

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.

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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.

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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.

INSTRUCTION NO. 28

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.

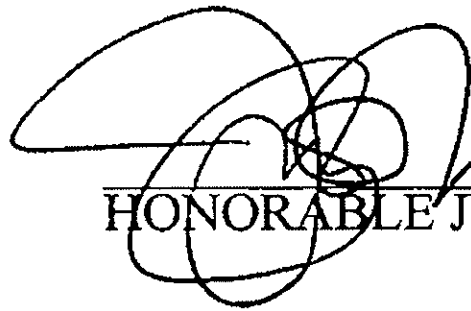
INSTRUCTION NO. 46

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

EXHIBIT 18

EXHIBIT 18

ORIGINAL

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

MAR 10, 2016

BY, 
ALICE JACOBSON, 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.: A-11-637772-c
Dept. No.: 30

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>

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

YES ☒ NO ☐

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

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

YES ☒ NO ☐

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

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

\$ 2,000,000.00

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

YES ☐ NO ☒

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

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

YES ☐ NO ☒

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

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23 FOREPERSON

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DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

EMILIA GARCIA,

Plaintiff,

vs.

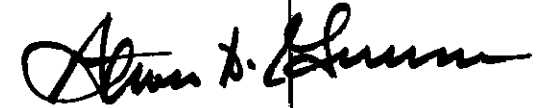
JARED AWERBACH, individually, and
ANDREA AWERBACH, individually,

Defendants.

CASE NO.: A637772
DEPT. XXX

NOTICE OF
ENTRY OF
ORDER RE:
POST-TRIAL
MOTIONS

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CLERK OF THE COURT

NOTICE OF ENTRY OF ORDER

RE: POST-TRIAL MOTIONS

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

DATED this 16th day of August, 2016.



JERRY A WIESE
DISTRICT COURT JUDGE

Certificate of Service

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

ADAM SMITH

CRAIG HENDERSON

DANIEL POLSENBERG

MARIA ESTANISLO

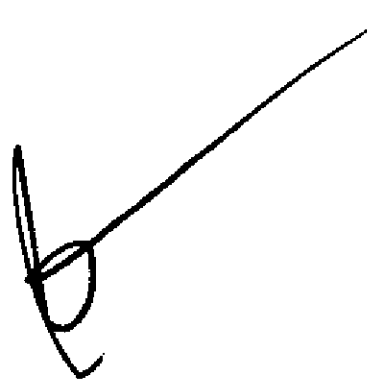
PETER MAZZEO

RANDY TINDALL

AUDRA BOONEY

GEMMA ENDOZO

TIM MOTT



Tatyana Ristic, Judicial Executive Assistant

**DISTRICT COURT
CLARK COUNTY, NEVADA**
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EMILIA GARCIA,

Plaintiff,

vs.

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

Defendants.

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

Alan B. Shuman
CLERK OF THE COURT

**ORDER RE:
POST-TRIAL
MOTIONS**

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

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

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

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

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

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

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

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

28 ¹ NRCp 59.

² 109 Nev. 314, 849 P.2d 277 (1993).

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

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

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

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

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

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

26 ⁶ *Id.*, at pg. 563.

27 ⁷ *Meyer* at pg. 563.

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

28 ⁹ *Meyer* at pgs. 563-64.

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

¹¹ 99 Nev. 265, 661 P.2d 1293 (1983).

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

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

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

26 ¹³ Russell at pg. 267.

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

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

¹⁶ See Jury Instruction No. 6.

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

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

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

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

24 ¹⁷ See Jury Instruction No. 6 .

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

26 ¹⁹ See *Meyer* at pgs. 563-64.

27 ²⁰ *Meyer* at pg. 564.

28 ²¹ *Russell* at pg. 267.

²² *Meyer* at pg. 564.

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

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

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

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

25 See Jury Instruction No. 7.

26 See Jury Instruction No. 15.

27 See Jury Instruction No. 16.

28 See Jury Instruction No. 18.

29 See Jury Instruction No. 33.

30 See Jury Instruction No. 37.

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

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

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

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

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

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

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

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

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

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

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

³⁴ 91 Nev. 698 (1975).

³⁵ 121 Nev. 391, 393-94 (2005).

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

4 **CONCLUSION AND ORDER**

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

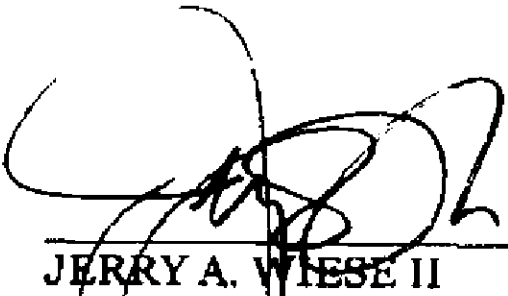
15 Based upon the foregoing, and good cause appearing therefor,

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

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

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

23
24 DATED this 12th day of August, 2016.

25
26
27
28

JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XXX

Certificate of Service

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

ADAM SMITH

CRAIG HENDERSON

DANIEL POLSENBERG

MARIA ESTANISLO

PETER MAZZEO

RANDY TINDALL

AUDRA BOONEY

GEMMA ENDOZO

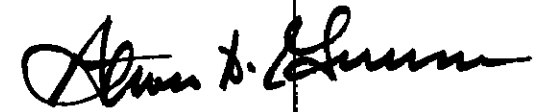
TIM MOTT



Tatyana Ristic, Judicial Executive Assistant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

-oOo-



CLERK OF THE COURT

EMILIA GARCIA,

Plaintiff,

vs.

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

Defendants.

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

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

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

DATED this 22 day of August, 2016.



JERRY A WIESE
DISTRICT COURT JUDGE

Certificate of Service

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

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Weinberg Wheeler Hudgins Gunn & Dial

Name	Email		Select
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File Edit Claim Investigation Total Loss Subrogation No Fault/Med-Pay Tools Reports Financial Help

Plan
Policyholder
Claimant
Occurrence
ICP/First Call
Medical
Vehicle
Structure
Items
Estimate/Repair
Time
Third Party
Legal
Financial

Claimant

Name: GARCIA, EMILIA

Role: Owner/Operator Claimant's Car

Home: (702)4739451 Bus:

Office: 0647 - PHOENIX, AZ

Open

Date of Loss: 01/02/2011 Report Date: 01/03/2011

Loss Location

Street/PO: rainbow blvd

City: las vegas

ST/Prov: NV

ZIP/Postal:

Investigation Strategy: **Yellow**

Assignments...

Coverage Type	Coverage	Loss Cost Estimate	Loss Paid to Date
Liability	LIBI - LIABILITY - BOD	\$50000.00	\$0.00
Liability	LIPD - LIABILITY - PR	\$6852.00	\$6851.53

First Year: 2009

CAT Code:

Expense Cost Estimate: \$0

Expense Paid to Date: \$0

Occurrence Descriptions:

apartment complex. There was a bus in right lane of 2 coming from his left. The bus stopped at the bus stop before the driveway. Opac thought it was clear. He proceeded to make his left turn and then collided w/ clmt. Clmt was coming from his left in left lane of 2. Opac did not see clmt until after the impact. Opac states he tried to swerve left and hit his brakes to avoid. CONT...

GARCIA, EMILIA, Claimant, 01/06/2011

Acc happened around 5:56pm. Clear weather. Moderate traffic. Headlights on. Clmt EB Rainbow Blvd in left lane of 2. PSL 35mph. Clmt going 30mph. Clmt saw a semi truck in right lane next to her making a right turn into the driveway of an apartment complex. She then saw insd veh coming straight at her from the driveway of the apartment complex. Clmt tried to swerve left to avoid the impact. Clmt was hit on p/s rear by the rear door and tire. Clmt spun and came to rest in her lane but facing the opposite way, against traffic. Impact was to insd's front end.

Injury/Damage Descriptions:

Detail Date 1/6/11
Opac RI 1/6/11
Clmt RI 1/6/11
P/R 1/31/11

FIRST REPORT

Injury
Back & Neck - Sprain/Strain
Back & neck pain
No insurance

Vehicle Damage

ps rear right tire and ps rear door went open and smashed in and ps front door went open - rear axle bent in and rear tire flat - and steering wheel shaking
Initial PDI: 05-Right Rear Corner
Subsequent PDI: 15-Total Loss

Ready

NUM

Plan

Claimant

Name: GARCIA, EMILIA

Loss Location

Street/PO: rainbow blvd

Policyholder

Role: Owner/Operator Claimant's Car

City: las vegas

Claimant

Home: (702)4739451 Bus:

ST/Prov: NV

ZIP/Postal:

Occurrence

Office: 0647 - PHOENIX, AZ

Open

Investigation Strategy: Yellow

Date of Loss: 01/02/2011 Report Date: 01/03/2011

Assignments...

ICP/First Call

Coverage Type	Coverage	Loss Cost Estimate	Loss Paid to Date
Liability	LIBI - LIABILITY - BOD	\$50000.00	\$0.00
Liability	LIPD - LIABILITY - PR	\$6852.00	\$6851.53

First Year: 2009

CAT Code:

Expense Cost Estimate: \$0

Expense Paid to Date: \$0

Medical

Vehicle

Occurrence Descriptions:

engine steaming and fluids leaking. Police were called. Officer gave opac a sobriety test and arrested him for DUI. Officer told clmt that opac was high. No witnesses. Both vehicles towed. TM

Injury/Damage Descriptions:

Detail Data 1/6/11
Opac RI 1/6/11
Clmt RI 1/6/11
P/R 1/31/11

Structure

Items

Estimate/Repair

AWERBACH, JARED, Policyholder, 01/06/2011

FIRST REPORT

CONT.... Clmt veh spun. Police came to the scene. Opac states he was cited for DUI, drug possession, no drivers license, no insurance in veh, and FTY. Opac states he was not under the influence of drugs at the time. He had marijuana on his person. The last time he smoked was weeks ago. He had not smoked on DOL. TM

Injury

Back & Neck - Sprain/Strain
Back & neck pain
No insurance

Time

Third Party

FIRST REPORT

Per Caller clmt E Garcia

Broad Narrative clmt driving on rainbow and insd's son coming out of apt complex - clmt in right lane and moving truck moving into apt complex and blocking insd's view and insd attempted to

Vehicle Damage

ps rear right tire and ps rear door went open and smashed in and ps front door went open - rear axle bent in and rear tire flat - and steering wheel shaking
Initial POI: 05-Right Rear Corner
Subsequent POI: 15-Total Loss

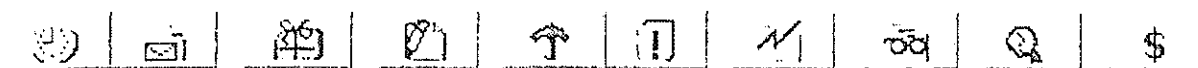
Legal

Financial

Ready

NUM

File Edit Claim Investigation Total Loss Subrogation No Fault/Med-Pay Tools Reports Financial Help

 Total Slwg Subro Assign Close Refresh Next Exit

Plan

Claimant

Name: GARCIA, EMILIA

Loss Location

Street/PO: rainbow blvd

Policyholder

Role: Owner/Operator Claimant's Car

City: las vegas

Claimant

Home: (702)4739451 Bus:

ST/Prov: NV

ZIP/Postal:

Occurrence

Office: 0647 - PHOENIX, AZ

Open

Investigation Strategy: Yellow

Date of Loss: 01/02/2011

Report Date: 01/03/2011

Assignments...

