

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JARED AWERBACH, INDIVIDUALLY,
Appellant/Cross-Respondent,
vs.
EMILIA GARCIA,
Respondent/Cross-Appellant,
and
ANDREA AWERBACH, INDIVIDUALLY,
Respondent.

No. 71348

(District Court Case No. A-11-633772-C)

DOCKETING STATEMENT

CIVIL APPEALS

Electronically Filed
Oct 20 2017 08:19 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 30
County Clark Judge Jerry A. Wiese
District Ct. Case No. A-11-637772-C

2. Attorney filing this docketing statement:

Attorney D. Lee Roberts, Jr., Esq. / Timothy A. Mott, Esq. Telephone 702-938-3838

Firm Weinberg, Wheeler, Hudgins, Gunn & Dial

Address

6385 South Rainbow Boulevard, Suite 400
Las Vegas, Nevada 89118

Client(s) Emilia Garcia

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Daniel F. Polsenberg, Esq. / Joel D. Henriod, Esq. Telephone 702-949-8200

Firm Lewis Roca Rothgerber Christie, LLP

Address

3933 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Client(s) Jared Awerbach

Attorney Peter Mazzeo Telephone 702-382-3636

Firm Mazzeo Law, LLC

Address

631 South Tenth Street
Las Vegas, Nevada 89101

Client(s) Andrea Awerbach

(List additional counsel on separate sheet if necessary)

3. Attorney(s) representing respondents(s) continued:

Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Craig A. Henderson, Esq.
Nevada Bar No. 10077
GLEN J. LERNER & ASSOCIATES
4795 South Durango Drive
Las Vegas, Nevada 89147

Roger W. Strassburg, Jr., Esq.
Randall Tindall, Esq.
RESNICK & LOUIS, P.C.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Awerbach v. Garcia, Case No. 71348
Garcia v. District Court (Awerbach), Case No. 69134
Awerbach v. District Court (Garcia), Case No. 68602

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a negligence personal injury action. A Judgment upon Jury Verdict was entered on August 21, 2017 in favor of Emilia Garcia against Jared Awerbach for \$2,824,846.01. Emilia Garcia appeals all orders pertaining to findings and modifications pertaining to the issue of permissive use (concerning Andrea Awerbach), as well as all other orders set forth in Emilia Garcia' Notice of Appeal.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) May a disqualified District Court Judge directly influence the rulings of the new presiding District Court Judge assigned to the case after disqualification of the first judge?

(2) In the absence of new evidence or a finding of clear error, may the presiding District Court Judge modify a sanction entered by a previous District Court Judge assigned to the case because of mere disagreement with the first judge's exercise of discretion?

(3) Did the District Court err in failing to find permissive use as a matter of law as a result of a Rule 36 admission by Andrea Awerbach?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

The issue of whether a disqualified judge may provide input to the presiding judge in a case from which she has been disqualified has not been addressed by this Court. The disqualified judge provided input to the presiding judge regarding her unstated intentions for a sanction she entered prior to her disqualification. Many jurisdictions have determined that a disqualified judge may not affect the determination of any case from which she is barred and may only perform ministerial acts to have the case transferred to another judge. This Court has not had an opportunity to address this critical issue. Emilia Garcia believes, consistent with the overwhelming persuasive authority, that any substantive involvement from a disqualified judge is inappropriate and constitutes judicial error. However, this Court's guidance is needed to ensure the judiciary has instruction on its obligations and limitations in regards to interactions with disqualified judges.

Additional important issues of law are presented in this appeal regarding the effect of Rule 36 admissions and whether the presiding judge may overturn the disqualified judge's orders absent new evidence or a finding of clear error. Strong public policy goals are served by the Supreme Court's invocation of its jurisdiction in this matter.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(13) and NRAP 17(a)(14).

14. Trial. If this action proceeded to trial, how many days did the trial last? 22

Was it a bench or jury trial? Jury

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 8/21/2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 8/21/2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed _____

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Emilia Garcia (9/19/2017)

Jared Awerbach (8/28/2017)

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

A final Judgment Upon Jury Verdict and Order Vacating Judgment as to Jared Awerbach Only was entered on August 21, 2017.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Emilia Garcia

Defendant: Jared Awerbach

Defendant: Andrea Awerbach

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Emilia Garcia v. Jared Awerbach: Negligence and Negligence Per Se (August 21, 2017)

Emilia Garcia v. Andrea Awerbach: Negligent Entrustment (August 21, 2017)

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Emilia Garcia

Name of appellant

10/19/2017

Date

Timothy A. Mott, Esq

Name of counsel of record



Signature of counsel of record

Nevada, Clark County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of October, 2017, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Roger W. Strassburg, Jr., Esq.
Randall Tindall, Esq.
Resnick & Louis, P.C.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorneys for Jared Awerbach

Peter Mazzeo, Esq.
Mazzeo Law, LLC
631 S. Tenth St.
Las Vegas, NV 89101
Attorney for Andrea Awerbach

Dated this

19th

day of

October

2017



Signature

EXHIBIT A

EXHIBIT A

1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 * * * * *

8

9 EMILIA GARCIA, individually,)

10 Plaintiff,)

11 vs.)

12 JARED AWERBACH, individually;)

ANDREA AWERBACH, individually;)

13 DOES I-X, and ROE CORPORATIONS)

I-X, inclusive,)

14)

Defendants.)

