of them, failed to affirm or deny coverage of the claim
11 within a reasonable time after proof of loss requirements were completed and submitted by
12 Gary Lewis.

13 98. That UAIC, and each of them, failed to effectuate a prompt, fair and equitable
14 settlement of the claim after liability of the insured became reasonably clear.

15 99. That UAIC, and each of them, failed to promptly provide to Gary Lewis a
16 reasonable explanation of the basis in the Policy, with respect to the facts of the Nalder claim
17 and the applicable law, for the delay in the claim or for an offer to settle or compromise the
18 claim.

19 100. That because of the improper conduct of UAIC, and each of them, Gary Lewis
20 was forced to hire an attorney.

21 101. That Gary Lewis has suffered damages as a result of the delayed investigation,
22 defense and payment on the claim.

23 102. That Gary Lewis has suffered anxiety, worry, mental and emotional distress as a
24 result of the conduct of UAIC, and each of the Defendants.

1 103. The conduct of UAIC, and each of the Defendants, was oppressive and malicious
2 and done in conscious disregard for the rights of Gary Lewis.

3
4 104. UAIC, and each of them, breached the contract existing between UAIC and Gary
5 Lewis by their actions set forth above which include but are not limited to:

- 6 a. Unreasonable conduct in investigating the loss;
7 b. Unreasonable failure to affirm or deny coverage for the loss;
8 c. Unreasonable delay in making payment on the loss;
9 d. Failure to make a prompt, fair and equitable settlement for the loss;
10 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
11 making payment on the loss;
12 f. Failing to defend Gary Lewis;
13 g. Fraudulent and frivolous litigation tactics;
14 h. Filing false and fraudulent pleadings;
15 i. Conspiring with others to file false and fraudulent pleadings;
16

17 91. As a proximate result of the aforementioned breach of contract, Gary Lewis has
18 suffered and will continue to suffer in the future damages as a result of the delayed payment on
19 the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert
20 those figures when such have been fully ascertained.
21

22 92. As a further proximate result of the aforementioned breach of contract, Gary
23 Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages
24 and out of pocket expenses, all to their general damage in excess of \$10,0000.
25

26 93. As a further proximate result of the aforementioned breach of contract, Gary
27 Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of
28 them, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.

1 94. That UAIC, and each of them, owed a duty of good faith and fair dealing
2 implied in every contract.
3

4 95. That UAIC, and each of the them, breached the covenant of good faith and fair
5 dealing by their actions which include but are not limited to:

- 6 a. Unreasonable conduct in investigating the loss;
- 7 b. Unreasonable failure to affirm or deny coverage for the loss;
- 8 c. Unreasonable delay in making payment on the loss;
- 9 d. Failure to make a prompt, fair and equitable settlement for the loss;
- 10 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
11 making payment on the loss;
- 12 f. Failing to defend Gary Lewis;
- 13 g. Fraudulent and frivolous litigation tactics;
- 14 h. Filing false and fraudulent pleadings;
- 15 i. Conspiring with others to file false and fraudulent pleadings;
- 16
- 17

18 96. As a proximate result of the aforementioned breach of the covenant of good faith
19 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a
20 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis
21 prays leave of the court to insert those figures when such have been fully ascertained.

22 97. As a further proximate result of the aforementioned breach of the covenant of
23 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional
24 distress, and other incidental damages and out of pocket expenses, all to their general damage in
25 excess of \$10,0000.
26

27 98. As a further proximate result of the aforementioned breach of the covenant of
28 good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this

1 claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and
2 necessarily incurred in connection therewith.

3
4 99. The conduct of UAIC, and each of the Defendants, was oppressive and malicious
5 and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore
6 entitled to punitive damages.

7 100. That UAIC, and each of the Defendants, acted unreasonably and with knowledge
8 that there was no reasonable basis for their conduct, in their actions which include but are not
9 limited to:

- 10
11 a. Unreasonable conduct in investigating the loss;
12 b. Unreasonable failure to affirm or deny coverage for the loss;
13 c. Unreasonable delay in making payment on the loss;
14 d. Failure to make a prompt, fair and equitable settlement for the loss;
15 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
16 making payment on the loss;
17 f. Failing to defend Gary Lewis;
18 g. Fraudulent and frivolous litigation tactics;
19 h. Filing false and fraudulent pleadings;
20 i. Conspiring with others to file false and fraudulent pleadings;
21

22 101. As a proximate result of the aforementioned breach of the covenant of good faith
23 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a
24 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis
25 prays leave of the court to insert those figures when such have been fully ascertained.
26

27 102. As a further proximate result of the aforementioned breach of the covenant of
28 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional

1 distress, and other incidental damages and out of pocket expenses, all to their general damage in
2 excess of \$10,0000.

3
4 103. As a further proximate result of the aforementioned breach of the covenant of
5 good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this
6 claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and
7 necessarily incurred in connection therewith.

8
9 104. The conduct of UAIC, and each of the Defendants, was oppressive and malicious
10 and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore
11 entitled to punitive damages.