ICP/First Call

Coverage Type	Coverage	Loss Cost Estimate	Loss Paid to Date
Liability	LIBI - LIABILITY - BOD	\$50000.00	\$0.00
Liability	LIPD - LIABILITY - PRQ	\$6852.00	\$6851.53

First Year: 2009

CAT Code:

Expense Cost Estimate: \$0

Expense Paid to Date: \$0

Medical

Vehicle

Structure

Items

Estimate/Repair

Time

Third Party

Legal

Financial

Occurrence Descriptions:

Per Caller clmt E Garcia
Broad Narrative clmt driving on rainbow and insd's son coming out of apt complex - clmt in right lane and moving truck moving into apt complex and blocking insd's view and insd attempted to pulled into left lane of opposite traffic and as insds tried to merge into traffic he hit clmt and clmt spun and landed in same lane but facing opposite direction
Weather Factors none
Veh Speed Posted Speed 30 /35
Traffic Controls ss for insd
Driver familiar with area yes
Saw other veh when just upon impact
Anything blocking the vision of either veh truck blocking insd and clmt
Driver's action to avoid collision swerved away

Injury/Damage Descriptions:

Detail Data 1/6/11
Opac RI 1/6/11
Clmt RI 1/6/11
P/R 1/31/11

FIRST REPORT

Injury
Back & Neck - Sprain/Strain
Back & neck pain
No insurance

Vehicle Damage

ps rear right tire and ps rear door wont open and smashed in and ps front door wont open - rear axle bent in and rear tire flat - and steering wheel shaking
Initial POI: 05-Right Rear Corner
Subsequent POI: 15-Total Loss

Ready

NUM

Type: Claim	Subject: Claim Status	Top
Created By : TERESA MERAZ	Created : 01/17/2011 04:29 PM	Updated: 01/17/2011

VM rec'd from Geraldine at atty's office Glen Lerner & Assoc (702) 877-1500. She states they rep clmt but only for BI. We can still deal directly w/ clmt for PD. She is sending LOR. She states clmt tx at ER and is tx w/ chiro for s/t inj.

I returned the call to discuss, I was transferred to Geraldine's vm, left message.

Clmt is now atty rep'd. Per atty's office, clmt tx at ER and w/ chiro for s/t inj. ER bills expected around \$1k-\$2k since no dx testing done. Chiro specials expected around \$4k-\$5500 for about 3-4 mos of tx.

Opac cited for DUI and drug possession. Opac denies being under the influence

Waiting for LOR.

Type: Claim	Subject: Total Loss	Top
Created By : GLORIA HEUSER	Created : 01/17/2011 12:35 PM	Updated: 01/17/2011

LIEN HOLDER: Wells Fargo

Contact Name/ Dept:

Phone #/ Ext: 800-289-8004

Fax #:

Payoff Amount/ Date: \$4,441.03 til 2/1/11

LOG Request Amount:

Account #: 9380197988

Gap Insurance:

Payment address: Remittance Center, MACE2717-024, 15750 Alton Pkwy, Irvine, CA, 92618-3825

Names on title: rep could not adv

Type: Claim	Subject: Total Loss	Top
Created By : GLORIA HEUSER	Created : 01/17/2011 12:28 PM	Updated: 01/17/2011

ib

Rcvd c/from copart, veh not released.

ob

I did xfernce c/with clmt, Emilia and Christy at shop, veh is released.

ob

I adv copart.

Type: Claim	Subject: Rental Management	Top
--------------------	-----------------------------------	---------------------

Current Rental Status: M.Cousins set LD

Rental Start Date: 1/6/11

Last Authorized Date: 1/21/11

Days Authorized to Date: 16 days @ \$24.74 /day

Type: Claim

Subject: Total Loss

[Top](#)

Created By : MICHELLE COUSINS

Created : 01/14/2011 05:22 PM

Updated: 01/14/2011

attmptd to get payoff

got message hold times longer then normal

Type: Claim

Subject: Total Loss

[Top](#)

Created By : MICHELLE COUSINS

Created : 01/14/2011 05:19 PM

Updated: 01/14/2011

Seller: L235 LIBERTY MUTUAL INSURANCE

Adjuster: GLORIA HEUSER

Claim#: 017331078-02

Insured: ANDREA AWERBACH

Owner: EMILIA GARCIA

Lot Number Assigned: 10407161

Description: 01 HYUN SANTA FE WHITE

Yard Assigned: 057 NV - LAS VEGAS

Yard Address: 4810 N. LAMB BLVD

LAS VEGAS, NV 89115

Yard Phone: (702) 638-9300

Yard Fax: (702) 638-9494

Salvage Type: VEHICLES

Assignment Date: 01/14/2011

Seller Reference#: N/A

VIN Number: N/A

Date of Loss: 01/02/2011

Estimated Advance Charge: \$.00

Type: Claim

Subject: Rental Management

[Top](#)

Created By : MICHELLE COUSINS

Created : 01/14/2011 05:15 PM

Updated: 01/14/2011

LD of rental set 1/21

Type: Claim

Subject: Negotiation/Settlement

[Top](#)

Created By : MICHELLE COUSINS

Created : 01/14/2011 05:13 PM

Updated: 01/14/2011

Settlement made to whom: Emilia

Agree

Rental last day: 1/21

Date Paperwork sent: 1/14

Type: Claim

Subject: ICP/1st Call

[Top](#)

Created By : MICHELLE COUSINS

Created : 01/14/2011 05:08 PM

Updated: 01/14/2011

1st Call – Total Loss Note

1st i/b call @ 3:05 s/w Emelia
Location of Vehicle: Ultimate Collision
Date permission to pick-up obtained:
Date salvage yard notified of pick-up:
Lien holder: Wells Fargo
Phone #/ Account#: 9380197988 / 800-289-8004
GAP Insurance: Y/N Explained?
Options reviewed(y/n): yes
List missed options/Receipts if any:
Rental explained: yes
LOSSHIST/ISO/NICB reviewed:
TL procedures explained: yes
Name/s on Title: Emilia Garcia
Paperwork sent (date): 1/14
Replacement Cost Endorsement (Y/N):

Type: Claim	Subject: Total Loss	Top
Created By : GLORIA HEUSER	Created : 01/13/2011 11:41 AM	Updated: 01/13/2011

Rcvd vm from clmt.

ob
No ans, I lvm for clmt.

T/L TO DO:
-icp
-neg/sttle
-p/u veh

Type: Claim	Subject: Salvage	Top
Created By : SANDRA M WILCH	Created : 01/13/2011 10:34 AM	Updated: 01/13/2011

Sent NV t/l ppwrk to clmt req: title, notrz poa, keys, auth (lh unk)

Type: Claim	Subject: Total Loss	Top
Created By : GLORIA HEUSER	Created : 01/12/2011 06:19 PM	Updated: 01/12/2011

ob
I lvm for clmt.
I sent mn to S. Wilch to send NV ppwk, unk title/lh.

T/L TO DO:
-icp
-neg/sttle
-p/u veh

Type: Occurrence	Subject: Coverage	Top
Created By : TERESA MERAZ	Created : 01/12/2011 05:44 PM	Updated: 01/12/2011

VM rec'd from insd. I returned the call to discuss permissive use. I got vm, left message.

Type: Claim	Subject: Total Loss	Top
Created By : MICHELLE COUSINS	Created : 01/12/2011 02:26 PM	Updated: 01/12/2011

i/b call from Ms Garcia wanted status of claim and when rental was due back will reviewing claim Ms Garcia hung up called back was unable to reach clmt

Type: Claim	Subject: Claim Status	Top
Created By : DAVID A COOK	Created : 01/12/2011 01:35 PM	Updated: 01/12/2011

IB cal from the 3pc and it was confirmed that the clmt. does not have MP. I confirmed that liab. has been accepted. I provided the call w/ the contact info. re the CS assigned to the file.

Type: Claim	Subject: Claim Status	Top
Created By : TERESA MERAZ	Created : 01/11/2011 01:00 PM	Updated: 01/11/2011

Rec'd call back from clmt. She states she doesn't get good reception w/ her cell phone in her apt. She states she is in a great deal of pain and has anxiety and unable to sleep. She wants to f/u w/ Dr to see if they can prescribe meds. I reminded clmt of claims process and benefits of DD. She states her welfare got cancelled in Dec so she is trying to get it back. She does not have money to pay for tx oop or for meds if they are prescribed. Advised clmt we do not pay for tx as she is receiving it but once she is ready to settle and settlement is reached. She is not ready to settle due to pain worsening and f/u tx planned. In an effort to maintain DD, I offered to advance the cost of prescriptions if needed. I asked her to ctc me about this if needed. Clmt agreed. Advised I will f/u in a couple of weeks but if any quest to call me. RADD.