15)

16

17 REPORTER'S TRANSCRIPT

18 OF

19 JURY TRIAL

20 BEFORE THE HONORABLE JERRY A. WIESE, II

21 DEPARTMENT XXX

22 DATED MONDAY, MARCH 7, 2016

23

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
CA CSR #13529

25

1 sitting here waiting for each other to get back
2 together again. You still can't do that. Okay? You
3 can't talk to each other until everything is done and
4 you are in the deliberation room together. All right?
5 I'm just emphasizing that to you because sometimes
6 people get confused once both sides have rested.
7 Nothing has changed. I will tell you when you can talk
8 about the case. Okay?

9 Thank you, folks. We'll see you tomorrow
10 morning at 10:00 o'clock.

11 (The following proceedings were held
12 outside the presence of the jury.)

13 THE COURT: All right. We're now outside the
14 presence of the jury. Anything we need to put on the
15 record now, Counsel?

16 MR. ROBERTS: I have got a few motions to
17 make. I don't know if -- and then we need to settle
18 jury instructions, but we can ...

19 THE COURT: Go ahead. Make your motions.

20 MR. ROBERTS: Thank you, Your Honor.

21 THE COURT: You have a few?

22 MR. ROBERTS: Well, a few. Sorry, Your
23 Honor. So many I have to get out my notes to remember
24 them all.

25 The first one is, we would request a directed

1 verdict on the issue of permissive use on whether or
2 not Mr. Awerbach had permission, express or implied, to
3 use the vehicle. Under the Court's modified order on
4 the sanctions, there is a presumption of permissive use
5 shifting the burden of proof to the defendants to
6 rebut.

7 I would submit that there was no evidence
8 from which a reasonable juror could find that they,
9 indeed, met their burden of proof. There's been
10 undisputed evidence now that she allowed Mr. Awerbach
11 to drive her car on past occasions. There's been
12 undisputed evidence that she put the keys to the car in
13 his hand on the day of the incident. And while I
14 understand that it's -- it was a close question and
15 might not otherwise have been an appropriate motion, I
16 think what pushes us over the top is the admission.
17 The -- under the rules, the admission conclusively
18 establishes permissive use as a matter of law; and,
19 therefore, we're entitled to directed verdict on that
20 motion.

21 While Counsel stated that they were going to
22 introduce into evidence an amended admission and proof
23 that this was withdrawn and later corrected, I don't
24 recall seeing that come into evidence. If I missed it
25 because I was doing something else, I apologize. I

1 don't think -- I think they rested their case without
2 putting the amended admission into evidence; therefore,
3 the only thing in evidence is an admission that he had
4 permissive use, and that's conclusive.

5 THE COURT: But didn't we just have an
6 argument on that on our last break, and I said I wasn't
7 going to allow the amendment based on the -- based on
8 the rule, but I was going to allow them to use the
9 interrogatory answer?

10 MR. MAZZEO: You did.

11 MR. ROBERTS: I guess I'm confused. Because
12 if it's conclusively established and they're not being
13 allowed to amend, how could there be an issue of fact
14 for the jury?

15 THE COURT: That goes back to Mr. Tindall's
16 argument. And -- and I said -- I read it as being
17 conclusively presumed as it related to Rule 36. That's
18 why I didn't allow the amended admission response, but
19 I was going to allow additional discovery responses
20 because I knew they were inconsistent.

21 MR. ROBERTS: Okay. Well, I still want to
22 make my motion.

23 THE COURT: That's fine.

24 MR. ROBERTS: You can deny it.

25 THE COURT: Okay. Denied.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 I, Kristy L. Clark, a duly commissioned
6 Notary Public, Clark County, State of Nevada, do hereby
7 certify: That I reported the proceedings commencing on
8 Monday, March 7, 2016, at 10:05 o'clock a.m.

9 That I thereafter transcribed my said
10 shorthand notes into typewriting and that the
11 typewritten transcript is a complete, true and accurate
12 transcription of my said shorthand notes.

13 I further certify that I am not a relative or
14 employee of counsel of any of the parties, nor a
15 relative or employee of the parties involved in said
16 action, nor a person financially interested in the
17 action.

18 IN WITNESS WHEREOF, I have set my hand in my
19 office in the County of Clark, State of Nevada, this
20 7th day of March, 2016.

21 _____
22 KRISTY L. CLARK, CCR #708
23
24
25

EXHIBIT B

EXHIBIT B

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,

Defendants.

CASE NO.: A637772
DEPT. XXX

NOTICE OF
ENTRY OF
ORDER RE:
POST-TRIAL
MOTIONS

Electronically Filed
08/17/2016 07:31:16 AM


CLERK OF THE COURT

NOTICE OF ENTRY OF ORDER

RE: POST-TRIAL MOTIONS

You are hereby notified that this Court entered an Order Re: Post-Trial Motions, a copy of which is attached hereto.

DATED this 16th day of August, 2016.


