

1 66. At the emergency room, Jared was diagnosed with a skull fracture and a torn
2 retina that would require specialized surgery to repair, but left him with headaches, and blurry
3 vision that he compensated for as best he could in the years ahead without proper neurological
4 care of the injury deep inside his brain.

5 67. Back in 2005, no one thought to consider traumatic brain injury, and so, Jared did
6 the best he could in the years ahead during which time he spiraled into an ever deepening cycle
7 of drug dependence and petty crimes.

8 68. Jared self-medicated for his headaches and disequilibrium with street drugs when
9 the chiropractic care that his deeply concerned mother saw to it he received proved unavailing.

10 69. Jared's relationships with those closest to him suffered from his substance abuse
11 problems that afflicted him with bouts of mania that could turn violent, even against his mother
12 who stoically tried to deal with the rages of her son as best she could.

13 70. It was not until 2014, as part of the preparation of his defense in the Lawsuit, that
14 Jared was seen by a qualified neurologist, Dr. Russell Shah, of Las Vegas, who diagnosed his
15 equilibrium, headache, and impulse control problems as resulting from traumatic brain injury due
16 to the assault in 2005.

17 **JARED'S TRAUMATIC BRAIN INJURY**

18 71. Dr. Shah ordered that Jared undergo sophisticated brain scans at the Brain
19 Imaging Center at the University of California-Irvine's Department of Psychiatry and Human
20 Behavior run by Dr. Joseph C. Wu, M.D., a leader in the field of using PET and fMRI-DTI brain
21 scans along with volumetric analysis of the brain to diagnose traumatic brain injury.

22 72. Dr. Wu's brain scans and clinical correlation report verified that Jared was
23 suffering from traumatic brain injury to the part of his brain's "white matter" called the "corpus
24 callosum," which governs impulse control and other executive functions—the deficits of which
25 in Jared's case were all too apparent from his dissipated lifestyle.

26 73. Dr. Wu's clinical correlation report on Jared attributed the traumatic brain injury
27 to the assault on November 10, 2005.

28

1 74. Dr. Wu also has ruled out all other confounding factors for Jared's diagnosis,
2 including drug addiction.

3 75. Based on Dr. Wu's report, and his own clinical assessment of Jared, Dr. Shah
4 referred him for brain neurological rehabilitation at the brain rehabilitation program of the
5 Nevada Community Enrichment Program.

6 **PARTIAL SUMMARY JUDGMENT**

7 76. During the motion practice in the Lawsuit, Garcia obtained partial summary
8 judgment against Jared in an interlocutory order entered on January 28, 2015, that granted
9 Garcia's Motion for Partial Summary Judgment that Defendant Jared Awerbach was Per Se
10 Impaired Pursuant to NRS 484C.110(3).

11 77. The district court in the Lawsuit found there was no issue of fact that a sample of
12 Jared's blood taken by the LVMPD after the accident tested as positive for "marijuana
13 metabolite," THC-carboxylic acid, an inert degradation byproduct of marijuana, at a level of 47
14 nanograms per ml of blood and exceeded the legal limit for that substance.

15 78. Under NRS 484C.110(3)(h), relied on by the state court, "[i]t is unlawful for any
16 person to drive ... with an amount of a prohibit substance in his or her blood or urine that is
17 equal to or greater than ... 5 nanograms per milliliter [of marijuana metabolite in blood]."

18 79. The state court ordered that Jared "is deemed per se impaired as a matter of law
19 based on the undisputed level of marijuana metabolite in his blood...."

20 80. Thus, the state court found that Jared was technically in violation of the legal limit
21 for "Marijuana metabolite," though no actual evidence of intoxication was shown.

22 81. "Marijuana metabolite" is a non-intoxicating substance and cannot cause driving
23 impairment.

24 82. The psychoactive ingredient of marijuana that is intoxicating is delta
25 9-tetrahydrocannabinol ("THC"), for which the legal limit in Nevada, under NRS 484C.110(3) is
26 2.0 ng/ml.

27 83. The district court found that there was an issue of fact as to whether Jared's blood
28 level from the same sample contained marijuana in excess of the legal limit.

84. Jared showed that the LVMPD's Crime Lab's testing of marijuana, which purported to show 3.3 ng/ml in his blood, was fatally flawed at the time his blood was tested and could not tell the difference between THC and another marijuana constituent, cannabidiol ("CBD"), a non-intoxicating substance that tends to counteract the effects of THC.

85. CBD is present in all marijuana and can persist in the human body for over three hours after ingestion.

86. In fact, the LVMPD Crime Lab had discovered a year after testing Jared's blood for THC that its own testing reagents converted CBD into THC and thus the test was blind.

87. Dr. Raymond Kelly, a well-regarded toxicologist in Clark County, who has repeatedly testified for the State over the years, opined that the THC testing of Jared's blood could not tell whether the blood level exceeded the legal limit for THC and was invalid.

88. Dr. Kelly also opined that chronic users of marijuana, like Jared, build up a tolerance to the effects of THC.

89. Finally, Dr. Kelly concluded that the available evidence in the case is insufficient to establish that Jared's driving was actually impaired when the accident occurred.

90. During a recent hearing on May 6, 2015, the state court ruled that Jared would not be permitted to introduce any evidence that contradicted the court's ruling on partial summary judgment by proving that Jared was not impaired at the time of the accident.

91. The issue raised by this adversary is whether Jared's chance at a fresh start should be prevented by defective evidence that fails to establish that he was actually intoxicated at the time of the accident, but was at most over the legal limit for a non-intoxicating constituent of marijuana present in his blood.

FIRST CLAIM FOR RELIEF

(11 U.S.C. § 523(a)(9) – DECLARATORY RELIEF)

92. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 91 as though fully set forth herein.

93. Section 523(a)(9) of Title 11 of the United States Code excepts from discharge “any debt . . . for death or personal injury caused by the debtors operation of a motor vehicle,

1 vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using
2 alcohol, a drug, or another substance[.]”

3 94. Jared was not actually intoxicated from using alcohol, a drug, or another
4 substance at the time of the January 2, 2011, accident.

5 95. As originally enacted in 1984, Section 523(a)(9) applied to debts resulting from
6 driving while “legally intoxicated,” but in 1990, the statute was amended to delete the term
7 “legally” so that the statute only applied to debts resulting from driving while the “debtor was
8 intoxicated....”

9 96. Jared’s rights under the Fifth Amendment to the U.S. Constitution preclude the
10 denial of his bankruptcy discharge under Section 523(a)(9), as applied here, for having a
11 substance in his system that is not intoxicating.

12 97. Plaintiff seeks a declaratory judgment that the debt owed to Garcia by Jared, if
13 any, for personal injury is excepted from discharge under 11 U.S.C. § 523(a)(9) because Jared
14 was not actually intoxicated at the time of the January 2, 2011 accident.

15 **SECOND CLAIM FOR RELIEF**

16 **(11 U.S.C. § 523(a)(6) – DECLARATORY RELIEF)**

17 98. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
18 through 97 as though fully set forth herein.

19 99. Section 523(a)(6) of Title 11 of the United States Code excepts from discharge
20 “any debt . . . for willful and malicious injury by the debtor to another entity or to the property of
21 another entity [.]”

22 100. To the extent any debt arises to Garcia, Jared did not intend to injure Garcia
23 during the January 2, 2011, accident.

24 101. To the extent any debt arises to Garcia, Jared did not act with any malice to injure
25 Garcia during the January 2, 2011, accident.

26 102. Plaintiff seeks a declaratory judgment that the debt owed to Garcia by Jared, if
27 any, for personal injury is dischargeable under 11 U.S.C. § 523(a)(6), because Jared did not
28 willfully or maliciously injure Garcia during the January 2, 2011, accident.

DEMAND

WHEREFORE, Plaintiff requests that judgment be entered as follows:

1. First Claim for Relief – Declaratory judgment that the debt, if any, owed to Garcia by Plaintiff, is dischargeable pursuant to 11 U.S.C. § 523(a)(9).
2. Second Claim for Relief - Declaratory judgment that the debt, if any, owed to Garcia by Plaintiff, is dischargeable pursuant to 11 U.S.C. § 523(a)(6).
3. For such other and further relief as is just and proper.

DATED this 29th day of May, 2015.

**HOLLEY, DRIGGS, WALCH,
PUZEY & THOMPSON**

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorneys for Jared Awerbach

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, and that on the 29th day of May, 2015, I caused to be served a true and correct copy of COMPLAINT FOR DECLARATORY RELIEF REGARDING DISCHARGEABILITY OF POTENTIAL CLAIM OF EMILIA GARCIA in the following manner:

☒ (ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

☐ (UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed on the attached service list, at their last known mailing addresses, on the date above written.

☐ (OVERNIGHT COURIER) By depositing a true and correct copy of the above-referenced document for overnight delivery via Federal Express, at a collection facility maintained for such purpose, addressed to the parties on the attached service list, at their last known delivery address, on the date above written.

☐ (FACSIMILE) That I served a true and correct copy of the above-referenced document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached service list, on the date above written.

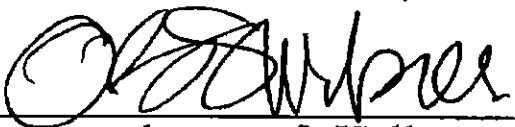

An employee of Holley, Driggs, Walch,
Fine, Wray, Puzey & Thompson

EXHIBIT 1-Q

EXHIBIT 1-Q

REGISTER OF ACTIONS
CASE No. A-13-676419-C

Shafik Hirji, Plaintiff(s) vs. Barry Jacobson, Defendant(s)

§
§
§
§
§
§

Case Type: **Negligence - Auto**
Date Filed: **02/08/2013**
Location: **Department 4**
Cross-Reference Case Number: **A676419**

PARTY INFORMATION

Defendant Delta Mechanical Inc

Lead Attorneys
Kenneth E. Goates
Retained
7026695200(W)

Defendant Jacobson, Barry

Bruce S. Dickinson
Retained
7024747229(W)

Defendant Nevada Delta Mechanical Inc

Kenneth E. Goates
Retained
7026695200(W)

Defendant Pavlich, John A

Kenneth E. Goates
Retained
7026695200(W)

Defendant USF Reddaway Inc

Bruce S. Dickinson
Retained
7024747229(W)

Defendant Wang, Chung

Randall Tindall
Retained
702-408-3800(W)

Defendant Wang, Ting

Randall Tindall
Retained
702-408-3800(W)

Plaintiff Hirji, Shafik

Robert T. Eglet
Retained
7024505400(W)

EVENTS & ORDERS OF THE COURT

05/06/2014 **Minute Order** (3:00 AM) (Judicial Officer Alf, Nancy)
Minute Order: Recusal

Minutes

05/06/2014 3:00 AM

- In accordance with NRS 1.230(1) and to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random.

[Return to Register of Actions](#)

EXHIBIT 1-R

EXHIBIT 1-R

1 **RESNICK & LOUIS, P.C.**
2 ROGER STRASSBURG, SB #8682
3 5940 SOUTH RAINBOW BLVD.
4 LAS VEGAS, NV 89146
5 PH: (702) 997-3800
6 FAX: (702) 997-3800
7 EMAIL: RSTRASSBURG@RLATTORNEYS.COM

8 *Attorney for Jared Awerbach*

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

11 EMILIA GARCIA

12 Plaintiff,

13 vs.

14 JARED AWERBACH, individually,
15 ANDREA AWERBACH, individually, DOES
16 I-X, and ROE CORPORTAIONS I-X,
17 inclusive,

18 Defendants.

CASE NO. A-11-637772-C
DEPT. NO. XXVII

**DEFENDANT JARED AWERBACH'S
TENTH SUPPLEMENTAL
DISCLOSURE PURSUANT TO
N.R.C.P. 16.1(a)(3)**

19 Defendant Jared Awerbach hereby provides his **Tenth** Supplemental List of Witnesses and
20 Documents as follows (**additions are in bold**):

- 21 1. EMILIA GARCIA, Plaintiff
22 c/o ADAM D. SMITH, ESQ.
23 Glen Lerner & Associates
24 4795 South Durango Drive
25 Las Vegas, Nevada 89147

26 EMILIA GARCIA is the Plaintiff in this matter and is expected to testify to the facts and
27 circumstances surrounding the subject incident, as well as to her alleged injuries sustained thereby and
28 medical treatment received therefor, and to all other relevant matters. **She is also expected to testify
in accordance with her two depositions.**

2. JARED AWERBACH, Defendant
c/o Counsel Roger Strassburg

1 Resnick & Louis, P.C.
2 5940 South Rainbow Blvd.
3 Las Vegas, NV 89146

4 JARED AWERBACH is the Defendant in this matter and is expected to testify to the facts and
5 circumstances surrounding the subject incident and to all other relevant matters. **He is also expected**
6 **to testify in accordance with his deposition, statement, and answers to interrogatories.**

7 3. ANDREA AWERBACH, Defendant
8 c/o Pete Mazzeo
9 Mazzeo Law

10 ANDREA A WERBACH is the Defendant in this matter and is expected to testify to the facts
11 and circumstances surrounding the subject incident and to all other relevant matters.

12 4. OFFICER D. FIGUEROA, ID/Badge #9693
13 c/o Las Vegas Metropolitan Police Department
14 400 East Stewart Avenue
15 Las Vegas, Nevada 89101

16 OFFICER FIGUEROA was the investigating officer on the scene of the accident in question
17 and is expected to testify as to the facts and circumstances surrounding the subject incident and to all
18 other relevant matters. **He is also expected to testify in accordance with his deposition and report,**

19 5. PERSON MOST KNOWLEDGEABLE
20 Employer of Plaintiff at the time of the subject incident

21 The PERSON MOST KNOWLEDGEABLE of the Employer of Plaintiff at the time of the
22 subject incident is expected to testify as to any loss of time and/or wage loss to be potentially claimed
23 by Plaintiff as a result of the subject incident and to all other relevant matters.

24 6. ALL APPROPRIATE MEDICAL CARE
25 PROVIDERS OF PLAINTIFF

26 ANY AND ALL APPROPRIATE MEDICAL CARE PROVIDERS OF PLAINTIFF are
27 expected to testify as to the injuries allegedly sustained by Plaintiff and the treatment rendered
28 therefor, Plaintiff's medical history and records, and to all other relevant matters.

1 7. G. MICHAEL ELKANICH, M.D.

2 2680 Crimson Canyon Drive
3 Las Vegas, Nevada 89128
4 (702) 228-7355

5 DR. G. MICHAEL ELKANICH is an orthopedic surgeon who is expected to testify concerning
6 his Independent Medical Examination of Plaintiff EMILIA GARCIA on December 18, 2012, his
7 review of plaintiffs medical records and films, and concerning such issues as causation, reasonableness
8 of injury claims, treatment and medical charges, and concerning his present status, physical condition,
9 ability to work, prognosis, need for future treatment, and all relevant matters.

10 8. ROBERT H. ODELL, JR., M.D., Ph.D.

11 8084 W. Sahara, Suite E
12 Las Vegas, Nevada 89117
13 (702) 257-7246

14 DR. ROBERT H. ODELL is an anesthesiologist and pain management expert who is expected
15 to testify concerning his review of plaintiffs medical records, and concerning such issues as causation,
16 reasonableness of injury claims, treatment and medical charges, and concerning her present status,
17 physical condition, ability to work, prognosis, need for future treatment, and all relevant matters.

18 9. Thomas Ireland, P.hD.

19 Department of Economics, 408 SSB
20 University of Mo.- St. Louis
21 One University Blvd.
22 St. Louis, MO 63121

23 Dr. Ireland is an Economics expert who specializes in public finance, law and economics,
24 forensic economics, and organizational theory. Mr. Ireland is expected to testify and provide expert
25 opinions as to Plaintiff's past and future economic losses, if any, including his opinions as to the
26 present monetary value of Plaintiff's future medical expenses, and potential future economic losses that
27 Plaintiff may or may not experience. Dr. Ireland is expected to rebut Plaintiffs expert, Stan Smith's,
28 opinions as to a wage and benefits loss analysis, loss of household services, and loss of enjoyment of
life aka "hedonic damages." Dr. Ireland will also rebut Dr. Oliveri's present value for life care plan. Dr.
Ireland's opinions are based on his experience, education, and training; his review of Plaintiffs experts'
reports; his review of the documents used by Stan Smith to formulate his opinions, Stan Smith's prior

1 case opinions, case holdings in which Smith testified, Smith's writings and literature and theories upon
2 which Smith bases his opinions.

3
4 10. Heidi Heath
5 Aliante Casino
6 7300 Aliante Parkway
7 Las Vegas, NV 89084
8 702.692.7820

9 This witness is expected to testify in accordance with her deposition taken on June 25, 2014.

10 11. David Bearman, M.D.
11 209 Hillview Drive, Goleta
12 CA 93117
13 (805) 961-9988

14 Dr. Bearman is an expert in medicine and drug impairment. The expert will testify in
15 accordance with his deposition and reports disclosed in our Supplemental Expert Designation and in
16 response to the Plaintiff's Motion to Strike and in support of Defendant's Motion in Limine regarding
17 the Blood Test Results for Defendant. **His testimonial history reconstructed to the best of his ability
18 from records and memory is also disclosed with this disclosure statement:**

19 **David Bearman, M.D.**
20 **Expert Witness Cases: 2010-2015**

21 **2010**

22 • **Leon v. City of Indian Wells, et. al.**

23 **Planiff: Elizabeth Leon**

24 **Ms. Leon was billed in a one car automatic accident that was caused by negligence of the
25 Cochella Valley Water District. They raised a defense that Mr. Leon was under the influence of
26 marijuana. Dr. Bearman was deposed and he testified the evidence did not demonstrate she was
27 under the influence at the relevant time and the case was settled for in excess of a million dollars.**

28 • **Jellison Case**

Defendant: Denise Jellison

Attorney: David S. Silber

Santa Barbara, CA

Possesion of cannabis

2011

• **State of Montana v. Montana Cannabis Industry Association**

Defendants: James H. Goetz, J. Devlan Geddes, and Jim Barr Coleman

Mark Mathews, Shirley Hamp, Shelly Yeager, Phyllis McQuay, John Doe #1, John Doe #2,

Michael Geci-Black, M.D., Charlie Hamp and the Montana Cannabis Industry Association

Montana Cannabis Industry Association sued the state over Senate Bill 423's amendment to

MMA as unconstitutional. Dr. Bearman worked with Edward Steinman on professor at Santa

Clara School of Law.

• **Bray Case**

Defendant: Jeff Bray

Medically necessary

• **Stauff/Andrew Case**

Defendant: Jenny Andrews

Attorney: Clyde Stauff

Driving under the influence of Percocet and marijuana.

• **Riverside County Department of Public Social Services v. Cruz**

Defendant: Maile Vera Cruz

Attorney: Letitia E. Pepper

Child Protective Services

• **Commonwealth of Virginia v. Miles**

Defendant: Robert Miles

Attorney: Jon Katz

This was a grow case. The defendant had neuropathic pain and pled medically necessary. He eventually was not penalized.

• **People v. Steward**

Defendant: Luke Stewart

Attorney: Rebecca Mendribil

Dr. Bearman gave his expert opinion on how marijuana did not impair his driving.

2012

• **Cornwell v. Bank of America**

1 Plaintiff: Mark S. Cornwell
Attorney: Mark S. Cornwell

2 San Luis Obispo, CA

3 Mr. Cornwall alleged that the Bank took advantage his brother Tod's medical condition and
4 changed the bank with failure to discharge their to have fiduciary responsibility, financial elder
5 abuse, fraud, constructive fraud and negligence as the last remaining heir in Tod's Cornwall
trustee. Dr. Bearman wrote a report that said that Tod Cornwall was vulnerable to his medical
conditions and prescribed medications.

6 • People of California v. Duncanwood

7 Defendant: Dennis Blair Duncanwood

8 Attorney: Alec Henderson

9 Shasta County, California

10 During a traffic stop, Mr. Ducanwood charged with DUI with an expired medical marijuana
card. Dr. Bearman testified that the fact that the patient was speeding was indication of not
11 being under the influence. Also that failing the field sobriety test due to poor coordination and
emotional disturbance versus being under the influence.

12 2013

13 • Lewis Case

14 Defendant: Brain Lewis

15 Attorney: Sharon Hobson

16 Dr. Bearman gave his expert opinion on Defendant's pain and how it should be treated.

17 • Medical Board of California, Department of Consumer Affairs v. Rees, M.D.

18 Defendant: Atsuko Eubank Rees, M.D.

19 Attorney: David L. Fisher

20 San Luis Obispo, California

21 Dr. Reese had allegations of insufficient protocol for dispensing medical marijuana prescriptions
at his family practice. Dr. Bearman testified on the assessment of quality of care, definition of
standards, the source of standards and appropriate action if standards are not met.

22 • Vega Case

23 Defendant: James Trotman

24 Attorney: David Vega

25 Mr. Trotman was charged with possession of marijuana with intent to sell. Dr. Bearman wrote a
report that his use of marijuana was medically necessary

26 • Wheeler Case

27 Defendant: Wade Wheeler

28 Attorney: Susanne Cho

Mr. Wheeler faced vehicular manslaughter charge based marijuana impairment. Dr. Bearman
testified that Mr. Wheeler was not impaired by MJ at the time of the accident.

1 • Medical Board of California v. Hopkins

2 Defendant: Dr. Milan Hopkins

3 Medical Board Case over quality of care given to patients to receive medical marijuana
4 recommendation. Dr. Bearman wrote a report evaluating Dr. Hopkins quality of care.

5 • Connor Case

6 Defendant: Sarah Connor

7 Attorney: Susanne Cho

8 Ms. Connor was charged with child neglect because of her heavy marijuana use.

9 • State of Maryland v. Adkins

10 Defendant: Thomas Brandon Adkins

11 Attorney: Jonathan Katz

12 Mr. Adkins was arrested for possession of .4 grams of marijuana and pipe with residue. Dr.
13 Bearman testified that his use of marijuana was medical necessity for his multiple conditions

14 • State of Maryland v. Cunningham

15 Defendant: Justin L. Cunningham

16 Attorney: Jonathan Katz

17 Carroll County, Maryland

18 Mr. Cunningham was arrested for possession of .7 grams of cannabis after a traffic stop. Dr.
19 Bearman testified the medical necessity for Mr. Cunningham's use of Cannabis.

20 • Egozi Case

21 Defendant: Uri Egozi

22 Attorney: Russell Goodrow

23 Mr. Eogzi was charged with possession during a traffic stop and was arrested despite being
24 medically necessary.

25 • Diehl Case

26 Defendant: Arnold Diehl

27 Attorney: Michael Minardi

28 Dr. Bearman testified that Mr. Diehl's use of medical marijuana due to to his two diagnosis were
legitimate

• Klein Case

Defendant: Steve Klein

Attorney: Jon Katz

Dr. Bearman testified that Mr. Klien's use of cannabis was medical necessity

2014

• Vona v. Healthcare Services, Inc.

Defendant: Sam Vona

Attorney: Stephen H. Fredkin

1 Salinas, CA

2 Quality of care regarding A Better Tomorrow Treatment Center, operation & administration of
3 nonmedical residential addiction treatment facilities, compliance and non-compliance of the
4 defendants with CARF and state regulations of CA.

5 • Kounedijia Case

6 Defendant: Baresgh Kounedijia

7 Attorney: Kamarian

8 Burbank, CA

9 Offered an opinion to the law firm that the defendant was not under the influence of marijuana
10 when pulled over during traffic stop.

11 • Medical Board of California v. Clark

12 Defendant: Dr. Clark, M.D.

13 Attorney: Timothy Hodge

14 Accusation by the California Medical Board related to Dr. Clark's provision of medicinal
15 marijuana recommendations. Dr. Bearman reviewed the accusation and the investigation
16 materials.

17 • Drudy Case

18 Defendant: Mathew Drudy

19 Attorney: Adriane Bracciale

20 DUI Marijuana

21 • Estate of Ventura

22 Plaintiff: Chris and Wendy Ventura

23 Attorney: T.Randolph Catanese

24 Mr. Ventura has been cut of some or all of his inheritance due to his claims of his mental health
25 and drug use.

26 • Helfrich Case

27 Defendant: Cameron Helfrich

28 Attorney: Daniel Ditolf

DUI

2015

• Roca Case

Defendant: Danny Roca

Attorney: Justin Glenn

1 Mr. Roca was charged manslaughter as well as driving under the influence of marijuana. Dr.
2 Bearman will testify that the accusation of the DUI is faulty. This case has yet to go to trial.

3 • People of California v. Caruana

4 Defendant: Myk Caruana

5 Attorney: Russell Goodrow

6 Butte County

7 During a traffic stop, Mr. Caruana was found to have 52.64 pounds of marijuana. Dr. Bearman
8 testify to his medical conditions that provides necessity and expert knowledge on dosage
9 cannabis.

10 • People of California v. Pappas

11 Defendant: John Pappas

12 Attorney: Christopher Glen

13 Santa Ana County, California

14 Mr. Pappas was arrested and charged with possession for sale and transportation for sale of
15 allegedly 2.5 lbs. Dr. Bearman testified on behalf of John Pappas and that his medical conditions,
16 a marijuana and 6:6 warranted the amount of marijuana.

17 • Isacone Case

18 Plaintiff: Michael Isacone

19 • Her Majesty the Queen v. Kharaghani & Styrsky

20 Shahrooz Kharaghani & Peter Styrsky

21 Ontario County, Canada

22 This involved the Church of the Universe. They said that cannabis was a sacrament. The case
23 revolved around was this zeal religion and has cannabis for dangerous to be used as a sacrament.

24 12. Gregory Brown, M.D.

25 Assoc. Prof. of Psychiatry, University of Nevada School of Medicine

26 3663 East Sunset, Suite 504

27 Las Vegas, NV 89120

28 (702) 232-3256

Dr. Brown is an expert in Psychiatry. The expert will testify in accordance with his reports,
and any deposition, as to his psychological IMEs and assessments of Jared Awerbach and Emilia
Garcia based on the records disclosed in our Supplemental Expert Designation. The witness will also
testify that Mr. Awerbach's deteriorated impulse control that leads to impulsivity identified by Dr.
Wu's brain scans is additional supporting evidence for his opinion that Mr. Awerbach's actions at the
accident scene were not motivated by, or characteristic of, any psychiatric condition or psychological
state.

1
2 13. Tony Corroto,
3 Nationwide DUI Expert Witness, DRE/SFST Instructor, Legal Consultant
4 2029 McLain Road
5 Acworth, Georgia 30101
6 404-906-2153 (Office)
7 770-693-9852 (Fax)

8 The expert will testify in accordance with his report and any deposition, based on the records
9 disclosed in our Supplemental Expert Designation.

10 14. Greg Kane, M.D.
11 Englewood, CO (303) 741-0993.

12 The expert will testify in accordance with his report and any deposition, based on the records
13 disclosed in our Supplemental Expert Designation.

14 15. Raymond Kelly, Ph.D., DABFT,
15 Tox-Tech
16 1804 Somersby Way
17 Henderson, NV 89014
18 (702) 435-1900

19 Dr. Kelly is an expert in toxicology and impairment. The expert will testify in accordance with
20 his report, and any deposition, based on the reports disclosed in our Supplemental Expert Designation.

21 16. Michael R. Klein, Jr., M.D., F.A.C.S.
22 Consultants Medical Group
23 2500 W. Sahara Ave, Suite 207
24 Las Vegas, NV 89102
25 (702) 777-2663

26 The expert will testify in accordance with his report and any deposition, based on the reports
27 disclosed in our Supplemental Expert Designation.

28 17. Adrian Leon Mare
Expert Data Forensics
5071 N. Rainbow, Suite 180
Las Vegas, NV 89130
(702) 435-8885,

1 Mr. Mare is an expert in computer forensics. He will testify in accordance with his analysis of
2 records of NV Pharmacy Board, and any deposition, based on the reports disclosed in our
3 Supplemental Expert Designation.

4
5
6 18. Melvin Pohl, M.D.
7 2777 Paradise Road Unit 3006
8 Las Vegas, NV 89109
9 (702) 515-1373

10 Dr. Pohl is the treating physician for Jared Awerbach. He is an expert in drug addiction and
11 internal medicine. The expert will testify in accordance with his report and any deposition, based on
12 the records disclosed in our Supplemental Expert Designation.

13 19. Curtis W. Poindexter, M.D.
14 2073 E. Sahara Ave., Suite A
15 Las Vegas, NV 89104
16 (702) 732-8558

17 Dr. Poindexter is an expert in rehabilitation and psychiatry. The expert will testify in
18 accordance with his report and any deposition, based on the records disclosed in our Supplemental
19 Expert Designation.

20 20. Tami Rockholt, R.N., B.S.N.
21 10940 SW Barnes Road, Suite 106
22 Portland OR 97225
23 (503) 781-0357,

24 Ms. Rockholt is an expert in medical billing and compensability. The expert will testify in
25 accordance with her reports and any deposition, based on the records disclosed in our Supplemental
26 Expert Designation. **Ms. Rockholt will also supplement her opinions regarding usual and
27 customary medical charges for Plaintiff's past medical expenses as disclosed by Plaintiffs up to
28 and including Plaintiff's 61st Supplemental Disclosure Statement (supplement attached).**

21. Irving Scher, Ph.D., P.E.

1 P.O. Box 16799
2 Seattle, WA 98116
3 (206) 906-9090

4 Mr. Scher is an expert in biomechanical engineering, accident reconstruction). The expert will
5 testify in accordance with his report and technical appendix, as well as any deposition, based on the
6 records disclosed in our Supplemental Expert Designation.

7
8 22. Russell Shah, M.D.
9 Radar Medical Group, LLP
10 10624 South Eastern Avenue, Suite A-425
11 Henderson, NV 89052
12 (702) 644-0500

13 Dr. Shah is an expert in neurology. The expert will testify in accordance with his report, and
14 any deposition, based on the records disclosed in our Supplemental Expert Designation.

15 23. Daniel T. Shiode, Ph.D.
16 Licensed Clinical Psychologist, Lic. PY244
17 3371 North Buffalo Drive
18 Las Vegas NV 89124
19 (702) 515-1373

20 Dr. Shiode is an expert in psychology. He will testify in accordance with any deposition, based
21 on the records disclosed in our Supplemental Expert Designation.

22 24. Chip Siegel, Attorney
23 601 South 7th Street
24 Las Vegas, NV 8910
25 (702) 387-2447

26 Mr. Siegel is an expert in the fields of law and the constitutional guidelines for punitive
27 damages. The expert will testify in accordance with his report and any deposition, based on the
28 records disclosed in our Supplemental Expert Designation.

29 25. Joseph Wu, M.D.
30 Associate Professor in Residence
31 Department of Psychiatry and Human Behavior

1 Brain Imaging Center, Room 109
2 Irvine Hall
3 University of California, Irvine- College of Medicine (UCI-COM)
4 Irvine, CA 92697-3960
5 (949) 824-7867.

6 Dr. Wu is an expert in brain scanning, quantitative volumetrics, and neurology. This expert will
7 testify in accordance with his report and any deposition, based on the records and reports disclosed in
8 our Supplemental Expert Designation.

9 26. **Jeff Schomb**, Case Worker
10 LV Rescue Mission
11 480 W Bonanza Rd
12 Las Vegas, NV 89106
13 702.382.1766 x1206

14 This witness is Mr. Awerbach's case worker in charge of his program at the LV Rescue
15 Mission and will testify about his prognosis, compliance, and terms of the program. **He will testify**
16 **about Jared's participation to date in the Mission's rehabilitation and recovery program.**

17 27. Other identified witnesses

18 Defendant hereby names, and incorporates by reference herein, any witness listed by any other
19 party to this litigation. Defendant reserves the right to call as a witness any treating physicians named
20 by Plaintiff or any other witness arising out of the subject incident. Defendant reserves the right to
21 supplement this list of witnesses as discovery progresses. Defendant reserves the right to name
22 additional expert witnesses that are determined to be necessary as discovery continues.

23 28. Theresa Suffecol
24 LVMPD-Forensic Laboratory
25 400 S. Martin L. King Blvd.
26 Las Vegas, NV 89106

27 The witness will testify to the blood testing of Defendant by the police department, deficiencies
28 discovered by the police department in those testing protocols, and significance of the deficiencies
discovered. She will also testify accordance with her deposition.

1 29. George Urbina
2 LVMPD-Forensic Laboratory
3 400 S. Martin L. King Blvd.
4 Las Vegas, NV 89106

5 The witness will testify regarding a certain blood draw he performed on the Defendant Jared
6 Awerbach on January 2, 2011 and documents related thereto.

7 30. Stacey Sweeney
8 LVMPD-Forensic Laboratory
9 400 S. Martin L. King Blvd.
10 Las Vegas, NV 89106

11 The witness will testify as to certain blood testing she performed on a sample of the Defendant
12 Jared Awerbach's blood and the results that she and you and you and you actually just reported.

13 31. Jonathan Davis
14 Manager at Rancho Fiesta
15 Las Vegas, NV

16 The witness will testify as to Plaintiff's performance at her employment.

17 32. Cherise Killian
18 2801 N. Rainbow, Apt 137
19 Las Vegas, NV 89108

20 The witness will testify about events on Jan. 2, 2011 in accordance with her deposition and
21 statement.

22 33. Paul Landry, LSW, and/or
23 Custodian(s) of Records for
24 Mohave Mental Health/ Mojave Adult, Child & Family Services
25 4000 E. Charleston Blvd., Suite B-230
26 Las Vegas, NV 89104

27 The witness will testify about Defendant Jared Awerbach's mental condition.

28 34. Case Worker or other Person most knowledgeable
Las Vegas Rescue Mission
480 West Bonanza Rd
Las Vegas, NV 89106-3227
(702) 382-1766

1 The witness will testify about his or her service as Jared Awerbach's caseworker while at the
2 Las Vegas Rescue Mission, including his compliance, progress, achievements, and prognosis.

3 **35. James Webster**

4 LKA: 1164 N. Clark Ave., Ste. 600
5 Chicago, IL 60610
6 (312) 943-1551

7 This witness will testify about Smith Economics Group, Ltd's methods of obtaining
8 information from litigants regarding alleged loss of value of life, the recording of the information
9 obtained, the training he was given to do his job duties, and the instructions given to litigants.

10 **36. Custodian of Records**

11 Sunrise Hospital
12 3186 South Maryland Parkway
13 Las Vegas, NV 89109

14 Authentication of Jared's medical records from assault on Nov. 11, 2005.

15 **37. Custodian of Records**

16 Summerlin Hospital Medical Center
17 657 Town Center Drive
18 Las Vegas, NV 89109

19 Authentication of Jared's medical records for surgery in December, 2005, to repair
20 injuries from assault on Nov. 11, 2005.

21 **38. Custodian of Records**

22 Retina Consultants of Nevada
23 653 N. Town Center Drive
24 Las Vegas, NV 89109

25 Authentication of Jared's medical records for treatment and surgery in December, 2005,
26 to repair injuries from assault on Nov. 11, 2005. (Pltf's 40th Supp. Disclosure).