Type: Claim	Subject: Claim Status	Top
Created By : TERESA MERAZ	Created : 01/11/2011 12:45 PM	Updated: 01/11/2011

I called clmt to f/u. She states pain has not improved. I asked for tx status but call was disconnected. I tried calling clmt back but went straight to vm, left message requesting tx status and advising veh is t/l and provided t/l rep ctc info.

Type: Occurrence	Subject: Rental Management	Top
Created By : DELENE K MCQUEEN	Created : 01/11/2011 12:41 PM	Updated: 01/11/2011

i/b call mrs garcia
issue; rental ext
disc; rev notes , appraisal rec 1/7 for t/l, approved ext on rental for 2 more days, mn to t/l contact clmt , adv erac of ext.

Authorization changed by MCQUEEN, DEE at 9:43 AM.
S - Rental extended by MCQUEEN, DEE at 9:43 AM for 2 day(s).
S - Current authorized date is 1/13/11.
S - Extended 2 days at \$24.74/day.

Type: Occurrence	Subject: Coverage	Top
Created By : TERESA MERAZ	Created : 01/11/2011 12:12 PM	Updated: 01/11/2011

bus# and was told clmt is having breakfast w/ students. I left message requesting a call back.

Appears insd is a teacher so may be difficult to reach.

. Opac stated he has used insd veh in the past, with and without permission. Opac stated keys were on the counter and insd was home at the time.

Type: Claim	Subject: Damages	Top
Created By : TERESA MERAZ	Created : 01/10/2011 10:13 AM	Updated: 01/10/2011

Estimate/photos rec'd in e-folder of clmt veh. \$5464.27 in damage, veh is a T/L. T/L has been assigned.

Misc note to t/l rep to advise Lx posted at 100%.

Type: CLAIM	Subject: APPRAISER NOTES	Top
Created By :	Created : 01/07/2011 06:03 PM	Updated:

HIDDEN DAMAGE: POSSIBLE ADDL DAMAGE TO INNER ROCKER AND ADDL TO WHEELHOUSE

Type: CLAIM	Subject: APPRAISER NOTES	Top
Created By :	Created : 01/07/2011 06:03 PM	Updated:

APPT: NO APPT SET TOW IN CAR NOT DRIVABLE

Type: CLAIM	Subject: VEHICLE DISCREPANCY	Top
Created By :	Created : 01/07/2011 05:58 PM	Updated:

Vehicle Year = 2001; Vehicle Make = HYUNDAI; Vehicle Model = SANTA FE; Vehicle VIN = KM8SC83D81U053810

Type: Occurrence	Subject: Coverage	Top
Created By : TERESA MERAZ	Created : 01/07/2011 05:13 PM	Updated: 01/07/2011

Vm rec'd from insd. I called insd to discuss permissive use. I got vm, left messge.

Type: Occurrence	Subject: Investigation	Top
Created By : TERESA MERAZ	Created : 01/06/2011 05:47 PM	Updated: 01/06/2011

Statements taken from both drivers. Opac making left turn from private drive. A bus in right lane to clmt's left was stopped and blocking opac's view. Clmt coming from opac's left in left lane of 2. Opac pulled out of driveway causing collision. POI was to opac's front end and clmt's p/s rear door and rear tire. Clmt attempted to swerve left to avoid. . Opac cited for DUI and drug possession.

Lx decision posted.

Type: Claim	Subject: Rental Management	Top
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TT E.Garcia and discussed rental procedures -- she adv that could provide a small deposit to the brnch if need be

sent db auth thru ARMS and did conference call w/Donovan at brnch 5427
expln deposit issue and he said would be okay w/\$1 on deposit -- E.Garcia adv okay with this -during conversation found that another branch would be closer to clmnt's work

TT Erika at brnch 5404 who adv that will be okay w/\$1 deposit

Current Rental Status: Reservation for 1/6
Days Authorized to Date: 6 days @ \$24.74 /day
Authorized Total: \$148.44*

Type: Occurrence	Subject: Policyholder	Top
Created By : TERESA MERAZ	Created : 01/06/2011 05:28 PM	Updated: 01/06/2011

I called opac (702) 772-6256 and was able to reach him. Obtained RI. Posting version. Opac is mhsd but is in the process of getting his own apt at same apt complex. He did not ask insd to use the veh b/c he was not supposed to be driving. There was an issue w/ his permit. He thought he had a permit but didn't. Opac does not have a drivers license or valid permit. Opac has used insd veh in the past with and without permission. Insd has given him permission to use veh in the past to run errands. Opac could not say how many times. Opac states insd was home at the time. Keys were on the counter. Opac took the keys and was going to visit his child. Opac states he was cited for DUI, drug possession, no drivers license, no insurance in veh, and FTY. Opac states he was not under the influence of drugs at the time. He had marijuana on his person. The last time he smoked was weeks ago. He had not smoked on DOL.

Type: Claim	Subject: Damages	Top
Created By : TERESA MERAZ	Created : 01/06/2011 05:09 PM	Updated: 01/06/2011

I called TLC Ultimate Collision and arranged to have clmt veh picked up from Ewing Bros for inspection. TLC assignment sent.

Type: Claim	Subject: Rental Management	Top
Created By : TERESA MERAZ	Created : 01/06/2011 04:52 PM	Updated: 01/06/2011

OK standard size rental, DB. Clmt veh inspection pending. Will arrange for TLC Ultimate Collision to pick up veh from tow yard for appraisal.

Type: Claim	Subject: Claim Status	Top
Created By : TERESA MERAZ	Created : 01/06/2011 04:51 PM	Updated: 01/06/2011

CONT..Advised I'm sending med auth and I will f/u once estimate is completed. Established DD. Transferred clmt to ERAC.

Clmt has had 1 ER visit for back pain. No dx testing done. No f/u tx planned. only if pain gets worse. Opac was arrested for DUI

Med auth sent.

Type: Claim	Subject: Claim Status	Top
Created By : TERESA MERAZ	Created : 01/06/2011 04:49 PM	Updated: 01/06/2011

I called clmt at 1pm (NV time) and obtained RI. Posting version. Clmt states opac was arrested for DUI. Officer told clmt that opac was high. Clmt has back pain w/ numbness/tingling in both legs. She went to Mountain View Hospital on her own and was checked out. No dx testing done, meds given. Clmt will seek f/u tx if pain gets worse. Her health ins is not active yet so ER bill will be mailed to her. No WL. Attempted to make 1st call settlement but clmt would like to wait to see how she feels. No offer made. Clmt veh is at Ewing Bros. She called 3pc to get it moved but was told she would have to pay her ded so 3pc not handling her PD. Advised Lx pending but appears adverse to opac. Unk if opac still in jail so we do not want to delay PD. Clmt does not think veh is a t/l so advised I will have TLC shop pick up veh and have it inspected. In an effort to establish DD, I agreed to set up rental on DB for standard size. Clmt was appreciative. CONT...

Type: Claim	Subject: Claim Status	Top
Created By : TERESA MERAZ	Created : 01/06/2011 12:11 PM	Updated: 01/06/2011

Vm rec'd from clmt. I returned her call and requested RI. Clmt was at work and unable to discuss claim at the time. She requested I call back at 1pm (NV time). Advised I will back then.

Type: Occurrence	Subject: Coverage	Top
Created By : TERESA MERAZ	Created : 01/06/2011 12:10 PM	Updated: 01/06/2011

I called insd to discuss permissive use. I got vm, left messge.

Per Collision notes:

Unlisted Operator Questions for Policyholder

Did the operator have permission to drive your car? NO

Is the operator a member of your household? YES

What is your relationship to the operator? SON

Does the operator have their own set of keys to your car? NO If not where did they obtain the keys to your car?

ACCESS TO KEYS BECAUSE SAME HOUSEHOLD

Has the operator driven your vehicle before? NO

Does the operator have a valid driver's license? NO – HE SD HE HAS A PERMIT

How often does the operator use this vehicle? UNK

Does the operator have a vehicle of their own? NO

If yes, who is their insurance carrier? N/A

If operator was son or daughter, when did they obtain their license? NONE

Still need to verify additional details w/ insd.

Type: Occurrence	Subject: Claim Status	Top
Created By : DELENE K MCQUEEN	Created : 01/06/2011 11:51 AM	Updated: 01/06/2011

i/b mrs garcia clmt

issue; req to speak to rep

disc, trans call to bi teresa m

Type: Claim	Subject: Claims Strategy	Top
Created By : TERESA MERAZ	Created : 01/06/2011 11:05 AM	Updated: 01/06/2011

*Rec'd claim. Appears opac pulled out of driveway while clmt headed straight. Per notes, opac was DUI. Need to obtain statements from both drivers. P/R ordered.

*50/100/50 PL. Opac is insd's son and unlisted operator. Appears opac is mhsd. Per Collision notes, insd states opac did not have permission to drive but had access to keys since he is mhsd, opac does not have his own

*Clmt reported neck/back pain. Unk if seeking tx.

POI appears to be to clmt's p/s rear and insd's front end

Also, opac was DUI.

Type: Claim

Subject: Rental Management

[Top](#)

Created By : PAMELA GOODNIGHT

Created : 01/05/2011 06:29 PM

Updated: 01/05/2011

recv call from E.Garcia very upset w/clm process and fact that had to speak with so many diff people -- she is a single mother of 3 and needs rental today w/out paying any \$\$

adv that would be speaking with many diff people at LM but they all work as a team effort -- in regards to rental it will not be possible to get one at no expense to her -- LM must protect their customer and a rental cannot be auth w/out LM's consent

adv that clm was just assigned to T.Meraz and she has not seen this clm yet but would transfer her to vmail, she can leave a msg and I would also let T.Meras know

Transferred call to T.Meraz

Type: Claim

Subject: Claim Status

[Top](#)

Created By : MARY-LOU HUDSON

Created : 01/05/2011 04:01 PM

Updated: 01/05/2011

Hi Teresa, clmt injured, DD, please handle. Thank-you, eh

Type: Claim

Subject: Claim Status

[Top](#)

Created By : KRISTEN R LORD

Created : 01/05/2011 01:51 PM

Updated: 01/05/2011

RECEIVED VM FROM CLMT--Emelia Garcia at (702)358-8470

*Clmt woke up w/ back & neck pain

OB call to Clmt--Garcia

*Adv lx is still pending OPAC's statement

*Clmt may seek tx today--updated clmt info

*adv Clmt will need to get veh. moved from tow yard ASAP---she s/w her ins. co. & she was told that she needs to have LM get veh moved.