JERRY A WIESE
DISTRICT COURT JUDGE

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EPP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

ADAM SMITH

CRAIG HENDERSON

DANIEL POLSENBERG

MARIA ESTANISLO

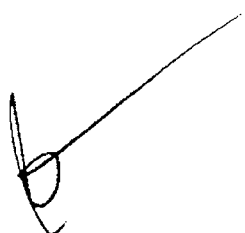
PETER MAZZEO

RANDY TINDALL

AUDRA BOONEY

GEMMA ENDOZO

TIM MOTT



Tatyana Ristic, Judicial Executive Assistant

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

Electronically Filed
08/12/2016 02:12:57 PM

EMILIA GARCIA,

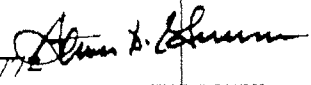
Plaintiff,

vs.

JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,

Defendants.

CASE NO.: A63777
DEPT. XXX


CLERK OF THE COURT

ORDER RE:
POST-TRIAL
MOTIONS

On June 23, 2016, the above-referenced matter came on for hearing before Judge Jerry A. Wiese II, with regard to Plaintiff's Motion for New Trial or, in the Alternative, for Additur, Plaintiff's Renewed Motion for Judgment as a Matter of Law, Jared Awerbach's Motion for New Trial, and Andrea Auerbach's Countermotion for Remittitur. The Court had previously reviewed the pleadings, and at the time of the hearing allowed oral argument on the part of all parties. The Court indicated that it would subsequently issue an Order, and the Court's Order now follows:

With regard to Plaintiff's and Jared Awerbach's Motions for New Trial, NRCP 59 provides the following standard:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

1 [As amended; effective January 1, 2005.]¹

2 Plaintiff argues that she is entitled to a New Trial, based upon the following
3 arguments: 1) the jury engaged in improper experimentation during deliberations; 2)
4 the jury was improperly advised by the Court during deliberations that they may award
5 Ms. Garcia past medical expenses and not award future medical expenses; 3)
6 Defendants inappropriately previewed Dr. Scher's opinions, and then used them again
7 in closing argument, even though Dr. Scher's opinions were stricken; 4) defense
8 counsel violated numerous pre-trial Orders; and 5) the damages awarded to Ms. Garcia
9 were clearly inadequate, and consequently, additur is necessary. The Court will
10 address each argument in order.

11 **1) Did the jury conduct an improper experiment during deliberations,
12 which warrants a new trial?**

13 Plaintiff argues that she is entitled to a new trial because the jury conducted an
14 improper experiment during deliberations. This argument is obviously premised on
15 the Declaration of Keith Berkery, (Juror 5) in which he explained how the jury chose
16 Juror 6, Jessica Bias, to reach over the wood hand/rail/divider, to pick up a water
17 bottle, which the Jurors had apparently seen the Plaintiff do during the Trial, so they
18 could determine the effect that it had on Ms. Bias, and therefore, on the Plaintiff.

19 In *ACP Reno Assoc., ACP v. Airmotive and Villanova*,² the Nevada Supreme
20 Court affirmed its adherence to the general rule "prohibiting the use of juror affidavits
21 to impeach the jury's verdict."³ The Court has held that there is an exception to the
22 general rule, and "[w]here the misconduct involves extrinsic information or contact
23 with the jury, juror affidavits or testimony establishing the fact that the jury received
24 the information or was contacted are permitted."⁴ An extraneous influence includes,
25 among other things, publicity or media reports received and discussed among jurors
26 during deliberations, consideration by jurors of extrinsic evidence, and third-party
27 communications with sitting jurors. In contrast, intra-jury or intrinsic influences

28 ¹ NRCP 59.

² 109 Nev. 314, 849 P.2d 277 (1993).

³ *ACP Reno Assoc., ACP v. Airmotive and Villanova*, 109 Nev. 314, 318, 949 P.2d 277 (1993); See also *Weaver Brothers, Ltd. v. Misskelley*, 98 Nev. 232, 645 P.2d 438 (1982).

⁴ *Meyer v. State*, 119 Nev. 554, 80 P.3d 447, 454.

1 involve improper discussions among jurors (such as considering a defendant's failure
2 to testify), intimidation or harassment of one juror by another, or other similar
3 situations that are generally not admissible to impeach a verdict."⁵ The Court stated
4 that "proof of misconduct must be based on objective facts and not the state of mind or
5 deliberative process of the jury. Juror affidavits that delve into a juror's thought
6 process cannot be used to impeach a jury verdict and must be stricken."⁶

7 The Nevada Supreme Court has cited heavily to the case of *Meyer v. State*, for
8 the proposition that "[A] motion for a new trial may . . . be premised upon juror
9 misconduct where such misconduct is readily ascertainable from objective facts and
10 overt conduct without regard to the state of mind and mental processes of any juror."⁷
11 Additionally, *ACP Reno Assocs. v. Airmotive & Villanova, Inc.*,⁸ holds that "juror
12 affidavits [are] inadmissible to show that the jurors misunderstood the judge's
13 instructions." In order to prevail on a motion for a new trial based on juror
14 misconduct, admissible evidence must establish "(1) the occurrence of juror
15 misconduct, and (2) a showing that the misconduct was prejudicial."⁹ "Prejudice is
16 shown whenever there is a reasonable probability or likelihood that the juror
misconduct affected the verdict."¹⁰

17 Plaintiff's Motion cites to the case of *Russell v. State*,¹¹ in which the appellant's
18 counsel argued during closing argument, that the accused would not have been able to
19 get from Reno to Carson City in time to commit the alleged offense. During a recess in
20 the trial, a juror drove to Reno, and then measured the time it took him to drive to
21 Carson City from the accused's place of employment in Reno. During the jury
22 deliberations, he told the other jurors that it took him twenty-five minutes to travel that
23 distance. The District Court agreed that the juror's actions constituted "misconduct,"
24 but concluded that the misconduct was "harmless." The Nevada Supreme Court,
25 however, concluded that the district court's conclusion was an abuse of discretion. The

26 ⁵ *Meyer v. State*, 119 Nev. 554, 562, 80 P.3d 447, 454 (2003).