27 **39. Custodian of Records**

28 Active Life Chiropracty
4250 Simmons St., Suite 100
N. Las Vegas, NV 89032

Authentication of Jared's medical records for treatment for injuries from assault on Nov.
11, 2005.

DOCUMENTS AND TANGIBLE ITEMS PRODUCED

- A) Copy of State of Nevada Traffic Accident Report, six (6) pages;
- B) Transcript and tape of recorded statement of Plaintiff, Emilia Garcia;
- C) Transcript and tape of recorded statement of Defendant, Jared Awerbach;
- D) Salvage title for Plaintiffs 2001 Hyundai Santa Fe;
- E) Settlement statement for salvage title 2001 Hyundai Santa Fe;
- F) Property damage estimate from Ultimate Collision Repair Center;
- G) Autosource valuation for Plaintiffs 2001 Hyundai Santa Fe;
- H) Rental invoice;
- I) Authorization for payment by Plaintiff, Emilia Garcia;
- J) Liberty Mutual Policy A02-268-633569-400
- K) Adjuster's Claims Notes between January 2-17, 2011 (Bates labels LMOOJ-006; LM019-027); notes after January 17, 2011 withheld (Bates labels LM007-018);
- L) Privilege log pertaining to redacted claims notes;
- M) Documents received pursuant to Subpoena Duces Tecum from Ewing Bros, Inc. (JA EB 4 00001- 00004);
- N) Documents received pursuant to Subpoena Duces Tecum from Harmony Health (JA HH 00001- 00058);
- O) Documents received pursuant to Subpoena Duces Tecum from Neck and Back Clinic (JA NBC 00001 - 00171);
- P) Documents received pursuant to Subpoena Duces Tecum from Dr. Lemper (JA LM 00001 -00314);
- Q) Documents received pursuant to Subpoena Duces Tecum from Aliante Casino (JA AC00001- 00028); and
- R) Documents received pursuant to Subpoena Duces Tecum from Dr. Cash (JA CA00001- 00029).
- S) Documents received pursuant to Subpoena Duces Tecum from Aliante Casino (JA AC00029- 00388)

1 T) Surveillance Video received from Aliante Stations Casino (JA AC00389)
2 U) Documents received pursuant to Subpoena Duces Tecum from Aliante Stations Casino
3 (ASC00001-00035)
4 V) Documents received pursuant to Subpoena Duces Tecum from Canyon Medical Billing
5 (CMB00001-00184)
6 W) Documents received pursuant to Subpoena Duces Tecum from Louis Mortillaro (JA
7 MOR00001-00109)
8 X) Documents received pursuant to Subpoena Duces Tecum from Keralapura
9 Subramanyam, MD (JA UMC00001-00017)
10 Y) Medical Images received pursuant to Subpoena Duces Tecum from Las Vegas
11 Radiology (JA LVR00001-00255)
12 Z) Documents received pursuant to Subpoena Duces Tecum from National Intraoperative
13 Monitoring, Inc. (JA NATL00001-00008)
14 AA) Documents received pursuant to Subpoena Duces Tecum from NV Imaging
15 (NVI00001-00013)
16 BB) Medical Images received pursuant to Subpoena Duces Tecum from NV Imaging
17 (NVI00001-00273)
18 CC) Audio and Transcription received pursuant to Subpoena Duces Tecum from NV
19 Imaging (NVI00274)
20 DD) Documents received pursuant to Subpoena Duces Tecum from Pain Institute of
21 Nevada (JA PAIN00001-00047)
22 EE) Documents received pursuant to Subpoena Duces Tecum from Pamela Nyon, OD
23 (PNY00001-00012)
24 FF) Documents received pursuant to Subpoena Duces Tecum from Quest Diagnostics (JA
25 QUES00001-00061)
26 GG) Documents received pursuant to Subpoena Duces Tecum from Walgreens (JA
27 WAL00001-00023)
28 HH) Digital Forensic Lab Report (JA DFL00001-00004)

1 II) Disc of medical images and report from June 2014 received pursuant to Subpoena
2 Duces Tecum from Las Vegas Radiology (JA LVR00001-00255)
3 JJ) Disc containing missing medical images received pursuant to Subpoena Duces Tecum
4 from NV Imaging (JA NVI00274)
5 KK) Disc containing the July 1, 2012 surveillance footage pursuant to Subpoena Duces
6 Tecum from Aliante Casino. (JA AC00390)
7 LL) Records received from the Medicaid Office pursuant to Subpoena Duces Tecum. (JA
8 MED00001-00032)
9 MM) Records received from Saint Mary's pursuant to Subpoena Duces Tecum. (JA
10 STM00001-00003)
11 NN) Records received from CVS pursuant to Subpoena Duces Tecum. (JA CVS00001-
12 00016)
13 OO) Records received from KeyHealth pursuant to Subpoena Duces Tecum. (JA
14 KH00001-00034
15 PP) Records received from Active Life. (JA AL00001-00069)
16 QQ) Records received from Health Plan of Nevada pursuant to Subpoena Duces Tecum.
17 (JA HPNV00001-00033)
18 RR) Records received from Dr. Gross pursuant to Subpoena Duces Tecum. (JA
19 GRO00001-00297)
20 SS) Records received from Pacific Hospital pursuant to Subpoena Duces Tecum. (JA
21 PAC00001-00731)
22 TT) Records received from Brian Lemper pursuant to recent Subpoena Duces Tecum. (JA
23 LMP00001-00366)
24 UU) Records received from Cigna pursuant to recent Subpoena Duces Tecum. (JA CIG00001-
25 00031)
26 VV) Documents received pursuant to Subpoena Duces Tecum from Keralapura
27 Subramanyam, MD (JA UMC00018-00026)
28

1 WW) Documents received pursuant to Subpoena Duces Tecum from Las Vegas Police
2 Department (JA LVPD00001-00212)
3 XX) Documents received pursuant to Subpoena Duces Tecum from the Las Vegas DMV (JA
4 DMV00001-00029)
5 YY) Documents received pursuant to Subpoena Duces Tecum from Summerlin Hospital (JA
6 SUMM00001-00041)
7 ZZ) Drug screening results received from Las Vegas Recovery Center (JA LVRC00001-
8 00002)
9 AAA) Documents received pursuant to Subpoena Duces Tecum from Sunrise Hospital (JA
10 SUN00001-00015)
11 BBB) Any witness engaged, consulted, identified, disclosed, or deposed by any party.
12 CCC. Order Withdrawing Guilty Plea Nunc Pro Tunc, in City of Las Vegas v. Jared
13 Awerbach, Case No. C1033654A (LV Muni.).
14 DDD. Motion to Withdraw Guilty Plea and Enter a Plea of No Contest Nunc Pro Tunc in City
15 of Las Vegas v. Jared Awerbach, Case No. C1033654A (LV Muni.).
16 EEE. Affidavit in Support of Motion to Withdraw Guilty Plea and Enter a Plea of No Contest
17 Nunc Pro Tunc in City of Las Vegas v. Jared Awerbach, Case No. C1033654A (LV
18 Muni.).
19 FFF. LVMPD Forensic Lab Corrective Action Report.
20 GGG. Records received from Fiesta Rancho Casino in response to our Subpoena Duces
21 Tecum, JA FIESTA00001-00097.
22 HHH. Chain of Custody documents produced by Las Vegas Metro Police Department, (JA
23 LVPD00216-00221).
24 III. Letter from Bearman supporting response against Motion to Exclude, (JA BEAR00001-
25 00007).
26 JJJ. MRI Model of representative spine.
27 KKK. Records from AZ Department of Motor Vehicles, (JA ADMV00001-00006).
28 LLL. Summary Billing Opinion of Nurse Rockholt as updated

1 LLL. Illustrative videos

2 MMM. Illustrative graphics

3 NNN. Tape and transcript of 911 Call from Plaintiff on Jan. 2, 2011

4 OOO. Illustrative images for illustrative purposes by testifying experts including Dr.s Scher,
5 Klein, Odell, Poindexter

6 PPP. FACEBOOK images of Plaintiff showing activities of daily living.

7 **QQQ. TRIAL EXHIBITS (ATTACHED)**

8 **RRR. Drug Screen of Defendant dated September 30, 2014, University of California at**
9 **Irvine, Department of Psychiatry & Human Behavior, Brain Imaging Center, 181**
10 **Irvine Hall, Irvine, CA 92697 (949) 824-7872**

11 **SSS. Documents from Smith Economics Group website.**

12 **TTT. Production of article authored by Stan Smith "Hedonic Damages and Personal**
13 **Injury: A Conceptual Approach".**

14 **UUU. Transcript of Deposition of James Webster.**

15 **VVV. Transcript of Deposition of Stan Smith, Ph.D.**

16 **WWW. Review of medical records by Tami Rockholt, RN, BSN**

17 **XXX. Medical Charges Comparison by Tami Rockholt, RN, BSN**

18 **YYY. Summary Billing by Tami Rockholt, RN, BSN**

19 **ZZZ. Summary Billing Medicare Pricing by Tami Rockholt, RN, BSN**

20 **AAAA. Medical Chronology by Tami Rockholt, RN, BSN.**

21 Defendant hereby includes a list of his trial exhibits set forth below.

22 Defendant hereby lists, and incorporates by reference herein, any and all documents set forth by
23 any other party to this litigation. Defendant reserves the right to supplement this list of documents and
24 tangible items produced as discovery progresses. **Defendant reserves the right to supplement his**
25 **list of trial exhibits from records previously disclosed.**

26 Dated: this 21st day of August, 2015.

27 By: /s/ Roger Strassburg
28 Roger Strassburg

Attorneys for Jared Awerbach

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **TENTH SUPPLEMENTAL DISCLOSURE PURSUANT TO N.R.C.P. 16.1** was served this 21st day of August, 2015, 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:

Corey M. Eschweiler, Esq.
Adam D. Smith, Esq.
GLEN LERNER AND ASSOC.
4795 S. Durango
Las Vegas, NV 89147
Attorneys for Plaintiff

Peter Mazzeo, Esq.
Mazzeo Law, LLC
631 S. 10th Street
Las Vegas, NV 89101
Attorneys for Defendant Andrea Awerbach

☐ **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, PC 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).

/s/ Robin Finn
An Employee of Resnick & Louis, P.C.

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;)
13 ANDREA AWERBACH, individually;)
14 DOES I-X, and ROE CORPORATIONS)
15 I-X, inclusive,)
Defendants.)
_____)

16

17 REPORTER'S TRANSCRIPT

18 OF

19 PROCEEDINGS

20 BEFORE THE HONORABLE JERRY A. WIESE, II

21 DEPARTMENT XXX

22 DATED TUESDAY, SEPTEMBER 15, 2015

23

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

1 APPEARANCES:

2 For the Plaintiff:

3 GLEN J. LERNER & ASSOCIATES
4 BY: ADAM D. SMITH, ESQ.
4795 South Durango Drive
Las Vegas, Nevada 89147
5 (702) 977-1500
asmith@glenlerner.com
6

7 For the Defendant Andrea Awerbach:

8 MAZZEO LAW, LLC
9 BY: PETER MAZZEO, ESQ.
631 South 10th Street
Las Vegas, Nevada 89101
10 (702) 382-3636

11 For the Defendant Jared Awerbach:

12 RESNICK & LOUIS
13 BY: ROGER STRASSBURG, ESQ.
5940 South Rainbow Boulevard
14 Las Vegas, Nevada 89118
(702) 997-3800
15

16 - AND -

17 UPSON SMITH
18 BY: RANDY W. TINDALL, ESQ.
7455 Arroyo Crossing Parkway
Suite 200
Las Vegas, Nevada 89113
19 (702) 408-3800
20

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23 * * * * *

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1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 15, 2015;

2 9:12 A.M.

3
4 P R O C E E D I N G S

5 * * * * *

6
7 THE COURT: Emilia Garcia versus Awerbach.

8 MR. MAZZEO: Good morning, Your Honor. Peter
9 Mazzeo on behalf of defendant Andrea Awerbach.

10 THE COURT: Good morning.

11 MR. STRASSBURG: Roger Strassburg and Randy
12 Tindall on behalf of defendant Jared Awerbach.

13 THE COURT: Good morning, guys. Just so you
14 know, I got a -- Jared Awerbach's opposition and motion
15 to -- the motion to disqualify. I -- apparently it was
16 delivered this morning. I haven't read it obviously.
17 So kind of have to give it to me before the hearing in
18 order to have me read it.

19 MR. STRASSBURG: The runner picked it up
20 yesterday, and it should have been dropped off
21 yesterday afternoon, Your Honor.

22 THE COURT: I don't know. It might have --
23 it was in the box, but maybe after 5:00, but I didn't
24 see it till this morning.

25 MR. SMITH: I also got served with it at 7:00

1 this morning, Your Honor. I didn't really have an
2 opportunity to review it. And for my appearance, Adam
3 Smith on behalf of the plaintiff, Emilia Garcia.

4 THE COURT: Go ahead, Mr. Smith.

5 MR. SMITH: And, Your Honor, I've asked your
6 court reporter to report this as well. And I apologize
7 if I'm going to take some time because I want to go
8 through a little bit of the background. I understand
9 Your Honor has read our brief, and we presented you
10 with the background, but I think it's important to
11 understand this case in the context of the entire case.

12 This should be a rather simple two-level
13 fusion automobile accident case.

14 THE COURT: Here's the question that I've got
15 for you: How are you going to prove that they hired
16 Mr. Tindall at the last minute to disqualify
17 Judge Allf? How are you going to prove that?

18 MR. SMITH: How could anyone ever prove that,
19 Your Honor --

20 THE COURT: I know.

21 MR. SMITH: -- because the only way I can
22 prove -- and I'll tell you what we have to prove
23 because that's not what we have to prove.

24 The only way I could ever prove that is if
25 Mr. Tindall came here and said, oops, that's what I

1 did. You're right. You got me. No attorney is ever
2 going to admit that. No one's ever going to admit
3 that's what happened. I don't have to prove that.

4 I have to approve [sic] that the appearance
5 of what they have done weeks before trial impugns the
6 integrity of the Court, and that's what the Millen case
7 talks about. This isn't about what specifically they
8 intended to do.

9 One thing I can prove, and -- and Your Honor
10 knows this as well, is that Mr. Tindall knew his
11 insertion into this case would require Judge Allf to
12 recuse herself and would result in that. He has sought
13 that in the past and she has granted that in the past.
14 And, in fact, we presented Your Honor with a case where
15 she's done it on her own. In other words, he knows
16 inserting himself into this case a few weeks before
17 trial is going to end up with that result.

18 This is not about my opinion of Your Honor or
19 Your Honor's opinion of me or anybody in this room's
20 opinion of anybody else. And the attacks on what court
21 we want to be in are irrelevant. This is about the
22 integrity of the judicial process.

23 We have laid out in great detail what has
24 gone on in this case, and it's very important to
25 understand that detail because part of this is about

1 institutional knowledge. There have been hundreds of
2 motions that have been filed. We have spent many hours
3 in front of Judge Allf. We have -- she's read
4 thousands and thousands of pages that would take Your
5 Honor forever to get up to speed on, including reading
6 all the transcripts and everything that has transpired
7 in this case. And when we attempt to present that to
8 Your Honor, the response is that we're trying somehow
9 to slant this case in front of Your Honor. And that's
10 not true.

11 What we need to look at is the pattern and
12 practice of what has gone on in this case because what
13 the defense doesn't want to do here is ever have a
14 trial on the merits. And you have to look at that
15 entire history because if -- if you take it back to the
16 first time we were going to trial, they requested a
17 continuance.

18 The second time we were going to trial, 11
19 days before trial, somebody is suddenly ill. The next
20 time we're going to trial, weeks before trial, they
21 have now presented three more expert witnesses. And at
22 that point, Your Honor, we had been ready three times
23 to go to trial where the plaintiff had two expert
24 witnesses, the defense had three expert witnesses, and
25 this case was the scope of what it should have been.

1 And I doubt, Your Honor, if you look through
2 the pleadings, has ever seen a motor vehicle accident
3 case that is this grand scope, particularly considering
4 exactly what's being alleged in this case. This isn't
5 a products defect case. This is a case that should
6 have been limited to that scope.

7 When they filed those expert reports a few
8 weeks before trial, well after the expert disclosure
9 deadline, Judge Allf granted them a courtesy that she's
10 since said she's sorry for. And that courtesy has
11 ended up in them disclosing 18 experts, a litany of
12 motions that have been very intensive in order to now
13 at this point have stricken completely 9 of those
14 experts. So half of what they've tried to do in their
15 defense in this case was ruled frivolous essentially
16 from the outset.

17 Then we end up after that point where much of
18 the rest of their experts are limited in what they're
19 allowed to testify about. So we're back to the
20 original position that the case should have been in in
21 the first place. They're not happy with Judge Allf's
22 ruling on those things. And what they're particularly
23 unhappy with is Judge Allf's ruling on summary
24 judgment.

25 And it's important for Your Honor to notice

1 what they did before they hired Mr. Tindall on this
2 case. They filed for bankruptcy on behalf of
3 Mr. Awerbach. The bankruptcy pleadings admit that the
4 insurance company paid for it, that the insurance
5 company paid more than the total amount of his debts,
6 that he had \$1255 in -- in unsecured debt and less than
7 \$15,000 in total debt, but they paid \$15,000 just for
8 the filing of the petition and are paying by the hour
9 after that, just in order to do the next thing that
10 they did.

11 And the next thing that they did is filed a
12 complaint in the bankruptcy court that says --
13 specifically says this, We disagree with Judge Allf's
14 rulings, and we want you, Judge Davis, in bankruptcy
15 court to redécide all of these issues. And that's --
16 their complaint is very clear in what it says. When
17 that failed, because Judge Davis sent them back to this
18 court, they take the next step, which is hiring
19 Mr. Tindall.

20 And Your Honor asked me how do I prove that
21 that's why they hired him on this case? Well, I can't
22 exactly prove that, and I never would be able to. But
23 I can tell you a few different things. One of those is
24 that Mr. Strassburg, who's supposedly the lead counsel
25 for that firm, has said to Judge Allf in open court

1 that Mr. Mazzeo is taking the lead on this case.

2 And I have that. It's -- it's a transcript
3 from February 10th, 2010 -- or February 10th, 2015,
4 excuse me, where Mr. Strassburg says, The insurance
5 company wanted Mr. Mazzeo to assume the lead -- the
6 role of lead counsel in this matter. And I have a copy
7 for Your Honor and for counsel if anybody would like to
8 take a look at it.

9 What that means is we have Mr. Mazzeo, who's
10 presently sitting in the seat as first chair, we have
11 Mr. Strassburg who would be second chair, and now we
12 have Mr. Tindall who would be third chair. And what
13 they are saying is that they can now insert a third
14 chair into this case who they know is going to require
15 recusal of the judge and who they know is going to
16 completely blow up this another time. That was our
17 fourth trial setting. It was, again, weeks before
18 trial. And they -- they absolutely understood the
19 ramifications of the decision to insert that third
20 chair into this matter.

21 They have many other attorneys at that firm
22 who could third chair this case. They already had
23 Mr. Call, who is a very experienced attorney in Nevada,
24 who could have third chaired this case. They have a
25 number of attorneys in Arizona who could have third

1 chaired this case. And it's important to note that the
2 prior third chair, before Mr. Call came in, was an
3 Arizona attorney who was admitted pro hac vice in this
4 matter. So they've never exhibited the intent to have
5 a local Clark County attorney who they may need as --
6 as counsel in this matter, and in particular,
7 Mr. Strassburg is a licensed Nevada attorney. And they
8 have many other licensed Nevada attorneys that could
9 have handled this matter.

10 I know Your Honor doesn't want me to get into
11 the rest of the history that we've put in the brief,
12 and -- and I'm not going to. I think you understand
13 the point that we are making about Judge Allf's
14 institutional knowledge. And, you know, if you -- if
15 you talk about what the standard is, and we cited and
16 quoted from the Millen case quite a bit. And that's
17 122 Nev. 1245, 148 P.3d 694. It's a recent case from
18 2006. And the supreme court says that a lawyer has to
19 be disqualified when the lawyer is "retained for the
20 purpose of disqualifying the judge and obstructing the
21 management of the Court's calendar."

22 But the Court doesn't stop there. It says,
23 "A party or his attorney should not be permitted to
24 cause the disqualification of a judge by virtue of his
25 or her own intentional actions. Counsel may not be

1 chosen solely or primarily for the purpose of
2 disqualifying the judge. To tolerate such gamesmanship
3 would tarnish the concept of impartial justice. To
4 permit a litigant to blackball a judge merely by
5 invoking a talismanic right to counsel of my choice
6 would contribute to skepticism about and mistrust of
7 our judicial system."

8 They can't come in here and say this is who I
9 want to be in -- my attorney. And, in fact, you don't
10 have an affidavit from any of the clients in this case
11 saying this is who I want to be my attorney. Even if
12 you did, that's not the point. The question is whether
13 this would give the appearance of impartiality, of
14 impropriety in front of this Court.

15 Now, throughout this case, they have caused
16 unnecessary cost. They have multiplied this litigation
17 to an incredible level and a very unnecessary level.
18 And their actions already would create skepticism and
19 mistrust of the judicial system where a plaintiff can't
20 get to trial no matter how much money, time, and effort
21 she spends in doing so.

22 And to allow this latest thing that they've
23 done, to allow them to hire a new counsel to impugn
24 everything that is done -- been done over the last few
25 years would certainly impugn this Court and this case.

1 And the Court can't allow that to happen in a case
2 where we've already gone through so much.

3 And Mr. Tindall is clearly not absolutely
4 necessary to the defense of Mr. Awerbach's case. He
5 has been adequately represented, from Day 1 in this
6 case, and he continues to be represented by the same
7 attorney who's represented him for more than two years.

8 If you have any questions about any of that,
9 Your Honor, any other questions?

10 THE COURT: No.

11 MR. SMITH: Appreciate it.

12 THE COURT: Thanks.

13 Mr. Mazzeo, I got an opposition from you.

14 MR. MAZZEO: Yes, Your Honor. Let me try to
15 address some of the points that Mr. Smith made.

16 He talked about a pattern and practice of
17 litigation and -- however, as -- as he knows, the
18 pattern and practice of litigation, and as this Court
19 knows, is not proof that Mr. Tindall was employed
20 solely and primarily for the purpose of disqualifying a
21 judge to create the impression that the lawyer was
22 available for sheer manipulation of the judicial
23 system, quoting McKeown versus Texas on page 24 of
24 plaintiff's brief.

25 So the standard and the burden that the

1 plaintiff has in this case is -- or with respect to
2 this motion is that he has to prove that the sole and
3 primary purpose, that -- that there's some sort of
4 conspiracy, that Mr. Tindall was primarily retained by
5 Resnick Louis -- Resnick & Louis solely to -- to have
6 the case recused -- to have Judge Allf recuse herself
7 from this case and the case reassigned to a new judge.
8 It's not compelling. The facts that they've presented
9 in their 29 pages -- -page argument is certainly not
10 compelling.

11 Now, he talks about how -- the magnitude of
12 the litigation that occurred in this case. Well, yeah,
13 certainly. This case went from plaintiff alleging,
14 \$50,000 in damages to now \$6.6 million in damages. So
15 you better believe it. We're going to engage in
16 litigation to contest the damages, the economic and the
17 medical, future and past damages that are being
18 alleged.

19 Now, I appeared in this case -- I was
20 retained to represent Andrea Awerbach in February of
21 2014. This case was going on since -- I believe the
22 complaint was filed in 2011. So this case was going on
23 for several years before I -- I was inserted into this
24 case.

25 When I came into the case, there were one or

1 two motions to reopen discovery that were made that
2 were denied by the Court. I looked at the file. I
3 looked at the amount of discovery that was done and the
4 amount of discovery that wasn't done that needed to be
5 done, so I filed the motion to reopen discovery before
6 Commissioner Bulla. She rejected it. I -- I brought
7 that up to Judge Allf, and she reopened discovery.

8 And when she reopened discovery, she saw
9 there was a deficit in the amount of discovery that
10 was -- that was done in this case. So when she
11 reopened it, she said, however, plaintiff's being
12 penalized here. So what we're going to do is we're
13 going to have the defense pay for all of his discovery
14 costs from this point forward to the end. And that --
15 that figure has gone up to about 180-, 190,000 or more.
16 And some of it was due to the fact that there were a
17 number of expert witnesses disclosed. So -- so I
18 wasn't part of -- I wasn't -- I wasn't part of this
19 case for two and a half years up until February of
20 2014.

21 And then, Mr. Smith, as -- as has been his
22 style and practice in arguing motions, he says the
23 defendants disclosed 18 experts. No, the defendants
24 didn't disclose 18 experts. Defendant Jared Awerbach
25 disclosed a number of experts. Now, he has a

1 peculiar -- you know, a unique claim against him for
2 punitive damages. He was the driver of the motor
3 vehicle. He was charged with DUI. My client was not.
4 My client's the owner, so she was charged with -- with
5 41.440 and the negligent entrustment claim.

6 So as far as lead counsel, we're -- I'm lead
7 counsel for Andrea Awerbach. She has -- for her
8 claims. I'm not lead counsel for Jared Awerbach, and
9 I'm not defending his DUI or the punitive damages
10 portion of the claim. So to set the record straight, I
11 will be -- be appearing myself with my partner, Maria
12 Estanislao. But this is not second string for Andrea
13 Awerbach, contrary to what Mr. Smith represented to the
14 Court.

15 I don't believe that they've -- they have
16 satisfied this burden. I don't think any facts that
17 they've alluded to justify disqualifying Randy Tindall.
18 Because they haven't shown any conspiracy. And as
19 Mr. Smith said, he can't show it. He can't show proof
20 that he was hired, again quoting the McKeown versus
21 Texas, for the sole and primary purpose to have
22 Judge Allf recuse herself to have this case reassigned
23 to a new judge.

24 Now, rather what -- what Mr. Smith wants is
25 he wants a second bite -- he wants a second preemptory

1 challenge. He's not entitled to it. 48.010 doesn't
2 allow him to have that. He had one. It was -- and --
3 and he's not entitled to another one. So what does he
4 want? He wants it sent back to Judge Allf. He figures
5 he's in favor with Judge Allf, possibly is going to get
6 the best, most favorable rulings. So that's what --
7 that's his position with respect to this motion.

8 I don't think the judge should give it any
9 serious consideration, that the judge -- Your Honor
10 should deny this motion as -- as not being -- as -- as
11 lacking in supporting factual evidence based on the
12 controlling case law that's out there which would
13 otherwise justify disqualifying counsel in this case.

14 THE COURT: Thanks.

15 Any of you guys want to talk?

16 MR. STRASSBURG: Judge, thank you for your
17 time. My name's Roger Strassburg for Jared Awerbach.

18 May I have the ELMO?

19 THE COURT: Probably not because it's hooked
20 up for our trial. I don't have control over it
21 anymore.

22 MR. STRASSBURG: No problem. No problem.

23 Can I use your board?

24 THE COURT: Okay. That's being used for
25 trial too. You know what, I -- I would leave that

1 stuff.

2 MR. STRASSBURG: I'll do it the old-fashioned
3 way, Judge, just with words.

4 The legal test that you have to consider is
5 in Millen, and -- and the test is was Mr. Tindall
6 retained for the purpose of forcing Judge Allf to
7 disqualify herself and for obstructing the management
8 of her calendar. Judge, we have submitted -- did you
9 get an affidavit from Mitch Resnick, the founder of my
10 firm?

11 THE COURT: I got your opposition this
12 morning. I haven't looked at it. I got it just as I
13 was walking into the courtroom this morning.

14 MR. STRASSBURG: Okay. There should be --
15 and I apologize, Judge. I'm sorry. That was my
16 responsibility, and I blew it. We should have got it
17 to you sooner. But there is an affidavit in the papers
18 from the founder of my firm who swears, and his
19 testimony is as follows: He made the decision on
20 August 13th, 2015, to assign Randy Tindall to be my
21 second chair in place of Gary Call. He did that for
22 objective business reasons without any intention, he
23 testifies, to precipitate a disqualification.

24 The -- the basis was that he had, from
25 inception of this litigation, made the judgment that it

1 required two lawyers. Initially, he had one of his
2 colleagues, Jeff Pitegoff, be the first chair and
3 another lawyer in the office, an associate, Lilly
4 Compton, be the second chair. And then when Pitegoff
5 left to go do plaintiffs' work, he substituted me
6 February of 2014 when I joined the firm as first chair
7 and Lilly Compton as second chair.

8 Then Ms. Compton left the firm in June of
9 2015. And I needed a second chair, and so he
10 substituted Gary Call who's a partner in the Las Vegas
11 office. In August -- well, July, of this year, the
12 managing partner of the Las Vegas office, Jenny Foley,
13 quit unexpectedly, and actually went to work for Adam
14 Kutner. And Attorney Call was promoted to be the
15 managing partner of the Las Vegas office. Because of
16 the duties, the administrative duties that entailed,
17 his caseload was reduced so he could concentrate
18 himself on management of that office.

19 As a result, Mr. Tindall, it was decided by
20 Mr. Resnick, would take Call's spot as second chair.
21 Tindall has superior experience in defending to juries
22 personal injury cases in Clark County. He's the most
23 experienced lawyer in that regard that we have, and he
24 was the logical candidate, based on his experience.
25 According to the affidavit, he was hired not because of

1 a book of business he might bring, but simply because
2 of his trial experience and skill.

3 Because of the dimensions of this case, the
4 plaintiff is seeking \$6.5 million in medical special
5 damages for a traffic accident. We wanted the most
6 experienced people on the case to defend Mr. Awerbach.
7 So the basis for the decision of which plaintiff
8 complains was objective, it was business, and it's set
9 out before you in sworn testimony in the affidavit of
10 Mr. Resnick.

11 We also have provided the affidavit of
12 Mr. Tindall. So you have sworn testimony on the merits
13 of the issue that shows that there was no intention to
14 precipitate the disqualification of Judge Allf.

15 Now, the -- the legal question I submit to
16 you for you to decide is: How do you apply the Millen
17 test? You got -- I think you have two options. One of
18 them is a straight preponderance of the evidence. You
19 look at the -- the evidence provided. On our side, you
20 have two sworn affidavits. On plaintiff's side you
21 essentially have an affidavit that just -- that
22 authenticates a bunch of documents. Weighing and
23 balancing in light of, I believe it's local Rule 2 --
24 2.20, which requires factual information to be
25 submitted on affidavit which is cited in our papers,

1 EDCR 2.21A, which requires affidavits. In weighing and
2 balancing, the preponderance of the evidence clearly
3 favors the defense in this case.

4 Now, another possible legal test that you --
5 you might use -- and the supreme court really hasn't
6 given any of us much guidance as to how to apply that,
7 the Millen test -- is the weighing and balancing of
8 Texas versus Burdine, that standard test developed in
9 the Title VII litigation, age discrimination, a lot of
10 discrimination-type cases where plaintiffs state a
11 prima facie case. We say that the plaintiff hasn't
12 even produced the necessary factual basis for -- for
13 that.

14 But the -- but Burdine test says plaintiff
15 states prima facie case burden of production shifts to
16 the defense to articulate a nonimproper reason for the
17 complained of action, which we have done here, and then
18 the burden of production shifts back to the plaintiff
19 to demonstrate that the reason given is pretext. That
20 showing hasn't been made either. So under either test,
21 the straight preponderance of the evidence test or the
22 Burdine, the -- your verdict should be -- or, I'm
23 sorry, your decision should be for the defense in this
24 matter.

25 I'd also draw your attention to the question

1 of your authority. The authority to assign or reassign
2 cases in this building rests with the chief judge under
3 NRS 3.025 cited in our papers at page 4. And under the
4 local rule, EDCR 1.60, it specifies that the chief
5 judge shall have the authority to assign or reassign
6 all cases pending in the district.

7 It also further provides that in addition,
8 the civil presiding judge shall have the authority to
9 assign or reassign civil cases. By granting that
10 authority specifically to those two individuals, the
11 authority to assign or reassign cases is denied to
12 other judges here because cases are to be assigned by
13 random draw. So in -- in that respect, focusing on the
14 law and the local rule, this Court does not have the
15 authority to grant the relief the plaintiff seeks.

16 Now, I'd also say that you -- one other legal
17 authority you might want to consider is NCJC 2.7, which
18 articulates the judge's duty to hear, and it provides
19 that -- that the -- any judge has a legal duty to hear
20 and decide cases submitted or assigned to that court
21 like this one.

22 The -- again, with respect to the right of
23 Mr. Awerbach to select counsel, plaintiff touched on
24 that. As to that, I would just say that he's being
25 defended under a policy of insurance issued by Liberty

1 Mutual to his mom. And under that policy, the right to
2 control the defense is with the insurer, and the --
3 that right is delegated to the law firm engaged by the
4 insurer, the Resnick firm, specifically Mr. Resnick.
5 And he exercised that right as he's described in his
6 affidavit, and that's entirely proper.

7 The test that Mr. Smith appears to contend
8 for is -- and I wrote it down here -- an appearance
9 that impugns the integrity of the Court. Well, for one
10 thing, that's not the legal test under Millen. And the
11 Millen test, however you apply it, either way, is
12 satisfied here by the defense evidence.

13 The -- I'd also point out that -- that Millen
14 is distinguishable. Millen was a first chair lawyer
15 that was hired by the client privately. This is a
16 little different factual situation. This is a second
17 chair lawyer, and all that third chair stuff, that's
18 the product of counsel's invention.

19 I'm first chair for Awerbach, for
20 Mr. Awerbach, Jared. And my colleague, Mazzeo here,
21 he's first chair for Andrea. And he's got an
22 assistant, a very capable partner, and I have an
23 assistant who, I promise you, will in the future get
24 stuff to you on time. And that is entirely -- and
25 that's the way it's been the entire -- my tenure in the

1 case.

2 Now, you've heard a lot of contention, and I
3 address this in the papers, but the contentions that
4 you've heard about what's gone on in -- in Judge Allf's
5 room, that's false, Judge. It's all false. And I
6 explained the worst ones in -- in my papers. And let
7 me just hit the high points. I mean, I know -- I
8 appreciate your time.

9 THE COURT: You know what, we don't have to
10 hit a whole bunch of high points.

11 MR. STRASSBURG: I only got two, and then
12 I'll shut up. The 18 expert thing, well, the plaintiff
13 treated with 17 healthcare providers. We've discovered
14 my guy has traumatic brain injury. And that's what
15 caused him the problems at the scene of the accident,
16 and not that -- that he was high on dope. It was
17 traumatic brain injury.

18 I mean, he's -- he's a 22-year-old guy who's
19 had a terrible history. He's living at the Las Vegas
20 Rescue Mission now trying to engage -- get his life
21 back together and recover his sobriety and his
22 capabilities. And he -- he was entitled to the best
23 defense we could give him. And to prove beyond a doubt
24 that he has traumatic brain injury, yeah, it took some
25 experts.

1 Bankruptcy. The point of the bankruptcy, I
2 explained, okay, because, you know, the -- the -- Jared
3 has a child support obligation, 7,000 bucks. He's got
4 two little girls, and he wants to support them, but
5 that might as well be \$7 million to him. And the only
6 way that I could see to address that obligation, as
7 well as the other obligations that he had, which total
8 6-, \$7,000, was to provide him the protection of the
9 bankruptcy court.