*explained that LM has not accepted lx & to let 3pc know that--if she has coll covg they should be able to move veh. from tow yard.

*clmt in need of rental--adv we typically use ERAC--hold on to all receipts if necessary, she does not have rental on her own policy.

*adv I created inj file--will follow up

Type: Claim

Subject: Total Loss

[Top](#)

Created By : AMANDA HOHMAN

Created : 01/05/2011 01:22 PM

Updated: 01/05/2011

Revd TL assignment, lx is pending, cv in storage. Sent s/s letter w/ 1/10 cutoff. Note to AshleyF to instruct clmt to move veh during 1st call..ah 1121

Type: Occurrence

Subject: Claim Status

[Top](#)

Created By : ASHLEY FLANAGAN

Created : 01/03/2011 02:44 PM

Updated: 01/03/2011

Received vm from Ins. Ms. Awerbach. She stated in message son was driving her vehicle w/o permission. Ins. son got a DUI and vehicle is currently in impound. OB left message for Ms. Awerbach to c/h when available

Type: Occurrence	Subject: Claim Status	Top
Created By : ASHLEY FLANAGAN	Created : 01/03/2011 02:38 PM	Updated: 01/03/2011

Ordered PR.

Type: Occurrence	Subject: 800 Center	Top
Created By : LISSETTE GRAY	Created : 01/03/2011 12:58 AM	Updated: 01/03/2011

Clmt needs a rental this is her only veh

Type: Claim	Subject: Total Loss Probability	Top
Created By : SYSTEM	Created : 01/03/2011 12:54 AM	Updated:

Probability Percentage = 0.9739
Probability of Total Loss = TRUE
Accident Description Code = 02
Date of Loss, Month = 1
Date of Loss, Year = 2011
Is Vehicle Driveable? = N
Lag Time = 1
Vehicle Make_Model = HYUN_SANTAFE
Policy State = NV
Severity of Damage = 03
Vehicle Age = 10

EXHIBIT "L"

1 **PLOG**

Alexandra B. McLeod

2 Nevada Bar No. 8185

amcleod@bvrclaw.com

3 **BRADY, VORWERCK, RYDER & CASPINO**

2795 East Desert Inn Road, Suite 200

4 Las Vegas, Nevada 89121

Telephone: (702) 697-6500

5 Facsimile: (702) 697-6505

6 Attorneys for Defendants, JARED AND ANDREA
AWERBACH

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11 EMILIA GARCIA,

12 Plaintiff,

13 v.

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

17 Defendants.

Case No.: A-11-637772-C

Dept. No.: XXVII

**PRIVILEGE LOG PERTAINING TO
PLAINTIFF'S REQUEST FOR
PRODUCTION NO. 7**

18
19 COME NOW Defendants, JARED AND ANDREA, by and through their counsel of record,
20 ALEXANDRA B. MCLEOD, ESQ., of the law firm of BRADY VORWERCK RYDER & CASPINO,
21 and hereby submits the instant Privilege Log in the above-entitled action, pursuant to the Nevada
22 Rules of Civil Procedure and the Discovery Commissioner Opinions.

23 Pursuant to *Albourn v. Koe, M.D., et al.*, DISCOVERY COMMISSIONER OPINION #10 (November,
24 2001), "In order to properly discharge the burden of establishing a privilege in the Eighth Judicial
25 District, the first step by the objecting party, in sync with E.D.C.R. 2.34, is to produce an informative
26 privilege log. This log should be served along with the privilege claims on the discovering party."
27 Furthermore, that opinion lays out a specific procedure for doing so:

1 The requirements of a privilege log in the Eighth Judicial District Court shall be
2 substantially as follows: For each document the log should provide 1) the author(s) and
3 their capacities, 2) the recipients (including cc's) and their capacities, 3) other
4 individuals with access to the document and their capacities, 4) the type of document,
5 5) the subject matter of the document, 6) the purpose(s) for the production of the
6 document, 7) the date on the document, and 8) a detailed, specific explanation as to
7 why the document is privileged or otherwise immune from discovery, including a
8 presentation of all factual grounds and legal analyses in a non-conclusory fashion.
9 *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973); *Diamond State Ins. Co. v. Rebel Oil*
10 *Co., Inc.*, 157 F.R.D. 691 (D.Nev. 1994); *Nevada Power Co. v. Monsanto Co.*, *supra*.
11 Such explanation may require affidavits or other evidence as a supplement to the log.
12 *Allendale Mut. Ins. Co. v. Bull Data Systems, Inc.*, 145 F.R.D. 84 (N.D. Ill. 1992).

13 Therefore, following the format outlined above, Defendant ANDREA AWERBACH, provides
14 the following privilege log for documents withheld from the its production of the insurance
15 company's adjusting/investigation file:

16 **A. Adjuster's claims notes dated January 18, 2011 *et. seq.***

- 17 1. AUTHOR: Claims handler and supervisors from Liberty Mutual
- 18 2. RECIPIENTS: Internal
- 19 3. ACCESSIBLE TO: Liberty Mutual representatives, Defense counsel
- 20 4. TYPE OF DOCUMENT: Print-out of computer claims notes, 15 pages redacted and produced
21 (Bates labels LM001-006; LM019-027), 12 pages withheld (Bates labels LM007-018).
- 22 5. SUBJECT MATTER: Subject accident, strategy for defending same
- 23 6. PURPOSE: Handling of Plaintiff's claim and subsequent litigation, determining liability and
24 damages valuation/reserves for same
- 25 7. DATE: January 18, 2011-Sept 26, 2011
- 26 8. OBJECTION: The redacted/withheld documents are privileged as they contain the mental
27 impressions of the insurance adjuster in anticipation of litigation and after receipt of Plaintiff's
28 counsel's letter of representation. "There would be no incursion into the mental impressions,
29 conclusions, opinions or legal theories of an attorney or other representative of a party
30 concerning the litigation. If such impressions, opinions or conclusions are mixed in with a
statement of facts from a witness, the document can be submitted to the court or Discovery
Commissioner in camera who will make the appropriate deletions of such protected materials
from the statement." *Moyns v. Creviston*, DISCOVERY COMMISSIONER OPINION #1 (June,

1 1988) (citing *Henry Enterprises, Inc. v. Smith*, 592 P.2d 915 (Kan. 1982) and *Anderson v. St.*
2 *Mary's Hospital*, 428 N.E.2d 528 (Ill.App. 1981)).

3 If the explanations proffered through this privilege log are not satisfying, Defendants will be
4 agreeable to submitting the computer log documents to the Discovery Commissioner for an *in camera*
5 review of same.

6 DATED: July 22nd, 2013

BRADY, VORWERCK, RYDER & CASPINO


7
8 By 
9 ALEXANDRA B. McLEOD
10 Nevada Bar No. 8185
11 2795 E. Desert Inn Road, Suite 200
12 Las Vegas, NV 89121
13 Attorneys for Defendants, JARED & ANDREA
14 AWERBACH
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EXHIBIT 5

EXHIBIT 5

DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA,)	
)	
Plaintiff,)	Case No.: A-11-637772-C
)	Dept. No.: XXVII
vs.)	
)	
JARED AWERBACH, individually,)	
ANDREA AWERBACH, individually,)	
DOES I-X, and ROE CORPORATIONS)	
I-X, inclusive,)	
)	
Defendants.)	
)	

DEPOSITION OF ANDREA AWERBACH
LAS VEGAS, NEVADA
THURSDAY, SEPTEMBER 12, 2013

REPORTED BY: GINA DILUZIO, RPR, CCR #833
JOB NO.: 186406

1 DEPOSITION OF ANDREA AWERBACH, taken at Glen Lerner
2 Injury Attorneys, 4795 South Durango Drive, Las Vegas,
3 Nevada, on Thursday, September 12, 2013, at 4:21 p.m.,
4 before Gina DiLuzio, Certified Court Reporter, in and for
5 the State of Nevada.

6
7 APPEARANCES:

8 For the Plaintiff Emilia Garcia:

9 GLEN LERNER INJURY ATTORNEYS
10 BY: ADAM D. SMITH, ESQ.
4795 South Durango Drive
11 Las Vegas, Nevada 89147
(702) 877-1500

12 For the Defendants Jared Awerbach and Andrea Awerbach:

13 BRADY, VORWERCK, RYDER & CASPINO
14 BY: ALEXANDRA B. MCLEOD, ESQ.
2795 East Desert Inn Road
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15 Las Vegas, Nevada 89121
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16 amcleod@bvrclaw.com

17 For the Defendant Jared Awerbach:

18 RESNICK & LOUIS, P.C.
19 BY: JEFFREY I. PITEGOFF, ESQ.
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20 Suite 300
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21 (702) 997-3800
jpitegoff@rlattorneys.com
22
23
24
25

1 Q. Did he ask for permission to drive your car
2 that day?

3 A. No.

4 Q. How did he get the keys?

5 A. I don't know.

6 Q. Where were the keys when he took the car?

7 A. I don't know, because I don't know when he took
8 them.

9 Q. Do you know where you were when he took your
10 car?

11 A. No.

12 Q. Would you have been home when he took your car?

13 A. Yeah, I'd have to be.

14 Q. Is there a regular place that you leave the
15 keys in your house?

16 A. No.

17 Q. And that's poor question. At the time, on
18 January 2, 2011, was there a regular place where you kept
19 your car keys in your house?