27 ⁶ *Id.*, at pg. 563.

28 ⁷ *Meyer* at pg. 563.

⁸ 109 Nev. 314, 318, 849 P.2d 277, 279 (1993).

⁹ *Meyer* at pgs. 563-64.

¹⁰ *Meyer* at pg. 564. (Note that the Court has taken these citations directly from a Nevada Supreme Court Order of Reversal and Remand in *Estate of William George Dyer v. Vicky Guernier, et al.*, Nev. Supreme Court Case No.: 62941, filed 2/19/2015.)

¹¹ 99 Nev. 265, 661 P.2d 1293 (1983).

1 Supreme Court noted that "juror misconduct is particularly egregious where, as here,
2 the juror has engaged in independent 'research' of the facts."¹² The Court further
3 noted that "the information disclosed by the juror related to a crucial aspect of
4 appellant's defense. Appellant's case was therefore significantly harmed by his inability
5 to cross-examine the juror, during the trial, concerning the many variables which may
6 have affected his driving time."¹³

7 This Court notes that the "experiment" conducted by the jury in the present case,
8 occurred after the jury had asked to return to the courtroom to view the steps leading
9 into the witness stand.¹⁴ The Court saw no problem with this "view" because it was
10 something that the jury had been able to view throughout the trial. There was no
11 indication that the jury intended to conduct any type of experiment, or the Court would
12 not have allowed it. Based upon Mr. Berkery's affidavit, however, the jury used the
13 opportunity to conduct an "experiment" and reenact what Mr. Berkery had apparently
14 seen the Plaintiff do (the Plaintiff leaning over the wooden rail to obtain a bottle of
15 water.) According to the Nevada Supreme Court, a juror's affidavit may only be
16 considered as it relates to establishing objective facts.¹⁵ In the present case, this Court
17 may rely on Mr. Berkery's affidavit, only to the extent that it establishes the objective
18 fact that an "experiment" was conducted, and how it was conducted. The
19 determination of whether, and to what extent, the experiment affected the jurors, must
20 be determined based on an "objective" standard, not on a juror's affidavit. This Court
21 concludes that the experiment conducted by the jurors, in the Courtroom, constituted
22 juror misconduct. The jurors had been instructed that they were to "decide all
23 questions of fact in this case from the evidence received in this trial and not from any
24 other source."¹⁶ They were instructed not to "make any independent investigation . . .
[or to] visit the scene, conduct experiments, or consult reference works for additional

25 ¹² Russell at pg. 267, citing to *Barker v. State*, 95 Nev. 308, 312, 594 P.2d 719 (1979).

26 ¹³ Russell at pg. 267.

27 ¹⁴ The actual question from the jury foreperson said, "We would like to see a courtroom to see the stairs in
the witness area and the attorney area." (See Court Exhibit 17, March 10, 2016).

28 ¹⁵ "A motion for a new trial may . . . be premised upon juror misconduct where such misconduct is readily
ascertainable from objective facts and overt conduct without regard to the state of mind and mental processes of
any juror." *Meyer v. State*, 119 Nev. 554, 563, 80 P.3d 447, 454 (2003).

¹⁶ See Jury Instruction No. 6.

1 information.”¹⁷ Clearly, the affidavit of Mr. Berkery establishes that the jury did
2 conduct an “independent investigation,” and conducted an “experiment” in violation of
3 Jury Instruction No. 6. As the Supreme Court has indicated, “juror misconduct is
4 particularly egregious where . . . the juror has engaged in independent ‘research’ of the
5 facts.”¹⁸

6 After concluding that misconduct occurred, the more important question, and
7 the one that is more difficult to answer, is whether the jury’s misconduct was
8 “prejudicial.”¹⁹ The Supreme Court has indicated that “[p]rejudice is shown whenever
9 there is a reasonable probability or likelihood that the juror misconduct affected the
10 verdict.”²⁰ This Court concludes that the experiment conducted by the jurors “related
11 to a crucial aspect” of the Plaintiff’s case – credibility of the plaintiff, and the nature
12 and extent of the plaintiff’s injuries. The Court further concludes that the Plaintiff’s
13 case was “significantly harmed by [her] inability to cross-examine the juror . . .
14 concerning the many variables which may have affected [the result of the
15 experiment].”²¹ The Court concludes that there is a reasonable probability or likelihood
16 that the juror misconduct affected the verdict.”²²

17 **Did the Court improperly advise the jury that it could award past
18 medical expenses and no future medical expenses?**

19 Plaintiff contends that it was error for the Court to advise the jury that it could
20 award the Plaintiff her past medical expenses and no future medical expenses. The
21 question posed by the jury foreperson was as follows: “Based on Instruction 25 would
22 it [be] possible to award the Plaintiff [the] entire amount of Past Medical Expenses
23 without awarding anything for Future medical expenses?” The Court responded with
24 “yes.”²³ The Plaintiff argues that the Plaintiff’s future medical expenses were “either

24 ¹⁷ See Jury Instruction No. 6 .