12 105. That UAIC, and each of them, violated NRS 686A.310 by their actions which
13 include but are not limited to:

- 14 a. Unreasonable conduct in investigating the loss;
15 b. Unreasonable failure to affirm or deny coverage for the loss;
16 c. Unreasonable delay in making payment on the loss;
17 d. Failure to make a prompt, fair and equitable settlement for the loss;
18 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
19 making payment on the loss;
20 f. Failing to defend Gary Lewis;
21 g. Fraudulent and frivolous litigation tactics;
22 h. Filing false and fraudulent pleadings;
23 i. Conspiring with others to file false and fraudulent pleadings;
24
25

26 106. As a proximate result of the aforementioned violation of NRS 686A.310, Gary
27 Lewis has suffered and will continue to suffer in the future damages as a result of the delayed
28

1 payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court
2 to insert those figures when such have been fully ascertained.
3

4 107. As a further proximate result of the aforementioned violation of NRS 686A.310,
5 Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental
6 damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

7 108. As a further proximate result of the aforementioned violation of NRS 686A.310,
8 Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each
9 of them, are liable for their attorney's fees reasonably and necessarily incurred in connection
10 therewith.
11

12 109. The conduct of UAIC, and each of them, was oppressive and malicious and done
13 in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore entitled to
14 punitive damages.

15 110. That UAIC, and each of them, had a duty of reasonable care in handling Gary
16 Lewis' claim.
17

18 111. That at the time of the accident herein complained of, and immediately prior
19 thereto, UAIC, and each of them, in breaching its duty owed to Gary Lewis, was negligent and
20 careless, inter alia, in the following particulars:

- 21 a. Unreasonable conduct in investigating the loss;
- 22 b. Unreasonable failure to affirm or deny coverage for the loss;
- 23 c. Unreasonable delay in making payment on the loss;
- 24 d. Failure to make a prompt, fair and equitable settlement for the loss;
- 25 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
26 making payment on the loss;
- 27 f. Failing to defend Gary Lewis;
- 28

- g. Fraudulent and frivolous litigation tactics;
- h. Filing false and fraudulent pleadings;
- i. Conspiring with others to file false and fraudulent pleadings;

112. As a proximate result of the aforementioned negligence, Gary Lewis has suffered and will continue to suffer in the future damages as a result of the delayed payment on the claim in a presently unascertained amount. Plaintiff prays leave of the court to insert those figures when such have been fully ascertained.

113. As a further proximate result of the aforementioned negligence, Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

114. As a further proximate result of the aforementioned negligence, Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, is liable for his attorney's fees reasonably and necessarily incurred in connection therewith.

115. The conduct of UAIC, and each of them, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis are therefore entitled to punitive damages.

116. The aforementioned actions of UAIC, and each of them, constitute extreme and outrageous conduct and were performed with the intent or reasonable knowledge or reckless disregard that such actions would cause severe emotional harm and distress to Gary Lewis.

117. As a proximate result of the aforementioned intentional infliction of emotional distress, Gary Lewis has suffered severe and extreme anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

1 118. As a further proximate result of the aforementioned negligence, Gary Lewis was
2 compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are
3 liable for his attorney's fees reasonably and necessarily incurred in connection therewith.
4

5 119. The conduct of UAIC, and each of them, was oppressive and malicious and done
6 in conscious disregard for the rights of Gary Lewis and Gary Lewis is therefore entitled to
7 punitive damages.

8 120. That Randall Tindall, as a result of being retained by UAIC to represent Gary
9 Lewis, owed Gary Lewis the duty to exercise due care toward Gary Lewis.
10

11 121. Randall Tindall also had a heightened duty to use such skill, prudence, and
12 diligence as other members of the profession commonly possess and exercise.

13 122. Randall Tindall breached the duty of care by failing to communicate with Gary
14 Lewis, failing to follow his reasonable requests for settlement, case strategy and communication.

15 123. That breach caused harm to Gary Lewis including but not limited to anxiety,
16 emotional distress, delay, enhanced damages against him.

17 124. Gary Lewis was damaged by all of the above as a result of the breach by Randall
18 Tindall.
19

20 WHEREFORE, Gary Lewis prays judgment against UAIC, Tindall and each of
21 them, as follows:
22

23 1. Indemnity for losses under the policy including damages paid to Mr. Lewis,
24 attorney fees, interest, emotional distress, and lost income in an amount in excess of
25 \$10,000.00;

26 2. General damages in an amount in excess of \$10,000.00;

27 3. Punitive damages in an amount in excess of \$10,000.00;
28

1 4. Special damages in the amount of any Judgment ultimately awarded against him
2 in favor of Nalder plus any attorney fees, costs and interest.
3

4 5. Attorney's fees; and

5 6. Costs of suit;

6 7. For such other and further relief as the Court may deem just and proper.
7

8 DATED THIS 24 day of October, 2018.

9
10 
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CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b) and NEFCR 9, I certify that I am an employee of CHRISTENSEN LAW OFFICES and that on this 24th day of Oct, 2018, I served a copy of the foregoing Cross-Claim/Third Party Complaint as follows:

xx E-Served through the Court's e-service system to the following registered recipients:

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