20 A. I think I was answering based on January 2.

21 No. I constantly hid the keys.

22 Q. You didn't hide them that day, did you?

23 A. Yes.

24 Q. Now, Jared said the keys were left out on the
25 counter. Is he not telling the truth?

1 A. I don't remember. It was quite some time ago.

2 Q. It was totaled, correct?

3 A. Yes.

4 Q. Do you know if Jared was talking on the phone
5 at the time of the accident?

6 A. No.

7 Q. Do you know if he got injured in the accident?

8 A. I don't know.

9 Q. Do you know if he got any treatment as a result
10 of the accident?

11 A. I don't know.

12 Q. Have you ever given a statement to your
13 insurance company about the accident?

14 A. Yes.

15 Q. When was that?

16 A. I'm sure days following the accident. I don't
17 remember the dates.

18 Q. Do you know if they recorded that statement?

19 A. I don't know.

20 Q. You know, sometimes they tell you, at the
21 beginning of the call, we're going to be recording this.

22 A. Uh-huh.

23 Q. Do you recall if that happened?

24 A. Assuming that it happened.

25 MR. SMITH: Can I have you check into that,

EXHIBIT 6

EXHIBIT 6

DISTRICT COURT
CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO.: A637772
)	DEPT. NO.: XXVII
JARED AWERBACH, individually;)	
ANDREA AWERBACH, individually;)	
DOES I-X, and ROE CORPORATIONS)	
I-X, inclusive,)	
)	
Defendants.)	
)	

VIDEO DEPOSITION OF ANDREA AWERBACH
LAS VEGAS, NEVADA
FRIDAY, OCTOBER 24, 2014

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809
JOB NO.: 224205

1 VIDEO DEPOSITION OF ANDREA AWERBACH, taken
2 at 4795 South Durango Drive, Las Vegas, Nevada on
3 FRIDAY, OCTOBER 24, 2014, at 1:30 p.m., before
4 Jackie Jennelle, Certified Court Reporter, in and
5 for the State of Nevada.

6

7

APPEARANCES:

8

For the Plaintiff:

9

10 GLEN LERNER INJURY ATTORNEYS
11 BY: ADAM SMITH, ESQ.
4795 South Durango Drive
12 Las Vegas, Nevada 89147
(702) 877-1500

13

For the Defendant, JARED AWERBACH:

14

15 RESNICK & LOUIS, PC
16 BY: LILY COMPTON, ESQ.
6600 West Charleston Boulevard, Suite 117A
17 Las Vegas, Nevada 89146
(702) 997-3800

18

For the Defendant, ANDREA AWERBACH:

19

20 BARRON & PRUITT, LLP
21 BY: PETTER MAZZEO, ESQ.
3890 West Ann Road
22 North Las Vegas, Nevada 89031
(702) 870-3940

23

The Videographer:

24

MONICA HAYWORTH

25

26

27

28

1 hindsight, did they need to be hidden better? Yes.

2 It doesn't mean I didn't hide them well.

3 Q. You could have kept the keys with you?

4 A. In the shower or wherever I went? If I had
5 thought to do that and not believe Jared would come
6 in. I mean, mostly they were with me. If they
7 weren't with me, it was because for that moment I
8 thought they were safe or for that moment I had to
9 do something where I couldn't take the keys.

10 Or, again, I'm a human being. I had
11 forgotten for the 30 seconds that it took.

12 Q. And you were in the practice of hiding the
13 keys because you knew there was a risk he would take
14 the keys and take the car; right?

15 A. I was in the practice of hiding the keys
16 because I kept track of everything that was
17 important to me. I hid the keys. I hid my wallet.
18 I kept track of any school things I needed.

19 I knew that I was living in a precarious
20 situation, and I was also hypervigilant because I
21 was under so much stress. So it wasn't just the
22 keys.

23 Q. About the keys though, you hid the keys
24 because you knew there was a risk that Jared would
25 take the keys and take your car; correct?

1 clever. I think that I'm not as relentless and
2 clever.

3 I think that it is to his advantage to be
4 able to take what he needs to take, and when you are
5 an addict who is craving, whether it's gambling or
6 drugs, you do things that people who are not craving
7 don't know you're going to do.