10 That way, whatever claims the plaintiff's
11 attorney thinks that my guy has against Liberty Mutual
12 because they didn't take the settlement when they
13 should have, according to the plaintiff, the plaintiffs
14 would have a chance to put their money where their
15 mouth is. And in bankruptcy court, that's an asset.
16 And that claim, kind of in quotes, is marketable. And
17 the only way the plaintiffs can get it is to bid for it
18 and pay money. And that's the money that's going to be
19 used to retire all of Mr. Awerbach's obligations so
20 that he can get the fresh start that bankruptcy court
21 allows.

22 So to call this a sham, I mean, the
23 bankruptcy court didn't dismiss it. They -- they don't
24 think it's a sham. That's an invention of Mr. Smith.

25 That's it. Thanks, Judge.

1 THE COURT: Thank you.

2 MR. MAZZEO: May I make one point, Your
3 Honor? It will take one minute. Thank you.

4 I think Mr. Strassburg made a good point, and
5 I wasn't aware of the sequence of events that occurred
6 at that firm. But at the time that Gary Call was
7 promoted to managing partner at Resnick Louis, Jared's
8 case was still in bankruptcy court. So the stay hadn't
9 been lifted. So for them to bring Randy Tindall into
10 the firm, they couldn't have known that he would be
11 brought in to represent Jared in the state court
12 because he was still in bankruptcy court. At that
13 point, we only knew that plaintiff was proceeding
14 against Andrea, and it was on calendar for
15 September 21st just for the trial against plaintiff,
16 against Andrea Awerbach. So that -- that fact alone
17 defeats plaintiff's motion and -- and requires the
18 Court to dismiss the motion.

19 Thank you.

20 THE COURT: Last word.

21 MR. SMITH: I want to try to be brief. I
22 know it's not my strong point. Let me address the
23 authority issue first. Your Honor, as the --

24 THE COURT: Don't worry about it. I have
25 authority to recommend to the chief judge what to do.

1 MR. SMITH: And you certainly have authority
2 to address a disqualification motion, which is the
3 first part of the motion.

4 One thing that I think is important to note,
5 and I'm not going to get into the specifics of the
6 evidence, but Mr. Strassburg has already, just today,
7 asked you to overrule Judge Allf's order and consider
8 evidence that she has already excluded from this case.
9 And when -- when he stood up here and talked about the
10 brain injury and all of that evidence, that's all been
11 excluded from this case. And that underscores what the
12 point of our motion is.

13 Judge Allf has the institutional knowledge
14 and knows what has gone on in this case. There were
15 probably close to 100 motions in limine. I know we
16 filed over 50 of them because of what's gone on in this
17 case. They want to take that out of Judge Allf's
18 courtroom and move it into somebody else's courtroom
19 who doesn't know the history and is not going to be
20 able to get up to speed.

21 Now, what they -- when they talk about the
22 standard, they both essentially told you that I could
23 never present you with facts to -- to allow this to
24 happen. And that would eviscerate the Millen case. If
25 we could never present facts showing disqualification,

1 unless the attorney admits it, then that case is
2 irrelevant. And that's not what the case says. That
3 case talks about whether the attorney knew that his
4 insertion into the case would result in
5 disqualification of the judge.

6 And in that case, because there was a secret
7 list that the judge had and the attorney didn't know
8 that he was on the secret list and he had no idea that
9 his disqualification would lead to the judge recusing
10 himself, then it was okay for the attorney to insert
11 him in the case.

12 I agree with Mr. Strassburg that this case is
13 very different. We're not talking about a first chair.
14 We're not talking about somebody who is unrepresented
15 and without this attorney would have no representation.
16 And we are talking about someone who absolutely knew
17 that his insertion into this case would result in
18 Judge Allf's disqualification.

19 Now, our brief lays out that -- that there's
20 a pattern and practice of violating court orders,
21 multiplying the proceedings, seeking continuances at
22 the last minute, seeking to overturn Judge Allf's
23 rulings, and seeking a new judge other than Judge Allf.

24 As I said before, you have to look at how
25 this appears. I agree. Nobody's ever going to be able

1 to prove this absolutely directly, and this is as close
2 as you're ever going to get, knowing that the attorney
3 absolutely knows and has not denied that he knew
4 Judge Allf would recuse her in this case. And
5 reviewing their pattern and practice of seeking a
6 continuance at the last minute at four prior trial
7 settings, that gives the appearance of impugning the
8 integrity of the Court. And the Millen case is clear
9 that that's the standard. And there's no doubt that
10 anybody who reads the history of this case, reviews
11 even this motion, would have to come to the conclusion
12 that this appears like judge shopping. And that's what
13 it is, and that's why have you to grant the motion.

14 THE COURT: All right, guys. I think the
15 Millen case is on point. Problem is I -- I don't know
16 that I really agree with either of you as far as the
17 application.

18 I think that in order for me to disqualify
19 Mr. Tindall and send it back to Judge Allf, I have to
20 find that there's some kind of conspiracy. And -- and
21 I know that word's not used in the Millen case, but
22 that's essentially what they say is that I -- the way I
23 understand it is that there has to be some showing that
24 there is improper -- impropriety in getting Mr. Tindall
25 involved in this case and that they did that for the

1 purpose of getting Judge Allf to recuse herself. I
2 don't -- I'm not convinced that that evidence is there.
3 So I'm going to deny the motion to disqualify and the
4 reassignment.

5 What I'm going to ask is this: My
6 understanding is that you guys are set for trial in
7 front of me in two months; is that right, November?

8 MR. MAZZEO: Yes.

9 MR. STRASSBURG: November 16th stack.

10 THE COURT: Not like it moved from September
11 to -- to two or three years from now. I mean, it got
12 moved two months; right?

13 So I understand that I don't know everything
14 about this case like Judge Allf did, so what -- what
15 I'm going to suggest is that each side file some sort
16 of brief, a pretrial memorandum or something, and
17 outline what you think I need to know that she
18 previously ruled on. And I'm happy to -- happy to look
19 at that. It's a lot of case, so I'm going to -- I'm
20 going to follow what her rulings were.

21 MR. MAZZEO: And, Judge, we have that. We
22 have the orders regarding motions in limine except for
23 Jared Awerbach's because he was in bankruptcy. So his
24 motions were not entertained by Judge Allf. So we do
25 have to get -- get those back on. I have a few motions

1 in limine that are on as well as for September 25th.

2 THE COURT: There's no more discovery to be
3 done in the case?

4 MR. MAZZEO: We're done.

5 THE COURT: Discovery is done?

6 MR. SMITH: Well, Your Honor's going to see
7 motions because they continue to disclose new witnesses
8 and new evidence, and we outline that in our brief. So
9 the -- at least Mr. Awerbach -- I won't say that
10 Mrs. Awerbach is doing it. Mr. Awerbach is continuing
11 to conduct discovery. You're going to see a motion for
12 sanctions from us and a motion to strike that new
13 evidence.

14 THE COURT: Okay.

15 MR. SMITH: Along with other motions and, you
16 know, we can address those when those come up.

17 THE COURT: All right. Sorry, guys.

18 MR. MAZZEO: Thank you, Your Honor.

19 THE COURT: I'm -- I'm just not comfortable.
20 I do the job that I'm assigned. People give me a case,
21 whether I like it or not, I keep it, unless I have a
22 good reason to get rid of it. It's not like I -- I
23 want your case, but ...

24 MR. SMITH: And Your Honor doesn't consider
25 the insertion of Mr. Tindall and disqualification of

1 Judge Allf has as a preemptory challenge, that they
2 would then get another one?

3 THE COURT: No. I mean, I understand your
4 argument. But I'm not convinced that there was
5 impropriety, and I have to find some impropriety, I
6 think, in order to throw him off the case.

7 MR. MAZZEO: Thank you, Your Honor.

8 MR. SMITH: Appreciate it.

9 THE COURT: Let me get defense counsel to
10 prepare an order on that, please. Run it by
11 plaintiff's counsel to approve form and content.

12 MR. STRASSBURG: Yes, sir.

13 (Thereupon, the proceedings
14 concluded at 9:53 a.m.)
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CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Tuesday, September 15, 2015, at 9:12 o'clock a.m.

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

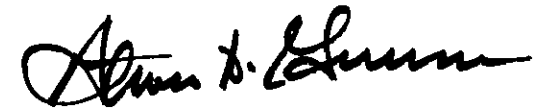
I further certify that I am not a relative or
employee of counsel of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
7th day of October, 2015.

KRISTY L. CLARK, CCR #708

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DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

Plaintiff,

v.

JARED AWERBACH, individually, and

ANDREA AWERBACH, individually,

Defendants.

) CASE NO. A637772

) DEPT. NO. XXVII

) **PLAINTIFF'S TRIAL BRIEF**

) **REGARDING PERMISSIVE USE**

) Date of trial: Feb. 8, 2016

) Time of hearing: 10:30 a.m.

I. INTRODUCTION

On the first day of jury selection, this Court drastically modified two sanction orders issued by Judge Allf one year ago that conclusively establish permissive use. The last minute reversal was based on a conversation the Court had with Judge Allf wherein she conveyed her recollection that her initial written decision was not intended to establish permissive use, but instead was only intended to establish a *rebuttable presumption* of permissive use. Contrary to Judge Allf's recollection, two months after entering her original order finding that a finding of permissive use would be appropriate, she clarified her intentions by entering a *second order* affirming her finding of permissive use as a matter of law. She discussed the issues remaining for trial. The remaining issues did not include permissive use in any way, shape or form.

Judge Allf's recollection as to her intentions when issuing an order one year ago is conclusively rebutted by not only the language of the original order, but by her second order affirming the first: "[T]he Court did consider the *Ribeiro* factors and did enter the less severe sanction of finding there was permissive use" and "*[t]he finding of permissive use does not prevent adjudication on the merits because Plaintiff still maintains the burden of showing causation and damages.*" The entire purpose of Judge Allf's orders was to preclude Andrea from disputing permission at trial because Andrea concealed critical evidence pertaining to permission, thereby preventing Emilia from adequately investigating the issue during discovery, and thereafter provided fabricated testimony on two occasions while apparently believing the concealed evidence would never see the light of day. The orders were always intended to be a punitive sanction and were there is nothing on the face of the written orders that would indicate a rebuttable presumption was intended by the Court. Judge Allf's orders, on their face, contemplate Andrea would be precluded from disputing permissive use at trial (the orders were drafted by Judge Allf, not counsel).

Judge Allf has no proper ability or power to change her written orders or influence this court to modify her orders once she recused herself in August, 2015. The law is abundantly clear that a judge must not substantively influence a case after her recusal. Once Judge Allf voluntarily recused

1 herself from the case, her involvement ended and any influence by her was improper and constitutes
2 reversible error.

3 Finally, and of great significance, Andrea has conclusively admitted permissive use on two
4 prior occasions: First, in her Answer to Plaintiff's Complaint she admitted permissive use, only to
5 recant the admission in her Answer to Plaintiff's Amended Complaint. Second, in her responses to
6 Plaintiff's requests for admissions Andrea again admitted permissive use. This second admission is
7 binding in the absence of the court affirmatively relieving her of the admission. No relief has been
8 sought or granted. Indeed, all of the parties likely assumed this issue was moot in light of the
9 conclusive finding of permissive use by Judge Allf. If this Court's expressed intent to modify
10 Judge Allf's order is formally adopted as a written order, the admission becomes dispositive.

11 Andrea later attempted to change her position in these responses, almost one and a half
12 years later and only after obtaining new counsel. Amended responses were served, but without
13 leave of Court and without compliance with NRCP 36(b). Andrea's admission conclusively
14 establishes permissive use.

15 Regardless of Judge Allf's orders, Andrea must be precluded from disputing permissive use
16 at trial. For these reasons and the reasons set forth more fully below, Plaintiff requests that this
17 Court preclude Andrea from disputing permissive use at trial.

18 II. FACTUAL BACKGROUND

19 A. ANDREA'S ANSWER TO EMILIA'S COMPLAINT ADMITTING PERMISSIVE USE.

20 This accident occurred on January 2, 2011. Emilia initiated the lawsuit on March 25, 2011.
21 Defendants answered Emilia's Complaint on January 23, 2012, and, of great significance, admitted
22 that "Defendant ANDREA AWERBACH, did entrust the vehicle to the control of Defendant
23 JARED AWERBACH." See Plaintiff's Complaint (3/25/11), paragraph 23, on file with this Court;
24 Defendants' Answer to Complaint, paragraph 2, on file with this Court. One year later, in response
25 to Plaintiff's Amended Complaint, Andrea conveniently flipped her answer on this critical issue.

26 B. ANDREA'S ANSWER TO EMILIA'S REQUEST FOR ADMISSION.

27 On June 5, 2012, Andrea answered Emilia's requests for admissions and unequivocally
28 admitted that Jared operated her vehicle on January 2, 2011 with her permission. Specifically:

REQUEST NO. 2:

Admit JARED AWEBACH was operating your vehicle on January 2, 2011, with your permission.

RESPONSE TO REQUEST NO. 2:

Admit.

Ex. 1-A.

C. ANDREA ACTIVELY CONCEALED EVIDENCE IN THE FORM OF A CLAIMS NOTE.

On July 22, 2013, after Emilia filed a motion to compel, Andrea produced what appeared to be the complete claims notes from her claim with Liberty Mutual in a pleading styled Second Supplement to List of Witnesses and Documents And Tangible Items Produced At Early Case Conference. *See* Mot. to Strike, at Ex. 1-G. What Andrea did not tell Emilia was that one of the notes dated January 17, 2011, at 4:44 p.m., had been secretly redacted making it appear as if that note never existed. In fact, Andrea furthered the ruse by producing a misleading disclosure and privilege log that further concealed the existence of the 4:44 p.m. note. Specifically, Andrea's disclosure indicated that "Adjustor's Claims Notes between January 2-17, 2011 (Bates Labels LM001-LM006; LM019-027)" were disclosed, and only "notes after January 17, 2011, [were being] withheld (Bates labels LM007-018)." *Id.* Indeed, Andrea's privilege log indicated she was only claiming a privilege for claims notes dated "**January 18, 2011, et seq.**", i.e., notes dated on or after January 18, 2011. It is now obvious this was misleading because the January 17, 2011, note from 4:44 p.m. was not contained in the disclosure or identified on the privilege log. Instead, that note was whited-out, making it appear as if the note never existed. It was surreptitiously redacted.

D. ANDREA FURTHERED THE CONCEALMENT THROUGH HER DEPOSITION TESTIMONY.

Emilia first deposed Andrea on September 12, 2013, approximately two months after Andrea served Emilia with the whited-out claims note. During the deposition, Andrea testified inconsistently with the whited-out claims note, which, of course, had not yet been uncovered by Emilia's counsel. Andrea also admitted speaking with her insurer following the accident, but claimed ignorance whether the conversation was recorded or when the conversations occurred.

///

1 In fact, Andrea furthered the ruse shortly after her first deposition by filing a Motion for
2 Summary Judgment claiming it was undisputed she did not give Jared permission to drive her car
3 on January 2, 2011. *See* Defendant Andrea Awerbach's Motion for Partial Summary Judgment, on
4 file with this Court. Again, this motion was made while Andrea was actively concealing evidence
5 that contradicted her motion. Andrea ultimately withdrew her Motion for Partial Summary
6 Judgment. Andrea was deposed again on October 24, 2014, and again testified extensively to
7 material information that clearly contradicted the claims note, which, at that point, had still not yet
8 been uncovered by Emilia's counsel. As detailed below, the withheld information did not come to
9 light until Emilia independently obtained it from Andrea's insurer.

10 **E. THE HIDDEN CLAIMS NOTE, WHICH WAS UNCOVERED ONLY THROUGH THE**
11 **DILIGENCE OF PLAINTIFF'S COUNSEL, CONTRADICTED ANDREA'S DEPOSITION**
12 **TESTIMONY.**

13 Emilia discovered the concealed claims note on November 10, 2014, when Andrea's
14 insurer, Liberty Mutual, produced the note in response to Emilia's subpoena duces tecum. The
15 Liberty Mutual adjustor who created the note subsequently testified to the note's authenticity and
16 confirmed the note accurately memorialized the adjustor's January 17, 2011, conversation with
17 Andrea.

18 The contents of the concealed note contradict Andrea's adamant testimony at both of her
19 depositions, wherein she vehemently claimed (i) that she constantly hid her keys for fear that her
20 drug abusing son might have access to the car, (ii) that she never gave Jared permission to drive her
21 vehicle, and (iii) that she had no idea how Jared obtained the keys on the day of the crash. The
22 surreptitiously concealed portions of the claims note establish that Andrea told her insurer days
23 after the crash that she had previously let Jared drive her car, she gave him the keys earlier in the
24 day, and she usually kept the keys on the mantle. Amazingly, when Andrea was asked under oath
25 about Jared claiming Andrea left the keys out, Andrea claimed her son was mistaken. It is clear,
26 however, that Andrea was changing her story and trying to cover for herself once she understood
27 the legal ramifications of permissive use.

28 ///

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1 **F. ANDREA IMPROPERLY AMENDS HER DISCOVERY RESPONSE.**

2 Conveniently, almost eighteen months after Andrea admitted in her Responses to Plaintiff's
3 Requests for Admissions that she gave Jared permission to use her vehicle on January 2, 2011, and
4 only after Andrea changed counsel, Andrea attempted to improperly modify the aforementioned
5 response, without leave of court, to state that "Andrea admits she learned after the accident that
6 Jared Awerbach had operated her vehicle on January 2, 2011 but Andrea denies she gave him
7 permission."

8 This improper and ineffective attempt to amend was of no concern to Emilia. The issue was
9 rendered moot shortly thereafter as a result of Judge Allf entering the finding of permissive use
10 based on Andrea's discovery sanctions, as set forth below.

11 **G. JUDGE ALLF UNAMBIGUOUSLY MADE A CONCLUSIVE FINDING OF PERMISSIVE USE**
12 **IN TWO SEPARATE ORDERS.**

13 On December 2, 2014, Emilia filed a motion to strike Andrea's answer based on Andrea's
14 intentional concealment of the claims note. See Plaintiff's Motion to Strike Andrea Awerbach's
15 Answer, on file with this Court. On February 25, 2015, Judge Allf granted Emilia's motion in part
16 and issued a written decision (drafted by Judge Allf, not counsel) providing in relevant part:

17 COURT FURTHER FINDS after review the Court took Plaintiffs
18 Motion to Strike Defendant Andrea Awerbach's Answer under
19 submission on January 15, 2015. Plaintiff moves to strike Defendant
20 Andrea's answer under NRCP 37(b)(C) for conduct in discovery
21 relating to concealment of an entry on her insurance claim log.
22 COURT FURTHER FINDS after review that striking the answer in
23 [sic] inappropriate because Plaintiff became aware of the concealed
24 entry during discovery and was able to conduct a deposition of the
claims adjustor, but a lesser sanction is warranted. COURT
FURTHER FINDS after review Andrea gave her son permission to
use the car and a finding of permissive use is appropriate because
the claims note was concealed improperly, was relevant, and was
willfully withheld by Defendant Andrea.

25 See Decision and Order, filed with this Court February 25, 2015 (emphasis added). On March 13,
26 2015, Andrea filed a motion seeking reconsideration of the Court's order. The Court denied
27 Andrea's motion and issued a second written decision, again drafted by Judge Allf, not counsel:

28 ///

1 COURT FURTHER FINDS after review that here the Court did
2 consider the Ribeiro factors and did enter the less severe sanction of
3 finding there was permissive use rather than striking Defendant
4 Andrea's answer as requested by Plaintiff's Motion. The finding of
5 permissive use specifically relates to the content of the improperly
6 withheld claims note, which included a statement by Defendant
7 Andrea that she had given Defendant Jared permission to use her car
8 at the time of the accident. The finding of permissive use does not
9 prevent adjudication on the merits because Plaintiff still maintains
10 the burden of showing causation and damages. The withholding of
11 the note and the misleading privilege log was willful, and sanctions
12 are necessary to "deter the both the parties and future litigants from
13 similar abuses." *Id.* Although the note was withheld by previous
14 counsel, Defendant Andrea's deposition testimony at both of her
15 depositions was contrary to her statement to her insurance carrier.
16 The sanction was crafted to provide a fair result to both parties, given
17 the severity of the issue.

18 See Decision and Order, filed with this Court April 27, 2015 (emphasis added).

19 Neither of Judge Allf's two written orders is ambiguous, and neither mentions a rebuttable
20 presumption. Moreover, even if the first order was ambiguous, it was unmistakably clarified
21 through Judge Allf's second order denying reconsideration. The parties relied on Judge Allf's
22 orders for the next year and prepared for trial believing the issue of permissive use was resolved
23 and no longer an issue for trial. This governed the totality of the parties' trial preparation, including
24 drafting motions in limine and making crucial strategic decisions regarding witnesses, evidence,
25 and trial presentation.

26 **H. JUDGE ALLF RECUSES HERSELF.**

27 On August 27, 2015, Judge Allf recused herself because of a conflict with Jared's newly
28 associated counsel, Randall Tindall. Emilia requested Mr. Tindall be disqualified and the action re-
assigned to Judge Allf because she was familiar with the case, the action was on the eve of trial, and
it was improper for new counsel to be hired knowing his retention would result in recusal based on
prior recusals by Judge Allf (i.e., forum shopping). During the September 15, 2015, hearing on
Emilia's motion, this Court denied Emilia's request to reassign the case back to Judge Allf, but
made it clear: "I'm going to follow what her rulings were." See Sep. 15, 2015, Transcript.

///

1 **I. THIS COURT REVERSES JUDGE ALLF'S ORDERS ON PERMISSIVE USE ON THE FIRST**
2 **DAY OF JURY SELECTION.**

3 On February 8, 2016, one year after Judge Allf issued her sanction order, ten months after
4 she reaffirmed that order, six months after Judge Allf recused herself from the action, and a half day
5 into jury selection, this Court overruled both of Judge Allf's permissive use orders, *sua sponte*, with
6 no notice to the parties:

7 THE COURT: ...We're outside the presence of the jury. I know that
8 one of the things that you guys wanted me to tell you how we're
9 going to handle is this issue of permissive use. So I talked to Judge
10 Allf this morning to try to figure out what was her intention when she
11 entered that order. I don't think she understood the difference
12 between permissive use and auto negligent entrustment. That being
13 said, it was her intention that her ruling would result in a rebuttable
14 presumption, not a determination as a matter of law, even though
15 that's what the order says. I'm not going to change from permissive
16 use to negligent entrustment, even though I think that's probably what
17 she envisioned. But I am going to make it a rebuttal presumption as it
18 relates to the permissive use. So -- and that's based upon what her
19 intention was.

20 Feb. 8, 2016, at 61 (emphasis added). The reversal was based upon a discussion with Judge Allf
21 (who long ago recused herself due to a conflict and should no longer be influencing the rulings of
22 this court). Moreover, it is without dispute that the Court's decision contradicts the plain language
23 of both of the orders drafted by Judge Allf:

24 MR. ROBERTS: -- I'm somewhat taken aback by this. We weren't
25 there at the time. So I've been mainly relying on the order in
26 preparing to try the case. The order says nothing about rebuttable
27 presumption. It says that permissive use is found as matter of law as a
28 sanction.

THE COURT: I know.

Feb. 8, 2016, at 63.

Even Andrea's counsel (the primary beneficiary of the reversal) recognized the parties'
inability to anticipate a reversal of the permissive use order in preparing for trial:

MR. MAZZEO: But it does throw a wrench in the works because we
didn't anticipate as -- as we're preparing for trial, I'm sure both sides
were not looking at this case in terms of, okay, what evidence do we
need now to rebut the ruling on permissive use

Feb. 8, 2016, 62-63.

III. ARGUMENT

A. A RECUSED JUDGE MUST NOT HAVE ANY INFLUENCE ON A CASE AFTER RECUSAL.

“Patently a judge who is disqualified from acting must not be able to affect the determination of any case from which he is barred.” *Arnold v. E. Air Lines*, 712 F.2d 899, 904 (4th Cir. 1983); *see also Doe v. Louisiana Supreme Court*, 1991 WL 121211 (E.D. La. June 24, 1991). “[C]ourts have almost uniformly held that a trial judge who has recused himself should take no other action in the case except the necessary ministerial acts to have the case transferred to another judge.” *Doddy v. Oxy USA, Inc.*, 101 F.3d 448, 457 (5th Cir. 1996); *see also Stringer v. United States*, 233 F.2d 947, 948 (9th Cir. 1956) (acknowledging that after disqualification, judges are confined to performing only the “mechanical duties of transferring the case to another judge or other essential ministerial duties short of adjudication”); *Moody v. Simmons*, 858 F.2d 137, 143 (3d Cir. 1988) (holding that once a judge has disqualified herself, she may only perform the ministerial duties necessary to transfer the case to another judge any may not enter any further orders in the case, except for “housekeeping” ones), *cert. denied*, 489 U.S. 1078, (1989); *El Fenix de P.R. v. The M/Y Johanny*, 36 F.3d 136, 142 (1st Cir. 1994) (“recused judge should take no further action except to enable administrative reassignment of the case”).

Once Judge Allf made the decision to disqualify herself, she was not permitted to have any influence on this case. Her recusal ended her involvement and any further influence by Judge Allf that caused this court to modify her prior orders was improper and constitutes reversible error. Moreover, as set forth in more detail below, Judge Allf’s recollection as to her intention when initially entering the permissive use order one year ago is conclusively rebutted by her second order on permissive use. A Judge’s belated recollection of her intention cannot prevail over the plain terms of her written order. This is a formula for anarchy, uncertainty and loss of faith in the integrity of the judicial system.

B. THE COURT’S DECISION REWARDS ANDREA’S IMPROPER DISCOVERY TACTICS.

Courts have recognized that “[p]rior interlocutory orders should be vacated or amended by a successor judge only after careful consideration, especially if there is evidence of judge shopping.”

1 *Legget v. Kumar*, 212 Ill. App. 3d 255, 274 (Ill. 1991). “In the context of discovery, it is
2 particularly appropriate for a judge before whom a motion for reconsideration is pending to exercise
3 considerable restraint in reversing or modifying previous rulings. A successor judge should revise
4 or modify previous discovery rulings only if there is a change of circumstances or additional facts
5 which would warrant such action.” *Id.* In other words, it is improper to reverse an order the parties
6 “justifiably relied upon . . . for over a year . . . as they prepared the case for trial.” *Franklin v.*
7 *Franklin*, 858 So. 2d 110, 122 (Miss. 2003) (Mississippi Supreme Court overturning trial court’s
8 order that reversed the original trial court’s ruling since the original ruling was made within the
9 judge’s discretion and the “lawyers justifiably relied upon th[e] order for over a year . . . as they
10 prepared the case for trial”; and further finding that the reversal of the original trial court’s ruling
11 “reache[d] an inequitable result”). This case is no different.

12 The Court’s decision to overturn Judge Allf’s long standing orders rewards the intentional
13 concealment of evidence and unfairly prejudices Emilia. Permissive use has been established three
14 times in this case and has now been changed (or attempted to be changed) each time:

15 First, Andrea admitted permissive use in her Answer to Plaintiff’s Complaint, only to later
16 switch positions and claim the complete opposite in her Answer to Plaintiff’s Amended Complaint.

17 Second, Andrea admitted permissive use in her responses to Plaintiff’s requests for
18 admissions, again only to later switch positions almost one and a half years later, and after retaining
19 new counsel, to claim no permissive use. Of great significance, however, Andrea’s attempted
20 “amendment” of her binding admission fails as a matter of law as “[a]ny matter admitted under
21 [Rule 36] is conclusively established unless the court on motion permits withdrawal or
22 amendment of the admission.” NRCP 36(b) (emphasis added). Since Andrea admitted permissive
23 use and never filed a motion to change her admission, ***Andrea must be bound by the admission,***
24 irrespective of any modifications to Judge Allf’s long standing orders. It is too late to file a motion
25 now that jury selection has started and trial is imminent.

26 Finally, Judge Allf conclusively found permissive use based on Andrea’s blatant discovery
27 violations and issued two separate orders establishing the permissive use, only to have this court
28 express an intention to reverse the rulings.

1 Allowing Andrea to dispute permissive use allows Andrea to continue committing the same
2 conduct that resulted in the Court's sanctions in the first place. By the time Emilia independently
3 found the hidden claims note in late November, 2014, Emilia had already deposed Andrea twice.
4 Each time Andrea's testimony contradicted the hidden claims note and Jared's testimony that he
5 obtained the keys from the counter of their home. In other words, Andrea claimed she did not give
6 Jared permission, hid evidence that showed otherwise, and prevented Emilia from discovering the
7 evidence that directly contradicted her deposition testimony. That was the basis for Judge Allf's
8 sanction orders. Judge Allf's orders preventing Andrea from challenging permissive use at trial
9 entered the only logical sanction that could have been imposed at that point because it was Andrea's
10 concealment and deceptive deposition testimony that prevented Emilia from being able to properly
11 conduct discovery on the issue. It was also a lesser sanction than the one sought by Emilia.
12 Consequently, it would be patently inequitable to allow Andrea to dispute permission after she (1)
13 intentionally concealed critical evidence that would allow Emilia to prove permissive use and (2)
14 admitted permissive in her Answer and responses to requests for admissions. Allowing Andrea to
15 challenge permissive use now gives her the best of both worlds: she is allowed to dispute
16 permission at trial after thwarting Emilia's attempts to prove permissive use by hiding evidence
17 during discovery.

18 **C. EMILIA HAS RELIED ON JUDGE ALLF'S ORDERS IN PREPARING FOR TRIAL.**

19 The Court's intention to reverse Judge Allf's sanction order is also improper because the
20 parties have relied on the order for an entire year. *See Franklin*, 858 So. 2d at 122. Emilia adjusted
21 her discovery strategy accordingly, and has been preparing for trial for a year in reliance on the
22 Court's order that she would not have to prove permission at trial. In other words, after Judge Allf
23 issued her order and confirmed it in a second order, Emilia no longer needed to seek leave to
24 conduct discovery on the issue, and, as a result, she did not seek to re-open discovery, she did not
25 seek to re-depose Andrea or Jared, and she did not seek testimony from other knowledgeable
26 witnesses. Emilia appropriately relied on the Court's order rendering permissive use a non-issue
27 for trial. Now, after jury selection has started and after the parties spent an enormous amount of
28 time preparing for trial not knowing permissive use was an issue, Emilia's entire trial strategy has

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2016, a true and correct copy of the foregoing **PLAINTIFF'S TRIAL BRIEF REGARDING PERMISSIVE USE** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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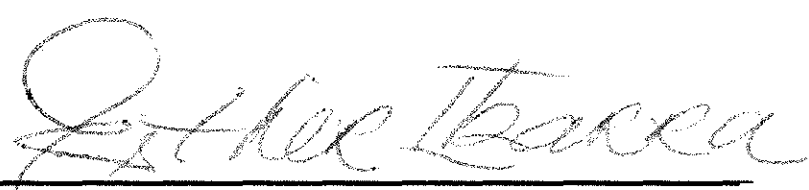
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An Employee of WEINBERG, WHEELER,
HUDGINS, GUNN & DIAL, LLC

**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.

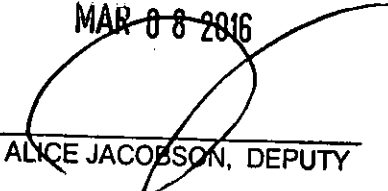
21 
22 JERRY A. WIESE II
23 DISTRICT COURT JUDGE
24 EIGHTH JUDICIAL DISTRICT COURT
25 DEPARTMENT XXX
26
27
28

1 **Jl**

 ORIGINAL

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

MAR 08 2016

BY, 
ALICE JACOBSON, DEPUTY

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

8 EMILIA GARCIA, individually,

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

10 Plaintiff,

11 v.

JURY INSTRUCTIONS

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

15 Defendants.
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A-11-637772-C
Jl
Jury Instructions
4533115



AA_000948

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LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

INSTRUCTION NO. 2

The purpose of the trial is to ascertain the truth.

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INSTRUCTION NO. 3

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 4

The masculine form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a male person or a female person.

INSTRUCTION NO. 5

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked of a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 6

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult referenced works for additional information.

INSTRUCTION NO. 7

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 8

You are not to discuss or even consider whether or not the Plaintiff was carrying insurance to cover medical bills, loss of earnings, or any other damages she claims to have sustained.

You are not to discuss or even consider whether or not the Defendants were carrying insurance that would reimburse them for whatever sum of money they may be called upon to pay to the Plaintiff.

Whether or not any party was insured is immaterial, and should make no difference in any verdict you may render in this case.

INSTRUCTION NO. 9

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 10

There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

INSTRUCTION NO. 11

In determining whether any proposition has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.

INSTRUCTION NO. 12

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

INSTRUCTION NO. 13

During the course of the trial you have heard reference made to the word "interrogatory". An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers thereto the same as if the questions had been asked and answered here in court.

INSTRUCTION NO. 14

In this case, as permitted by law, Plaintiff, Emilia Garcia, served on the Defendant, Andrea Awerbach, a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the Defendant, Andrea Awerbach, or which Defendant, Andrea Awerbach, failed to deny.

INSTRUCTION NO. 15

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

INSTRUCTION NO. 16

Discrepancies in a witness's testimony or between his testimony and that of others, if there were any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

INSTRUCTION NO. 17

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him what he would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

INSTRUCTION NO. 18

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his or her opinion as to any matter in which he or she is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 19

A question has been asked in which an expert witness was told to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. If any fact assumed in the question has not been established by the evidence, you should determine the effect of that omission upon the value of the opinion.

INSTRUCTION NO. 20

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

INSTRUCTION NO. 21

The preponderance, or weight of evidence, is not necessarily with the greater number of witnesses.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of the one witness, you should accept his testimony.

INSTRUCTION NO. 22

As to Defendant Jared Awerbach, the Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish the following:

1. That the Plaintiff sustained damages; and
2. That Jared Awerbach's negligence, which has been established by the Court, was a proximate cause of the damage sustained by the Plaintiff.

INSTRUCTION NO. 23

When I use the expression "proximate cause," I mean any cause which, in natural, foreseeable, and continuous sequence, unbroken by any efficient intervening cause, produces the injury complained of and without which the result would not have occurred. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

INSTRUCTION NO. 24

There may be more than one proximate cause of an injury. When negligent conduct of two or more persons contributes concurrently as proximate causes of an injury, the conduct of each of said persons is a proximate cause of the injury regardless of the extent to which each contributes to the injury. A cause is concurrent if it was operative at the moment of injury and acted with another cause to produce the injury.

INSTRUCTION NO. 25

If you find that a Defendant is liable for the original injury to the Plaintiff, that 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.

INSTRUCTION NO. 26

The court has taken judicial notice that sunset on January 2, 2011, the date of the accident that is the subject of this lawsuit, occurred at 4:46 p.m., Pacific Standard Time. You are to accept this fact as true and give it the weight you deem it deserves.