25 ¹⁸ *Russell* at pg. 267, citing to *Barker v. State*, 95 Nev. 308, 312, 594 P.2d 719 (1979).

26 ¹⁹ See *Meyer* at pgs. 563-64.

27 ²⁰ *Meyer* at pg. 564.

28 ²¹ *Russell* at pg. 267.

²² *Meyer* at pg. 564.

²³ See Court Exhibit 19, March 10, 2016. Note that Instruction No. 25 read as follows: If you find that a Defendant is liable for the original injury to the Plaintiff, then Defendant is also liable for any aggravation of the original injury caused by negligent medical or hospital treatment or care of the original injury, or for any additional injury caused by negligent medical or hospital treatment or care of the original injury.”

1 undisputed or [were] disputed on the exact same grounds as her past expenses."²⁴
2 Consequently, since the jury awarded all of Ms. Garcia's past medical expenses
3 (\$574,846.01), Plaintiff argues that the jury had no choice but to award the Plaintiff her
4 future medical expenses.

5 This Court finds that Plaintiff's argument lacks merit, as the jurors were
6 instructed to "bring to the consideration of the evidence [their] everyday common
7 sense and judgment as reasonable men and women;"²⁵ they were instructed that it was
8 up to them to determine the "credibility or believability" of the witnesses;²⁶ they were
9 instructed about "discrepancies in a witness's testimony;"²⁷ they were told that they
10 were "not bound" by any expert testimony, but that they were to give such testimony
11 "the weight to which [they] deem it entitled;"²⁸ and with regard to damages, they were
12 instructed that they could award the Plaintiff the "damages [they] believe from the
13 evidence Plaintiff has sustained," and they could award "[t]he reasonable medical
14 expenses which [they believed] Plaintiff probably will incur in the future as a result of
15 the accident;"²⁹ and finally, the jurors were instructed that "[w]hether any of these
16 elements of damage have been proven by the evidence is for [them] to determine."³⁰
17 The jury was free to disregard the testimony of the experts, and was free to believe or
18 disbelieve the testimony of the Plaintiff, the treating doctors, etc. This Court will not
19 disturb the verdict of the Jury with regard to its award of future medical expenses, or
20 refusal to award such damages. The Court recalls that there was sufficient evidence
21 presented, through cross-examination of the medical care providers, cross-examination
22 of the Plaintiff herself, and other evidence, upon which the Jury could have based its
23 decision to deny the Plaintiff any future medical expenses. Particularly, the Court
24 recalls Facebook pictures that were presented to the Jury showing the Plaintiff
25 participating in activities which could have been interpreted as inconsistent with the
26 Plaintiff's pain complaints. Although Plaintiff argues that the evidence supporting past
27 and future damages was "undisputed," the Court does not agree, and the Jury was free

24 (See Motion for New Trial at pg. 7 of 30).

25 See Jury Instruction No. 7.

26 See Jury Instruction No. 15.

27 See Jury Instruction No. 16.

28 See Jury Instruction No. 18.

29 See Jury Instruction No. 33.

30 See Jury Instruction No. 37.

1 to accept or to disregard the evidence which it saw and heard, and reach the verdict
2 that it reached. A verdict that is unsupported by evidence is improper and must be
3 overturned,³¹ but in this case, the verdict was supported by the evidence, and need not
4 be overturned.

5 **2) Did the Court err in allowing Defense counsel to preview Dr. Scher's**
6 **opinions during opening statement, and then refer to such opinions**
7 **during closing argument?**

8 Plaintiff next argues that the Court erred in allowing Defense counsel to preview
9 Dr. Scher's foundationless opinions regarding forces of impact, during opening
10 statement, and then Defense counsel again referred to such evidence in Closing
11 Argument, even after Dr. Scher's testimony had been stricken. The Court allowed a
12 preview of Dr. Scher's opinions during opening statement, because the Court allows the
13 attorneys to explain what the evidence will show, and what they have a good faith belief
14 will be entered into evidence during the course of the trial. Based upon representations
15 from Defense counsel, the Court had no reason to believe at the outset, that Dr. Scher's
16 testimony would be stricken. Prior to Trial, the Court had evaluated the proposed
17 testimony of Dr. Scher, and was convinced that there was "at least arguably" sufficient
18 foundation for that testimony. During the presentation of evidence, however, it became
19 evident that there was "inadequate foundation" for Dr. Scher's opinions, and
20 consequently, his testimony was stricken from the record, and the Jury was instructed
21 to disregard it. During closing argument, Mr. Awerbach's counsel argued that the
22 Plaintiff sustained "no physical forces greater than the roller coasters she rode
23 before."³² The Court overruled an objection to that statement, indicating that the Court
24 felt that Mr. Strassburg was simply using a "common sense" argument, but later the
25 Court noted that the Court should have sustained the objection because it was a
26 conclusion that didn't have any basis in evidence.³³ The Court acknowledges that the
27 objection should have been sustained, and Defense counsel should have been
28 admonished not to "testify" or refer to Dr. Scher's opinions during closing argument,
since Dr. Scher's opinions had been stricken from the record. Although the Court
acknowledges the error, the Court is not convinced that the statement regarding the

³¹ *Arnold v. Mt. Wheeler Power*, 101 Nev. 612, 614, 707 P.2d 1137, 1139 (1985).