8 BY MR. SMITH:

9 Q. You know Jared says that he took the keys
10 off the counter; correct?

11 A. I have read that.

12 Q. Why would he lie about that?

13 MR. MAZZEO: Objection, mischaracterizes --
14 (Multiple parties speaking.)

15 MR. SMITH: Well, wait a minute. Let me
16 ask you the question first.

17 BY MR. SMITH:

18 Q. Do you think he's lying about that?

19 A. I think he's mistaken. I think he may have
20 seen them there earlier. I also don't think it
21 matters.

22 Q. Why don't you think it matters?

23 A. Because you -- because I leave keys on the
24 counter does not mean you have permission to take
25 the car.

EXHIBIT 7

EXHIBIT 7

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DISTRICT COURT
CLARK COUNTY, NEVADA
EMILIA GARCIA, individually,
Plaintiff,
vs. No. A637772
JARED AWERBACH, individually;
ANDREA AWERBACH, individually;
DOES I-X, and ROE CORPORATIONS
I-X, inclusive,
Defendants.
~~~~~

VIDEOTAPED AND VIDEOCONFERENCE DEPOSITION OF  
TERESA MERAZ

January 8, 2015  
2:17 p.m.

11811 Tatum Boulevard  
Phoenix, Arizona

JOB NO.: 230760  
Talía Douglas, RPR, CR No. 50775

APPEARANCES OF COUNSEL

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GLEN J. LERNER & ASSOCIATES  
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For Non-Party Liberty Mutual Insurance Company and Teresa Meraz:

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GREGORY J. KERWIN, ESQ.  
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Denver, CO 80202  
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gkerwin@gibsondunn.com

KOELLER NEBEKER CARLSON HALLUCK LLP  
ANDREW C. GREEN, ESQ. (Appearing via videoconference)  
300 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
702.853.5500  
andrew.green@knchlaw.com

ALSO PRESENT: Brent Jensen, Videographer

1 MR. SMITH: No. Because my follow-up  
2 question is going to be, is that your usual practice, and  
3 that's the same question I'm asking right now --

4 MR. KERWIN: I would let her answer that --

5 MR. SMITH: -- and that is a proper  
6 foundation question.

7 MR. KERWIN: I would let her answer that  
8 follow-up question if you frame it my way.

9 BY MR. SMITH:

10 Q. Did you speak with Andrea or Jared Awerbach about  
11 the January 2nd, 2011 accident?

12 A. Yes.

13 Q. What was your process for documenting the  
14 conversations you had with Jared and Andrea Awerbach about  
15 the January 2nd, 2011 accident?

16 A. What do you mean my process?

17 Q. I'm going to go back to the same question that I  
18 asked before.

19 When you speak with people about a claim, do  
20 you have a regular procedure that you use for documenting  
21 the conversation?

22 A. My notes -- my notes reflect an accurate account  
23 of the conversation.

24 Q. You write down what was said during the  
25 conversation, right?

# EXHIBIT 8

# EXHIBIT 8

1 **RSP**  
2 **PETER MAZZEO, ESQ.**  
3 Nevada Bar No. 9387  
4 **BARRON & PRUITT, LLP**  
5 3890 West Ann Road  
6 North Las Vegas, Nevada 89031-4416  
7 Telephone: (702) 870-3940  
8 Facsimile: (702) 870-3950  
9 E-Mail: [pmazzeo@lvnvlaw.com](mailto:pmazzeo@lvnvlaw.com)  
10 Attorney for Defendant Andrea Awerbach

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

13 EMILIA GARCIA,  
14  
15 Plaintiff,

Case No: A-11-637772-C  
Dept No: XXVII

16 vs.

**DEFENDANT ANDREA AWERBACH'S  
CORRECTION TO HER RESPONSES  
TO PLAINTIFF'S FIRST SET OF  
REQUESTS FOR ADMISSION**

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

21 Defendant Andrea Awerbach by and through her attorneys, BARRON & PRUITT, LLP, and  
22 pursuant to Rule 36 of the Nevada Rules of Civil Procedure answer Plaintiff's First Set of Requests  
23 for Admission as follows:.

24 **REQUEST FOR ADMISSION NO. 2:**

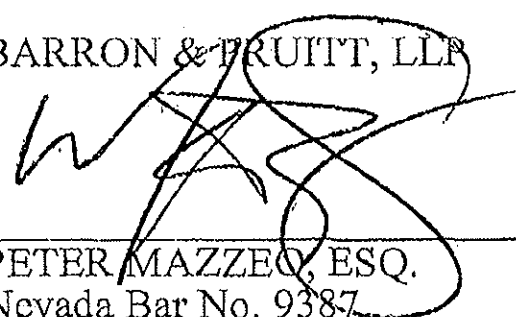
25 Admit Jared Awerbach was operating your vehicle on January 2, 2011, with your permission.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

27 Andrea admits she learned after the accident that Jared Awerbach had operated her vehicle on  
28 January 2, 2011 but Andrea denies she gave him permission.

DATED this 20<sup>th</sup> day of October 2014.

BARRON & PRUITT, LLP

  
PETER MAZZEO, ESQ.  
Nevada Bar No. 9387  
3890 West Ann Road  
North Las Vegas, Nevada 89031-4416  
Attorney for Defendant Andrea Awerbach

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FACSIMILE (702) 870-3950

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of October, 2014, I served the foregoing  
**DEFENDANT ANDREA AWERBACH'S CORRECTION TO HER RESPONSES TO  
PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION** as follows:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to  
the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the  
address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set  
forth below.

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s)  
listed above with the Eighth Judicial District Court's WizNet system.

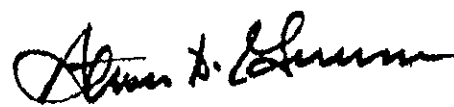
COREY M. ESCHWEILER, ESQ.  
ADAM D. SMITH, ESQ.  
Glen Lerner & Associates  
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*Attorneys for Plaintiff Emilia Garcia*

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*Attorneys for Defendant Jared Awerbach*

  
An Employee of BARRON & PRUITT, LLP

# EXHIBIT 9

# EXHIBIT 9

Electronically Filed  
02/25/2015 03:43:40 PM

CLERK OF THE COURT

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 REPORTS15 These matters having come on for hearing before Judge Allf 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.  
14

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

**COURT FURTHER ORDERS** for good cause appearing and after review the Motion for Order to Show Cause why Defendant Jared Awexbach 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](mailto:asmith@glenlerner.com)  
FAX: 702-933-7043

Mazzeo Law, LLC - Peter Mazzeo, Esq. - [pmazzeo@mazzeolawfirm.com](mailto:pmazzeo@mazzeolawfirm.com)  
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Resnick & Louis, P.C. - Roger Strassburg, Esq. - [rstrassburg@rlattorneys.com](mailto:rstrassburg@rlattorneys.com)  
FAX: 702-997-3800

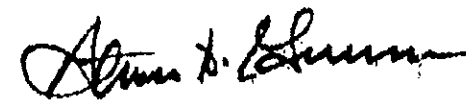


Karen Lawrence  
Judicial Executive Assistant

# EXHIBIT 10

# EXHIBIT 10





CLERK OF THE COURT

ORDR

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

EMILIA GARCIA,

Plaintiff,

CASE NO: A-11-637772

v.

DEPARTMENT 27

ANDREA AWERBACH and JARED  
AWERBACH

Defendants.

**DECISION AND ORDER DENYING DEFENDANT ANDREA AWERBACH'S  
MOTION FOR RELIEF FROM FINAL COURT ORDER**

This matter having come on for hearing before Judge Allf on the 15th day of April, 2015; Adam Smith appearing on behalf of Plaintiff Emilia Garcia, (hereinafter "Plaintiff" OR "Emilia") and Peter Mazzeo, Esq. appearing for and on behalf of Defendant Andrea Awerbach (hereinafter "Andrea"), and the Court having heard argument of counsel, and being fully advised in the premises:

**COURT FINDS** after review that in its February 25, 2015 Decision and Order, the Court denied Plaintiff's Motion to Strike Defendant Andrea's Answer. However the Court did enter a lesser sanction under NRCP 37(c), finding there was permissive use of Defendant Andrea's vehicle because "the claims note was concealed improperly, was relevant, and was willfully withheld by Defendant Andrea."

**COURT FURTHER FINDS** after review Defendant Andrea filed a Motion for relief from Final Court Order on March 13, 2015 under NRCP 60(b) and EDCR 2.24. Under NRCP 60(b), a moving party can be relieved from an order for "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due

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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  
relating to improperly withheld or destroyed evidence to be admitted by  
18 the offending party, the policy favoring adjudication on the merits,  
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  
19 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

20   
21 NANCY ALLF  
22 DISTRICT COURT JUDGE  
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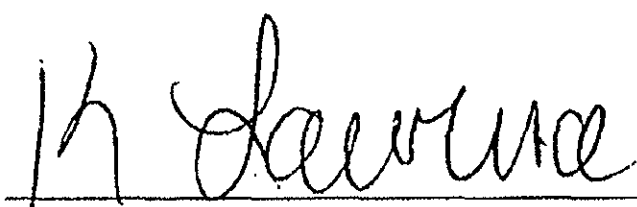
CERTIFICATE OF SERVICE

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:

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\_\_\_\_\_  
Karen Lawrence  
Judicial Executive Assistant

# EXHIBIT 11

# EXHIBIT 11

1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8

9 EMILIA GARCIA, individually, )

10 Plaintiff, )

11 vs. )

12 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

13 DOES I-X, and ROE CORPORATIONS )

I-X, inclusive, )

14 )

Defendants. )

15 )

16

17

REPORTER'S TRANSCRIPT

18

OF

19

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,  
CA CSR #13529

25

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19 (702) 408-3800

20

21

22 \* \* \* \* \*

23

24

25



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

# EXHIBIT 12

# EXHIBIT 12

1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8

9 EMILIA GARCIA, individually, )

10 Plaintiff, )

11 vs. )

12 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

13 DOES I-X, and ROE CORPORATIONS )

I-X, inclusive, )

14 Defendants. )

15

16

17

REPORTER'S TRANSCRIPT

18

OF

19

PROCEEDINGS

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED MONDAY, FEBRUARY 8, 2016

23

24

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

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\* \* \* \* \*

1 Internet, or radio. You are not to conduct any  
2 research on your own, which means you cannot talk with  
3 others, Tweet others, text others, Google issues, or  
4 conduct any other kind of book or computer research  
5 with regard to any issue, party, witness, or attorney  
6 involved in this case. You're not to form or express  
7 any opinion on any subject connected with this trial  
8 until the case is finally submitted to you.

9 We'll see you back at 1:00 o'clock.

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

12 THE COURT: All right. We're outside the  
13 presence of the jury.

14 Anything we need to put on the record yet?

15 MR. ROBERTS: Nothing from us, Your Honor.

16 MR. MAZZEO: Your Honor, just, do you have  
17 a -- something other than this lecturn? Do you have a  
18 smaller portable lectern because I know this is kind of  
19 grounded here with the wires and --

20 THE COURT: It swivels.

21 MR. MAZZEO: It does? It turns? It does.

22 Okay. Well, that may work.

23 THE COURT: Okay.

24 MR. ROBERTS: About how much longer do you  
25 think you have with your part, Judge? Not exact, but

1 just --

2 THE COURT: Probably half an hour.

3 MR. ROBERTS: Very good.

4 THE COURT: Okay? All right. Off the  
5 record. See you back at 1:00.

6 (Whereupon a lunch recess was taken.)

7 THE COURT: Go back on the record, Case  
8 No. A637772. We're outside the presence of the jury.  
9 I know that one of the things that you guys wanted me  
10 to tell you how we're going to handle is this issue of  
11 permissive use. So I talked to Judge Allf this morning  
12 to try to figure out what was her intention when she  
13 entered that order.

14 I don't think she understood the difference  
15 between permissive use and auto negligent entrustment.  
16 That being said, it was her intention that her ruling  
17 would result in a rebuttable presumption, not a  
18 determination as a matter of law, even though that's  
19 what the order says.

20 I'm not going to change from permissive use  
21 to negligent entrustment, even though I think that's  
22 probably what she envisioned. But I am going to make  
23 it a rebuttal presumption as it relates to the  
24 permissive use. So -- and that's based upon what her  
25 intention was.

1           So what that means is I need both of you to  
2 propose an instruction dealing with the rebuttal  
3 presumption on permissive use. Because it's a rebuttal  
4 presumption, the defense gets to put on whatever  
5 evidence you have to try to rebut it. Okay? I know  
6 that's not what everybody has prepared for.

7           MR. MAZZEO: No, but ...

8           THE COURT: It's -- I think it's the only  
9 thing I can do to try to -- to try to move forward the  
10 trial with the orders that are in place based on the  
11 intention of the judge that issued those orders.  
12 Doesn't make either of you happy; right?

13          MR. MAZZEO: Well, no, it makes the defense  
14 somewhat happy. It's not --

15          MR. STRASSBURG: Doesn't make me happy,  
16 Judge.

17          THE COURT: Okay.

18          MR. MAZZEO: But --

19          THE COURT: Sorry.

20          MR. MAZZEO: But it does throw a wrench in  
21 the works because we didn't anticipate as -- as we're  
22 preparing for trial, I'm sure both sides were not  
23 looking at this case in terms of, okay, what evidence  
24 do we need now to rebut the ruling on permissive use so  