INSTRUCTION NO. 27

Certain charts and summaries have been received into evidence to illustrate facts brought out in the testimony of some witnesses. Charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.

There was in force at the time of the occurrence in question a law (NRS 484C.110) which read as follows:

It is unlawful for any person who . . . [i]s under the influence of a controlled substance . . . to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. . . .

It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his or her blood or urine that is equal to or greater than:

<u>Prohibited substance</u>	<u>Urine</u> <u>Nanograms</u> <u>per milliliter</u>	<u>Blood</u> <u>Nanograms</u> <u>per milliliter</u>
....		
(h) Marijuana metabolite	15	5

A violation of the law just read to you constitutes negligence as a matter of law.

INSTRUCTION NO. 29

It has been established as a matter of law that Defendant Jared Awerbach was impaired at the time of the January 2, 2011 collision. After the subject collision, Defendant Jared Awerbach consented to having Las Vegas Metropolitan Police Department take a sample of his blood. The Las Vegas Metropolitan Police Department Toxicology Laboratory tested Defendant Jared Awerbach's blood and determined that at the time of the subject collision, Defendant Jared Awerbach had 47 nanograms of marijuana metabolite per milliliter of blood. This exceeds the legal level of 5 nanograms of marijuana metabolite per milliliter.

Defendant Jared Awerbach has been deemed impaired as a matter of law.

INSTRUCTION NO. 30

In order to establish a claim of negligent entrustment against Defendant Andrea Awebach, Plaintiff has the burden of proving the following elements by a preponderance of the evidence:

(1) That the Defendant Andrea Awerbach knowingly entrusted her vehicle to an inexperienced or incompetent person; and

(2) That the Defendant Andrea Awerbach's entrustment of her vehicle was a proximate and a legal cause of the damage to Plaintiff.

Among other factors, you may consider that fact that Defendant Jared Awerbach was unlicensed as evidence that he was inexperienced or incompetent to drive a motor vehicle on the date of the collision.

Entrustment may be established through proof of either express or implied permission.

INSTRUCTION NO. 31

The law provides for a rebuttable presumption that Defendant Andrea Awerbach gave Defendant Jared Awerbach permission, express or implied, to use her car on the day of the subject accident.

The effect of this rebuttable presumption is that it places upon Defendant Andrea Awerbach the burden of proving, by a preponderance of the evidence, that she did not give Defendant Jared Awerbach permission, express or implied, to use her car on the day of the subject accident.

INSTRUCTION NO. 32

An owner of a motor vehicle is liable for any damages proximately resulting from the negligence of an immediate family member in driving and operating the vehicle upon a highway with the owner's express or implied permission.

As advised in these instructions, Defendant Jared Awerbach was negligent and caused the accident that gives rise to this case. You must then determine whether or not he was driving with the express or implied permission of Defendant Andrea Awerbach.

If you find that Defendant Jared Awerbach did not have such permission, then your verdict must be in favor of Defendant Andrea Awerbach.

But if you find that such permission, express or implied, had been given, you must find Defendant Andrea Awerbach also liable.

INSTRUCTION NO. 33

In determining the amount of losses, if any, suffered by Plaintiff as a proximate result of the accident in question, you will take into consideration the nature, extent and duration of the injuries or damages you believe from the evidence Plaintiff has sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate her for the following items:

1. The reasonable medical expenses Plaintiff has necessarily incurred as a result of the accident.
2. The reasonable medical expenses which you believe Plaintiff probably will incur in the future as a result of the accident.
3. Any loss of household services proximately caused by the accident from the date of the accident to the present and any loss of household services you believe Plaintiff will probably experience in the future as a proximate result of the accident.
4. The physical and mental pain, suffering, anguish and disability endured by Plaintiff from the date of the accident to the present, including lost enjoyment of life or the lost ability to participate and derive pleasure from the normal activities of daily life, or for the inability to pursue talents, recreational interests, hobbies, or avocations.
5. The physical and mental pain, suffering, anguish and disability which you believe Plaintiff will probably experience in the future, as a proximate result of the accident, including lost enjoyment of life or the lost ability to participate and derive pleasure from the normal activities of daily life, or for the inability to pursue talents, recreational interests, hobbies, or avocations.

INSTRUCTION NO. 34

Where Plaintiff's injury or disability is clear and readily observable, no expert testimony is required for an award of future pain, suffering, anguish and disability. However, where an injury or disability is subjective and not demonstrable to others, expert testimony is necessary before a jury may award future damages.

INSTRUCTION NO. 35

A person who has a condition or disability at the time of an injury is not entitled to recover damages therefor. However, a Plaintiff is entitled to recover damages for any aggravation of a preexisting condition or disability, caused by the injury.

This is true even if a condition or disability made Plaintiff more susceptible to the possibility of ill effects that a normally healthy person would have been, and even if a normally healthy person probably would not have suffered any substantial injury.

Where a preexisting condition or disability is so aggravated, the damages as to such condition or disability are limited to the additional injury caused by the aggravation

INSTRUCTION NO. 36

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation. In making an award for pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

INSTRUCTION NO. 37

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that Plaintiff prove each item of damage by a preponderance of the evidence.

INSTRUCTION NO. 38

If you find that Plaintiff is entitled to compensatory damages for actual harm caused by Defendants' breach of an obligation, then you may consider whether you should award punitive damages against Defendant Andrea Awerbach. The question whether to award punitive damages against a particular defendant must be considered separately with respect to each defendant.

You may award punitive damages against Defendant Andrea Awerbach only if Plaintiff proves by clear and convincing evidence that the wrongful conduct upon which you base your finding of liability for compensatory damages was engaged in with oppression and/or malice on the part of Defendant Andrea Awerbach. You cannot punish Defendant Andrea Awerbach for conduct that is lawful, or which did not cause actual harm to the Plaintiff. For the purposes of your consideration of punitive damages only:

"Oppression" means despicable conduct that subjects the Plaintiff to cruel and unjust hardship with a conscious disregard of the rights of the Plaintiff.

"Malice" means conduct which is intended to injure the Plaintiff or despicable conduct which is engaged in with a conscious disregard of the rights or safety of the Plaintiff.

"Despicable conduct" means conduct that is so vile, base or contemptible that it would be looked down upon and despised by ordinary, decent people.

"Conscious disregard" means knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to avoid these consequences.

The purposes of punitive damages are to punish a wrongdoer that acts with oppression and/or malice in harming a plaintiff and deter similar conduct in the future, not to make the Plaintiff whole for her injuries. Consequently, a plaintiff is never entitled to punitive damages as a matter of right and whether to award punitive damages against the Defendant is entirely within your discretion.

1 At this time, you are to decide only whether Defendant Andrea Awerbach
2 engaged in wrongful conduct causing actual harm to the Plaintiff with the
3 requisite state of mind to permit an award of punitive damages against
4 Defendant Andrea Awerbach, and if so, whether an assessment of punitive
5 damages against Defendant Andrea Awerbach is justified by the punishment and
6 deterrent purposes of punitive damages under the circumstances of this case. If
7 you decide an award of punitive damages is justified, you will later decide the
8 amount of punitive damages to be awarded, after you have heard additional
9 evidence and instruction.

INSTRUCTION NO. 39

Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the jury a firm belief or conviction as to the allegations sought to be established. It is an intermediate degree of proof, being more than a mere preponderance but not to the extent of such certainty as is required to prove an issue beyond a reasonable doubt. Proof by clear and convincing evidence is proof which persuades the jury that the truth of the contentions is highly likely.

INSTRUCTION NO. 40

If you find that Plaintiff is entitled to compensatory damages for actual harm caused by Defendant Jared Awerbach's breach of an obligation, you may also consider whether you should assess punitive damages against Defendant Jared Awerbach on the basis of his impairment with a controlled substance, if Plaintiff proves that:

1. Defendant Jared Awerbach willfully consumed or used marijuana knowing that he would thereafter operate a motor vehicle; and
2. Defendant Jared Awerbach thereafter caused actual harm to Plaintiff by operating a motor vehicle.

The purposes of punitive damages are to punish a wrongdoer that harms the plaintiff and to deter similar conduct in the future, not to make the Plaintiff whole for her injuries. Consequently, a plaintiff is never entitled to punitive damages as a matter of right and whether to award punitive damages against the Defendant is entirely within your discretion.

There are no fixed standards for determining the amount of punitive damage award; the amount, if any, is left to your sound discretion, to be exercised without passion or prejudice and in accordance with the following governing principles.

The amount of punitive damage award is not to compensate the Plaintiff for damages suffered but what is reasonably necessary (in light of the Defendant's financial condition) and fairly deserved (in light of the blameworthiness and harmfulness inherent in the Defendant's conduct) to punish and deter the Defendant and others from engaging in conduct such as that warranting punitive damages in this case. Your award cannot be more than otherwise warranted by the evidence in this case merely because of the wealth of the Defendant. Your award cannot either punish the Defendant for conduct injuring others who are not parties to this litigation or financially annihilate or destroy the Defendant in light of the Defendant's financial condition.

In determining the amounts of your punitive damage awards, if any, against Defendant Jared Awerbach, you should consider the following guideposts:

The degree of reprehensibility of the Defendant's conduct, in light of (a) the culpability and blameworthiness of the Defendant's fraudulent, oppressive and/or malicious misconduct under the circumstances of this case; (b) whether the conduct injuring Plaintiff that warrants punitive damages in this case was part of a pattern of similar conduct by the Defendant; and (c) any mitigating conduct by the Defendant, including any efforts to settle the dispute.

The ratio of your punitive damage award to the actual harm inflicted on the Plaintiff by the conduct warranting punitive damages in this case, since the measure of punishment must be both reasonable and proportionate to the amount of harm to the Plaintiff and to the compensatory damages recovered by the Plaintiff in this case.

How your punitive damages award compares to other civil or criminal penalties that could be imposed for comparable misconduct, since punitive damages are to provide a means by which the community can express its outrage or distaste

1 for the misconduct of a fraudulent, oppressive or malicious Defendant and deter and
2 warn others that such conduct will not be tolerated.

3 Evidence has been presented concerning Defendant Jared Awerbach's 2008
4 car accident. You cannot use such evidence to award Plaintiff punitive damages for
5 conduct injuring others who are not parties to this litigation, or conduct that does not
6 bear a reasonable relationship to the conduct injuring Plaintiff that warrants punitive
7 damages in this case. You may consider such evidence only with respect to the
8 reprehensibility of the Defendant's conduct and only to the extent the conduct is
9 similar and bears a reasonable relationship to the Defendant's conduct injuring
10 plaintiff that warrants punitive damages in this case.

INSTRUCTION NO. 42

The court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case, including that of damages, must not be taken as indicating an opinion of the court as to what you should find to be the facts or as to which party is entitled to your verdict.

INSTRUCTION NO. 43

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violation to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any questions submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given by the court.

INSTRUCTION NO. 44

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreman. The officer will then return you to court where the information sought will be given to you in the presence of the parties or their attorneys.

Readbacks of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a readback, you must carefully describe the testimony to be read back so that the court reporter can arrange his notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 45

When you retire to consider your verdict, you must select one of your number to act as foreman, who will preside over your deliberation and will be your spokesman here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. If your verdict is in favor of the Plaintiff, you are directed to make special findings of fact consisting of written answers to the questions in a form that will be given to you. You shall answer the questions in accordance with the directions in the form and all of the instructions of the court. As soon as six or more of you have agreed upon a verdict and six or more of you have agreed upon every answer in the special findings, you must have the verdict and special findings signed and dated by your foreman, and then return with them to this room.

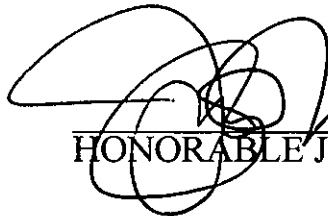
INSTRUCTION NO. 46

During opening statements, counsel for Defendant Andrea Awerbach stated that “just because there’s no evidence of any preexisting records, doesn’t mean that none exist.” You should disregard this statement. There is no evidence that Plaintiff Emilia Garcia ever sought medical treatment related to back pain prior to the accident. It would be improper for you to speculate that such medical records exist.

INSTRUCTION NO. 47

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

Given this 8TH day of March, 2016

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a horizontal line.

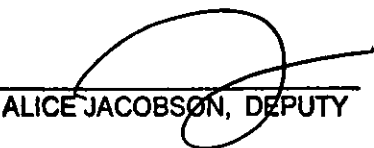
HONORABLE JERRY A. WIESE II

ORIGINAL

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

MAR 10, 2016

VER

BY, 
ALICE JACOBSON, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,
Plaintiff,

Case No.: A-11-637772-c
Dept. No.: 30

v.

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

JURY VERDICT

A-11-637772-C
JV
Jury Verdict
4530909



On the questions submitted, the jury finds as follows:

1. What amount of damages do you find were sustained by Emilia Garcia (excluding any punitive damages) as a proximate result of the auto collision on January 2, 2011.

Past medical expenses	\$ <u>574,846.01</u>
Future medical expenses	\$ <u>0</u>
Past Loss of household services	\$ <u>0</u>
Future Loss of household services	\$ <u>0</u>
Past pain, suffering and loss of enjoyment of life	\$ <u>250,000.00</u>
Future pain, suffering and loss of enjoyment of life	\$ <u>0</u>
TOTAL	\$ <u>824,846.01</u>

1 2. Do you find that Plaintiff proved, by clear and convincing evidence, that Jared Awerbach
2 willfully consumed marijuana, knowing that he would thereafter operate a motor vehicle?

3
4 YES ☒ NO ☐

5 If you answered "YES," answer question 3. If you answered "NO," please skip to
6 question 5.

7
8 3. Should punitive damages be assessed against Defendant Jared Awerbach for the sake of
9 example and by way of punishing the defendant?

10 YES ☒ NO ☐

11 If you answered "YES," answer question 4. If you answered "NO," please skip to
12 question 5.

13
14 4. We assess punitive damages against Jared Awerbach in the amount of:

15 \$ 2,000,000.00

16 5. Did Defendant Andrea Awerbach give express or implied permission to Defendant Jared
17 Awerbach to use her vehicle on January 2, 2011?

18 YES ☐ NO ☒

19 If you answered "YES" to question 5, answer question 6. If you answered "NO",
20 please skip to the end of the form and have the Jury Foreperson sign where
21 indicated
22

23 6. Did Defendant Andrea Awerbach negligently entrust her vehicle to an inexperienced or
24 incompetent person on January 2, 2011?

25 YES ☐ NO ☒

26 If you answered "YES" to question 6, answer question 7. If you answered "NO",
27 please skip to the end of the form and have the Jury Foreperson sign where
28 indicated.

1 7. Was that negligence a proximate cause of harm to Emilia Garcia?

2 YES _____ NO _____

3 If you answered "YES" to question 7, answer question 8. If you answered "NO",
4 please skip to the end of the form and have the Jury Foreperson sign where
5 indicated.

6
7 8. Did Plaintiff prove by clear and convincing evidence that Andrea Awerbach acted with
8 oppression or malice (express or implied) in negligently causing harm to Emilia Garcia?

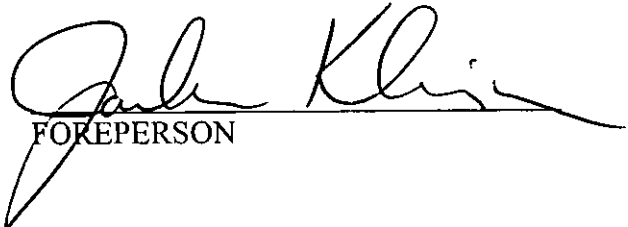
9
10 YES _____ NO _____

11 If you answered "YES", answer question 9. If you answered "NO", please skip to
12 the end of the form and have the Jury Foreperson sign where indicated.

13
14 9. Should punitive damages be assessed against Defendant Andrea Awerbach for the sake of
15 example and by way of punishing the defendant?

16
17 YES _____ NO _____

18
19 DATED this 10th day of March, 2016.

20
21
22 
23 FOREPERSON
24
25
26
27
28

No. 71348

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 15 2018 01:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EMILIA GARCIA,
Appellant,

v.

ANDREA AWERBACH,
Respondent.

**APPELLANT'S APPENDIX
VOLUME IV, BATES NUMBERS 0751 TO 1000**

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ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
I	22 – 28	Amended Complaint	01/14/2013
V	1031 – 1282	Appendix of Exhibits to Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
V, VI	1304 – 1486	Appendix of Exhibits to Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
I	1 – 6	Complaint	03/25/2011
III	642 – 646	Decision and Order Denying Defendant Andrea Awerbach's Motion for Relief from Final Court Order	04/27/2015
III	623 – 629	Decision and Order Denying Plaintiff's Motion to Strike Andrea Awerbach's Answer; Granting Plaintiff's Motion for Order to Show Cause; and Granting in Part and Denying in Part Plaintiff's Motion to Strike Supplemental Reports	02/25/2015
I	164 – 165	Defendant Andrea Awerbach's Correction to Her Responses to Plaintiff's First Set of Requests for Admission	10/20/2014
III	630 – 641	Defendant Andrea Awerbach's Motion for Relief from Final Court Order	03/13/2015
I	96 – 163	Defendant Andrea Awerbach's Motion for Summary Judgment	11/08/2013
I	13 – 21	Defendant Andrea Awerbach's Responses to Request for Admissions	06/05/2012
I	29 – 35	Defendants' Answer to Amended Complaint	02/07/2013
I	7 – 12	Defendants' Answer to Complaint	01/23/2012
I	36 – 60	Defendants' Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference	07/22/2013
I	61 – 95	Deposition of Andrea Awerbach [Vol. 1]	09/12/2013
I, II	166 – 391	Deposition of Andrea Awerbach [Vol. 2]	10/24/2014

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXVI, XXVII	6441 – 6942	Deposition of Jared Awerbach	
III	581 – 616	Deposition of Teresa Meraz	01/08/2015
IV	948 – 997	Jury Instructions	03/08/2016
IV	998 – 1000	Jury Verdict	03/10/2016
VI, VII	1499 – 1502	Minute Order	08/22/2016
VII	1513 – 1554	Notice of Appeal	09/19/2017
III	647 – 649	Notice of Department Reassignment	08/27/2015
VII	1508 – 1512	Notice of Entry of Judgment Upon the Verdict	08/21/2017
III	617 – 622	Order Granting, in Part, and Denying, In Part, Plaintiff's Motion for Partial Summary Judgment that Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3); and Denying Defendant Jared Awerbach's Motion for Partial Summary Judgment on Punitive Damage Claims	01/28/2015
IV	946-947	Order Modifying Prior Order of Judge Allf	02/12/2016
VI	1487 – 1498	Order Re: Post –Trial Motions	08/12/2016
VII	1503 - 1507	Order Vacating Judgment as to Jared Awerbach only	08/21/2017
V	1001 – 1030	Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
III, IV	650 – 900	Plaintiff's Motion to Disqualify Defendant Jared Awerbach's Counsel Randall Tindall and Motion For Reassignment to Department 27 on Order Shortening Time and Request for Leave to File Extended Memorandum of Points and Authorities	09/08/2015
II, III	392 – 580	Plaintiff's Motion to Strike Defendant Andrea Awerbach's Answer	12/02/2014
V	1283 – 1303	Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
IV	933 – 945	Plaintiff's Trial Brief Regarding	02/10/2016

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
		Permissive Use	
IV	901 – 932	Reporter's Transcript of Proceedings	09/15/2015
VII, VIII	1555 – 1765	Trial Transcript – 02/08/2016	11/10/2017
VIII	1766 – 1996	Trial Transcript – 02/09/2016	11/10/2017
VIII, IX, X	1997 – 2290	Trial Transcript – 02/10/2016	11/10/2017
X	2291 – 2463	Trial Transcript – 02/11/2016	11/10/2017
X, XI	2464 – 2698	Trial Transcript – 02/12/2016	11/10/2017
XI, XII	2699 – 2924	Trial Transcript – 02/16/2016	11/10/2017
XII, XIII	2925 – 3177	Trial Transcript – 02/17/2016	11/10/2017
XIII, XIV	3178 – 3439	Trial Transcript – 02/18/2016	11/10/2017
XIV, XV	3440 – 3573	Trial Transcript – 02/19/2016	11/10/2017
XV, XVI	3574 – 3801	Trial Transcript – 02/22/2016	11/10/2017
XVI, XVII	3802 – 4038	Trial Transcript – 02/23/2016	11/10/2017
XVII, XVIII	4039 – 4346	Trial Transcript – 02/24/2016	11/10/2017
XVIII, XIX	4347 – 4586	Trial Transcript – 02/25/2016	11/10/2017
XIX, XX	4578 – 4819	Trial Transcript – 02/26/2016	11/10/2017
XX, XXI	4820 – 5045	Trial Transcript – 03/01/2016	11/10/2017
XXI, XXII	5046 – 5361	Trial Transcript – 03/02/2016	11/10/2017
XXII, XXIII	5362 – 5559	Trial Transcript – 03/03/2016	11/10/2017
XXIII, XXIV	5560 – 5802	Trial Transcript – 03/04/2016	11/10/2017

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXIV	5803 – 5977	Trial Transcript – 03/07/2016	11/10/2017
XXIV, XXV	5978 – 6203	Trial Transcript – 03/08/2016	08/23/2018
XXV, XXVI	6204 – 6422	Trial Transcript – 03/09/2016	08/23/2018
XXVI	6423 – 6440	Trial Transcript – 03/10/2016	08/23/2018

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
I	22 – 28	Amended Complaint	01/14/2013
V	1031 – 1282	Appendix of Exhibits to Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
V, VI	1304 – 1486	Appendix of Exhibits to Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
I	1 – 6	Complaint	03/25/2011
III	642 – 646	Decision and Order Denying Defendant Andrea Awerbach's Motion for Relief from Final Court Order	04/27/2015
III	623 – 629	Decision and Order Denying Plaintiff's Motion to Strike Andrea Awerbach's Answer; Granting Plaintiff's Motion for Order to Show Cause; and Granting in Part and Denying in Part Plaintiff's Motion to Strike Supplemental Reports	02/25/2015
I	164 – 165	Defendant Andrea Awerbach's Correction to Her Responses to Plaintiff's First Set of Requests for Admission	10/20/2014
III	630 – 641	Defendant Andrea Awerbach's Motion for Relief from Final Court Order	03/13/2015
I	96 – 163	Defendant Andrea Awerbach's Motion for Summary Judgment	11/08/2013
I	13 – 21	Defendant Andrea Awerbach's Responses to Request for Admissions	06/05/2012
I	29 – 35	Defendants' Answer to Amended Complaint	02/07/2013
I	7 – 12	Defendants' Answer to Complaint	01/23/2012
I	36 – 60	Defendants' Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference	07/22/2013
I	61 – 95	Deposition of Andrea Awerbach [Vol. 1]	09/12/2013
I, II	166 – 391	Deposition of Andrea Awerbach [Vol. 2]	10/24/2014

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXVI, XXVII	6441 – 6942	Deposition of Jared Awerbach	
III	581 – 616	Deposition of Teresa Meraz	01/08/2015
IV	948 – 997	Jury Instructions	03/08/2016
IV	998 – 1000	Jury Verdict	03/10/2016
VI, VII	1499 – 1502	Minute Order	08/22/2016
VII	1513 – 1554	Notice of Appeal	09/19/2017
III	647 – 649	Notice of Department Reassignment	08/27/2015
VII	1508 – 1512	Notice of Entry of Judgment Upon the Verdict	08/21/2017
III	617 – 622	Order Granting, in Part, and Denying, In Part, Plaintiff's Motion for Partial Summary Judgment that Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3); and Denying Defendant Jared Awerbach's Motion for Partial Summary Judgment on Punitive Damage Claims	01/28/2015
IV	946-947	Order Modifying Prior Order of Judge Allf	02/12/2016
VI	1487 – 1498	Order Re: Post –Trial Motions	08/12/2016
VII	1503 - 1507	Order Vacating Judgment as to Jared Awerbach only	08/21/2017
V	1001 – 1030	Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
III, IV	650 – 900	Plaintiff's Motion to Disqualify Defendant Jared Awerbach's Counsel Randall Tindall and Motion For Reassignment to Department 27 on Order Shortening Time and Request for Leave to File Extended Memorandum of Points and Authorities	09/08/2015
II, III	392 – 580	Plaintiff's Motion to Strike Defendant Andrea Awerbach's Answer	12/02/2014
V	1283 – 1303	Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
IV	933 – 945	Plaintiff's Trial Brief Regarding	02/10/2016

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
		Permissive Use	
IV	901 – 932	Reporter's Transcript of Proceedings	09/15/2015
VII, VIII	1555 – 1765	Trial Transcript – 02/08/2016	11/10/2017
VIII	1766 – 1996	Trial Transcript – 02/09/2016	11/10/2017
VIII, IX, X	1997 – 2290	Trial Transcript – 02/10/2016	11/10/2017
X	2291 – 2463	Trial Transcript – 02/11/2016	11/10/2017
X, XI	2464 – 2698	Trial Transcript – 02/12/2016	11/10/2017
XI, XII	2699 – 2924	Trial Transcript – 02/16/2016	11/10/2017
XII, XIII	2925 – 3177	Trial Transcript – 02/17/2016	11/10/2017
XIII, XIV	3178 – 3439	Trial Transcript – 02/18/2016	11/10/2017
XIV, XV	3440 – 3573	Trial Transcript – 02/19/2016	11/10/2017
XV, XVI	3574 – 3801	Trial Transcript – 02/22/2016	11/10/2017
XVI, XVII	3802 – 4038	Trial Transcript – 02/23/2016	11/10/2017
XVII, XVIII	4039 – 4346	Trial Transcript – 02/24/2016	11/10/2017
XVIII, XIX	4347 – 4586	Trial Transcript – 02/25/2016	11/10/2017
XIX, XX	4578 – 4819	Trial Transcript – 02/26/2016	11/10/2017
XX, XXI	4820 – 5045	Trial Transcript – 03/01/2016	11/10/2017
XXI, XXII	5046 – 5361	Trial Transcript – 03/02/2016	11/10/2017
XXII, XXIII	5362 – 5559	Trial Transcript – 03/03/2016	11/10/2017
XXIII, XXIV	5560 – 5802	Trial Transcript – 03/04/2016	11/10/2017

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXIV	5803 – 5977	Trial Transcript – 03/07/2016	11/10/2017
XXIV, XXV	5978 – 6203	Trial Transcript – 03/08/2016	08/23/2018
XXV, XXVI	6204 – 6422	Trial Transcript – 03/09/2016	08/23/2018
XXVI	6423 – 6440	Trial Transcript – 03/10/2016	08/23/2018

Page 238

Page 240

1 A. No, I didn't see what was used -- at the
2 time, what was used to hit me. There was a shovel at
3 the riot. There was a skateboard at the riot, and
4 there was something else at the riot; so nobody really
5 knew what I was struck with.
6 The boy admitted to using the brass knuckles
7 upon his interview with Sergeant Bonatti [phonetic] of
8 school police because he wanted to specify that he did
9 not use a skateboard, he did not use a shovel, that he
10 was using brass knuckles.
11 Q. All right. Now, other than the pain, have
12 you experienced any headaches or migraines or blurring
13 of vision in the sequence after -- of your healing
14 after that trauma?
15 A. What happens is is -- I refer to as an ocular
16 migraine, which is -- it takes away my vision and still
17 has the same characteristics as a migraine, just
18 visually my eyes are impaired.
19 Q. And how long have you been experiencing
20 ocular migraines? Is it ever since you were -- your
21 skull was fractured, or did they start shortly
22 thereafter?
23 A. Shortly after.
24 Q. How long have they lasted?
25 A. Continuous.

1 my eyes and be still and be content with the fact that
2 I have to wait for an ocular migraine to pass than it
3 is to go through it.
4 Q. Does it help with the --
5 (Reporter clarified.)
6 THE WITNESS: It's easy --
7 BY MR. STRASSBURG:
8 Q. That's no problem. Let me ask a better
9 question.
10 Does the usage of marijuana help with the
11 pain and discomfort from the migraine?
12 A. Yes, sir.
13 Q. Now, does your -- these ocular migraines,
14 would you -- if you looked at yourself kind of coldly
15 and critically, would those ocular migraines have
16 anything to do with your drug usage?
17 A. No.
18 Q. Would your attempt to medicate and deal with
19 the pain from those ocular migraines, that pain, would
20 that have anything to do with your drug usage?
21 A. Definitely.
22 Q. In what way?
23 A. It's easier to lay down and relax and keep my
24 eyes closed and be content with the fact that I'm
25 having an ocular migraine under the influence of

Page 239

Page 241

1 Q. To this day?
2 A. Yes, sir.
3 Q. And what's the frequency of these ocular
4 migraines that you experience, typically?
5 A. They come and go. I try to avoid them. You
6 know, try to avoid sunlight. My glasses are transition
7 glasses, and so -- I haven't had one for some months,
8 actually, and I try to treat them as soon as they come.
9 Q. All right. And what -- when the migraines
10 come with some frequency, about how often a week do you
11 experience them?
12 A. One comes for like two or three days a week.
13 Q. And when the migraine comes, how long does it
14 last?
15 A. Two, three, four days a week, sometimes a
16 week at a time, depending upon how the migraine feels.
17 Q. Now, does your usage of marijuana have any
18 therapeutic benefits to you for these migraines?
19 A. Yes, sir.
20 Q. And would you describe it for us, please.
21 A. I self-medicate.
22 Q. And how does the use of marijuana make you
23 feel when you have the migraines; better, worse, no
24 change, what?
25 A. It's easier to lay down and relax and close

1 marijuana rather than under the influence of anything
2 else.
3 Q. Will ocular migraines allow you to sleep, or
4 is the pain just too intense?
5 A. Sometimes it's hard to sleep. Sometimes it's
6 hard to relax.
7 Q. And does the marijuana help you sleep when
8 you have one of these several-day-long episodes of
9 ocular migraine?
10 A. It helps me relax, yes, sir. It helps me be
11 calm. It helps stabilize the effects of the ocular
12 migraine.
13 Q. Does it help you to sleep?
14 A. No.
15 Q. Okay. Does it help you to endure your
16 situation with these migraine headaches?
17 A. Yes, sir.
18 Q. Now -- sorry.
19 MS. COMPTON: That's okay.
20 BY MR. STRASSBURG:
21 Q. Now, we've had some discussion here about the
22 cell phone.
23 Do you remember that?
24 A. Yes, sir.
25 Q. And you -- I just want to make sure that

Page 242

Page 244

1 we're all clear on this.
 2 You said that you had used your cell phone
 3 prior to the accident, right?
 4 A. Yes, sir. Moments prior.
 5 Q. Sorry?
 6 A. Moments prior.
 7 Q. Okay. And before you stopped your vehicle to
 8 look both ways, as you've testified to, before you
 9 stopped at the entrance to the highway here --
 10 A. Yeah.
 11 Q. -- had you stopped using your cell phone?
 12 A. Yes, sir.
 13 Q. And when you stopped using your cell phone,
 14 where -- what did you do with it? Did you keep it in
 15 your hand, or did you put it on the seat or the floor
 16 or somewhere else?
 17 A. Just dropped it.
 18 Q. All right. Did your usage of the cell phone,
 19 before you first saw the plaintiff's vehicle in the
 20 location of this red Jeep in Exhibit 7, have anything
 21 to do with this accident?
 22 A. No.
 23 Q. Do you have any plans -- let me ask you this:
 24 You've testified that you are a buyer and dealer of
 25 marijuana and other drugs on a regular basis; at least

1 business, the drug business.
 2 A. Outside, yeah.
 3 Q. And you had a scale there?
 4 A. Yes, sir.
 5 Q. And what were you using the scale for?
 6 A. To weigh out the marijuana.
 7 Q. All right. And when you -- when you weigh
 8 out marijuana on a scale, is that -- is there a
 9 necessity of -- to do that in a fairly precise way so
 10 you don't get the weights wrong, or can you just slop
 11 it in there any old way?
 12 A. Some people slop it in there any old way,
 13 and -- but what I was doing at the time was my going
 14 rate for a gram was \$20. So I would do the math. I
 15 would apply the math to get a profit and break down
 16 what's known as a gram and an ounce individually, and
 17 that was important. The scale is used to calculate
 18 profit.
 19 Q. Well, is it a good business practice in that
 20 line of work, as you conducted it, to get high with
 21 marijuana when you're doing the business production
 22 side of weighing it out and bagging it up for delivery?
 23 A. No.
 24 Q. Why not?
 25 A. Because you'll mess up your calculations.

Page 243

Page 245

1 you were at the time of the accident?
 2 A. Yes, sir.
 3 Q. And you've testified that you are and were
 4 back then a steady user of --
 5 A. Yes, sir.
 6 Q. -- some of your products, right?
 7 A. Yes, sir.
 8 Q. And you -- now you've testified that at
 9 the -- at the time of the accident, that you were not
 10 under the influence of any of these drugs, marijuana or
 11 otherwise, and so your driving ability was unimpaired?
 12 A. Yes, sir.
 13 Q. Now, but let me ask you this: Why should
 14 anybody believe that?
 15 A. Because you've got to make money first before
 16 you can get high. You've got to make what's called --
 17 what's referred to as the rib. You have to cover the
 18 quota before you get high, or you're going to lose
 19 money. You're not going to make it. You're not going
 20 to be able to sell drugs and supply a habit at the same
 21 time.
 22 Q. Well, now, you've testified -- that makes me
 23 think that -- I recollect you testifying that in the
 24 morning of the day of the accident, that you were at
 25 home, it sounds like in your bedroom engaged in

1 You want to know how much you have to sell and how much
 2 you have to make, how much you can smoke.
 3 Q. Now, when you went over to this apartment at
 4 the Villa Del Sol, and you said you spent 30 minutes, I
 5 think, making this delivery?
 6 A. Yes, sir.
 7 Q. And when you did the delivery for this 30 to
 8 45 minutes, were there business negotiations, or did
 9 you have to do a business process of cutting up the
 10 marijuana into smaller segments, or was it just
 11 chitchat?
 12 A. I had to weigh out the weed. I had to
 13 discuss with her the next order of business, which is
 14 the next package, what we were going to do, fronts,
 15 anything like that, if she wanted to give me a loan.
 16 I had to sell some weed to some kids that
 17 were already there; so I needed a scale, and I needed
 18 to weigh out the work. I didn't have time to smoke.
 19 Q. And did you need your wits about you for that
 20 kind of commercial activity?
 21 A. Definitely. Especially going by yourself,
 22 definitely. Because --
 23 Q. So it's risky by yourself?
 24 A. Although it's family you never know who's
 25 going to be there. You never know what's going to

Page 246

Page 248

1 happen. Family isn't always solid. Sometimes family
2 may not be there.
3 Q. So it sounds like that, in this business, you
4 perceive a risk that when you're making a delivery, you
5 could get jumped, right?
6 A. It's happened.
7 Q. And to defend yourself you want to have your
8 wits about you, right?
9 A. Yes, sir.
10 Q. And are you better able to defend yourself
11 high on dope or with all your faculties ready to go in
12 a sober condition?
13 A. Sober.
14 Q. Now, does your mother have any addictive
15 problems that you're aware of?
16 A. Not currently but --
17 MR. MAZZEO: Objection, relevance.
18 BY MR. STRASSBURG:
19 Q. Go ahead. Go ahead.
20 A. Not currently. She's been abstinent from
21 gambling for 12 years, but at one point of our life,
22 she was -- at one point of our life, she was addicted
23 to gambling.
24 Q. During what ages -- what years of your
25 childhood was she afflicted with that addiction?