³² See Trial Transcript 3/9/16 at pg. 19:6-7.

³³ See Trial Transcript 3/9/16 at pg. 65:10-24.

1 "roller coasters" or the other general references to "forces" were sufficiently prejudicial
2 to have made a difference to the Jury. There is no indication that such statements
3 made a difference in the minds of the jurors, and the jurors were instructed more than
4 once that opening statements and closing arguments were "not evidence." Although
5 the Court acknowledges the error, the Court finds that such error may have been
6 harmless, and by itself such error would not justify a new trial. In combination with the
7 other irregularities during Trial, however, it may.

8 **3) Did the accumulation of juror misconduct, error, and improper**
9 **presentation of biomechanical testimony, and repeated violation of**
10 **Pre-Trial Orders prejudice the Plaintiff to the extent that a new trial**
11 **is warranted?**

12 Plaintiff's final argument in support of its Motion for New Trial is that the
13 accumulation of juror misconduct, error, and improper presentation of biomechanical
14 testimony, in addition to repeated violations of Pre-Trial Orders by Defense counsel,
15 prejudiced the Plaintiff and affected the verdict. Plaintiff argues that defense counsel
16 violated at least 15 Pre-Trial Orders. This Court acknowledges that Defense counsel did
17 walk a fine line, coming close to violating, and sometimes went past the line, actually
18 violating, some of the Pre-Trial Orders. Consequently, many of Plaintiff's counsel's
19 objections in that regard were sustained. The Court is not convinced that such
20 violations, by themselves, justify a new trial, but in combination with other
21 irregularities, they may.

22 **4) Are the damages "clearly inadequate" such that Plaintiff is entitled to**
23 **an "additur?"**

24 Plaintiff argues that as an alternative to a new trial, she is entitled to an
25 "additur." The Plaintiff correctly cites to the cases of *Drummond v. Mid-West*
26 *Growers*,³⁴ and *Lee v. Ball*,³⁵ as authority for the potential use of an additur, but those
27 cases stand for the proposition that an additur is only appropriate if 1) the damages are
28 clearly inadequate; and 2) the case would be a proper one for granting a motion for new
trial limited to damages. This Court cannot conclude that the damages awarded by the
Jury are "clearly inadequate," and consequently, the Court does not feel comfortable

³⁴ 91 Nev. 698 (1975).

³⁵ 121 Nev. 391, 393-94 (2005).

1 substituting its judgment regarding damages for that of the Jury. As a result, the Court
2 concludes that an "additur" in this case would not be appropriate. A similar analysis
3 would preclude the Court from granting Andrea Awerbach's request for "remittitur."

4 **CONCLUSION AND ORDER**

5 Based upon the foregoing, this Court finds that a "new trial" of all issues is
6 warranted, based upon NRCP 59(a)(2) (Misconduct of the jury – conducting an
7 experiment); NRCP 59(a)(5) (Manifest disregard by the jury of the instructions of the
8 court – specifically the instruction that the jury was prohibited from conducting its own
9 experiments or investigation); and NRCP 59(a)(7) (Error in law occurring at the trial
10 and objected to by the party making the motion – specifically the statements by
11 Defense Counsel during closing argument, improperly referencing the "forces of
12 impact" testimony of Dr. Scher, as well as the cumulative effect of multiple violations of
13 various Pre-Trial Orders). Based upon these irregularities, the Court concludes that the
14 parties were prejudiced, and were prevented from having a fair trial.

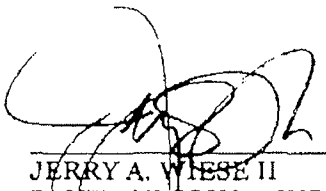
15 Based upon the foregoing, and good cause appearing therefor,

16 **IT IS HEREBY ORDERED** that Plaintiff's Motion for New Trial or, in the
17 Alternative, for Additur, is hereby **GRANTED** as it relates to a request for a new trial,
18 and **DENIED** as it relates to a requested additur.

19 **IT IS FURTHER ORDERED** that Andrea Awerbach's Countermotion for
20 Remittitur is hereby **DENIED**.

21 **IT IS FURTHER ORDERED** that a new trial will be scheduled at the Court's
22 next available date in the regular course, and a new Trial Setting Order will issue.

23 DATED this 12th day of August, 2016.
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JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XXX

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

ADAM SMITH

CRAIG HENDERSON

DANIEL POLSENBERG

MARIA ESTANISLO

PETER MAZZEO

RANDY TINDALL

AUDRA BOONEY

GEMMA ENDOZO

TIM MOTT

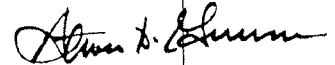


Tatyana Ristic, Judicial Executive Assistant

EXHIBIT C

EXHIBIT C

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-


CLERK OF THE COURT

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,

Defendants.

CASE NO.: A637772
DEPT. XXX

NOTICE OF
ENTRY OF
ORDER RE:
MINUTE ORDER
OF 8/22/16

You are hereby notified that this Court entered an Order Re: Minute Order of 8/22/16
(re: Plaintiff's Renewed Motion for Judgment as a Matter of Law), a copy of which is
attached hereto.