25 that we can fight both the joint liability, 41.440, and

1 negligent entrustment. So wow.

2           The good thing is we'll be doing jury  
3 selection today and tomorrow, and I don't anticipate  
4 getting to openings until Wednesday, but it may create  
5 a little --

6           THE COURT: That gives you time.

7           MR. MAZZEO: It gives us some time, you know.

8           MR. ROBERTS: Look, Judge, I have to -- to  
9 say that --

10          THE COURT: I know.

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

17          THE COURT: I know.

18          MR. ROBERTS: There's no rebuttal  
19 presumption. The file and the admissions that were  
20 made were made to an insurance adjustor. The insurance  
21 adjustor was excluded as a witness because permissive  
22 use has already been found as a matter of law. We  
23 would have moved to reopen discovery.

24                 Now, we have the burden -- I know it's not  
25 really our burden, but now we have to be prepared to



1 put on evidence of permissive use when we have planned  
2 for trial and governed our discovery attempts and not  
3 asked for additional discovery after the claims file  
4 was produced outside of discovery period.

5 THE COURT: If you want to bring the  
6 adjustor, I'm going to allow you to bring them.

7 MR. MAZZEO: Well, maybe over objection.  
8 There's a lot --

9 THE COURT: Okay.

10 MR. MAZZEO: -- lot to digest right now in  
11 three minutes.

12 THE COURT: I know.

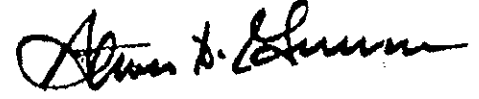
13 MR. MAZZEO: And -- and also, if you don't  
14 mind me jumping in, but -- but also, I'm also still  
15 considering thinking about not fighting liability. So  
16 it's just -- it's something that's rolling around in my  
17 brain that if we don't contest it, then we still need a  
18 an instruction from the Court, because we certainly  
19 have to defend punitive damages. You received our  
20 trial brief and my argument last week as far as we have  
21 to -- that -- that -- and I'm sure after speaking with  
22 Judge Allf, you asked her about -- or you confirmed  
23 there was a discovery sanction, so it had nothing to do  
24 with the circumstances by which Andrea might have given  
25 permission to Jared to use the vehicle. Facts of the

# EXHIBIT 13

# EXHIBIT 13

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*Attorneys for Plaintiff Emilia Garcia*

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.**

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

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

27 ///

28 ///

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 adjuster, 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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to be readjusted without the ability to vet evidence that would have been obtainable in discovery. Emilia now has to be prepared to rebut Andrea's testimony regarding permissive use, despite the fact that Andrea's prior deposition testimony is unhelpful because it consists of a string of untruths that misled Emilia throughout years of discovery.

Allowing Emilia to, now, depose the Liberty Mutual adjustor while trial is proceeding is not a compromise, but further inflicts prejudice on Emilia. There is limited time to conduct a discovery deposition during trial, and it would further delay Emilia's day in court and completely upend this Court's schedule to continue trial to allow the deposition. The simple fact is that all parties relied on the Court's order for a year leading up to trial, when additional discovery could have been conducted had the parties known permissive use was an issue. It is highly improper and prejudicial for this Court to reverse Judge Allf's decision, with no notice and on the first day of jury selection, after the parties placed significant reliance on the orders.

#### IV. CONCLUSION

For the reasons set forth above, Emilia requests that this Court reconsider its decision to modify both of Judge Allf's sanction orders, and refrain from issuing a written order modifying the binding written orders of Judge Allf (which still bind these proceedings until modified by a written order of this Court).

DATED this 10<sup>th</sup> day of February, 2016.

*/s/ Marisa Rodriguez-Shapoval*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> 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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# EXHIBIT 14

# EXHIBIT 14



1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8

9 EMILIA GARCIA, individually, )

10 Plaintiff, )

11 vs. )

12 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

13 DOES I-X, and ROE CORPORATIONS )

I-X, inclusive, )

14 )

Defendants. )

15 )

16

17

REPORTER'S TRANSCRIPT

18

OF

19

PROCEEDINGS

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED WEDNESDAY, FEBRUARY 10, 2016

23

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
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23

24

\* \* \* \* \*

25

1 have more people sitting here.

2 MR. TINDALL: That would be dependent upon  
3 whether everybody exercises their strikes.

4 THE COURT: Okay.

5 MR. MAZZEO: You still need a starting point  
6 with more jurors, then, in the box.

7 MR. TINDALL: And I'm not sure I ever heard  
8 Mr. Lee Roberts pass for cause. Did that happen? I  
9 didn't -- I never heard that.

10 THE COURT: He passed the jury. I'm guessing  
11 he was passing for cause.

12 MR. ROBERTS: I think that may have been  
13 implied by my action. If something new comes up,  
14 something new comes up, but I pass for cause.

15 THE COURT: I -- I agree that things have  
16 changed based on my ruling at the beginning of trial.  
17 I don't know that it necessarily puts you guys as  
18 adverse to each other as you may think. But -- but I  
19 also agree with Mr. Roberts's suggestion that it's  
20 probably too late. So I'm going to leave it the way it  
21 is.

22 What else?

23 MR. ROBERTS: On our trial brief, Your Honor,  
24 one, we just wanted to make sure we -- we made a  
25 complete record and filed the brief. We understand

1 that you've told us what your inclination is. But, you  
2 know, as -- as I mentioned when you told us this for  
3 the first time after lunch on Monday, it's our position  
4 that, you know, the supreme court's been pretty clear  
5 that a written order is the law of the case and minute  
6 orders don't change the written orders and oral  
7 pronouncements from the bench don't change the written  
8 orders. So we've still got a written order.

9           There are some additional things in here that  
10 I thought the Court should know about before deciding  
11 whether to modify the -- the orders of Judge Alf.  
12 One, is that I didn't mention on Monday that there was  
13 a motion for reconsideration or clarification, after  
14 the first order that I read into the record, and I  
15 believe that second order is much more clear that --  
16 that a finding of permissive use as a matter of law is  
17 being entered.

18           THE COURT: That's the one you cited on the  
19 top of page 7?

20           MR. ROBERTS: That is -- that is correct.  
21 And -- and this is what I think is particularly  
22 probative to the intent of Judge Alf as reflected in  
23 the actual written order she signed. She says, The  
24 finding of permissive use does not prevent adjudication  
25 on the merits because plaintiff still maintains the

1 burden of showing causation and damages.

2           So if -- it seems to me if it was her intent  
3 to preserve their ability to adjudicate the merits of  
4 permissive use when she was talking about what they  
5 still had left, she would have mentioned, Oh, and they  
6 can try to rebut this finding, if they want. They can  
7 do that too. So we are still adjudicating it on the  
8 merits.

9           The written -- regardless of her recollection  
10 now, a year later, the written order she signed is  
11 fairly clear and fairly unambiguous and doesn't  
12 preserve a rebuttable presumption, doesn't make a  
13 rebuttable presumption. And when talking about what's  
14 left for trial on the merits, does not mention  
15 permissive use in any fashion.

16           So we believe that the record is clear and  
17 that once she recused herself, she said, I'm out of  
18 this case, and it's improper for her through either  
19 written orders or conversation with the new judge to  
20 try to influence the new judge in either new findings  
21 or an interpretation of her old findings. She's  
22 recused herself. She's for whatever reason said, I'm  
23 not going to be involved anymore. And we all know what  
24 that reason is. And -- and certainly there could be an  
25 implication that she'd be biased against Mr. Tindall,

1 but we all know when there's a facial bias, sometimes  
2 judges go the other way to prove they're not biased.  
3 But for whatever reason, she recused herself. She's  
4 now out of the case. And -- and I -- I don't believe  
5 it's proper for this Court to rely on what she may have  
6 told you about her intent when her written orders  
7 entered a year ago are clear.

8           Now, there was another issue which we haven't  
9 spent any time on and thought was moot, and that was  
10 that at the beginning of this case, they answered  
11 interrogatories indicating that he had permission. But  
12 more importantly, they responded to a request for  
13 admission on permissive use, and we've indicated that  
14 here in our pleadings, that -- where she admitted  
15 permissive use in response to a request for admission.  
16 Not just failed to respond, but admitted permissive  
17 use.

18           Now, when she got new counsel, she filed an  
19 amended response denying permissive use. But at that  
20 time, this is when the motion for sanctions was being  
21 made, we were moving to strike their answer altogether.  
22 We got a finding of permissive use. It doesn't matter  
23 that they tried to amend their answer. But the  
24 statute, NRS 36B, is clear that if you admit something,  
25 the only way to get relief from that admission is upon

1 motion to the Court and upon a showing. And they've  
2 never filed a motion for relief from the admission they  
3 properly made under 36A, long before the Court made a  
4 finding of permissive use as a sanction.

5           So there is still a binding admission in  
6 place which they've never moved for relief from, and  
7 it's simply too late to move for relief from that  
8 admission now that the trial has started. We'd be  
9 prejudiced in our preparation, the same way we believe  
10 we're prejudiced by the modification of Judge Allf's  
11 sanction order.

12           Thank you, Judge.

13           MR. MAZZEO: Not much different from the way  
14 Andrea believes she was prejudiced by the initial  
15 ruling by Judge Allf regarding a discovery sanction  
16 when she found a fact -- made a fact that's in dispute,  
17 took it out of dispute and found permissive use against  
18 her.

19           With regard to the trial brief regarding the  
20 permissive use, I haven't had -- I know it was filed  
21 today. It has a date on it of February 8th for a  
22 hearing date, but I know it was filed today. Haven't  
23 had the opportunity to read it or -- or to address the  
24 points and authorities that -- I guess addressed by the  
25 plaintiff in the brief.

1 THE COURT: No.

2 MR. MAZZEO: No, not at all?

3 Well, in any event there is a conflict.

4 THE COURT: Okay.

5 MR. MAZZEO: And -- and so we -- we need --

6 we were talking for about five or ten minutes, I guess,

7 and we're at an impasse with -- with legal strategy at

8 that point based on --

9 MR. STRASSBURG: It's not --

10 MR. MAZZEO: It's actually based on

11 responses --

12 MR. STRASSBURG: It's not an impasse.

13 MR. MAZZEO: It's based on responses by

14 jurors, so we need to give it a little bit more thought

15 and -- and -- before we resume with jury selection.

16 And -- and to also properly review plaintiff's trial

17 memo regarding permissive use unless you're not going

18 to --

19 THE COURT: Whether I rule on that right now

20 or not shouldn't affect whether we go forward with the

21 jury selection; right?

22 MR. STRASSBURG: Correct.

23 MR. MAZZEO: Correct. Yeah, if you're not

24 going to give us additional peremptory challenges,

25 that's true.



1           THE COURT:  Sounds like we should go forward.  
2 Let's keep picking a jury.  
3           MR. MAZZEO:  Okay.  
4           MR. STRASSBURG:  Thank you, Judge.  
5           THE COURT:  Do you want make -- cause  
6 challenges at this point?  
7           MR. MAZZEO:  No.  
8           THE COURT:  Okay.  
9           MR. MAZZEO:  Not yet.  
10          THE COURT:  Before we bring the jury as a  