1 BY MR. STRASSBURG:
2 Q. That had to be a very difficult childhood.
3 A. It was what it was at the time, and then as
4 you're older -- as you get older, you realize, you
5 know -- you know, it's not really fair, but it is the
6 living conditions that we had, but she's definitely
7 improved her life.
8 Q. Now, I wanted to ask you what part -- what
9 neighborhood in the city of Vegas did you grow up in?
10 A. Maryland and Karen.
11 Q. And what's that called?
12 A. That's called Naked City.
13 Q. Growing up in Naked City, if you were to be
14 asked why did you turn to drugs and -- traffic and sale
15 and possession and use of drugs growing up in Naked
16 City, what would your answer be?
17 A. It was the culture at the time. It was what
18 the youth were expected to do. The older gang members,
19 the older people carrying drugs used us, would use the
20 kids.
21 Q. For what?
22 A. Transport, things that would give an adult
23 prison time, the things a juvenile could get away with.
24 Q. You, too?
25 A. Yeah. Yes.

Page 247

Page 249

1 A. Elementary school.
2 MR. STRASSBURG: I'm sorry. Excuse me for a
3 moment.
4 MR. ESCHWEILER: Sure.
5 MR. STRASSBURG: I don't want to screw up.
6 MR. ESCHWEILER: Take your time.
7 BY MR. STRASSBURG:
8 Q. Do you -- were you present in the household
9 so that you could describe why your mom quit gambling?
10 A. Yeah, yeah. I called her one night. I woke
11 up in the house alone. It's like 2:00, 3:00 in the
12 morning. I called her because, for some reason, I
13 always had a fear that I would be abandoned or that she
14 was going to kill herself or something. Our living
15 conditions weren't that good.
16 (Reporter interrupted.)
17 THE WITNESS: Or she was going to kill
18 herself in response to -- it was very tense. It was
19 very tense, and she was always worried about money. So
20 I called her, and I said where are you. She said I'm
21 at the casino. I said, oh, I thought you killed
22 yourself.
23 She said, no, honey, I'm just gambling, and
24 she said I'm on my way home, and since that day she
25 hasn't placed a bet. That's how I remember it.

1 Q. And could you estimate for us whether you
2 were -- I mean, did you keep track of the money you
3 were making selling marijuana and other drugs, or did
4 you just -- in and out, didn't pay attention?
5 A. I didn't pay attention at the time.
6 Q. Can you give us an estimate as to whether you
7 made more money dealing drugs than you did working
8 construction?
9 A. Working construction I made more money day to
10 day, but, overall, I made more money selling drugs, but
11 the construction was good money.
12 Q. Now, you put -- your college plans, you
13 shelved those.
14 A. Yes.
15 Q. Because you wanted to support your child and
16 your family?
17 A. Yes, I wanted to begin having a family of my
18 own.
19 Q. And did the need to support that family
20 encourage you to engage in selling drugs?
21 A. Yeah, something I had known.
22 Q. The money you made selling drugs, did you put
23 that all at the disposal of your family, or did you
24 blow it on yourself?
25 A. Both. Both.

Page 250

1 Q. Thank you for your honesty.

2 A. Yes, sir.

3 Q. Now, you've indicated that you made some
4 efforts lately to try and turn your life around, and I
5 wanted to inquire about that.

6 Whose idea was it for you to present yourself
7 to the psychiatric -- the state psychiatric hospital,
8 Rawson-Neal on Charleston? Was it your idea, or did
9 the authorities force you to do that or something else?

10 A. It's my own.

11 Q. And what brought that about?

12 A. While incarcerated I had requested to see a
13 psychiatrist. There was no response. So I notified --
14 notified a CO that I wanted to go on suicide watch. I
15 was feeling suicidal at the time, a little suicidal,
16 but I knew that while on suicide watch, the
17 psychiatrist has to speak to you.

18 I knew that the damage from my meth addiction
19 required medication, and I was seeking help for that.
20 The jail released me to the hospital, and the hospital
21 released me to 6161 West Charleston, which is
22 Rawson-Neal.

23 And I went and I talked to a nurse about what
24 was happening. A nurse then placed me on legal hold at
25 Summerlin until a bed was available at Rawson-Neal. At

Page 252

1 time to --

2 Q. All because of meth?

3 A. All because of my behavior but, yeah, with
4 meth.

5 Q. They say that meth is a soul killer.

6 What's your view?

7 A. Meth is the most addictive drug that there
8 is. It's more addictive than crack, more addictive
9 than heroin. It's addictive psychologically,
10 neurologically, and physically. Some bad -- it's bad.
11 It's bad.

12 Q. And you could not get away from it on your
13 own?

14 A. I couldn't shake it. I didn't have any place
15 to withdraw. I didn't have any place to get away from
16 where I was. I mean, it would take a strong decision
17 to do that, and I wasn't capable of making that
18 decision.

19 Q. At Rawson-Neal, Dr. Bhushan, the
20 psychiatrist, was able to wean you from the grips of
21 methamphetamine, right?

22 A. Well, I was able -- I was -- I had served
23 time in January. I had served a 30-day sentence -- a
24 20-day sentence, a violation of a TPO; so I was able to
25 obtain sobriety that way, but the damage of the

Page 251

1 Rawson-Neal I received antidepressants, sleep
2 medication, and an antipsychotic drug.

3 I discontinued the antipsychotic when I
4 started to get a grip on my reality, when I started to
5 come back, and I continued taking the antidepressant
6 and the sleeping pill.

7 Q. So when you appeared and presented yourself
8 to Rawson-Neal, you were later informed you were
9 displaying psychotic symptomatology?

10 A. What's it's called is -- it's not a
11 meth-induced psychosis. It's a meth-induced mania,
12 which is confusion, distortion, hallucinations, voices,
13 and that's what had occurred to me.

14 That has never happened to me ever before in
15 my -- in my long time of using drugs, it never
16 happened, but this time it happened, and that scared
17 me. That shook me.

18 Q. It sounds like this time what was different
19 was the grinding effects of long-time meth usage --

20 A. Yeah.

21 Q. -- is that true?

22 A. Yeah. I lost myself this time. I mean, you
23 lose yourself every time, but this time there was no
24 contact with my children, no contact with my mother, no
25 contact with my family, no family support. So it was

Page 253

1 methamphetamine was still affecting me.

2 Q. And that was the TPO that your mother asked
3 for to protect her from you?

4 A. After a coercion charge in November.

5 Q. And has your mother told you whether or not
6 she intends for that TPO to be lifted or remain in
7 place?

8 A. She has placed it on calendar to have it
9 lifted.

10 Q. And you're living with your -- you're back
11 with your mother now?

12 A. Yes, right now.

13 Q. And your -- you keep your children with you
14 from time to time, right?

15 A. Yes.

16 Q. And are you currently enrolled in any kind of
17 psychiatric program to continue your improvement?

18 A. What I'm doing is I'm attending NA regularly
19 every day, enjoying that, and I'm enrolled in Mojave
20 Mental Health Clinic, the day program, waiting for my
21 insurance to switch, my HMO, because right now I'm
22 covered under Medicaid, and I need -- I'm covered under
23 Amerigroup, and I guess Mojave receives a different
24 one.

25 So they have an open case for me. I have a

Page 254

1 caseworker, and I'm just waiting for my -- just the HMO
2 to switch over so I can be -- get into day treatment
3 there.

4 Q. You were asked about your religious
5 experience, and you mentioned, of all -- of all the
6 chapters of the Bible, you mentioned Psalm 51; didn't
7 you?

8 A. Yeah.

9 Q. And were you thinking of the language that
10 says create in me a clean heart, oh, God, and renew a
11 right spirit in me?

12 A. I was thinking of that and the next one, so I
13 may teach transgressors your ways.

14 I like the part where he says I have sinned
15 in your sight and your sight alone, Lord.

16 Q. Do you believe that applies to you?

17 A. Yes, sir, meaning the sins that we commit
18 against God. Not the sins that we commit against each
19 other, but the sins that are actual sins against God
20 himself, and I just really like Psalms 51.

21 Q. It sounds like you've had a religious
22 awakening that's recommitted you to your -- the faith
23 of your childhood.

24 Do you -- can you estimate for us about when
25 that happened?

Page 255

1 A. Serving my sentence in 2012, I was placed on
2 23-and-a-half-hour lockdown; so I wasn't caught up with
3 the normal activities that occur in jail. I was caught
4 up with the Bible and improving my life.

5 I also read the Quran at that time. I also
6 got to study religious studies and come to my own
7 belief of a higher power, and I loved it. It was the
8 only thing that made sense at the time. It was the
9 only thing I would read.

10 And I continue to take, you know, a more
11 religious stance with my peers and more of a -- I'd say
12 not a do-gooder but more of someone who would do the
13 right thing in a certain situation rather than leave
14 someone and stuff like that. I started to, yeah, live,
15 what I perceived, not as Jesus did but as a disciple
16 would in this time period.

17 MR. STRASSBURG: All right. Thank you. I
18 don't think I have any other questions at this time.

19 MR. ESCHWEILER: Do you want to change the
20 tape?

21 THE VIDEOGRAPHER: Off the video record at
22 3:28.

23 (Discussion off the record.)

24 THE VIDEOGRAPHER: This is the beginning of
25 Videotape No. 5 in the continuing deposition of Jared

Page 256

1 Awerbach. Back on the video record at 3:32.

2 EXAMINATION

3 BY MR. ESCHWEILER:

4 Q. Mr. Awerbach, you understand that you're
5 still under oath?

6 A. Yes, sir.

7 Q. Can you pull out Exhibit 7 for me, please.

8 A. Yes, sir.

9 Q. And could you use Mr. Strassburg's pen and
10 just put an X where the point of impact was on that,
11 where you think the collision took place. In the road,
12 not on the vehicle. I'm talking about in the road.

13 MR. STRASSBURG: If it's on -- if it's even
14 on the picture. It may not show.

15 THE WITNESS: What I'll do is I'll put an X
16 and an arrow indicating that it's not on the picture
17 (drawing).

18 BY MR. ESCHWEILER:

19 Q. Okay. So you're -- and what you're saying is
20 that you're right here where Mr. Strassburg is taking
21 the picture, correct, and so you're saying that the
22 point of impact is somewhere off of this picture, and
23 you were making a left turn?

24 A. Yes, sir.

25 Q. This way (indicating)?

Page 257

1 A. Yes, sir.

2 MR. STRASSBURG: And that's -- not really.
3 That's not fair. What he said was --

4 MR. ESCHWEILER: He -- I --

5 MR. STRASSBURG: -- I'm taking the picture --

6 MR. ESCHWEILER: I'm asking him the question,
7 not you, Roger.

8 MR. STRASSBURG: No, no, no. But you're
9 miss --

10 MR. ESCHWEILER: I'm not.

11 MR. STRASSBURG: I just want you to
12 understand.

13 MR. ESCHWEILER: I heard what you said. I'm
14 asking him the question.

15 MR. STRASSBURG: I think those are the facts.

16 BY MR. ESCHWEILER:

17 Q. So you believe that making a left turn, that
18 the impact was off of this picture?

19 A. Possibly where the X is.

20 Q. Okay, great.

21 A. I'd like to explain the left turn. What I
22 was doing was moving to the right so that I could clear
23 this first lane and begin to move into the second
24 because the traffic at the time was heavy. So I was
25 moving -- I was kind of doing a loop kind of thing, and

Page 258

Page 260

1 also I wanted to get into this third lane
2 appropriately.
3 Q. Oh, okay. So when you came out, you didn't
4 immediately go to the left? You actually bowed out to
5 the right?
6 A. Yeah, I'm at the corner at the right with my
7 nose poking out --
8 Q. Okay.
9 A. -- but I had my turn signal on.
10 Q. Very good. Very good.
11 And if you could pull up Exhibit 10, it's
12 the --
13 MR. STRASSBURG: Is that the drawing?
14 MR. ESCHWEILER: Yeah.
15 BY MR. ESCHWEILER:
16 Q. You would agree that that's a drawing not
17 made by you; that was a drawing by Mr. Mazzeo, correct?
18 A. Yes, sir.
19 Q. Okay. Has any doctor ever prescribed
20 marijuana to you?
21 A. No.
22 Q. And what was your preferred method of taking
23 meth? How did you take it?
24 A. Smoked it.
25 Q. Did you ever inject it?

Page 259

1 A. Never.
2 Q. So smoking meth was your preferred method?
3 A. Yes, sir. I like to smoke, obviously.
4 Q. And you talked about a coercion charge --
5 A. Yes, sir.
6 Q. -- in November?
7 A. Yes, sir.
8 Q. Was that 2013?
9 A. Yeah.
10 Q. Well, what was the coercion charge?
11 A. I got into an altercation with my mom, and I
12 threw a temper tantrum. I felt like her behavior
13 indicated that she wanted me in jail; so -- because
14 jail is one of the safe places for me. I didn't have a
15 problem with sending myself to jail.
16 So I -- what I did was I -- I threw a temper
17 tantrum, and I threw a whole bunch of glass on the
18 floor, broke a whole bunch of her items, punched holes
19 in the walls, and I received a coercion charge due to
20 the fact that she could not exit her room.
21 She did at the point exit her room, but she
22 was scared. There was glass on the floor, and the
23 glass on the floor warranted -- warranted a coercion
24 charge.
25 Q. And what's the status of that charge?

1 A. I have to continue paying my fines.
2 Q. So you were convicted?
3 A. Yeah. I took a misdemeanor.
4 Q. And let's look at Exhibit 8.
5 I believe what -- what you told
6 Mr. Strassburg when he was asking you the question is
7 you paced the distance between Mister -- where
8 Mr. Strassburg's standing and where you were standing
9 in Exhibit 8, and it was approximately a hundred feet?
10 A. 35 paces.
11 Q. Okay. And you estimated that your -- one of
12 your paces was three feet?
13 A. Just about.
14 Q. So it was a little over a hundred feet in
15 distance, correct?
16 A. Yes, sir.
17 Q. And do you have an estimate of a vehicle
18 traveling at 35 miles an hour, how long it would take
19 for that to clear where Mr. Strassburg was standing?
20 MR. MAZZEO: Objection, calls for expert
21 opinion.
22 BY MR. ESCHWEILER:
23 Q. You can answer.
24 MR. STRASSBURG: Yeah, I have to object to
25 that, too. That's -- lacks foundation.

Page 261

1 Go ahead if --
2 BY MR. ESCHWEILER:
3 Q. You can answer.
4 MR. STRASSBURG: -- if you can give such an
5 opinion.
6 THE WITNESS: In my opinion --
7 MR. MAZZEO: Please don't guess.
8 THE WITNESS: Oh, no, I'm not guessing at
9 all.
10 In my opinion, she -- I mean, the traffic in
11 the first lane slowed down for me, stopped. I was
12 expecting her to slow down and let me make the turn
13 instead of accelerating.
14 BY MR. ESCHWEILER:
15 Q. Who had the right-of-way?
16 A. I think -- I think it would be the traffic
17 flowing because I'm trying to make a left into oncoming
18 traffic.
19 Q. So you making a left turn onto northbound
20 Rainbow, you had the right-of-way versus cars
21 traveling -- I guess it would be northbound --
22 A. No.
23 Q. -- on Rainbow?
24 A. No, sir. I believe that traffic flowing
25 southbound, is the direction of the pictures, would

Page 262

1 have the right-of-way --
2 Q. Okay.
3 A. -- because their traffic is flowing.
4 Q. And you -- going back to my original
5 question, from the point where you're standing a
6 hundred feet from where Mr. Strassburg took the
7 picture, what's your estimate of -- your best estimate
8 of how long it would take for a car traveling 35 miles
9 an hour to clear Mr. Strassburg?
10 MR. MAZZEO: Objection, foundation, calls for
11 expert opinion.
12 BY MR. ESCHWEILER:
13 Q. Go ahead.
14 MR. STRASSBURG: Objection, contrary to fact.
15 Go ahead.
16 THE WITNESS: I couldn't give you an estimate
17 of that nature.
18 BY MR. ESCHWEILER:
19 Q. Do you think it's more than five seconds?
20 MR. STRASSBURG: Object to the form. He
21 already answered that.
22 THE WITNESS: I can't give you an estimate of
23 that question.
24 Like I said previously, I was expecting her
25 to slow down and let me have the turn and -- opposed to

Page 263

1 her acceleration, but, realistically, I can't give
2 you an estimate. I can't --
3 Q. Okay.
4 A. -- give you an answer for that question.
5 MR. ESCHWEILER: I don't have anything
6 further.
7 MR. MAZZEO: Nothing further.
8 MR. STRASSBURG: Read and sign. And you're
9 done.
10 THE VIDEOGRAPHER: Off the video record at
11 3:38.
12 (Whereupon, the deposition was concluded at
13 3:38 p.m. this date.)
14 * * * * *
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Page 264

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON
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17
18 DECLARATION OF DEPONENT
19 I, JARED EMMANUEL AWERBACH, deponent herein,
20 do hereby certify and declare under penalty of perjury
21 the within and foregoing transcription to be my
22 deposition in said action; that I have read, corrected
23 and do hereby affix my signature to said deposition.
24
25 SIGNATURE _____ DATE: _____
JARED EMMANUEL AWERBACH

Page 265

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)
5 I, Peggy S. Elias, a Certified Court Reporter
6 licensed by the State of Nevada, do hereby certify:
7 That I reported the deposition of JARED EMMANUEL
8 AWERBACH, on Thursday, March 27, 2014, at 10:08 a.m.
9 That prior to being deposed, the witness was
10 duly sworn by me to testify to the truth. That I
11 thereafter transcribed my said stenographic notes via
12 computer-aided transcription into written form, and
13 that the typewritten transcript is a complete, true and
14 accurate transcription of my said stenographic notes.
15 That review of the transcript was requested.
16 I further certify that I am not a relative,
17 employee or independent contractor of counsel or of any
18 of the parties involved in the proceeding; nor a person
19 financially interested in the proceeding; nor do I have
20 any other relationship that may reasonably cause my
21 impartiality to be questioned.
22 IN WITNESS WHEREOF, I have set my hand in my
23 office in the County of Clark, State of Nevada, this
24 6th day of April, 2014.
25 PEGGY S. ELIAS, RPR, CCR NO. 274

EXHIBIT 1-B

EXHIBIT 1-B



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Mitchell J. Resnick

Mitchell Resnick is co-founder of Resnick & Louis, P.C. A renowned name in insurance defense litigation, including specialty lines, construction defect litigation, professional liability, bodily injury, transportation (auto/trucking/rental car), life & disability litigation, employment law, insurance coverage, first party property (including appraisals), and damage claims. Mitch additionally focuses his practice on commercial litigation, regulatory/administrative, real estate, landlord / tenant, hospitality (hotel/resort/timeshare/casino), surety, premises, security, workers compensation, construction injury and delay, contracts, public entity, personal and advertising injury, products liability, general liability, and environmental matters.

Mitch was previously named as one of the top Arizona construction law attorneys with Southwest Super Lawyers, and has been a featured speaker at different seminars around the country regarding construction related litigation. Mitch represents clients in Arizona, California, Nevada, and Colorado. Mitch has been the primary responsible attorney on multi-million dollar cases, which have been brought before state and federal trial courts, and through the alternative dispute resolution process in mediation and arbitration.

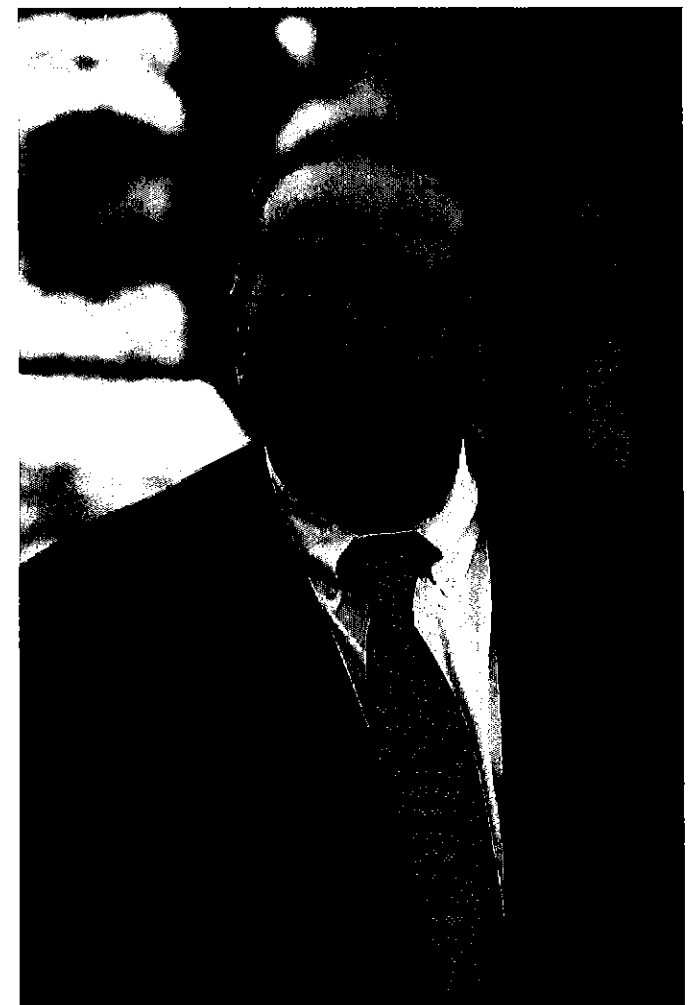
Mitch is licensed to practice law in Arizona, California, Colorado, Nevada, New Jersey, and New York.

Education

- J.D., Pace University Law School, cum laude, 1994
- B.A., University of Arizona, with honors, 1990

Honors & Awards

- Selected, Southwest Super Lawyers for Construction
- Westfield Group's 2010 Golden Gavel Award for Attorney Excellence
- Arizona Finest Lawyers



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- Orange County Bar Association
- Arizona Association of Defense Counsel



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Roger W. Strassburg

For over 30 years, Roger has tried complex injury and commercial cases in state and federal courts nationwide including Arizona, Nevada, Ohio, Oklahoma and Maryland. He has extensive experience in construction defect, professional liability, transportation defense, personal injury, insurance, product defect, real estate, death and class action & mass action tort cases. He has successfully defended public agencies and private companies from environmental and other tort claims. Today he focuses his practice on the application of technology to litigation to maximize results and reduce costs for his clients.

Education

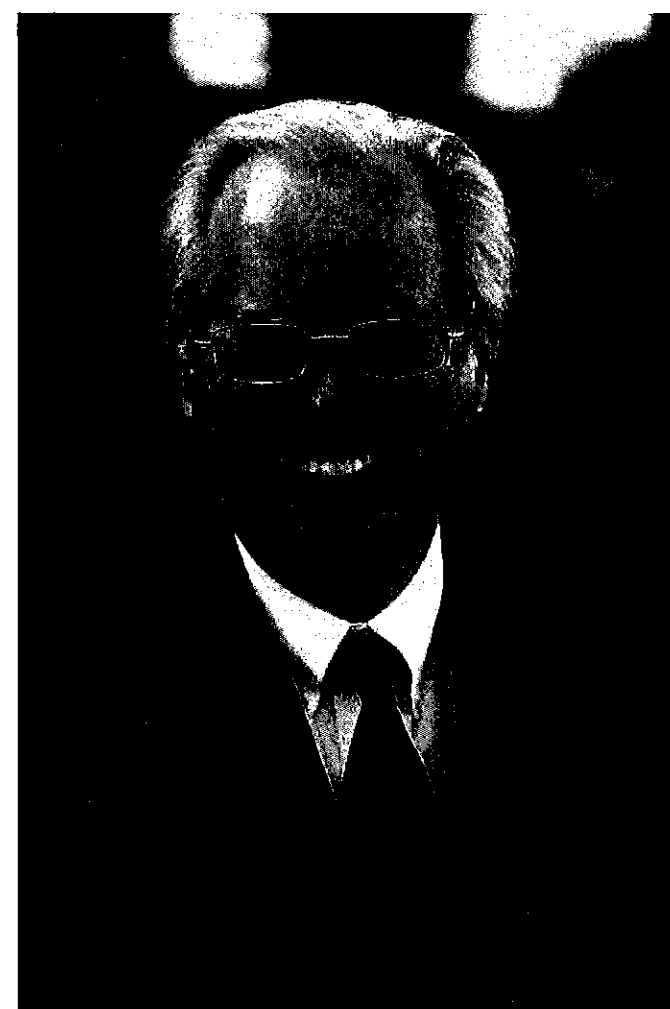
- J.D., Case Western Reserve University, 1982
- B.A., Cornell University, Ithaca, 1975

Areas of Concentration

- Construction Defect Litigation
- Commercial Litigation
- Professional Liability
- Transportation Defense
- Insurance Defense Litigation
- Personal Injury Litigation
- Employment Law

Professional Affiliations

- State Bar of Arizona
- State Bar of Nevada
- Arizona Association of Defense Counsel



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Gary W. Call

Gary W. Call has nearly 25 years of experience, focusing his practice on automobile accidents, slip & fall, first party actions, professional liability, transportation litigation, medical malpractice, wrongful death and other personal injury-related actions.

Gary's experience as a registered nurse give him unique insight related to patient needs and experiences in various accidents, which he uses to his clients' benefit in building their case.

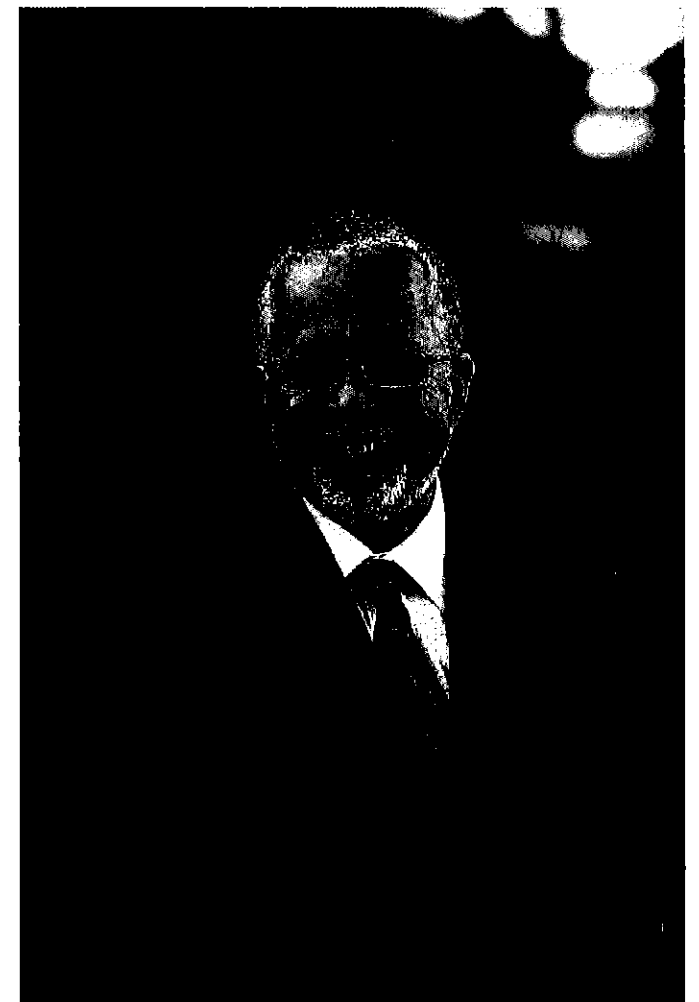
Additionally, Gary has concentrated on construction defect cases where he has represented both design professionals as well as contractors. Gary has also represented and defended major casino properties with regard to premises liability claims as well as general business claims.

Education

- J.D. and Certificate in Dispute Resolution, Willamette University, College of Law, 1992
- B.A. and Honors for Legal Research and Writing, California State University, 1989
- Diploma – Registered Nurse, Los Angeles County School of Nursing, 1986

Areas of Concentration

- Personal Injury Litigation
- Construction Defect Litigation
- Professional Liability
- Trucking and Transportation Defense
- Medical Malpractice Litigation
- General Liability Litigation
- Premises Liability Litigation
- Worker's Compensation



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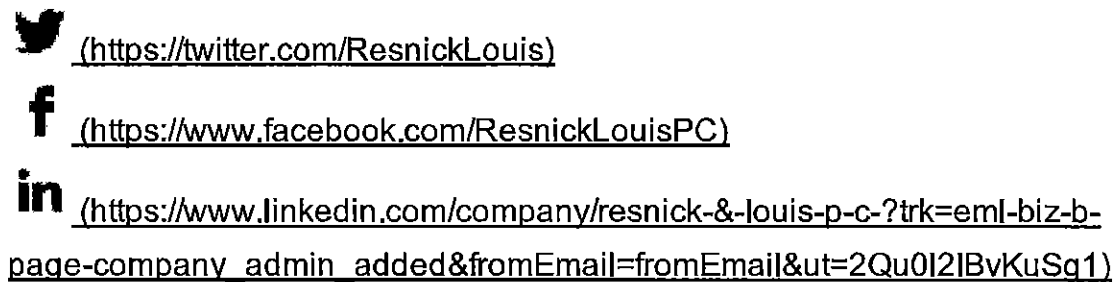
Professional Affiliations

- Nevada State Bar Association
- Oregon State Bar Association (i)
- Las Vegas Defense Lawyers, Member

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Randall Tindall

Randall has been working with and defending insurance clients for nearly 20 years. He has extensive litigation experience and has worked closely with hospitality, casino, pharmaceutical and automotive clients such as Wynn Resorts, MGM and other premier Las Vegas resorts. Randall focuses his practice primarily on large-loss cases and has successfully obtained verdicts in several cases regarding matters such as wrongful death, traffic accidents and bad faith. He has also worked as the head of risk management departments and therefore has invaluable insight into this side of insurance defense. Additionally, Randall has used his knowledge and experience to mentor junior attorneys and ensure quality work product and representation throughout the firm.

Education

- J.D., University of Oregon, 1997
- M.A., Kansas State University, 1994
- B.A., Kansas State University, 1992

Areas of Practice

- Bodily Injury Defense
- Casino/Gaming Industry
- General Liability
- Hospitality and Retail Defense
- Insurance Defense
- Product Liability
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- State Bar of Nevada
- State Bar of Kansas
- Court Appointed Arbitrator, 2006 – present
- Small Claims Court Referee, 2003 – present
- Fee Dispute Committee Member, 2010 – present

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Attorneys for Jared Awerbach

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. XXVIII

**DEFENDANT JARED AWERBACH'S COMPETING ORDER GRANTING IN PART,
AND DENYING IN PART, PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S EXPERT
THOMAS IRELAND**

This matter, having come before the Court on October 30, 2013, on Plaintiff's Motion to Strike Defendant's Expert Thomas Ireland; Adam Smith and Corey Eschweiler appearing on behalf of Plaintiff, Alexandra McLeod appearing on behalf of Andrea Awerbach, Jennifer Foley appearing on behalf of Jared Awerbach, the Court having considered the pleadings and papers on file herein and arguments of counsel at the time of hearing,

IT IS HEREBY ORDERED Plaintiff's Motion to Strike Defendants' Rebuttal Expert Witness Thomas Ireland is granted in part and denied in part.

IT IS FURTHER ORDERED Thomas Ireland shall be permitted to testify regarding Net Wage and Benefit Loss, Loss of Household Services, and the present value of Dr. Oliveri's Life Care Plan.

1 IT IS FURTHER ORDERED, that the Court will: "strike [Dr. Ireland's] ability to testify
2 against the premise of hedonic damages in the state of Nevada simply because the way [The Court]
3 took his report was that he was objecting to the premise of established law in Nevada, simply not
4 appropriate, so that part of his testimony will not be allowed at the time of trial."^[1]

5 IT IS FURTHER ORDERED that with respect to hedonic damage calculations, Thomas Ireland
6 will only be permitted to offer rebuttal testimony concerning the reliability and methodology of
7 Plaintiff's expert, Stan Smith's, damage calculations.

8
9
10 Dated this 15 day of November, 2013.

11
12 Nancy L. Allen
DISTRICT COURT JUDGE

13 Submitted by:

14
15 RESNICK & LOUIS, P.C.

16
17 By: [Signature] 1/6/13
18 Mitchell J. Resnick, Esq.
19 Nevada Bar No. 10274
20 Jeff Pitegoff, Esq.
21 Nevada Bar No. 5458
22 415 S. 6th Street, Suite 300
23 Las Vegas, NV 89101
24 Attorney for Defendant Jared Awerbach
25
26
27
28

^[1] October 30, 2013, transcript from hearing on Plaintiff's Motion to Strike.

EXHIBIT 1-D

EXHIBIT 1-D

ORIGINAL



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2 **PETER MAZZEO, ESQ.**
3 Nevada Bar No. 9387
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8 Facsimile: 702-870-3950
9 E-Mail: pmazzeo@lvnvlaw.com
10 Attorney for Defendant Andrea Awerbach

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

8 EMILIA GARCIA, individually,
9
10 Plaintiff,

Case No: A-11-637772-C

Dept No: XXVII

11 vs.

**ORDER REGARDING DEFENDANTS'
OBJECTION TO DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATIONS**

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

15 Defendants.

16
17 A hearing was held on April 10, 2014 regarding Defendants Andrea Awerbach and Jared
18 Awerbach's Objections to the Discovery Commissioner's Report and Recommendation granting in
19 part and denying in part Plaintiff's Motion For Protective Order and Attorney's Fees. All parties
20 were present by counsel for oral argument including ADAM D. SMITH, ESQ., of Glen Lerner
21 Injury Attorneys for Plaintiff EMILIA GARCIA; ROGER STRASSBURG, ESQ. of Resnick &
22 Louis, P.C. for Defendant JARED AWERBACH; and PETER MAZZEO, ESQ. and DARREN
23 RODRIGUEZ, ESQ. of Barron & Pruitt, LLP for Defendant ANDREA AWERBACH.

24 Defendants Andrea Awerbach and Jared Awerbach's Objections to the Discovery
25 Commissioner's Report and Recommendation granting in part and denying in part Plaintiff's Motion
26 for Protective Order and Attorney's Fees are sustained in part and overruled in part. Furthermore,
27 this Order shall replace the entirety of the proposed Report and Recommendation signed by the
28

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ATTORNEYS AT LAW
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NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

1 Discovery Commissioner, which was the subject of the Objection, and shall include both the
2 changed and non-changed portions of her ruling.