DATED this 22 day of August, 2016.


JERRY A WIESE
DISTRICT COURT JUDGE

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

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Weinberg Wheeler Hudgins Gunn & Dial

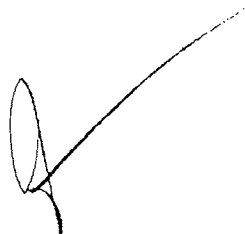
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Tatyana Ristic, Judicial Executive Assistant

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto

COURT MINUTES

August 22, 2016

A-11-637772-C Emilia Garcia, Plaintiff(s)
vs.
Jared Awerbach, Defendant(s)

August 22, 2016 9:00 AM Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT:

JOURNAL ENTRIES

- The above-referenced matter last came on for hearing on June 23, 2016. Subsequently, the Court issued a written Order Re: Post-Trial Motions, which was filed on 8/12/2016. It has come to the Court's attention that the Court erroneously failed to rule on the Plaintiff's Renewed Motion for Judgment as a Matter of Law. The Court now Orders that based upon the same reasoning that the Motion was denied previously, that the Plaintiff's Renewed Motion for Judgment as a Matter of Law is hereby DENIED.

EXHIBIT D

EXHIBIT D

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**


CLERK OF THE COURT

EMILIA GARCIA,

Plaintiff,

vs.

**JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,**

Defendants.

**CASE NO.: A637772
DEPT. XXX**

**ORDER MODIFYING
PRIOR ORDER OF
JUDGE ALLF**

Judge Allf previously entered an Order in the above-referenced matter finding "permissive use" as a matter of law, which was a discovery sanction against the Defendant, Andrea Awerach. This sanction was issued based upon what Judge Allf obviously concluded was a deliberate attempt to conceal information in an insurance claims note. The concealment of this information prejudiced the Plaintiff's ability to discover information and establish evidence in support of the Plaintiff's claim of negligent entrustment. As trial approached, defense counsel requested on several occasions that the Court allow Defendant the opportunity to tell the jury what she believed to be the "truth," about permissive use, even though there was a finding by the Court that "permissive use" was established as a matter of law. The Court was not inclined to disturb the prior findings and orders of Judge Allf, but the Court was faced with the dilemma that Judge Allf's prior Order not only established "permission" by Andrea Awerbach to Jared Awerbach, but it also essentially established an element of the Plaintiff's claim for punitive damages against Andrea Awerbach, without allowing Ms. Awerbach the opportunity to explain herself. This Court was not comfortable with such a finding, especially as it applied to the punitive damage claim. Because this Court appreciates the difference between "permissive use" and "negligent entrustment," the Court contacted Judge Allf to question what her intention was in granting the prior sanction. She indicated that it was actually her intention that at Trial, the parties would be able to present the various contradictory statements relating to "permissive use," and it was her intention that the sanction was to be a "rebuttable presumption" of

1 "negligent entrustment." This Court believes that giving partial effect to Judge Allf's
2 "intention" is more "fair" to the parties in this case. Regardless of whether or not this
3 Court contacted Judge Allf or not, and regardless of what her opinion or intention was,
4 this Court believes that it is more "fair" to all involved parties, to modify Judge Allf's
5 prior Order, and instead of "permissive use" being established as a matter of law, this
6 Court will impose a Rebuttable Presumption that "permissive use" is established
7 against Andrea Awerbach. The presumption still serves the purpose of sanctioning the
8 Defendant for the discovery improprieties, but allows the Defendant to present
9 evidence in an effort to try to rebut the presumption, and allows the Defendant the
10 opportunity to defend against the Plaintiff's claim for punitive damages.

11 This Court acknowledges that this modification of Judge Allf's prior Order, may
12 result in the parties needing to modify how they planned to present this case to the
13 jury. Due to the fact that a continuance of the trial was not possible due to a quickly
14 approaching 5-year deadline, the Court inquired what additional preparation the
15 Plaintiff needed to prepare. Plaintiff's counsel suggested that they needed to re-depose
16 the claims adjuster. The Court ordered that the adjuster be made available within the
17 following week. Counsel thereafter discussed the issue and decided that the re-
18 deposition of the claims adjuster was unnecessary, and the trial is consequently
19 proceeding without delay.

20 Dated this 12TH day of February, 2016.

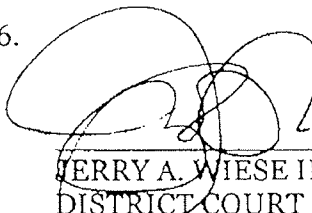
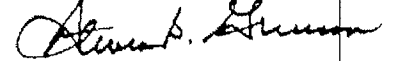
21 
22 JERRY A. WIESE II
23 DISTRICT COURT JUDGE
24 EIGHTH JUDICIAL DISTRICT COURT
25 DEPARTMENT XXX
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EXHIBIT E

EXHIBIT E



1 **NJUD**

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14 *Attorneys for Defendant*
15 *Jared Awerbach*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 EMILIA GARCIA,

15 Plaintiff,

16 *vs.*

17 JARED AWERBACH, individually; ANDREA
18 AWERBACH, individually; DOES I-X; and
19 ROE CORPORATIONS I- X, inclusive,

20 Defendants.

Case No. A-11-637772-C
Dept. No. 30

**NOTICE OF ENTRY OF
"JUDGMENT UPON JURY VERDICT"**

21 Please take notice that on the 18th day of August, 2017, a "Judgment
22 Upon Jury Verdict" was entered in this case. A copy of the judgment is
23 attached.