3 Based on the moving papers and oral argument by counsel,

4 IT IS HEREBY ORDERED that Plaintiff Emilia Garcia's Motion for Protective Order and
5 Attorneys' Fees on an Order Shortening Time is granted in part and denied in part;

6 IT IS FURTHER ORDERED that Defendant Jared Awerbach's subpoena duces tecum
7 served on the Las Vegas Metropolitan Police Department be quashed;

8 IT IS FURTHER ORDERED that all information obtained through the subpoena duces
9 tecum served on the Las Vegas Metropolitan Police Department be stricken, with the exception of
10 the recording of the 911 call made at the scene of the underlying accident that Jared Awerbach
11 claims to have in his possession;

12 IT IS FURTHER ORDERED that Defendant Jared Awerbach shall have until March 31,
13 2014 to engage in discovery solely to lay foundation for the recording of the 911 call. This
14 discovery shall be further limited to obtaining a custodian of records affidavit or taking a 30(b)(6)
15 deposition solely related to the foundation for the 911 recording;

16 IT IS FURTHER ORDERED that Defendant Andrea Awerbach's Notices of Deposition
17 served on Dr. David Oliveri and Officer Figueroa be quashed;

18 IT IS FURTHER ORDERED that no further discovery shall be had in this matter; and

19 IT IS FURTHER ORDERED that Defendant Jared Awerbach pay \$2000 for Emilia Garcia's
20 reasonable attorney's fees as sanctions for having to obtain a protective order. This sanction shall be

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 paid within 30 days after the District Court Judge signs its Order.

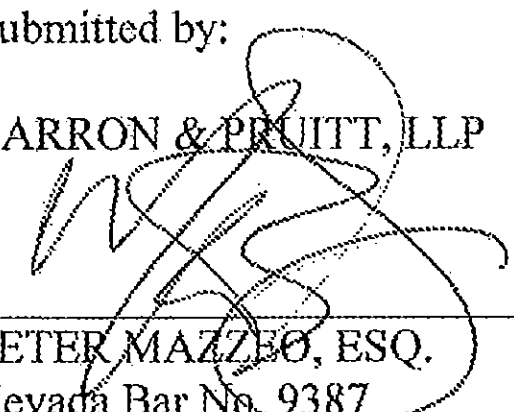
2 IT IS SO ORDERED:

3 DATED this 16 day of April, 2014.

4 
HON. NANCY L. ALLF

5
6 Submitted by:

7 BARRON & PRUITT, LLP

8 
9 PETER MAZZEO, ESQ.

10 Nevada Bar No. 9387

3890 W. Ann Road

11 Las Vegas, NV 89031

Attorneys for Defendant Andrea Awerbach

Approved as to Form and Content:

GLEN J. LERNER & ASSOCIATES

12 
ADAM SMITH, ESQ.

Nevada Bar No. 9690


4795 South Durango Drive

13 Las Vegas, Nevada 89147

Attorneys for Plaintiff Emilia Garcia

14 Approved as to Form and Content:

15 RESNICK & LOUIS, P.C.

16 
ROGER STRASSBURG, ESQ.

Nevada Bar No. 8682

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17 Las Vegas, NV 89146

Attorneys for Defendant Jared Awerbach

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
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EXHIBIT 1-E

EXHIBIT 1-E


ORIGINAL

ORDR

Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Adam D. Smith, Esq.
Nevada Bar No. 9690
GLEN LERNER INJURY ATTORNEYS
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E-mail: ceschweiler@glenlerner.com
asmith@glenlerner.com
Attorneys for Plaintiff

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

JUN 17 2014

BY: 
NICOLE MCDEVITT, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

Plaintiff,

v.

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

Defendants.

CASE NO.: A637772
DEPT NO.: XXVII

**ORDER REGARDING DEFENDANTS'
OBJECTION TO DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATIONS DENYING
MOTION TO REOPEN DISCOVERY
AND CONTINUE TRIAL**

Defendant Andrea Awerbach's Objection to the Discovery Commissioner's Report and Recommendation denying Defendant's Motion to Reopen Discovery and Continue Trial, and Defendant Jared Awerbach's Joinder, came on for hearing on April 30, 2014 and further discussions and argument regarding the nature and scope of permissible discovery continued at the subsequent Status Check conference held on May 7, 2014.

All parties were present by counsel for oral argument including ADAM D. SMITH, ESQ., of Glen Lerner Injury Attorneys for Plaintiff EMILIA GARCIA; ROGER STRASSBURG, ESQ. and LILY COMPTON, ESQ. of Resnick & Louis, P.C. for Defendant JARED AWERBACH; and PETER MAZZEO, ESQ. and DARREN RODRIGUEZ, ESQ. of Barron & Pruitt, LLP for Defendant ANDREA AWERBACH.

Based on the moving papers and oral argument by counsel,

IT IS HEREBY ORDERED the Defendants' Objection to the Discovery Commissioner's Report and Recommendation denying Defendant's Motion to Reopen Discovery and Continue Trial

1 is SUSTAINED finding that Defendant's failure to conduct certain prior discovery was the result of
2 excusable neglect.

3 **IT IS FURTHER ORDERED** the May 19, 2014 trial setting is vacated;

4 **IT IS FURTHER ORDERED** the case will be continued for a firm trial setting to begin on
5 February 2, 2015 with four weeks reserved for trial;

6 **IT IS FURTHER ORDERED** that discovery shall be reopened for all purposes;

7 **IT IS FURTHER ORDERED** the Court will issue a separate order identifying relevant
8 discovery dates, including dates for the disclosure of initial and rebuttal experts, the close of
9 discovery, and the filing of dispositive motions. Such order will also include all relevant trial and
10 motion dates;

11 **IT IS FURTHER ORDERED** Plaintiff may re-depose Defendant Andrea Awerbach,
12 without limitations as to the time or content of questions;

13 **IT IS FURTHER ORDERED** Defendants shall pay reasonable costs incurred by Plaintiff
14 related to discovery from this point forward, other than attorneys' fees. These costs shall include
15 depositions, deposition transcripts, expenses incurred for travel, and expert costs (including
16 deposing defense experts, hiring additional Plaintiff experts, and all payments due experts for
17 services rendered after May 7, 2014);

18 **IT IS FURTHER ORDERED** the additional discovery expenses incurred by the Plaintiff
19 shall split equally by the Defendants, subject to a later allocation based on a jury verdict;

20 **IT IS FURTHER ORDERED** Defendants shall pay the ^{reasonable} discovery expenses incurred by
21 Plaintiff as they come due and within a reasonable time upon submission of a proper vendor
22 invoice;

23 **IT IS FURTHER ORDERED** all future discovery disputes shall be presented to the
24 Discovery Commissioner, unless the Discovery Commissioner refers those disputes to the District
25 Court;

26 **IT IS FURTHER ORDERED** the Court reserves decision on objections to the timeliness of
27 discovery until hearings motions in limine; and
28

IT IS FURTHER ORDERED that Plaintiff's Motion to Strike Defendant's Expert Tami Rockholt and Request for Monetary Sanctions shall be withdrawn.

IT IS SO ORDERED:

DATED this 17 day of June, 2014.

Nancy L. Allf
HON. NANCY L. ALLF

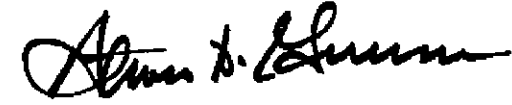
Respectfully submitted by:

GLEN J. LERNER & ASSOCIATES

By: _____
COREY M. ESCHWEILER, ESQ.
Nevada Bar No. 6635
ADAM D. SMITH, ESQ.
Nevada Bar No. 9690
CRAIG A. HENDERSON, ESQ.,
Nevada Bar No. 10077
4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiff

EXHIBIT 1-F

EXHIBIT 1-F


CLERK OF THE COURT

ORDER

Corey M. Eschweiler, Esq.
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asmith@glenlerner.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

Plaintiff,

v.

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

Defendants.

CASE NO.: A637772
DEPT NO.: XXVII

ORDER

Date of hearing: January 30, 2015
Time of hearing: 11:00 a.m.

Plaintiff Emilia Garcia's Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt for Violating This Court's Order Regarding Reimbursement of Plaintiff's Discovery Costs on Order Shortening Time came on for hearing on January 30, 2015, at 11:00 a.m. Plaintiff Emilia Garcia was represented by ADAM D. SMITH, ESQ., of Glen Lerner Injury Attorneys; Defendant Jared Awerbach was represented by ROGER STRASSBURG, ESQ. of Resnick & Louis, P.C.; and Defendant Andrea Awerbach was represented by PETER MAZZEO, ESQ. of Mazzeo Law, LLC.

The court, having considered the Motion, Supplement, Opposition, Reply, and oral argument of the parties, and good cause appearing,

IT IS HEREBY ORDERED Plaintiff's Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt for Violating This Court's Order Regarding Reimbursement of Plaintiff's Discovery Costs on Order Shortening Time is GRANTED;

1 IT IF FURTHER ORDERED Defendants have not shown cause why they should not be held
2 in contempt for violating this Court's Order regarding reimbursement of Plaintiff's discovery costs;

3 IT IS FURTHER ORDERED Defendants are in contempt for violating this Court's June 17,
4 2014, Order regarding Defendants' Objection to Discovery Commissioner's Report and
5 Recommendations Denying Motion to Reopen Discovery and Continue Trial;

6 IT IS FURTHER ORDERED the costs submitted by Plaintiff in her Motion, Supplement,
7 and January 14, 2015, letter to Discovery Commissioner Bulla are reasonable and necessitated by
8 Defendants' actions;

9 IT IS FURTHER ORDERED Defendants must pay all costs sought by Plaintiff in her
10 Motion, Supplement, and January 14, 2015, letter to Discovery Commissioner Bulla by February
11 11, 2015;

12 IT IS FURTHER ORDERED the costs that must be paid by February 11, 2015, include:

13 \$14,200 to Forensic Research & Analysis

14 \$34,125 to The Rejuvenation Medical Group, Inc.

15 \$961.45 to Carl Gann & Associates, Inc.

16 \$1,400 to Brian Lemper, D.O., Ltd.

17 \$50,263.46 to Park Dietz & Associates, Inc.

18 \$58,720.10 to Glen J. Lerner & Associates

19 IT IS FURTHER ORDERED Defendants have not sought to re-allocate costs in a manner
20 different from this Court's June 17, 2014, Order regarding Defendants' Objection to Discovery
21 Commissioner's Report and Recommendations Denying Motion to Reopen Discovery and Continue
22 Trial, and allocation shall remain the same as identified in the June 17, 2014, subject to future re-
23 allocation by the Court;

24 IT IS FURTHER ORDERED Defendants shall pay any additional costs in accordance with
25 this Court's June 17, 2014, Order regarding Defendants' Objection to Discovery Commissioner's
26 Report and Recommendations Denying Motion to Reopen Discovery and Continue Trial;

27 ...

28 ...

1 IT IS FURTHER ORDERED the Court sets a status check for February 12, 2015, at 10:30
2 a.m. to determine Defendants' compliance with this Order;

3
4 DATED this 9 day of February, 2015.

5
6 Nancy L. Allf
7 HON. NANCY L. ALLF *Dea*

8 Respectfully submitted by:

9 GLEN J. LERNER & ASSOCIATES

10 By: [Signature]
11 COREY M. ESCHWEILER, ESQ.
12 Nevada Bar No. 6635
13 ADAM D. SMITH, ESQ.
14 Nevada Bar No. 9690
15 CRAIG A. HENDERSON, ESQ.
Nevada Bar No. 10077
4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiff

16 Approved as to form and content:

17 By: Refused
18 Peter Mazzeo, Esq.
19 Danielle Kolkoski, Esq.
20 Mazzeo Law, LLC
528 S. Casino Center Blvd., Suite 305
Las Vegas, NV 89101
Attorney for Defendant Andrea Awerbach

21
22 By: Did not respond
23 Roger Strassburg, Esq.
24 Lily Richardson, Esq.
25 RESNICK & LOUIS, P.C.
6600 W. Charleston, Suite 117A
Las Vegas, NV 89146
Attorney for Defendant Jared Awerbach

EXHIBIT 1-G

EXHIBIT 1-G

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 * * * * *

6 EMILIA GARCIA,

7 Plaintiff,

CASE NO: A-11-637772

8 v.

DEPARTMENT 27

9 ANDREA AWERBACH and JARED
10 AWERBACH

Defendants.

11 **DECISION AND ORDER DENYING PLAINTIFF'S MOTION TO STRIKE**
12 **ANDREA AWERBACH'S ANSWER; GRANTING PLAINTIFF'S MOTION FOR**
13 **ORDER TO SHOW CAUSE; AND GRANTING IN PART AND DENYING IN**
14 **PART PLAINTIFF'S MOTION TO STRIKE SUPPLEMENTAL REPORTS**

15 These matters having come on for hearing before Judge Alf on the 15th day of
16 January, 2015; Adam Smith appearing on behalf of Plaintiff Emilia Garcia, (hereinafter
17 "Plaintiff" OR "Emilia"); Peter Mazzeo, Esq., and Danielle Kolkoski, Esq. appearing for
18 and on behalf of Defendant Andrea Awerbach (hereinafter "Andrea") and Roger
19 Strassberg, Esq. and Lily Richardson, Esq. appearing for and on behalf of Defendant
20 Jared Awerbach (hereinafter "Jared") and the Court having heard arguments of counsel,
21 and being fully advised in the premises:

22 **COURT FINDS** after review the Court ruled from the bench on some of the
23 matters before the Court. The Court granted the Plaintiff's Motion for Partial Summary
24 Judgment that Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS
25 484C.110(3) and denied Defendant Jared's Motion for Partial Summary Judgment on
26 Claims for Punitive Damages. The Court granted Defendant Andrea's Motion to
27 Continue Trial, as well as Defendant Jared's Joinder, and set the case on the trial stack
28

1 beginning April 6, 2015. The Court also ordered the parties to participate in a settlement
2 conference on February 19, 2015; based on the minute order entered by the settlement
3 judge, all parties participated in good faith.

4 **COURT FURTHER FINDS** after review the Court took Plaintiff's Motion to
5 Strike Defendant Andrea Awerbach's Answer under submission on January 15, 2015.
6 Plaintiff moves to strike Defendant Andrea's answer under NRCP 37(b)(C) for conduct
7 in discovery relating to concealment of an entry on her insurance claim log. **COURT**
8 **FURTHER FINDS** after review that striking the answer is inappropriate because
9 Plaintiff became aware of the concealed entry during discovery and was able to conduct a
10 deposition of the claims adjuster, but a lesser sanction is warranted. **COURT**
11 **FURTHER FINDS** after review Andrea gave her son permission to use the car and a
12 finding of permissive use is appropriate because the claims note was concealed
13 improperly, was relevant, and was willfully withheld by Defendant Andrea.

16 **COURT FURTHER FINDS** after review that Plaintiff filed a Motion for Order
17 to Show Cause why Defendant Jared Awerbach Should Not be Held in Contempt for
18 Violating the Court's Protective Order. Plaintiff seeks a recovery of attorneys' fees
19 relating to Defendant Jared's violation of the Discovery Commissioner's Report and
20 Recommendations (DCR&R) of August 26, 2014 that limited Defendant Jared's
21 subpoenas to spinal injuries claimed from this accident. **COURT FURTHER FINDS**
22 after review that Defendant Jared did not notify the recipients of the subpoenas of the
23 limitations in the DCR&R and received information outside of the limited scope.
24 Defendant Jared produced the protected documents in a NRCP 16.1 supplement on
25 November 3, 2014. **COURT FURTHER FINDS** after review that Defendant Jared
26
27
28

1 should be held in contempt for not complying with the August 26, 2014 DCR&R and
2 Plaintiff is entitled to attorneys' fees in the amount of \$5,000.

3 **COURT FURTHER FINDS** after review Plaintiff filed a Motion to Strike 1)
4 December 5, 2014 Supplemental Report of Defendants' Expert Witness Dr. Gregory
5 Brown; 2) December 5, 2014 Supplement of Dr. Joseph Wu; 3) December 5, 2014
6 Supplement of Dr. Raymond Kelly; and 4) December 11, 2014 Supplement of Dr. Curtis
7 Poindexter. **COURT FURTHER FINDS** after review that the Motion should be granted
8 in part and denied in part. As to the Supplemental Report of Dr. Brown, the Court denies
9 the Motion to Strike to remain consistent with the decision of the Court on December 30,
10 2014. The Court held that the scope of the experts' testimony will be determined at the
11 time of trial and experts can consider the opinions of other in their opinions, but they are
12 foundational only and the Court will not allow cumulative evidence. As to the
13 Supplements of Drs. Wu and Kelly, the Court grants the Motion to Strike because after
14 the Court struck Defendant Jared's experts on November 18, 2014, he did not re-
15 designate either Dr. Wu or Dr. Kelly. Because neither Dr. Wu nor Dr. Kelly is an expert
16 witness, their supplemental reports are stricken as well. As to Dr. Poindexter, the Court
17 grants the Motion to Strike as to the billing records because they were not timely
18 disclosed. Dr. Poindexter is limited to opinions set forth at the time of the expert
19 disclosure deadline. To remain consistent with previous rulings, Dr. Poindexter is
20 allowed to consider the opinions of others as part of his opinion, but they are foundational
21 only.
22
23
24

25 **COURT ORDERS** for good cause appearing and after review the Motion to
26 Strike Defendant Andrea Awerbach's Answer is **DENIED**, but a sanction of a finding of
27 permissive use is **GRANTED**.
28

COURT FURTHER ORDERS for good cause appearing and after review the Motion for Order to Show Cause why Defendant Jared Awerbach Should Not be Held in Contempt is **GRANTED**.

COURT FURTHER ORDERS for good cause appearing and after review Plaintiff's Motion to Strike is **GRANTED** in part and **DENIED** in part; **DENIED** as to Dr. Brown's Supplemental Report, **GRANTED** as to Drs. Wu and Kelly Supplemental Reports, and **GRANTED** as to the billing analysis in Dr. Poindexter's Supplement Report only.

Dated: February 24, 2015

Nancy L. Alf
NANCY ALF
DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and/or by Fax transmission to:

Glen J. Lerner & Associates - Adam D. Smith, Esq. - asmith@glenlerner.com
FAX: 702-933-7043

Mazzeo Law, LLC - Peter Mazzeo, Esq. - pmazzeo@mazzeolawfirm.com
FAX: 702-589-9829

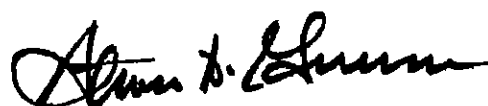
Resnick & Louis, P.C. - Roger Strassburg, Esq. - rstrassburg@rlattorneys.com
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Karen Lawrence
Judicial Executive Assistant

EXHIBIT 1-H

EXHIBIT 1-H



CLERK OF THE COURT

ORDER

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asmith@glenlerner.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

Plaintiff,

v.

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

Defendants.

CASE NO.: A637772

DEPT NO.: XXVII

ORDER

Date of hearing: Nov. 18, 2014

Time of hearing: 9:30 a.m.

Plaintiff Emilia Garcia's Motion to Strike Defendants' Expert Witnesses (1) Dr. Gregory Brown; (2) Dr. Melvin Pohl; (3) Dr. Daniel Shiode; (4) Dr. Russell Shah; (5) Dr. Joseph Wu; (6) Dr. Raymond Kelly; (7) Dr. David Bearman; (8) Dr. Greg Kane; (9) Tony Corroto; (10) Chip Siegel; (11) Dr. Michael Klein; and (12) Dr. Curtis Poindexter, or Alternatively, To Extend Rebuttal Expert Witness Deadline, came on for hearing on November 18, 2014, at 9:30 a.m. Plaintiff Emilia Garcia was represented by ADAM D. SMITH, ESQ., of Glen Lerner Injury Attorneys; Defendant Jared Awerbach was represented by ROGER STRASSBURG, ESQ. of Resnick & Louis, P.C.; and Defendant Andrea Awerbach was represented PETER MAZZEO, ESQ. of Mazzeo Law, LLC.

The court, having considered Plaintiff's Motion, Defendant Andrea Awerbach's opposition, Defendant Jared Awerbach's Opposition, Plaintiff's Reply and Supplemental Reply, and the oral argument of the parties, and good cause appearing,

1 IT IS HEREBY ORDERED Plaintiff's Motion to Strike Defendants' Expert Witnesses (1)
2 Dr. Gregory Brown; (2) Dr. Melvin Pohl; (3) Dr. Daniel Shiode; (4) Dr. Russell Shah; (5) Dr.
3 Joseph Wu; (6) Dr. Raymond Kelly; (7) Dr. David Bearman; (8) Dr. Greg Kane; (9) Tony Corroto;
4 (10) Chip Siegel; (11) Dr. Michael Klein; and (12) Dr. Curtis Poindexter, or Alternatively, To
5 Extend Rebuttal Expert Witness Deadline, is GRANTED in part and DENIED in part;

6 IT IS FURTHER ORDERED Dr. Gregory Brown; Dr. Melvin Pohl; Dr. Daniel Shiode; Dr.
7 Russell Shah; Dr. Joseph Wu; Dr. Raymond Kelly; Dr. David Bearman; Dr. Greg Kane; Tony
8 Corroto; and Chip Siegel are stricken as expert witnesses and barred from testifying subject to the
9 re-designation of two expert witnesses detailed below.

10 IT IS FURTHER ORDERED that Defendant Jared Awerbach may re-designate one expert
11 witness to respond to the conclusions made in the Metropolitan Police Department reports.

12 IT IS FURTHER ORDERED that Defendant Jared Awerbach may re-designate one expert
13 witness to opine regarding his physical and mental history.

14 IT IS FURTHER ORDERED that Defendant Jared Awerbach must inform Plaintiff Emilia
15 Garcia of the two expert witnesses he re-designates no later than November 26, 2014.

16 IT IS FURTHER ORDERED Dr. Michael Klein and Dr. Curtis Poindexter are not stricken.
17 The Court will not, however, allow cumulative evidence at trial and the allowance of certain expert
18 witnesses to testify at trial, including Dr. Michael Elkanich; Dr. Michael Klein; Dr. Robert Odell;
19 and Dr. Curtis Poindexter, is subject to further refinement by motions in limine or other pretrial
20 motions.

21 IT IS FURTHER ORDERED the testimony of all expert witnesses allowed by this Order is
22 subject to further refinement through motions in limine and other pretrial motions.

23 IT IS FURTHER ORDERED Plaintiff's alternative motion to extend rebuttal expert witness
24 deadline is GRANTED.

25 IT IS FURTHER ORDERED the parties are encouraged to agree on a date by which all
26 parties must disclose rebuttal expert witnesses and reports at a time after Defendant Jared
27 Awerbach's re-designation of expert witnesses detailed above.
28

1 IT IS FURTHER ORDERED the Court sets a status check for December 3, 2014 at 9:30
2 a.m. for the parties to identify the agreed-upon deadline to disclose expert witnesses and reports or,
3 if the parties have not agreed, for the Court to set a deadline for disclosure of rebuttal expert
4 witnesses and reports.

5 IT IS FURTHER ORDERED Defendant Andrea Awerbach's Countermotion for Sanctions
6 against Plaintiff is DENIED.

7 IT IS FURTHER ORDERED the trial date of February 2, 2014, remains unchanged.

8
9 DATED this 4 day of December 2014.

10 Nancy L. Allf
11 HON. NANCY L. ALLF on

12
13 Respectfully submitted by:

14 GLEN J. LERNER & ASSOCIATES

15 By: [Signature]
16 COREY M. ESCHWEILER, ESQ.
17 Nevada Bar No. 6635
18 ADAM D. SMITH, ESQ.
19 Nevada Bar No. 9690
20 CRAIG A. HENDERSON, ESQ.
21 Nevada Bar No. 10077
22 4795 South Durango Drive
23 Las Vegas, Nevada 89147
24 *Attorneys for Plaintiff*

21 Approved as to form and content:

22
23 By: [Signature]
24 Peter Mazzeo, Esq.
25 Mazzeo Law, LLC
26 528 S. Casino Center Blvd., Suite 305
27 Las Vegas, NV 89101
28 *Attorney for Defendant Andrea Awerbach*

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By: 

Roger Strassburg, Esq.
Mitchell J. Resnick, Esq.
RESNICK & LOUIS, P.C.
6600 W. Charleston, Suite 117A
Las Vegas, NV 89146
Attorney for Defendant Jared Awerbach

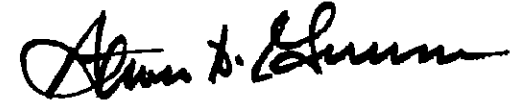
EXHIBIT 1-I

EXHIBIT 1-I

1 **ORDER**

2 Corey M. Eschweiler, Esq.
3 Nevada Bar No. 6635
4 Adam D. Smith, Esq.
5 Nevada Bar No. 9690
6 Craig A. Henderson, Esq.
7 Nevada Bar No. 10077
8 GLEN J. LERNER & ASSOCIATES
9 4795 South Durango Drive
10 Las Vegas, Nevada 89147
11 Telephone: (702) 877-1500
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13 asmith@glenlerner.com
14 chenderson@glenlerner.com
15 Attorneys for Plaintiff

Electronically Filed
06/01/2015 09:00:06 AM



CLERK OF THE COURT

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 EMILIA GARCIA, individually,

12 Plaintiff,

13 v.

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

17 Defendants.
18
19

) CASE NO. A637772
) DEPT. NO. XXVII

) **ORDER REGARDING PLAINTIFF'S**
) **MOTIONS IN LIMINE NUMBERS 1**
) **THROUGH 49**

) **Date of hearing: May 6, 2015**
) **Time of hearing: 10:00 a.m.**

20 Plaintiff Emilia Garcia's Motions in Limine Numbers 1 through 49 came on for hearing
21 before this Court on May 6, 2015. Plaintiff Emilia Garcia was represented by ADAM D. SMITH,
22 ESQ. and CRAIG A. HENDERSON, ESQ., of Glen Lerner Injury Attorneys; Defendant Jared
23 Awerbach was represented by ROGER STRASSBURG, ESQ. of Resnick & Louis, P.C.; and
24 Defendant Andrea Awerbach was represented by PETER MAZZEO, ESQ. of Mazzeo Law, LLC.

25 The Court, having considered Plaintiff's Motions in Limine Numbers 1 through 49, any
26 oppositions thereto, and Plaintiff's replies in support of the motions, hereby:

27 ORDERS Plaintiff's Motion in Limine Number 1 to Preclude Closing Argument That Emilia
28 Asked for a Greater Amount of Money Than Was Expected is GRANTED;

1 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 2 to Preclude
2 Hypothetical Medical Questions Designed to Confuse Jury is GRANTED;

3 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 3 To Preclude
4 Defendants from Suggesting to The Jury There Might Be Related Medical Records Prior to the
5 Crash that Have Not Been Disclosed is GRANTED;

6 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 4 Precluding Defendants
7 From Referring to Case as "Attorney-Driven Litigation" or a "Medical Buildup" Case, and
8 Precluding any Statements Insinuating that Emilia Sought Treatment at the Direction of Attorneys,
9 or Because of this Litigation is GRANTED in part and DENIED in part. Defendants are precluded
10 from using the words "attorney driven litigation," or "medical buildup." If a foundation is laid for
11 facts that the extent of the treatment was improper, unrelated or medically unnecessary, then the
12 defendants can argue that the motive for this case was for secondary gain. The Defendants are not
13 cut off from arguing from the facts that are deduced or brought out by the witnesses with regard to
14 these conclusions. IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 5
15 Precluding Defendant From Referring to any Ongoing or Past Federal Investigation or Allegations
16 of Conspiracy Between Doctors and Emilia's Attorneys is GRANTED.

17 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 6 Precluding Reference
18 to Emilia's Retention of Counsel is DENIED but the court will grant any objections should the
19 defendants intrude into the attorney client-privilege.

20 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 7 Precluding Reference
21 to Emilia's Counsel Working with Emilia's Treating Physicians on Other Unrelated Cases is
22 DENIED. The Court will allow limited latitude if there is relevance shown with regard to a
23 relationship between the doctor or a referral by the doctor or by the attorneys to the doctor.

24 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 8 Precluding Negative
25 References to Attorney Advertising is GRANTED.

26 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 9 that Closing
27 Arguments Must Be Limited to Evidence Presented at Trial is GRANTED reciprocally.

28 ...

1 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 10 Precluding Reference
2 to Recent Allegations Against Emilia's Counsel Relating to the BP Oil Spill cases is GRANTED.

3 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 11 Allowing Voir Dire
4 Questions Regarding Relationship to Any Insurance Company is GRANTED and enforced in
5 accordance with Nevada law and limited in scope by Nevada law. .

6 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 12 Allowing Voir Dire
7 Questioning Regarding Tort Reform Exposure is DEFERRED until jury selection.

8 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 13 Allowing Voir Dire
9 Questioning Regarding Verdict Amounts is DENIED. References to specific verdict amounts will
10 not be allowed during voir dire.

11 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 14 Permitting Treating
12 Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of
13 Disability — Without a Formal Expert Report is GRANTED in accord with the ruling in FCH₁ LLC
14 f/k/a Fiesta Palms LLC v. Rodriguez, 130 Nev. Adv. Op. 46, 326 P.3d 440 (2014).

15 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 15 Regarding Exclusion
16 of Non-Party Witnesses from Courtroom is GRANTED.

17 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 16 Precluding Negative
18 Inference for Failing to Call Cumulative Witness is GRANTED reciprocally.

19 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 17 Precluding Reference
20 to Filing Motions in Limine is GRANTED reciprocally.

21 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 18 Precluding
22 References to Taxation is GRANTED reciprocally.

23 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 19 Precluding Evidence
24 of Offers of Settlement or Compromise is GRANTED reciprocally.

25 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 20 Precluding
26 References to Collateral Sources is GRANTED with respect to all collateral sources other than
27 medical liens, but DENIED with respect to evidence of medical liens.

28 . . .

1 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 21 Excluding Evidence
2 of Prior and Subsequent Unrelated Injuries, Medical Conditions or Medical Treatment, Prior and
3 Subsequent Claims or Lawsuits is GRANTED.

4 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 22 Precluding Defense
5 Counsel from Suggesting that Defendants Will Be Required to Pay Jury Award Out of Pocket is
6 GRANTED.

7 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 23 Preclusion of Brian
8 Lemper's Settlement Agreement with the Government is GRANTED.

9 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 24 Excluding Lack of
10 Other Injuries from the Crash is DENIED.

11 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 25 Permitting Emilia to
12 Show Demonstrative Aids Relating to Plaintiff's Surgery is DEFERRED until the EDCR 2.67
13 conference where the parties will discuss proposed demonstrative trial exhibits.

14 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 26 Permitting the Traffic
15 Accident Report as a Means to Refresh the Police Officer's Recollection is GRANTED but the
16 traffic incident report itself is not admissible.

17 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 27 to exclude evidence
18 that Emilia did not graduate from high school is DENIED. The scope of Defendants' cross-
19 examination of Emilia will be determined at trial based upon the scope of Emilia's testimony on
20 direct examination.

21 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 28 to Exclude Evidence
22 of Emilia's Marital Status is DENIED. The scope of Defendants' cross-examination of Emilia will
23 be limited to what evidence Emilia chooses to introduce on the issue as related to damages.

24 IT IS FURTHER ORDERED Plaintiff's Motion in Limine Number 29 Excluding
25 Allegations of Improper Billing Practices Against Pacific Hospital of Long Beach is GRANTED.

26 IT IS FURTHER ORDERED Motion in Limine Regarding Apportionment of Damages
27 (MIL #30) is WITHDRAWN.

28 ...

1 IT IS FURTHER ORDERED Plaintiff's Motion in Limine To Exclude Evidence Plaintiff
2 Received Welfare (MIL #31) is GRANTED.

3 IT IS FURTHER ORDERED Plaintiff's Motion in Limine To Exclude Allegations Plaintiff
4 Was Speeding At the Time of the Accident (MIL #32) is GRANTED in part and DENIED in part.
5 Defendants are not permitted to argue or suggest Emilia was "speeding" at the time of the accident.
6 Defendant Jared Awerbach is, however, permitted to testify to his observations at the time of the
7 collision, including whether he perceived that Emilia increased the speed of her vehicle immediately
8 prior to the collision.

9 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Admit Evidence Defendant
10 Jared Awerbach Pleaded Guilty to Violating NRS 484C.110 (MIL #33) is DENIED.

11 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Preclude Defendants From
12 Arguing Plaintiff Was Malingering or Exhibited Secondary Gain (MIL #34) is DEFERRED until
13 trial.

14 IT IS FURTHER ORDERED Plaintiff's Motion to in Limine to Exclude Defendants' Expert
15 Witness Dr. Curtis Poindexter (MIL #35) is DENIED. Cumulative testimony will not be allowed at
16 trial, nor will two expert physicians be permitted to testify to the same subject matter at trial.

17 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Preclude Defendants From
18 Arguing Plaintiff Had an MRI on December 30, 2010 (MIL #36) is GRANTED.

19 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude Surveillance Video of
20 Plaintiff At Her Job At Sam's Town Casino (MIL #37) is GRANTED.

21 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Limit the Opinions of
22 Defendants' Expert Witness Dr. Gregory Brown to the Scope of his Expertise (MIL #38) is
23 DEFERRED until trial. Unless Dr. Brown can lay foundation for his personal expertise in
24 interpreting Emilia Garcia's MMPI-2 test, Dr. Brown cannot testify to the MMPI-2 test
25 administered by Jill Margolis, Ph.D. Unless Dr. Brown can lay foundation for his personal
26 experience in interpreting toxicology tests, Dr. Brown cannot testify regarding toxicology testing
27 administered to Jared Awerbach. No testimony will be admitted that contradicts the Court's partial

28 ...

1 summary judgment order finding Defendant Jared Awerbach was impaired at the time of the
2 January 2, 2011, motor vehicle accident.

3 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Preclude Defendants From
4 Arguing Dr. Brian Lemper Overtreated in this Case (MIL #39) is GRANTED in part and DENIED
5 in part. Evidence pertaining to Dr. Lemper's character or reputation as a physician is excluded.
6 Defendants may argue Dr. Lemper provided Emilia with unnecessary treatment in this case provided
7 Defendants' experts can lay foundation for the argument.

8 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Preclude Defendants From
9 Asking About Unrelated Accidents, Exclude Evidence of Plaintiff's Speeding Tickets, And Exclude
10 Questioning Regarding a Trip Plaintiff Took to California (MIL #40) is GRANTED in part and
11 DENIED in part. Evidence pertaining to a prior accident in 1993 involving an unrelated third-party
12 named Emilia Garcia is excluded. Evidence pertaining to Emilia's prior speeding citations, is
13 excluded. The motion is denied with respect to evidence pertaining to Emilia's trip to California
14 following her surgery. The court may allow limited cross-examination on this subject matter
15 depending on the scope of Emilia's direct testimony. Prior to any questions or mention of the trip to
16 California, the questioning party or party who intends to mention the trip must approach the bench
17 to notify the Court and all parties regarding the scope will be of the questioning because the scope
18 of cross-examination cannot be determined until the Court knows what the direct testimony is.

19 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Preclude Defendants' Experts
20 From Opining Counsel Directed Medical Treatment (MIL #41) is GRANTED in part and DENIED
21 in part. Defendants are permitted to offer evidence regarding the usual and customary charges for
22 similar treatment in Las Vegas, Nevada. Defendants may also offer evidence regarding Emilia's
23 referral to her medical providers by her attorneys, if a proper foundation is laid. All other portions
24 of the motion are granted.

25 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude Photographs of
26 Property Damage (MIL #42) is DENIED.

27 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude Reference to
28 Plaintiff's Alleged Inconsistent Drug Screen Results (MIL #43) is GRANTED.

1 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude Evidence Pertaining
2 to Her Termination From Aliante (MIL #44) is DEFERRED until the June 19, 2015, continued
3 hearing on Plaintiff and Defendants' motions in limine.

4 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude Emilia's Irrelevant
5 Medical Records (MIL #45) is GRANTED and the following medical records will not be admitted
6 at trial:

- 7 • JATX #504: PCH of Nevada, Inc., d/b/a Harmony Healthcare records for Plaintiff
- 8 • Canyon Medical Billing
- 9 • Keralapura Subramanyam
- 10 • Pamela Nyon OD
- 11 • Quest Diagnostics
- 12 • Walgreens
- 13 • CVS
- 14 • CIGNA
- 15 • Health Plan of Nevada.

16 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude the Opinions of
17 Defendants' Medical Expert Michael R. Klein (MIL #46) is DENIED. Plaintiff will be permitted on
18 cross-examination to explore Dr. Klein's bias. Dr. Klein may not testify to attorneys directing
19 treatment unless there is evidence of a direct referral from attorney to doctor.

20 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Limit the Opinions of
21 Defendants' Expert Witness Dr. David Bearman to the Scope of his Expertise (MIL #47) is
22 GRANTED. Dr. Bearman is not permitted to offer any testimony or opinions that contradict the
23 Court's partial summary judgment order finding Defendant Jared Awerbach was impaired at the
24 time of the January 2, 2011, motor vehicle collision. To the extent Dr. Bearman has given expert
25 opinions that do not contradict the scope of the Court's per se impairment ruling, and to the extent
26 Dr. Bearman is qualified to offer such opinions, then this is permissible provided Defendants lay a
27 proper foundation. Dr. Bearman may be allowed to offer those opinions, provided that on or before
28 June 5, 2015, Dr. Bearman provides Plaintiff with (1) a listing of any other cases in which [Dr.

1 Bearman] has testified as an expert at trial or by deposition within the preceding four years, and (2)
2 an affidavit from Dr. Bearman identifying the scope of his testimony on each of those occasions.

3 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Preclude Defendants From
4 Questioning Dr. Brian Lemper Regarding Marijuana (MIL #48) is GRANTED.

5 IT IS FURTHER ORDERED Motion in Limine to Exclude Evidence of Defendant Jared
6 Awerbach's Claimed Traumatic Brain Injury (MIL #49) is GRANTED. Defendants may not offer
7 evidence of Jared's claimed traumatic brain injury during the parties' case in chief. If there is a
8 separate punitive damages hearing, the Court will consider the scope of admissible evidence at that
9 time.

10 IT IS FURTHER ORDERED the hearing on the parties' remaining motions in limine will
11 reconvene on June 19, 2015, at 10:00 a.m.

12 Dated this 21 day of May, 2015.

13
14
15 Nancy L. Allen
DISTRICT COURT JUDGE

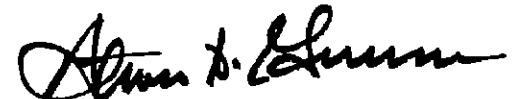
16 Respectfully submitted by:

17 GLEN J. LERNER & ASSOCIATES

18
19 By: [Signature]
COREY M. ESCHWEILER, ESQ.
20 ADAM D. SMITH, ESQ.
21 CRAIG A. HENDERSON, ESQ,
4795 South Durango Drive
22 Las Vegas, Nevada 89147
Attorneys for Plaintiff

EXHIBIT 1-J

EXHIBIT 1-J



CLERK OF THE COURT

ORDR

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

Plaintiff,

v.

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

Defendants.

CASE NO. A637772
DEPT. NO. XXVII

**ORDER REGARDING PLAINTIFF'S
MOTIONS IN LIMINE NUMBERS 44,
50, 52, 53, AND 54**

**Date of hearing: June 19, 2015
Time of hearing: 10:00 a.m.**

Plaintiff Emilia Garcia's Motions in Limine Numbers 44, 50, 52, 53, and 54 came on for hearing before this Court on June 19, 2015. Plaintiff Emilia Garcia was represented by ADAM D. SMITH, ESQ. and CRAIG A. HENDERSON, ESQ., of Glen Lerner Injury Attorneys, and Defendant Andrea Awerbach was represented by PETER MAZZEO, ESQ. of Mazzeo Law, LLC.

The Court, having considered Plaintiff's Motions in Limine Numbers 44, 50, 52, 53, and 54, any oppositions thereto, and Plaintiff's replies in support of the motions, hereby:

ORDERS Plaintiff's Motion in Limine to Exclude Evidence Pertaining to Her Termination From Aliante (MIL #44) is GRANTED;

IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Preclude Dr. Robert Odell's

1 Opinions Pertaining to Medical Billing (MIL #50) is DENIED. The scope of Dr. Odell's testimony
2 will be limited based on the foundation that can be laid for his opinions;¹

3 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude Evidence of
4 Impairment (MIL #52) is GRANTED;

5 IT IS FURTHER ORDERED Motion in Limine to Exclude Evidence of Liability Because
6 Jared's Judgment of Conviction Conclusively Establishes Liability (MIL #53) is GRANTED.

7 IT IS FURTHER ORDERED Plaintiff's Motion in Limine to Exclude Emilia's Irrelevant
8 Employment Records (MIL #54) is DENIED and deferred until trial.

9 Dated this 8 day of July, 2015.

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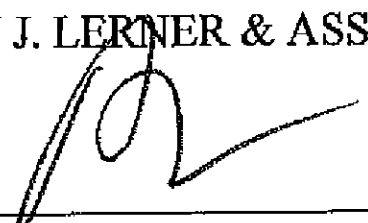
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Nancy L. Alif
DISTRICT COURT JUDGE _u

13 Respectfully submitted by:

14 GLEN J. LERNER & ASSOCIATES

15

16 By: 

COREY M. ESCHWEILER, ESQ.

17 ADAM D. SMITH, ESQ.

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Las Vegas, Nevada 89147

19 Attorneys for Plaintiff

20

21

22 MAZZEO LAW, LLC

23

By: 

24 PETER MAZZEO, ESQ.

631 S. 10th Street

25 Las Vegas, NV 89101

Attorneys for Defendant Andrea Awerbach

26

27

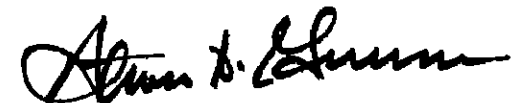
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¹ Plaintiff did not file a Motion in Limine Number 51.

EXHIBIT 1-K

EXHIBIT 1-K

ORIGINAL



CLERK OF THE COURT

DCRR

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

Plaintiff,

v.

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

Defendants.

CASE NO. A637772

DEPT. NO. XXVII

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

Date of hearing: Dec. 13, 2013

Time of hearing: 9:00 A.M.

HEARING DATE: December 13, 2013

HEARING TIME: 9:00 A.M.

ATTORNEY FOR PLAINTIFF EMILIA GARCIA: Adam D. Smith, Esq., of GLEN LERNER

INJURY ATTORNEYS appeared for Plaintiff Emilia Garcia.

ATTORNEY FOR DEFENDANT JARED AWERBACH: Jeff Pitegoff, Esq. of RESNICK &

LOUIS, P.C., appeared for Defendant Jared Awerbach.

ATTORNEY FOR DEFENDANT ANDREA AWERBACH: Alexandra McLeod, Esq., of BRADY,

VORWERCK, RYDER & CASPINO appeared for Defendant Andrea Awerbach.

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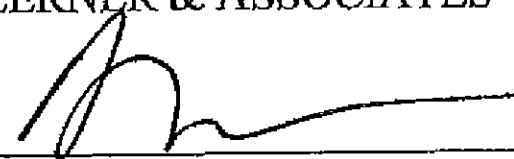
The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 10 day of January, ^{2014 BN}2013.


DISCOVERY COMMISSIONER

Respectfully submitted by:

GLEN J. LERNER & ASSOCIATES

By: 
COREY M. ESCHWEILER, ESQ.
Nevada Bar No. 6635
ADAM D. SMITH, ESQ.
Nevada Bar No. 9690
CRAIG A. HENDERSON, ESQ.
Nevada Bar No. 10077
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Attorneys for Plaintiff

Approved as to form and content:

RESNICK & LOUIS, P.C.

By: Did not respond
Jeff Pitegoff, Esq.
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Las Vegas, NV 89146
Attorneys for Defendant Jared Awerbach

BRADY, VORWERCK, RYDER & CASPINO

By: Refused
Alexandra McLeod, Esq.
2795 E. Desert Inn Rd., Suite 200
Las Vegas, Nevada 89121
Attorneys for Defendant Andrea Awerbach

CASE NAME: GARCIA v. AWERBACH

CASE NO.: A637772

NOTICE

Pursuant to NRCP 16.2(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

Pursuant to EDCR 2.34(f) an objection must be filed and served within five (5) days after being served with a copy of the Discovery Commissioner's Report. The Discovery Commissioner's Report is deemed received three (3) days after the clerk of the court or discovery commissioner designee places a copy of the Discovery Commissioner's Report in a folder of a party's attorney in the clerk's office, or three (3) days after mailing to party or the party's attorney. See EDCR 2.34(f).

A copy of the foregoing discovery Commissioner's report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2013.

☒ Placed in the folder of Plaintiff/Defendant's counsel in the Clerk's office on the 13 day of Jan., 2013.¹⁴

CLERK OF THE COURT

By: Jennifer Adth
Deputy Clerk

1 CASE NAME: GARCIA v. AWERBACH

2 CASE NO.: A637772

3 **ORDER**

4 The Court, having reviewed the above Report and Recommendations prepared by the
5 Discovery Commissioner and,

6 The parties having waived the right to object thereto,

7 ☒ No timely objection having been received in the office of the Discovery Commissioner
8 pursuant to EDCR 2.34(f),

9 Having received the objections thereto and the written arguments in support of said
10 objections, and good cause appearing,

11 ***

12 AND

13 ☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations
14 are affirmed and adopted.

15 IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendation s
16 are affirmed and adopted as modified in the following manner (attached hereto).

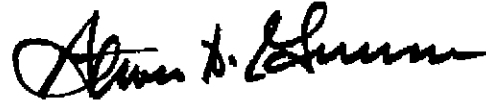
17 IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set
18 for _____, 2013, at _____,m.

19 DATED this 27 day of January, 2013.

20 Nancy L. Allen
21 DISTRICT COURT JUDGE
22
23
24
25
26
27
28

EXHIBIT 1-L

EXHIBIT 1-L



CLERK OF THE COURT

1 **ORDR**

2 Corey M. Eschweiler, Esq.
3 Nevada Bar No. 6635
4 Adam D. Smith, Esq.
5 Nevada Bar No. 9690
6 GLEN LERNER INJURY ATTORNEYS
7 4795 South Durango Drive
8 Las Vegas, Nevada 89147
9 Telephone: (702) 877-1500
10 Facsimile: (702) 933-7043
11 E-mail: ceschweiler@glenlerner.com
12 asmith@glenlerner.com
13 *Attorneys for Plaintiff*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 EMILIA GARCIA, individually,
11 Plaintiff,

12 v.

13 JARED AWERBACH, individually; ANDREA
14 AWERBACH, individually; DOES I - X, and ROE
15 CORPORATIONS I - X, inclusive,
16 Defendants.

CASE NO.: A637772
DEPT NO.: XXVII

ORDER

Date of hearing: Dec. 17, 2014
Time of hearing: 9:30 a.m.

16 Plaintiff Emilia Garcia's Motion to Strike Defendants' Expert Witnesses (1) Dr. Gregory
17 Brown; (2) Dr. Melvin Pohl; (3) Dr. Daniel Shiode; (4) Dr. Russell Shah; (5) Dr. Joseph Wu; (6) Dr.
18 Raymond Kelly; (7) Dr. David Bearman; (8) Dr. Greg Kane; (9) Tony Corroto; (10) Chip Siegel;
19 (11) Dr. Michael Klein; and (12) Dr. Curtis Poindexter, or Alternatively, To Extend Rebuttal Expert
20 Witness Deadline, came back on for a status check on December 3, 2014, at 9:30 a.m., along with
21 Plaintiff's Motion to Exclude Defendants' Expert Witness Tamara G. Rockholt on Order Shortening
22 Time and Plaintiff's Motion to Exclude Defendants' Expert Witness Irving Scher on Order
23 Shortening Time. Plaintiff Emilia Garcia was represented by ADAM D. SMITH, ESQ., of Glen
24 Lerner Injury Attorneys; Defendant Jared Awerbach was represented by ROGER STRASSBURG,
25 ESQ. of Resnick & Louis, P.C.; and Defendant Andrea Awerbach was represented by Danielle
26 Kolkoski of Mazzeo Law, LLC.

27 The court, having considered the oral argument of the parties, and good cause appearing,
28

1 IT IS HEREBY ORDERED the Court sets a further status check for December 30, 2014, at
2 12:00 p.m. to determine the deadline for Plaintiff Emilia Garcia to disclose expert witnesses to rebut
3 the opinions of Defendants' expert Dr. David Bearman.

4 IT IS FURTHER ORDERED the hearing on Plaintiff's Motion to Strike December 5, 2014
5 Supplemental Report of Defendants' Expert David Bearman on Order Shortening Time is continued
6 to December 30, 2014, at 12:00 pm.

7 IT IS FURTHER ORDERED the December 30, 2014, hearing at 12:00 p.m. shall be
8 telephonic.

9 IT IS FURTHER ORDERED Plaintiff's Motion to Exclude Defendants' Expert Witness
10 Tamara G. Rockholt on Order Shortening Time is granted in part and denied in part.

11 IT IS FURTHER ORDERED Ms. Rockholt shall not be permitted to testify regarding Ms.
12 Rockholt's opinion of what the amount of the medical bills Plaintiff incurred should have been, the
13 reasonableness of Ms. Garcia's medical bills, or the necessity of treatment.

14 IT IS FURTHER ORDERED Ms. Rockholt shall only be allowed to perform simple math
15 calculations to quantify the amount of bills a qualified medical expert claims were not medically
16 necessary, based upon the actual amount billed to Plaintiff.

17 IT IS FURTHER ORDERED Defendants may not introduce cumulative testimony regarding
18 the quantification of bills any medical expert deems not medical necessary, and Defendants may
19 only introduce one expert to quantify such bills.

20 IT IS FURTHER ORDERED Plaintiff's Motion to Exclude Defendants' Expert Witness
21 Irving Scher on Order Shortening Time is denied without prejudice.

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1 IT IS FURTHER ORDERED Defendants will be required to lay foundation for Irving
2 Scher's testimony, Irving Scher will not be permitted to offer medical opinions, and Irving Scher
3 will be limited to opining within his expertise, and solely regarding the opinions identified in his
4 report.

5
6 DATED this 31 day of December 2014.

7
8 Nancy L. Allf
HON. NANCY L. ALLF

9 Respectfully submitted by:

10 GLEN J. LERNER & ASSOCIATES

11
12 By: [Signature]
COREY M. ESCHWEILER, ESQ.
Nevada Bar No. 6635
13 ADAM D. SMITH, ESQ.
Nevada Bar No. 9690
14 CRAIG A. HENDERSON, ESQ.,
Nevada Bar No. 10077
15 4795 South Durango Drive
Las Vegas, Nevada 89147
16 *Attorneys for Plaintiff*

17 Approved as to form and content:

18
19 By: [Signature]
Peter Mazzeo, Esq.
20 Danielle Kolkoski, Esq.
Mazzeo Law, LLC
21 528 S. Casino Center Blvd., Suite 305
Las Vegas, NV 89101
22 *Attorney for Defendant Andrea Awerbach*

23
24 By: [Signature]
25 Roger Strassburg, Esq.
Lily Richardson, Esq.
RESNICK & LOUIS, P.C.
26 6600 W. Charleston, Suite 117A
Las Vegas, NV 89146
27 *Attorney for Defendant Jared Awerbach*
28

EXHIBIT 1-M

EXHIBIT 1-M

1 **ORDR**

2 Corey M. Eschweiler, Esq.

3 Nevada Bar No. 6635

4 Adam D. Smith, Esq.

5 Nevada Bar No. 9690

6 Craig A. Henderson, Esq.

7 Nevada Bar No. 10077

8 GLEN J. LERNER & ASSOCIATES

9 4795 South Durango Drive

10 Las Vegas, Nevada 89147

11 Telephone: (702) 877-1500

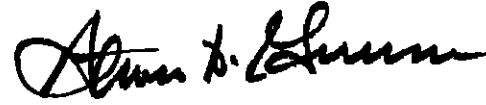
12 Facsimile: (702) 933-7043

13 asmith@glenlerner.com

14 chenderson@glenlerner.com

15 Attorneys for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

10 EMILIA GARCIA, individually,

11 Plaintiff,

12 v.

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

16 Defendants.

) CASE NO. A637772

) DEPT. NO. XXVII

) **ORDER GRANTING, IN PART, AND**
) **DENYING, IN PART, PLAINTIFF'S**
) **MOTION FOR PARTIAL SUMMARY**
) **JUDGMENT THAT DEFENDANT**
) **JARED AWERBACH WAS PER SE**
) **IMPAIRED PURSUANT TO NRS**
) **484C.110(3); AND**
) **DENYING DEFENDANT JARED**
) **AWERBACH'S MOTION FOR**
) **PARTIAL SUMMARY JUDGMENT ON**
) **PUNITIVE DAMAGE CLAIMS**

) **Date of hearing: Jan. 15, 2015**

) **Time of hearing: 9:30 a.m.**

20 Plaintiff Emilia Garcia's Motion for Partial Summary Judgment that Defendant Jared
21 Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3); and Defendant Jared Awerbach's
22 Motion for Partial Summary Judgment on Punitive Damage Claims came on for hearing before this
23 Court on January 15, 2015. Plaintiff Emilia Garcia was represented by ADAM D. SMITH, ESQ., of
24 Glen Lerner Injury Attorneys; Defendant Jared Awerbach was represented by ROGER
25 STRASSBURG, ESQ. of Resnick & Louis, P.C.; and Defendant Andrea Awerbach was represented
26 by Peter Mazzeo of Mazzeo Law, LLC.

27 The Court, having considered the papers and pleadings on file in this matter and the oral
28 argument of the parties, now finds and concludes as follows:

FINDINGS OF FACT

1. On January 2, 2011, Plaintiff Emilia Garcia and Defendant Jared Awerbach were involved in a car crash.

2. After the crash, Jared consented to having the Las Vegas Metropolitan Police Department take a blood sample from him.

3. The Las Vegas Metropolitan Police Department toxicology laboratory tested Jared's blood and determined that, at the time of the January 2, 2011, crash, Jared had 47 nanograms of marijuana metabolite per milliliter of blood.

4. Jared has come forward with no admissible evidence creating a genuine issue of material fact regarding the level of marijuana metabolite in his blood system following the January 2, 2011, crash.

CONCLUSIONS OF LAW

1. Pursuant to NRCP 56(d):

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

NRCP 56(d) (emphasis added).

2. NRS 42.010(1) provides:

In an action for the breach of an obligation, where the defendant caused an injury by the operation of a motor vehicle in violation of NRS 484C.110, 484C.130 or 484C.430 after willfully consuming or using alcohol or another substance, knowing that the defendant would thereafter operate the motor vehicle, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant.

3. Under NRS 484C.110(3)(h), "[i]t is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his or her blood or urine that is equal to or greater than... five

1 nanograms per milliliter of marijuana metabolite.” NRS 484C.110(3)(h); *see also Williams v. State*,
2 118 Nev. 536, 540-41, 50 P.3d 1116, 1119 (2002).

3 4. “In passing the prohibited substance statute, the Legislature clearly articulated its intent
4 to follow the lead of nine other states and create a per se drug violation similar to the alcohol per se
5 statute.” *Williams*, 118 Nev. at 541, 50 P.3d at 1119.

6 5. The toxicology test results from the Las Vegas Metropolitan Police Department
7 toxicology laboratory demonstrate Jared had 47 ng/mL of marijuana metabolite in his blood at the
8 time of the crash. This exceeds the legal level of 5 ng/mL of marijuana metabolite set forth in NRS
9 484C.110(3)(h).

10 6. Jared is, therefore, deemed per se impaired as a matter of law based on the undisputed
11 level of marijuana metabolite in his blood at the time of the crash, regardless of whether Jared was
12 actually impaired at the time of the January 2, 2011, accident. This fact is deemed conclusively
13 established for purposes of trial.

14 ORDER

15 Based on the foregoing, and good cause appearing, it is, therefore:

16 1. ORDERED Plaintiff Emilia Garcia’s Motion for Partial Summary Judgment that
17 Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3)(h) is GRANTED.
18 Defendant Jared Awerbach is deemed per se impaired as a matter of law based on the undisputed
19 level of marijuana metabolite in his blood at the time of the crash. This fact is conclusively
20 established for purposes of trial.

21 2. ORDERED Plaintiff Emilia Garcia’s Motion for Partial Summary Judgment that
22 Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3)(g) based on the level
23 of marijuana in Jared’s blood system is DENIED.

24 ///

25 ///

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28 ///

3. Defendant Jared Awerbach's Motion for Partial Summary Judgment on Punitive Damages claims is DENIED without prejudice.

Dated this 26 day of January, 2015.

Nancy L. Alf
DISTRICT COURT JUDGE

Respectfully submitted by:

GLEN J. LERNER & ASSOCIATES

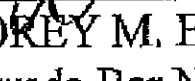
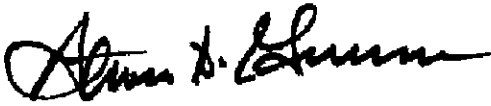
By: 
COREY M. ESCHWEILER, ESQ.
Nevada Bar No. 6635
ADAM D. SMITH, ESQ.
Nevada Bar No. 9690
CRAIG A. HENDERSON, ESQ.,
Nevada Bar No. 10077
4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiff

EXHIBIT 1-N

EXHIBIT 1-N



CLERK OF THE COURT

51
1 ORDR

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 * * * * *

6 EMILIA GARCIA,

7 Plaintiff,

CASE NO: A-11-637772

8 v.

DEPARTMENT 27

9 ANDREA AWERBACH and JARED
10 AWERBACH

Defendants.

11 **DECISION AND ORDER DENYING DEFENDANT ANDREA AWERBACH'S**
12 **MOTION FOR RELIEF FROM FINAL COURT ORDER**

13 This matter having come on for hearing before Judge Allf on the 15th day of
14 April, 2015; Adam Smith appearing on behalf of Plaintiff Emilia Garcia, (hereinafter
15 "Plaintiff" OR "Emilia") and Peter Mazzeo, Esq. appearing for and on behalf of
16 Defendant Andrea Awerbach (hereinafter "Andrea"), and the Court having heard
17 argument of counsel, and being fully advised in the premises:

18
19 **COURT FINDS** after review that in its February 25, 2015 Decision and Order,
20 the Court denied Plaintiff's Motion to Strike Defendant Andrea's Answer. However the
21 Court did enter a lesser sanction under NRCP 37(c), finding there was permissive use of
22 Defendant Andrea's vehicle because "the claims note was concealed improperly, was
23 relevant, and was willfully withheld by Defendant Andrea."

24 **COURT FURTHER FINDS** after review Defendant Andrea filed a Motion for
25 relief from Final Court Order on March 13, 2015 under NRCP 60(b) and EDCR 2.24.
26 Under NRCP 60(b), a moving party can be relieved from an order for "(1) mistake,
27 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due
28

RECEIVED

APR 27 2015

CLERK OF THE COURT

1 diligence could not have been discovered in time” It is the moving party’s burden to
2 show there was a mistake on the part of the court or there is newly discovered evidence
3 relevant to the previous order. Pursuant to EDCR 2.24, the motion for reconsideration
4 must be filed within 10 days after written notice of the order; here the Notice of Entry of
5 Order was filed on February 27, 2015 and the Motion for Relief was timely filed.

6 **COURT FURTHER FINDS** after review Defendant Andrea’s Motion for Relief
7 does not cite to any newly discovered evidence. Instead, Defendant Andrea’s Motion
8 argues, without citation to case law, that the Court cannot issue a sanction under NRCP
9 37(c) unless Plaintiff first moves for a Motion to Compel under NRCP 37(a). Here,
10 however, where Plaintiff discovered the concealed claims note without court intervention,
11 to argue that no sanctions could be entered without an order would have the effect of
12 condoning Defendant Andrea’s concealment of a relevant and discoverable claim note.
13

14 **COURT FURTHER FINDS** after review that although NRCP 37(b) requires a
15 finding that a party failed to comply with a court order, NRCP 37(c) allows the Court to
16 impose an “appropriate sanction” from those allowed under NRCP 37(b)(2), including
17 “(B) An order refusing to allow the disobedient party to support or oppose designated
18 claims or defenses, or prohibiting that party from introducing designated matters in
19 evidence.” The plain language of NRCP 37(c) does not require violation of a previous
20 order, and all case law cited in the reply stems from NRCP 37(b) and the requirement in
21 the language of the rule that a party violate the court order before sanctions may be
22 issued.
23

24 **COURT FURTHER FINDS** after review the Nevada Supreme Court has
25 addressed the court’s ability to issue sanctions.
26

27 [C]ourts have ‘inherent equitable powers to dismiss actions or enter
28 default judgments for ... abusive litigation practices.’ Litigants and

1 attorneys alike should be aware that these powers may permit sanctions
2 for discovery and other litigation abuses not specifically proscribed by
statute.

3 Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (*internal*
4 *citations omitted*). "Non-case concluding sanctions for discovery sanctions do not have to
5 be preceded by other less severe sanctions." Bahena v. Goodyear Tire & Rubber Co., 126
6 Nev. Adv. Op. 26, 235 P.3d 592 (2010). Here, the finding of permissive use does not
7 conclude the case.
8

9 **COURT FURTHER FINDS** after review Young v. Johnny Ribeiro Bldg. directs
10 a court to a non-exhaustive list of pertinent factors for severe discovery sanctions,
11 specifically dismissal with prejudice. The court must thoughtfully consider the following
12 factors:

13 the degree of willfulness of the offending party, the extent to which the
14 non-offending party would be prejudiced by a lesser sanction, the severity
15 of the sanction of dismissal relative to the severity of the discovery abuse,
16 whether any evidence has been irreparably lost, the feasibility and fairness
17 of alternative, less severe sanctions, such as an order deeming facts
18 relating to improperly withheld or destroyed evidence to be admitted by
the offending party, the policy favoring adjudication on the merits,
19 whether sanctions unfairly operate to penalize a party for the misconduct
of his or her attorney, and the need to deter both the parties and future
litigants from similar abuses.

20 Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 93, 787 P.2d 777, 780 (1990).

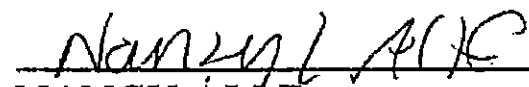
21 **COURT FURTHER FINDS** after review that here the Court did consider the
22 Ribeiro factors and did enter the less severe sanction of finding there was permissive use
23 rather than striking Defendant Andrea's answer as requested by Plaintiff's Motion. The
24 finding of permissive use specifically relates to the content of the improperly withheld
25 claims note, which included a statement by Defendant Andrea that she had given
26 Defendant Jared permission to use her car at the time of the accident. The finding of
27 permissive use does not prevent adjudication on the merits because Plaintiff still
28

1 maintains the burden of showing causation and damages. The withholding of the note and
2 the misleading privilege log was willful, and sanctions are necessary to "deter the both
3 the parties and future litigants from similar abuses." Id. Although the note was withheld
4 by previous counsel, Defendant Andrea's deposition testimony at both of her depositions
5 was contrary to her statement to her insurance carrier. The sanction was crafted to
6 provide a fair result to both parties, given the severity of the issue.
7

8 **COURT FURTHER FINDS** after review Defendant Andrea has failed to meet
9 her burden under NRCP 60(b) for relief from a final order. Defendant Andrea has not
10 provided any evidence that would change the court's February 25, 2015 order. Defendant
11 has also failed to show there was a mistake of law because Ribeiro and Bahena hold that
12 a court has the equitable power to enter sanctions and not require a lesser sanction to
13 issue or a party to violate a specific discovery order.
14

15 **COURT FURTHER ORDERS** for good cause appearing and after review
16 Defendant Andrea's Motion for Relief from Final Court order is **DENIED**.
17

18 Dated: April 22, 2015.
19

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21 NANCY ALF
22 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and/or by Fax transmission to:

Glen J. Lerner & Associates - Adam D. Smith, Esq. – asmith@glenlerner.com
FAX: 702-933-7043

Mazzeo Law, LLC – Peter Mazzeo, Esq. – pmazzeo@mazzeolawfirm.com
FAX: 702-589-9829

Resnick & Louis, P.C. – Roger Strassburg, Esq. – rstrassburg@rlattorneys.com
FAX: 702-997-3800



Karen Lawrence
Judicial Executive Assistant

EXHIBIT 1-0

EXHIBIT 1-0

B1 (Official Form 1)(04/13)

United States Bankruptcy Court District of Nevada				Voluntary Petition	
Name of Debtor (if individual, enter Last, First, Middle): AWERBACH, JARED EMMANUEL			Name of Joint Debtor (Spouse) (Last, First, Middle):		
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):			All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):		
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all) xxx-xx-6703			Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)		
Street Address of Debtor (No. and Street, City, and State): 480 West Bonanza Road Las Vegas, NV			Street Address of Joint Debtor (No. and Street, City, and State):		
ZIP Code 89106			ZIP Code		
County of Residence or of the Principal Place of Business: Clark			County of Residence or of the Principal Place of Business:		
Mailing Address of Debtor (if different from street address):			Mailing Address of Joint Debtor (if different from street address):		
ZIP Code			ZIP Code		
Location of Principal Assets of Business Debtor (if different from street address above):					
Type of Debtor (Form of Organization) (Check one box) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)		Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other		Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding	
Chapter 15 Debtors Country of debtor's center of main interests: Each country in which a foreign proceeding by, regarding, or against debtor is pending:		Tax-Exempt Entity (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).		Nature of Debts (Check one box) <input checked="" type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input type="checkbox"/> Debts are primarily business debts.	
Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.			Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,490,925 (amount subject to adjustment on 4-01-16 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).		
Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.				THIS SPACE IS FOR COURT USE ONLY	
Estimated Number of Creditors <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> OVER 100,000					
Estimated Assets <input checked="" type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion					
Estimated Liabilities <input checked="" type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion					

B1 (Official Form 1)(04/13)

Page 2

Voluntary Petition*(This page must be completed and filed in every case)*

Name of Debtor(s):

AWERBACH, JARED EMMANUEL**All Prior Bankruptcy Cases Filed Within Last 8 Years** (If more than two, attach additional sheet)

Location

Where Filed: **- None -**

Case Number:

Date Filed:

Location

Where Filed:

Case Number:

Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

- None -

Case Number:

Date Filed:

District:

Relationship:

Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).

X /s/ Ogonna M. Atamoh

Signature of Attorney for Debtor(s)

Ogonna M. Atamoh 007589

5/26/15

(Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☒ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☒ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue

(Check any applicable box)

- ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.
- ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes)

- ☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(Name of landlord that obtained judgment)

(Address of landlord)

- ☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and
- ☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.
- ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):

AWERBACH, JARED EMMANUEL**Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.
 [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
 [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X 
 Signature of Debtor **JARED EMMANUEL AWERBACH**

X _____
 Signature of Joint Debtor

Telephone Number (If not represented by attorney)

5/21/15

Date

Signature of Attorney*

X 
 Signature of Attorney for Debtor(s)

Ogonna M. Atamoh 007589

Printed Name of Attorney for Debtor(s)

Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson

Firm Name

**400 South Fourth Street
 Third Floor
 Las Vegas, NV 89101**

Address

702.791.0308 Fax: 702.791.1912

Telephone Number

5/26/15

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
 Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
 Signature of Foreign Representative

Printed Name of Foreign Representative

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X _____

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.

B6 Summary (Official Form 6 - Summary) (12/14)

United States Bankruptcy Court
District of Nevada

In re **JARED EMMANUEL AWERBACH**

Debtor

Case No. _____

Chapter 7

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	0.00		
B - Personal Property	Yes	3	95.00		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		0.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	2		7,032.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	3		6,255.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	2			190.00
J - Current Expenditures of Individual Debtor(s)	Yes	2			190.00
Total Number of Sheets of ALL Schedules		17			
Total Assets			95.00		
Total Liabilities				13,287.00	

B 6 Summary (Official Form 6 - Summary) (12/14)

United States Bankruptcy Court
District of Nevada

In re JARED EMMANUEL AWERBACH

Debtor

Case No. _____

Chapter 7

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	7,032.00
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	0.00
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	0.00
Student Loan Obligations (from Schedule F)	0.00
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	0.00
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	0.00
TOTAL	7,032.00

State the following:

Average Income (from Schedule I, Line 12)	190.00
Average Expenses (from Schedule J, Line 22)	190.00
Current Monthly Income (from Form 22A-1 Line 11; OR, Form 22B Line 14; OR, Form 22C-1 Line 14)	190.00

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		0.00
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column	7,032.00	
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		0.00
4. Total from Schedule F		6,255.00
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		6,255.00

B6A (Official Form 6A) (12/07)

In re JARED EMMANUEL AWERBACH

Case No. _____

Debtor

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
None				

Sub-Total >	0.00	(Total of this page)
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Total >	0.00
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0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

B6B (Official Form 6B) (12/07)

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand		Cash in Wallet	-	20.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.	X			
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		Bible and Koran	-	75.00
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			

Sub-Total > **95.00**
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.		Potential inheritance from grandmother.	-	Unknown
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > **0.00**
(Total of this page)

Sheet 1 of 2 continuation sheets attached
to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.		Jared Awerbach's rights, if any, against Liberty Mutual under a certain policy of auto insurance, Pol. No. AO2-268-633569-40 0 S, issued to his mother, Andrea Awerbach.	-	Unknown

Sub-Total > **0.00**
(Total of this page)
Total > **95.00**

Sheet **2** of **2** continuation sheets attached
to the Schedule of Personal Property

(Report also on Summary of Schedules)

B6C (Official Form 6C) (4/13)

In re JARED EMMANUEL AWERBACH

Case No. _____

Debtor

SCHEDULE C - PROPERTY CLAIMED AS EXEMPTDebtor claims the exemptions to which debtor is entitled under:
(Check one box)☐ Check if debtor claims a homestead exemption that exceeds
\$155,675. (Amount subject to adjustment on 4/1/16, and every three years thereafter
with respect to cases commenced on or after the date of adjustment.)☐ 11 U.S.C. §522(b)(2)☒ 11 U.S.C. §522(b)(3)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
<u>Cash on Hand</u> <u>Cash in Wallet</u>	Nev. Rev. Stat. § 21.090(1)(z)	20.00	20.00
<u>Books, Pictures and Other Art Objects; Collectibles</u> <u>Bible and Koran</u>	Nev. Rev. Stat. § 21.090(1)(a)	75.00	75.00

Total:	95.00	95.00
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0 continuation sheets attached to Schedule of Property Claimed as Exempt

B6D (Official Form 6D) (12/07)

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H U S B A N D W I F E J O I N T C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					
Subtotal (Total of this page)								
Total (Report on Summary of Schedules)							0.00	0.00

0 continuation sheets attached

B6E (Official Form 6E) (4/13)

In re JARED EMMANUEL AWERBACH

Case No. _____

Debtor

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)**☒ Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$12,475* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$6,150* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ Deposits by individuals

Claims of individuals up to \$2,775* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ Taxes and certain other debts owed to governmental units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ Commitments to maintain the capital of an insured depository institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ Claims for death or personal injury while debtor was intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amount subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B6E (Official Form 6E) (4/13) - Cont.