24 Dated this 21st day of August, 2017.

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

26
27 By /s/ Joel D. Henriod

28 DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway, Suite 600

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Attorneys for Defendant Jared Awerbach

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 21st day of August, 2017, I served the
3 foregoing "Notice of Entry of 'Judgment Upon Jury Verdict'" on counsel by the
4 Court's electronic filing system and by courtesy email to the persons and
5 addresses listed below:

6 D. LEE ROBERTS, JR.
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19
20 /s/ Luz Horvath
21 An Employee of Lewis Roca Rothgerber Christie LLP
22
23
24
25
26
27
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DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

JUDGMENT UPON
JURY VERDICT

This action proceeded to trial before the Court and a jury, the Honorable Jerry A. Wiese, district judge, presiding. The issues were duly tried and, on March 10, 2016, the jury rendered its verdict in favor of plaintiff and against defendant Jared Awerbach, but in favor of defendant Andrea Awerbach against plaintiff.

IT IS SO ORDERED AND ADJUDGED that plaintiff Emilia Garcia be given and granted judgment against defendant Jared Awerbach as follows:

1. Past medical expenses..... \$574,846.01

2. Past pain, suffering and loss of enjoyment of life..... \$250,000.00

TOTAL..... \$824,846.01

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff Emilia Garcia be given and granted punitive damages against Jared Awerbach in the amount of **\$2,000,000.00.**

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff Emilia Garcia take nothing from defendant Andrea Awerbach, and that judgment is entered in favor of Andrea Awerbach, based on the jury's findings that Andrea Awerbach

1 did not give express or implied permission to Jared Awerbach to use her vehicle
2 on January 2, 2011, and did not negligently entrust her vehicle to an
3 inexperienced or incompetent person on January 2, 2011.

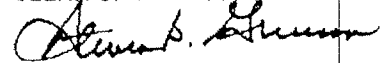
4 Dated this 17 day of August, 2017.



JERRY A. WIESE
DISTRICT COURT JUDGE – DEPT. 30

EXHIBIT F

EXHIBIT F



1 **NEO**

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14 *Attorneys for Defendant*
15 *Jared Awerbach*

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

14 EMILIA GARCIA,

15 Plaintiff,

16 *vs.*

17 JARED AWERBACH, individually; ANDREA
18 AWERBACH, individually; DOES I-X; and
19 ROE CORPORATIONS I- X, inclusive,

20 Defendants.

Case No. A-11-637772-C
Dept. No. 30

**NOTICE OF ENTRY OF
"ORDER VACATING JUDGMENT AS
TO JARED AWERBACH ONLY"**

21 Please take notice that on the 21st day of August, 2017, a "Order
22 Vacating Judgment as to Jared Awerbach Only" was entered in this case. A
23 copy of the order is attached.

24 Dated this 21st day of August, 2017.

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

26
27 By /s/ Joel D. Henriod

28 DANIEL F. POLSENBERG (SBN 2376)
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Attorneys for Defendant Jared Awerbach

1 CERTIFICATE OF SERVICE

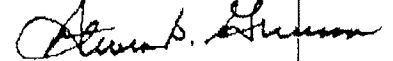
2 I hereby certify that on the 21st day of August, 2017, I served the
3 foregoing "Order Vacating Judgment as to Jared Awerbach Only" on counsel by
4 the Court's electronic filing system and by courtesy email to the persons and
5 addresses listed below:

6
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19 /s/ Luz Horvath
20 An Employee of Lewis Roca Rothgerber Christie LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually; ANDREA
AWERBACH, individually; DOES I-X; and
ROE CORPORATIONS I- X, inclusive,

Defendants.

Case No. A-11-637772-C
Dept. No. 30

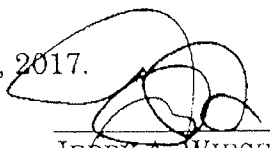
ORDER VACATING JUDGMENT
AS TO JARED AWERBACH ONLY

IT IS HEREBY ORDERED that the judgment in favor of plaintiff and against defendant Jared Awerbach, contained in the "Judgment Upon Jury Verdict," entered on August 18, 2017, is VACATED pursuant to this Court's order of August 12, 2016, which granted plaintiff's motion for new trial. (See August 12, 2016 "Order Re: Post-Trial Motions.")

The Court clarifies that the judgment entered in favor of defendant Andrea Awerbach and against plaintiff, contained in the "Judgment Upon Jury Verdict," entered on August 18, 2017, remains in effect. Pursuant to NRCP 54(b), the Court determines and certifies that the August 18, 2017 "Judgment Upon Jury Verdict" constitutes a "final judgment" as to all claims between plaintiff and Andrea Awerbach. There is no just reason to delay such finality.

1 IT IS FURTHER ORDERED that Jared Awerbach's motion for new trial, filed
2 May 26, 2016, is DENIED AS MOOT, as the Court concludes that it is unnecessary
3 to reach the grounds raised in that motion as a new trial has already been
4 granted.

5 Dated this 21 day of August, 2017.



JERRY A. WIESE
DISTRICT COURT JUDGE - DEPT. 30

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