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

Domestic Support Obligations

TYPE OF PRIORITY

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B T O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
								AMOUNT ENTITLED TO PRIORITY
Account No. Case No. R-13-177198-R			March 28, 2014					
State Collection and Disbursement Unit P.O. Box 98950 Las Vegas, NV 89193-8950			Child Support Arrears.					0.00
							7,032.00	7,032.00
Account No.								
Account No.								
Account No.								
Account No.								
Subtotal (Total of this page)							7,032.00	0.00 7,032.00
Total (Report on Summary of Schedules)							7,032.00	0.00 7,032.00

Sheet **1** of **1** continuation sheets attached to
Schedule of Creditors Holding Unsecured Priority Claims

Subtotal
(Total of this page)

Total

(Report on Summary of Schedules)

B6F (Official Form 6F) (12/07)

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M. I F C L A I M I S S U B J E C T T O S E T O F F, S O S T A T E.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	A M O U N T O F C L A I M
Account No. Aargon Agency Inc. 3025 West Sahara Avenue Las Vegas, NV 89102		-	June 23, 2014 Medical Bill with Centennial Hills Hospital sent to collections.				156.00
Account No. Aargon Agency Inc. 3025 West Sahara Avenue Las Vegas, NV 89102		-	October 27, 2014 Medical Bill from Spring Valley Hospital sent to collections.				251.00
Account No. Aargon Agency Inc. 3025 West Sahara Avenue Las Vegas, NV 89102		-	July 29, 2013 Medical Bill with Centennial Hills Hospital sent to collections.				151.00
Account No. Andrea Awerbach 4006 Dripping Springs Avenue North Las Vegas, NV 89031		-	"For Notice Purposes Only"	X	X	X	Unknown
Subtotal (Total of this page)							558.00

2 continuation sheets attached

B6F (Official Form 6F) (12/07) - Cont.

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. Bay Area Credit Service 1000 Abernathy Road Building 400 Suite Atlanta, GA 30328		-	February 1, 2014 Medical Bill with American Medical Response sent to collections.				187.00
Account No. Bay Area Credit Service 1000 Abernathy Road Building 400 Suite Atlanta, GA 30328		-	June 1, 2012 Medical Bill from American Medical Response sent to collections.				184.00
Account No. Colorado Technical University 4435 North Chestnut Street Colorado Springs, CO 80907		-		X			Unknown
Account No. A-11-637772-C Emilia Garcia c/o Adam D. Smith, Esq. Glen J. Lerner & Associates 4795 South Durango Drive Las Vegas, NV 89147		-	March 25, 2011 Action Pending in District Court for Clark County, Nevada - "For Notice Purposes Only"	X	X	X	Unknown
Account No. A-11-637772 Glen J. Lerner & Associates c/o Adam D. Smith 4795 South Durango Drive Las Vegas, NV 89147		-	February 24, 2015 Attorneys' fees in connection with state court sanctions order.				5,000.00
Subtotal (Total of this page)							5,371.00

Sheet no. 1 of 2 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont.

In re **JARED EMMANUEL AWERBACH**

Case No. _____

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.								
Las Vegas Athletic Club 9065 S. Eastern Avenue Las Vegas, NV 89123		-						326.00
Account No.								
NV Energy 6226 West Sahara Avenue Las Vegas, NV 89146		-					X	Unknown
Account No.								
Account No.								
Account No.								
Sheet no. 2 of 2 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims								Subtotal (Total of this page)
								Total (Report on Summary of Schedules)
								326.00
								6,255.00

B6G (Official Form 6G) (12/07)

In re JARED EMMANUEL AWERBACH

Case No. _____

Debtor

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.
State whether lease is for nonresidential real property.
State contract number of any government contract.

0

_____ continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

B6H (Official Form 6H) (12/07)

In re JARED EMMANUEL AWERBACH

Case No. _____

Debtor

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

0

continuation sheets attached to Schedule of Codebtors

Fill in this information to identify your case:

Debtor 1 JARED EMMANUEL AWERBACHDebtor 2
(Spouse, if filing)United States Bankruptcy Court for the: DISTRICT OF NEVADACase number
(If known)

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing post-petition chapter 13 income as of the following date:

MM / DD / YYYY

Official Form B 61

Schedule I: Your Income

12/13

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. Fill in your employment information.

If you have more than one job, attach a separate page with information about additional employers.

Employment status

Debtor 1

- ☒ Employed
- ☐ Not employed

Debtor 2 or non-filing spouse

- ☐ Employed
- ☐ Not employed

Occupation

Securty Guard

Include part-time, seasonal, or self-employed work.

Employer's name

Las Vegas Rescue Mission

Occupation may include student or homemaker, if it applies.

Employer's address

480 West Bonanza Road
Las Vegas, NV 89106

How long employed there?

7 Months

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

		For Debtor 1	For Debtor 2 or non-filing spouse
2. List monthly gross wages, salary, and commissions (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2.	\$ <u>0.00</u>	\$ <u>N/A</u>
3. Estimate and list monthly overtime pay.	3.	+\$ <u>0.00</u>	+\$ <u>N/A</u>
4. Calculate gross income. Add line 2 + line 3.	4.	\$ <u>0.00</u>	\$ <u>N/A</u>

Debtor 1 JARED EMMANUEL AWERBACH

Case number (if known) _____

	For Debtor 1	For Debtor 2 or non-filing spouse	
Copy line 4 here _____	4. \$ 0.00	\$ N/A	
5. List all payroll deductions:			
5a. Tax, Medicare, and Social Security deductions	5a. \$ 0.00	\$ N/A	
5b. Mandatory contributions for retirement plans	5b. \$ 0.00	\$ N/A	
5c. Voluntary contributions for retirement plans	5c. \$ 0.00	\$ N/A	
5d. Required repayments of retirement fund loans	5d. \$ 0.00	\$ N/A	
5e. Insurance	5e. \$ 0.00	\$ N/A	
5f. Domestic support obligations	5f. \$ 0.00	\$ N/A	
5g. Union dues	5g. \$ 0.00	\$ N/A	
5h. Other deductions. Specify: _____	5h.+ \$ 0.00	+ \$ N/A	
6. Add the payroll deductions. Add lines 5a+5b+5c+5d+5e+5f+5g+5h.	6. \$ 0.00	\$ N/A	
7. Calculate total monthly take-home pay. Subtract line 6 from line 4.	7. \$ 0.00	\$ N/A	
8. List all other income regularly received:			
8a. Net income from rental property and from operating a business, profession, or farm Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a. \$ 0.00	\$ N/A	
8b. Interest and dividends	8b. \$ 0.00	\$ N/A	
8c. Family support payments that you, a non-filing spouse, or a dependent regularly receive Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c. \$ 0.00	\$ N/A	
8d. Unemployment compensation	8d. \$ 0.00	\$ N/A	
8e. Social Security	8e. \$ 0.00	\$ N/A	
8f. Other government assistance that you regularly receive Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: <u>Food Stamps</u>	8f. \$ 190.00	\$ N/A	
8g. Pension or retirement income	8g. \$ 0.00	\$ N/A	
8h. Other monthly income. Specify: _____	8h.+ \$ 0.00	+ \$ N/A	
9. Add all other income. Add lines 8a+8b+8c+8d+8e+8f+8g+8h.	9. \$ 190.00	\$ N/A	
10. Calculate monthly income. Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10. \$ 190.00 + \$ N/A	= \$ 190.00	
11. State all other regular contributions to the expenses that you list in Schedule J. Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in <i>Schedule J</i> . Specify: _____	11. +\$ 0.00		
12. Add the amount in the last column of line 10 to the amount in line 11. The result is the combined monthly income. Write that amount on the <i>Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data</i> , if it applies	12. \$ 190.00		Combined monthly income
13. Do you expect an increase or decrease within the year after you file this form? <input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes. Explain: _____			

Fill in this information to identify your case:

Debtor 1 JARED EMMANUEL AWERBACH

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: DISTRICT OF NEVADA

Case number _____
(If known)

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing post-petition chapter 13 expenses as of the following date:

MM / DD / YYYY

- ☐ A separate filing for Debtor 2 because Debtor 2 maintains a separate household

Official Form B 6J

Schedule J: Your Expenses

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. Is this a joint case?

☒ No. Go to line 2.☐ Yes. Does Debtor 2 live in a separate household?☐ No☐ Yes. Debtor 2 must file a separate Schedule J.2. Do you have dependents? ☒ No

Do not list Debtor 1 and Debtor 2.

☐ Yes. Fill out this information for each dependent.....

Do not state the dependents' names.

Dependent's relationship to Debtor 1 or Debtor 2

Dependent's age

Does dependent live with you?

☐ No☐ Yes☐ No☐ Yes☐ No☐ Yes☐ No☐ Yes

3. Do your expenses include expenses of people other than yourself and your dependents?

☒ No☐ Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form 6I.)

Your expenses

4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.

4. \$ 0.00

If not included in line 4:

4a. Real estate taxes

4a. \$ 0.00

4b. Property, homeowner's, or renter's insurance

4b. \$ 0.00

4c. Home maintenance, repair, and upkeep expenses

4c. \$ 0.00

4d. Homeowner's association or condominium dues

4d. \$ 0.00

5. Additional mortgage payments for your residence, such as home equity loans

5. \$ 0.00

Debtor 1 **JARED EMMANUEL AWERBACH**

Case number (if known) _____

6. Utilities:	
6a. Electricity, heat, natural gas	6a. \$ 0.00
6b. Water, sewer, garbage collection	6b. \$ 0.00
6c. Telephone, cell phone, Internet, satellite, and cable services	6c. \$ 0.00
6d. Other. Specify: _____	6d. \$ 0.00
7. Food and housekeeping supplies	7. \$ 190.00
8. Childcare and children's education costs	8. \$ 0.00
9. Clothing, laundry, and dry cleaning	9. \$ 0.00
10. Personal care products and services	10. \$ 0.00
11. Medical and dental expenses	11. \$ 0.00
12. Transportation. Include gas, maintenance, bus or train fare. Do not include car payments.	12. \$ 0.00
13. Entertainment, clubs, recreation, newspapers, magazines, and books	13. \$ 0.00
14. Charitable contributions and religious donations	14. \$ 0.00
15. Insurance. Do not include insurance deducted from your pay or included in lines 4 or 20.	
15a. Life insurance	15a. \$ 0.00
15b. Health insurance	15b. \$ 0.00
15c. Vehicle insurance	15c. \$ 0.00
15d. Other insurance. Specify: _____	15d. \$ 0.00
16. Taxes. Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	16. \$ 0.00
17. Installment or lease payments:	
17a. Car payments for Vehicle 1	17a. \$ 0.00
17b. Car payments for Vehicle 2	17b. \$ 0.00
17c. Other. Specify: _____	17c. \$ 0.00
17d. Other. Specify: _____	17d. \$ 0.00
18. Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, Schedule I, Your Income (Official Form 6I).	18. \$ 0.00
19. Other payments you make to support others who do not live with you. Specify: _____	19. \$ 0.00
20. Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income.	
20a. Mortgages on other property	20a. \$ 0.00
20b. Real estate taxes	20b. \$ 0.00
20c. Property, homeowner's, or renter's insurance	20c. \$ 0.00
20d. Maintenance, repair, and upkeep expenses	20d. \$ 0.00
20e. Homeowner's association or condominium dues	20e. \$ 0.00
21. Other: Specify: _____	21. +\$ 0.00
22. Your monthly expenses. Add lines 4 through 21. The result is your monthly expenses.	22. \$ 190.00
23. Calculate your monthly net income.	
23a. Copy line 12 (your combined monthly income) from Schedule I.	23a. \$ 190.00
23b. Copy your monthly expenses from line 22 above.	23b. -\$ 190.00
23c. Subtract your monthly expenses from your monthly income. The result is your monthly net income.	23c. \$ 0.00

24. **Do you expect an increase or decrease in your expenses within the year after you file this form?**

For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?

☒ No.☐ Yes.

Explain: _____

B6 Declaration (Official Form 6 - Declaration). (12/07)

**United States Bankruptcy Court
District of Nevada**

In re JARED EMMANUEL AWERBACH

Debtor(s)

Case No. _____

Chapter 7

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 19 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date 5/21/15

Signature


JARED EMMANUEL AWERBACH
Debtor

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

B7 (Official Form 7) (04/13)

**United States Bankruptcy Court
District of Nevada**

In re JARED EMMANUEL AWERBACH

Debtor(s)

Case No. _____

Chapter 7

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any persons in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(2), (31).

1. Income from employment or operation of business

None
☐

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT
\$0.00

SOURCE
Las Vegas Rescue Mission from October 21, 2014 through present. There is no salary, the room and rehabilitation program are considered his salary.

2. Income other than from employment or operation of business

None
☒

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

B7 (Official Form 7) (04/13)

2

3. Payments to creditorsNone ☒ **Complete a. or b., as appropriate, and c.**

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
------------------------------	-------------------	-------------	--------------------

None ☒ b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$6,225*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
------------------------------	------------------------------	-----------------------------------	--------------------

None ☒ c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
---	-----------------	-------------	--------------------

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Emilia Garcia v. Jared Awerbach, et al. A-11-637772-C	Negligence - Auto	District Court Clark County, Nevada Department XXVIII	Pending Trial
Nv Dhhs Div Of Welfare & Supp Services, (Tikeira Howard-Reed) v. Jared Emmanuel Awerbach Case No. R-13-177198-R	Child Support	Family District Court Clark County, Nevada	Pending

None ☒ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
--	-----------------	-----------------------------------

* Amount subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B7 (Official Form 7) (04/13)

3

5. Repossessions, foreclosures and returns

- None ☒ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
--	--	-----------------------------------

6. Assignments and receiverships

- None ☒ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
------------------------------	--------------------	-----------------------------------

- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
-------------------------------	--	---------------	-----------------------------------

7. Gifts

- None ☒ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
--	--------------------------------	--------------	-------------------------------

8. Losses

- None ☒ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case or **since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
-----------------------------------	--	--------------

9. Payments related to debt counseling or bankruptcy

- None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Diversy Learning, Inc. 1101 Arrow Point Drive Suite 302 Cedar Park, TX 78613	April 6, 2015 Holley, Driggs, Walch, Puzey & Thompson	50.00 - Pre-Filing Credit Counseling

B7 (Official Form 7) (04/13)

4

10. Other transfers

None



a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE,
RELATIONSHIP TO DEBTOR

DATE

DESCRIBE PROPERTY TRANSFERRED
AND VALUE RECEIVED

None



b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER
DEVICE

DATE(S) OF
TRANSFER(S)

AMOUNT OF MONEY OR DESCRIPTION AND
VALUE OF PROPERTY OR DEBTOR'S INTEREST
IN PROPERTY

11. Closed financial accounts

None



List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION

TYPE OF ACCOUNT, LAST FOUR
DIGITS OF ACCOUNT NUMBER,
AND AMOUNT OF FINAL BALANCE

AMOUNT AND DATE OF SALE
OR CLOSING

12. Safe deposit boxes

None



List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK
OR OTHER DEPOSITORY

NAMES AND ADDRESSES
OF THOSE WITH ACCESS
TO BOX OR DEPOSITORY

DESCRIPTION
OF CONTENTS

DATE OF TRANSFER OR
SURRENDER, IF ANY

13. Setoffs

None



List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATE OF SETOFF

AMOUNT OF SETOFF

14. Property held for another person

None



List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER

DESCRIPTION AND VALUE OF PROPERTY

LOCATION OF PROPERTY

B7 (Official Form 7) (04/13)

5

15. Prior address of debtor

- None ☐ If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
---------	-----------	--------------------

16. Spouses and Former Spouses

- None ☐ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None ☐ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
-----------------------	---------------------------------------	----------------	-------------------

- None ☐ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
-----------------------	---------------------------------------	----------------	-------------------

- None ☐ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
---------------------------------------	---------------	-----------------------

B7 (Official Form 7) (04/13)

6

18 . Nature, location and name of business

None



a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
NAME				

None



b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
------	---------

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

None



a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
------------------	-------------------------

None



b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
------	---------	-------------------------

None



c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
------	---------

None



d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS	DATE ISSUED
------------------	-------------

B7 (Official Form 7) (04/13)

7

20. Inventories

- None ☐ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
-------------------	----------------------	---

- None ☐ b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
-------------------	---

21 . Current Partners, Officers, Directors and Shareholders

- None ☐ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
------------------	--------------------	------------------------

- None ☐ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
------------------	-------	---

22 . Former partners, officers, directors and shareholders

- None ☐ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None ☐ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
------------------	-------	---------------------

23 . Withdrawals from a partnership or distributions by a corporation

- None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
---	-----------------------------------	--

24. Tax Consolidation Group.

- None ☐ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
----------------------------	--------------------------------------

B7 (Official Form 7) (04/13)
8

25. Pension Funds.

None ☐ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER IDENTIFICATION NUMBER (EIN)

* * * * *

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date 5/21/15

Signature

Jared Ewerbach
JARED EMMANUEL AWERBACH
Debtor

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

B8 (Form 8) (12/08)

United States Bankruptcy Court
District of Nevada

In re JARED EMMANUEL AWERBACH

Debtor(s)

Case No. _____

Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A - Debts secured by property of the estate. (Part A must be fully completed for **EACH** debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
Creditor's Name: -NONE-	Describe Property Securing Debt:
Property will be (check one): <input type="checkbox"/> Surrendered <input type="checkbox"/> Retained	
If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).	
Property is (check one): <input type="checkbox"/> Claimed as Exempt <input type="checkbox"/> Not claimed as exempt	


PART B - Personal property subject to unexpired leases. (All three columns of Part B must be completed for each unexpired lease. Attach additional pages if necessary.)

Property No. 1		
Lessor's Name: -NONE-	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): <input type="checkbox"/> YES <input type="checkbox"/> NO

I declare under penalty of perjury that the above indicates my intention as to any property of my estate securing a debt and/or personal property subject to an unexpired lease.

Date 5/21/15

Signature


JARED EMMANUEL AWERBACH
 Debtor

**United States Bankruptcy Court
District of Nevada**

In re JARED EMMANUEL AWERBACH

Debtor(s)

Case No.
Chapter

7

VERIFICATION OF CREDITOR MATRIX

The above-named Debtor hereby verifies that the attached list of creditors is true and correct to the best of his/her knowledge.

Date:

5/21/15


JARED EMMANUEL AWERBACH

Signature of Debtor

480 West Bonanza Road
Las Vegas, NV 89106

Ogonna M. Atamoh
Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson
400 South Fourth Street
Third Floor
Las Vegas, NV 89101

Aargon Agency Inc.
3025 West Sahara Avenue
Las Vegas, NV 89102

Andrea Awerbach
4006 Dripping Springs Avenue
North Las Vegas, NV 89031

Bay Area Credit Service
1000 Abernathy Road
Building 400 Suite
Atlanta, GA 30328

Clark County Assessor
500 South Grand Central Parkway
PO Box 551401
Las Vegas, NV 89155

Clark County Treasurer
c/o Bankruptcy Clerk
500 South Grand Central Parkway
PO Box 551220
Las Vegas, NV 89155-1220

Colorado Technical University
4435 North Chestnut Street
Colorado Springs, CO 80907

Dept. of Employment, Training & Rehab
500 East Third Street
Carson City, NV 89713

Emilia Garcia
c/o Adam D. Smith, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147

Glen J. Lerner & Associates
c/o Adam D. Smith
4795 South Durango Drive
Las Vegas, NV 89147

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101

Las Vegas Athletic Club
9065 S. Eastern Avenue
Las Vegas, NV 89123

Bankruptcy Division
555 East Washington Ave., #1300
Las Vegas, NV 89101

NV Energy
6226 West Sahara Avenue
Las Vegas, NV 89146

State Collection and Disbursement Unit
P.O. Box 98950
Las Vegas, NV 89193-8950

State of Nevada Dept. of Motor Vehicles
Attn: Legal Division
555 Wright Way
Carson City, NV 89711

U.S. Trustee
300 Las Vegas Blvd. South
Room 4300
Las Vegas, NV 89101

EXHIBIT 1-P

EXHIBIT 1-P

Ogonna M. Brown, Esq. (NV Bar No. 7589)
Email: obrown@nevadafirm.com
HOLLEY, DRIGGS, WALCH,
FINE, WRAY, PUZEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

E-filed on: May 29, 2015

Attorneys for Jared Awerbach

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

JARED EMMANUEL AWERBACH,

Debtor.

Case No. 7
Chapter BK-S-15-13030-led

JARED EMMANUEL AWERBACH,

Plaintiff,

Adv. No.

**COMPLAINT FOR DECLARATORY
RELIEF REGARDING
DISCHARGEABILITY OF POTENTIAL
CLAIM OF EMILIA GARCIA**

v.

EMILIA AURORA GARCIA,

Defendant.

Judge: Hon. Laurel E. Davis

Plaintiff Jared Emmanuel Awerbach ("Plaintiff", "Jared" or alternatively, the "Debtor"),
by and through his counsel, the law firm of Holley, Driggs, Walch, Fine, Wray, Puzey &
Thompson, hereby alleges in this Complaint for declaratory relief regarding the dischargeability
of the potential claims of Emilia Garcia against the Debtor as follows:

JURISDICTION AND VENUE

1. On May 26, 2015, the Debtor filed a voluntary Chapter 7 bankruptcy petition for
relief in U.S. Bankruptcy Court, Southern District of Nevada, pending as Case No. BK-S-15-
13030-led.

...

...

2. This Court has jurisdiction over this adversary proceeding because it involves a core matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(a), (b)(2)(A), (b)(2)(G), and 11 U.S.C. § 523(a)(9).

3. This Court also has jurisdiction under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202.

4. Venue for this matter is proper under 28 U.S.C. § 1409.

5. The Debtor consents to entry of final orders and judgment by this Court.

THE PARTIES

6. Plaintiff is the debtor in the above-referenced bankruptcy case, and is, and at all relevant time was, a resident of Nevada.

7. Jared is a 23-year-old male who grew up in disadvantaged circumstances in the “Naked City” neighborhood in Las Vegas, Nevada.

8. Jared is currently institutionalized on his own volition at the Las Vegas Rescue Mission in Las Vegas, Nevada.

9. At the Las Vegas Rescue Mission, Jared is enrolled in a program of substance abuse rehabilitation and recovery.

10. Referred by his consulting neurologist, Dr. Russell J. Shah, Jared has applied for the brain injury rehabilitation program sponsored by the Nevada Community Enrichment Program, in Las Vegas, Nevada, and hopes to remain in his native Las Vegas, on a long-term basis to complete his rehabilitation for traumatic brain injury near his family — Jared’s mother, Andrea Awerbach, his grandmother, and his two daughters, Khaliyah Maii, age four (4) and Mecca, age three (3). His father has long been absent from his life and played no role in his upbringing.

STATE COURT LITIGATION

11. Emilia Aurora Garcia (“Garcia”) resides in Clark County, Nevada.

12. Garcia commenced an action against Jared and his mother, Andrea Awerbach (“Mrs. Awerbach”) in the Eighth Judicial District Court, Clark County, Nevada, pending before

1 Judge Nancy Allf as *Garcia v. Awerbach*, Case No. A-11-637772-C, Department XVIII,
2 currently scheduled trial on September 21, 2015, (the "Lawsuit").

3 13. In the Complaint, Garcia seeks recovery for personal injury, property damages,
4 and punitive damages, which causes of action are alleged solely against Jared, arising from a
5 certain traffic accident that occurred on January 2, 2011. The Lawsuit alleges special damages
6 totaling in excess of \$6.0 million.

7 14. The procedural posture of the Lawsuit is complicated and heavily litigated,
8 exposing Jared to a judgment in excess of the policy limits of the Liberty Mutual insurance
9 policy triggered by the incident.

10 **JARED SEEKS A FRESH START IN BANKRUPTCY**

11 15. At stake here is Jared's chance at a fresh start in life by obtaining a discharge
12 from the bankruptcy relief Jared sought by commencing the chapter 7 proceeding under the
13 Bankruptcy Code.

14 16. In the Complaint, Garcia seeks an award of punitive damages to punish Jared,
15 under N.R.S. 42.010, for allegedly driving with blood levels in excess of legal limits for
16 marijuana.

17 17. Jared seeks a declaration by this Court that Garcia's claim is dischargeable under
18 11 U.S.C. § 523(a)(9) of the Bankruptcy Code to allow Jared a fresh start.

19 18. The Lawsuit is currently scheduled to proceed to trial against Jared's mother on or
20 about September 21, 2015.

21 19. The defense of the Lawsuit for both Jared and his mother, as well as this
22 bankruptcy proceeding for Jared, is being provided by Liberty Mutual Insurance Company
23 ("Liberty").

24 **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

25 20. On January 2, 2011, at approximately 5:57 p.m., according to the time of the
26 311/911 call by Garcia, a 2007 Suzuki Forenza, driven by Jared, collided with a 2001 Hyundai
27 Santa Fe, driven by Garcia, despite his split-second attempt to swerve out of the way after he had
28 committed to his left turn but saw her speed up just before impact.

1 21. Jared's vehicle impacted at the right rear wheel well of Garcia's vehicle and
2 caused the deformation depicted in the photograph to the left.

3 22. The impact occurred in Clark County near the intersection of Rainbow Blvd., on
4 which Garcia was southbound at between 30 mph and 40 mph, and a private driveway from an
5 apartment complex on which Jared was eastbound at a slow speed after crossing one lane of
6 traffic after coming to a complete stop.

7 23. The impact caused damage to the right rear quarter panel of the vehicle driven by
8 Garcia that is accurately depicted in the photograph below:



14 **NO INJURIES DISCLOSED AT THE ACCIDENT SCENE**

15 24. Though she would later deny it, Garcia did not experience any pain at the time of
16 the collision and so informed Jared and the responding LVMPD Officer, David Figueroa.

17 25. Despite that she would subsequently be diagnosed with a non-traumatic and pre-
18 existing displaced vertebra in her lumbar spine (a clinical condition called, "spondylolisthesis"),
19 Garcia told Jared at the accident scene, after he had run over to her vehicle to check on her, that
20 she was not injured and was fine.

21 26. Garcia was restrained by a three-point lap-shoulder belt and the airbag did not
22 deploy.

23 27. Garcia told Officer Figueroa, who arrived at 6:12 p.m., that she was not injured,
24 and he so noted on his police report.

25 28. Garcia hitched a ride home from the accident scene with the tow truck driver and
26 did not seek medical attention until January 5, 2011, three (3) days after the accident, when she
27 went to the emergency room at MountainView Hospital, in Las Vegas, Nevada, where Garcia
28 was diagnosed with a strain/sprain and sent home during the same visit.

1 29. Garcia went to work the next day right after the accident.

2 30. After engaging legal counsel, Garcia would embark upon a full regime of medical
3 treatment culminating in back surgery on December 26, 2012, at a California surgery center
4 whose CEO would subsequently plead guilty in a fraud scheme to bilk the state's workers'
5 compensation fund and other insurance out of hundreds of millions of dollars in phony billings
6 for spine surgeries just like the one Garcia obtained there using counterfeit metal implants just
7 like the implants Garcia received.

8 31. The bills for Garcia's back surgery would end up totaling over \$400,000, for
9 surgery that her own lawyers estimated before the Lawsuit would cost about \$70,000 in Las
10 Vegas.

11 32. Unfortunately, Garcia would end up with a diagnosis of failed back surgery
12 syndrome as her continued complaints of back pain have continued to this day.

13 **JARED'S ARREST AT THE ACCIDENT SCENE**

14 33. Shortly after his arrival at the scene, Officer Figueroa approached the Suzuki and
15 noticed a strong odor of marijuana coming from inside the vehicle.

16 34. The Officer inquired of Jared as to whether he had been smoking and Jared stated
17 falsely that he had smoked marijuana approximately one hour before the accident.

18 35. Jared's statement to the Officer about smoking marijuana was false and motivated
19 by his fear of avoiding a more serious charge which he imagined would be imposed on him,
20 given his record of previous offenses for drugs, if a plastic bag containing marijuana (total
21 weight of bag and contents was 8.8 grams, or about the weight of four tea bags) that he was
22 concealing on his person was detected.

23 **THE INVALID STANDARD FIELD SOBRIETY TEST**

24 36. The Officer improperly administered a standard field sobriety test ("SFST") to
25 Jared at the scene and noted in his report that Jared did not pass.

26 37. The Officer invalidated the results of the SFST by failing to ask Jared the required
27 questions about his medical condition so as to rule out medical conditions that might confound
28 the results of the SFST.

1 38. If the Officer had followed the required procedures for proper administration of
2 the SFST, Jared would have said that he suffered from balance problems resulting from an
3 assault that he suffered on November 10, 2005, when he was beaten unconscious by a rival gang
4 member wielding brass knuckles while Jared tried to protect his fellow gang members in a fight.

5 39. The Officer deviated from proper protocols by administering the "Walk and
6 Turn" test without disclosing to Jared the location of the line he was supposed to walk on the
7 pavement; but rather, the Officer used an "imaginary" line, the location of which he kept to
8 himself.

9 40. The Officer did not observe lack of eye convergence and eyelid tremors in Jared,
10 and those are two "telltales" of marijuana use that officers are trained to look for.

11 41. The Officer did not measure heart rate or blood pressure of Jared, though both are
12 expected to be elevated with marijuana.

13 42. The Officer did not note the smell of marijuana on Jared's breath or a coating on
14 his tongue, two other signs that officers are trained is indicative of marijuana usage.

15 43. The Officer noted normal sized pupils in Jared, despite that his training instructed
16 him that pupils are frequently dilated in cases of marijuana use.

17 44. Dr. Raymond Kelly, a toxicologist, opined that the results of the SFST
18 administered to Jared must be disregarded as invalid and not indicative of driving impairment.

19 45. The SFST has never been validated for determining impairment resulting from
20 marijuana.

21 **THE CRIMINAL CASE RESULTING FROM THE ACCIDENT**

22 46. Believing that he had probable cause for an arrest, Officer Figueroa arrested Jared
23 at the accident scene.

24 47. During booking, the amount of marijuana was found on Jared's person, a minor
25 misdemeanor offense with the same legal penalty structure in the law as graffiti.

26 48. On April 20, 2011, a Criminal Complaint was filed against Jared in Las Vegas
27 Municipal Court, Case No. C1033654A/B/D/E, charging him with four misdemeanors: driving
28 under the influence in violation of NRS 484.379(2)(3)(Count A), driving without a valid license

1 in violation of NRS 483.550 (Count B), possession of one ounce or less of marijuana in violation
2 of NRS 453.336 (Count D)[sic], and failure to yield right of way from private way in violation of
3 NRS 484.321 (Count E).

4 49. On May 11, 2011, Jared pled not guilty and the Court appointed a public defender
5 for him.

6 50. On May 12, 2011, Jared pled guilty to Count A (the other charges were dropped)
7 at the suggestion of his public defender who did not discuss with him the difference between
8 entering a guilty plea or a no contest plea—differences that would have prompted him to plead
9 no contest had he but known.

10 51. In response to Jared's guilty plea, the Court imposed a sentence consistent with a
11 minimum recommendation consisting of credit for time served in jail due to a bench warrant, the
12 minimum fine of \$510 plus court assessments, DUI school, and Victim Impact Panel.

13 52. On October 13, 2014, the Court entered an order, on motion, to allow Jared to
14 withdraw his guilty plea due to ineffective assistance of counsel and enter a plea of no contest
15 *nunc pro tunc*.

16 **THE CIVIL CASE RESULTING FROM THE ACCIDENT**

17 53. After presenting at the ER at MountainView Hospital on January 5, 2011, Garcia
18 wasted no time engaging legal counsel, the Glenn Lerner Firm, an advertising plaintiff's injury
19 firm in the Las Vegas area.

20 54. On March 25, 2011, Garcia commenced the Lawsuit against Jared and Mrs.
21 Awerbach, as the owner of the vehicle, which would subsequently be amended to add a cause of
22 action for joint liability and punitive damages to punish Jared.

23 55. Jared is represented by Liberty Mutual insurance coverage counsel through the
24 law firm of Resnick & Louis, P.C.

25 56. Discovery proceedings in the Lawsuit found that Jared suffered from traumatic
26 brain injury that interfered with his ability to pass the SFST.

27

28

1 57. On April 22, 2014, the State Court sanctioned Jared \$2,000 for subpoenaing,
2 through his counsel, the law firm of Resnick & Louis, P.C., records from the police department
3 after the close of discovery. The \$2,000 sanction has been paid.

4 58. On March 27, 2015, the State Court sanctioned Jared \$5,000 for subpoenaing,
5 through his counsel, medical information about Ms. Garcia that the judge found went beyond the
6 limited scope of the recommendation of the discovery commissioner. The \$5,000 sanction
7 remains outstanding because Jared has no money to pay.

8 59. The discovery commissioner recommended that the subpoenas be modified to
9 limit discovery to medical providers or treatment related to Ms. Garcia's back or spine.

10 60. After receiving the discovery commissioner's report and recommendations,
11 Jared's counsel sent the report and recommendations to the subpoenaed parties.

12 61. Despite being provided with the report and recommendations, an insurance
13 company sent documents that referenced treatments beyond those for spine or back issues.

14 62. A government agency was inadvertently not served with the report and
15 recommendations until after it had already produced documents beyond the limited scope of
16 back and spine injuries. Based on these facts, Jared argued that any violation of the report and
17 recommendations was technical and not worthy of contempt sanctions.

18 **JARED ASSAULTED ON NOVEMBER 10, 2005**

19 63. The balance disequilibrium problems experienced by Jared in attempting to pass
20 the SFST at the accident scene stemmed from a traumatic brain injury that he suffered during a
21 fist fight in a parking lot at Sahara and Maryland in the "A-Mall," between rival gangs on
22 November 10, 2005, a day he will never forget.

23 64. The parking lot fight resulted from the previous day's clash between a gang of
24 teenage toughs called the "Receptacles," and a group of Jared's teenage friends, not including
25 him as he was at orchestra practice at school at the time.

26 65. In the parking lot, Jared faced the Receptacles alone, deserted by his friends, and
27 gamely endured a beating with brass knuckles by nine attackers that left him crumpled on the
28 pavement unconscious with EMS on the way.