11 whole back in --  
12          MR. MAZZEO:  Hold on, Judge.  One minute.  
13          MR. STRASSBURG:  We'd like to challenge for  
14 cause, Judge.  
15          MS. ESTANISLAO:  Raquel Go.  
16          MR. MAZZEO:  There is one --  
17          THE COURT:  Go ahead.  
18          MR. MAZZEO:  There is one juror, and it would  
19 be Raquel Go in Seat No. 19, because of her dad --  
20 dad's death two weeks ago, you saw that she had an  
21 emotional breakdown when I asked her about that.  And  
22 she indicated -- I asked her if that would be a  
23 problem, and she said she would be distracted or have  
24 problems focusing at times.  So there's a whole lot of  
25 information coming from -- between openings and

# EXHIBIT 15

# EXHIBIT 15

**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**

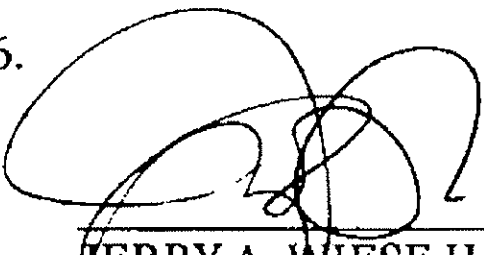
**ORDER MODIFYING  
PRIOR ORDER OF  
JUDGE ALLF**

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  
proceeding without delay.

19 Dated this 12<sup>TH</sup> day of February, 2016.

20  
21   
22 JERRY A. WIESE II  
23 DISTRICT COURT JUDGE  
24 EIGHTH JUDICIAL DISTRICT COURT  
25 DEPARTMENT XXX  
26  
27  
28

# EXHIBIT 16

# EXHIBIT 16

1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8

9 EMILIA GARCIA, individually, )

10 Plaintiff, )

11 vs. )

12 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

13 DOES I-X, and ROE CORPORATIONS) )

I-X, inclusive, )

14 )

Defendants. )

15 )

16

17

REPORTER'S TRANSCRIPT

18

OF

19

JURY TRIAL

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED MONDAY, MARCH 7, 2016

23

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

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22

23

24 \* \* \* \* \*

25

1 Q. Okay. And you know that your attorney  
2 admitted this statement on your behalf; right?

3 A. Yes.

4 Q. Okay. Request No. 2 --

5 MR. MAZZEO: Objection. Your Honor, can we  
6 specify which attorney? I did not admit that on her  
7 behalf.

8 THE COURT: Say it was a different attorney.  
9 That's fine.

10 MR. ROBERTS: We'll agree it was a different  
11 attorney who signed the document, Your Honor.

12 BY MR. ROBERTS:

13 Q. And Request No. 2, "Admit Jared Awerbach was  
14 operating your vehicle on January 2nd, 2011, with your  
15 permission."

16 And, again, your attorney admitted this on  
17 your behalf; correct?

18 A. Yes.

19 Q. You -- you told the jury about rehab --

20 A. Yes, sir.

21 Q. -- that Jared Awerbach has been through since  
22 this collision occurred.

23 A. Yes.

24 Q. And I just wanted to clarify for the jury.  
25 That rehab was not just for marijuana use;



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

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

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

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

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

19 THE COURT: Go ahead. Make your motions.

20 MR. ROBERTS: Thank you, Your Honor.

21 THE COURT: You have a few?

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

25 The first one is, we would request a directed

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

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

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

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

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

10 MR. MAZZEO: You did.

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

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

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

23 THE COURT: That's fine.

24 MR. ROBERTS: You can deny it.

25 THE COURT: Okay. Denied.

# EXHIBIT 17

# EXHIBIT 17

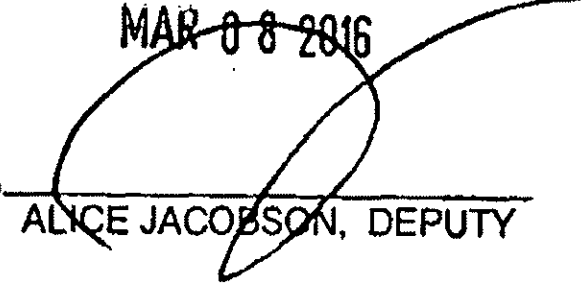
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FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

MAR 08 2016

BY,   
ALICE JACOBSON, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,

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

Plaintiff,

JURY INSTRUCTIONS

v.

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

Defendants.

A-11-637772-C  
JI  
Jury Instructions  
4533115



50

INSTRUCTION NO. 1

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.

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## INSTRUCTION NO. 2

The purpose of the trial is to ascertain the truth.

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.

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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.

No. 71348

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Electronically Filed  
Oct 15 2018 01:04 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

EMILIA GARCIA,  
Appellant,

v.

ANDREA AWERBACH,  
Respondent.

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**APPELLANT'S APPENDIX  
VOLUME VI, BATES NUMBERS 1251 TO 1500**

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| XXVI         | 6423 – 6440         | Trial Transcript – 03/10/2016 | 08/23/2018        |

1 A. I would agree with that.

2 Q. Okay. And the reason you need to know the  
3 mass is the amount of energy Mr. Awerbach's vehicle  
4 has, one component is mass and another component is  
5 velocity; right?

6 A. That's true.

7 Q. So the more -- assuming the exact same angle  
8 of impact, the greater the speed, the higher the  
9 delta-v; right?

10 A. In general, yes.

11 Q. Assuming the same speed, the higher the  
12 angle, the less delta-v; right?

13 A. The delta-v direction will change, but maybe  
14 not the magnitude.

15 Q. Okay. Thank you. That is more accurate.

16 So in this case, before you even get to -- to  
17 MADYMO -- did I say that correctly?

18 A. I believe so.

19 Q. Okay. And that's Mathematical --

20 A. Dynamic Model.

21 Q. Thank you. Mathematical dynamic model.

22 In your report of August 21st of 2014, you  
23 provide national weighted estimates and percent of  
24 restraint far-sided occupants injured in lateral  
25 impacts with a delta-v between 5 and 10 miles an hour,

1 characterized by severity; right?

2 A. Let me pull that up. You're looking at  
3 which?

4 Q. I'm looking page 17 of your  
5 August 21st, 2014, report.

6 A. Page 17. Bear with me.  
7 I'm there.

8 Q. Okay. So you look at some data from  
9 recognized sources, and you determine that, for  
10 delta-v's between 5 and 10, here are the reported  
11 injuries and reported injuries to the lumbar spine of  
12 two severities; right?

13 A. Yeah. There's more to it. So these are  
14 lateral impacts, single collisions. There's not  
15 multiple collision. These are far-side occupants. So  
16 there's more to it than just that. But, yes, the  
17 tables in here and the text describes it.

18 Q. And then you give the conclusion that "Based  
19 on the NASS/CDS data, it is unlikely that an individual  
20 would sustain AIS 2+ lumbar spine pathologies from an  
21 accident similar to the subject accident."

22 And the things that make it similar are  
23 lateral impact; right? Which is undisputed?

24 A. That's right.

25 Q. Far-sided, which undisputed, and delta-v;



1 right?

2 A. Those are all true.

3 Q. So one of the fundamental opinions you want  
4 to give is solely based from -- at least from a  
5 disputed standpoint, on delta-v; right?

6 A. No. So this is a check on the biomechanical  
7 and engineering analysis portion. And this actually  
8 comes in as a way of looking at delta-v's overall and  
9 injury likelihood. And so some of these may be pure  
10 lateral impacts and no rotation; some may have  
11 rotation. But the point being that, with or without  
12 it, we have zero cases with lumbar spine AIS 2+  
13 injuries.

14 Q. Right. And the database you used is delta-v  
15 between 5 and 10.

16 A. That's part of the query.

17 Q. And in this case you've calculated a delta-v  
18 of 9 using PC-Crash; correct?

19 A. 9 is the upper bound.

20 Q. Right. So let's assume that we changed a few  
21 of these things around a little bit and we got an upper  
22 bound of 11. Then this table would no longer apply;  
23 right? We'd have to look at different data.

24 A. I could do that, sure. Yes.

25 Q. So then what you told the Court is that you

1 took other data from your PC-Crash simulation and put  
2 it into MADYMO?

3 A. The output of PC-Crash into MADYMO.

4 Q. Right. And so this is very detailed output  
5 from PC-Crash that goes into your biomechanical  
6 program; right? And let's take a look at it. We don't  
7 have to -- to argue about semantics.

8 What you put into MADYMO was X, Y, and Z  
9 position and yaw, pitch, and roll rotation of the  
10 vehicles during the duration of the accident; right?

11 A. That's correct.

12 Q. And so it's not just the rotation of the  
13 vehicle that's important to you and that you entered  
14 into MADYMO; it's how fast the vehicle rotates around;  
15 right? Rotation by time.

16 A. Sure. All of these are time histories, of  
17 course.

18 Q. And this is your Attachment D. And all of  
19 this information that you put into MADYMO is the output  
20 from PC-Crash after you enter speed, angle, and all of  
21 the other things that you told Mr. Strassburg.

22 A. This is output, that's correct.

23 Q. Okay. And then MADYMO calculates sheer  
24 forces on the spine; right?

25 A. It does.

1 Q. Okay. And you calculated an axial force or  
2 compressive force; right?

3 A. Right. So let's be clear there is a force  
4 that has components in different directions.

5 Q. And the two you mentioned in your report as,  
6 in your words, most significant were the compressive  
7 axial force and the shear force.

8 A. That's right.

9 Q. And in your report you show the shear force  
10 going perpendicular to the -- to the body; right?

11 A. I show an anterior-posterior force.

12 Q. Right. And the force of the accident being  
13 balanced by the force of the ligaments in the muscles  
14 and the skeleton?

15 A. Not sure what you mean. Sorry.

16 Q. Force from the accident, resistive force of  
17 spine, ligaments, and muscles.

18 You prepared this; right? It's part of what  
19 you want to tell the jury?

20 A. I did, yes.

21 Q. And then what you want to tell the jury is --  
22 and this is page 65 of the PowerPoint that's been  
23 provided -- here is your occupant motion rotation only,  
24 and it shows that the occupant would experience a force  
25 making it go over toward the door of the vehicle;

1 right?

2 A. That's right. A rotational motion of the  
3 vehicle creates an outward motion for the occupant.

4 Q. Okay. And that would be a different type of  
5 force than you think happened in this case; right?

6 A. No, I think that's present in this case.

7 Q. The force from side to side?

8 A. There is some small shear force laterally.  
9 It's provided in my file. But as you can see, it's  
10 very small.

11 Q. Right. And reason that you say it's small  
12 and are going to tell the jury it's small is because in  
13 this case we've got rotational force which counteracts  
14 the lateral -- the -- the lateral force counteracts the  
15 rotational force; right?

16 A. It's close enough, yes. It's not quite how I  
17 would say it, but sure.

18 Q. Okay. And -- and then I think there's some  
19 slides in here where you actually show those two forces  
20 as counteracting in addition to the slide I just  
21 showed.

22 A. That's right.

23 Q. Now, in your reconstruction from your  
24 PC-Crash input, you have Ms. Garcia's vehicle going  
25 from the No. 1 travel lane going south, across the

1 median, and over into the No. 1 northbound lane; right?

2 A. In the animation that I showed, yes.

3 Q. Okay. And you would agree that it takes  
4 lateral force to move the vehicle from one side of the  
5 road over to the other side of the road.

6 A. Sure.

7 Q. And if the vehicle is staying in its lane,  
8 you've got more rotational force, and it's not being  
9 offset by the lateral force the way your calculations  
10 show.

11 A. Yeah. That would be physically impossible  
12 from what you described. It has to move laterally.  
13 And the only way it could get back into its original  
14 lane would be with the steering input that I mentioned  
15 earlier at the end of the accident sequence.

16 Q. So based on your calculations and the  
17 assumptions you've made about angles of impact, it has  
18 to move laterally?

19 A. Based on the laws of physics.

20 Q. Let's talk about crush for a minute. You  
21 would agree that there are no pictures or photographs  
22 you reviewed looking down from the top of the vehicle;  
23 right?

24 A. That's true.

25 Q. And so you attempted to use photogrammetry to

1 estimate crush; is that right?

2 A. That's right.

3 Q. And in your report you said that, since you  
4 couldn't actually go out and measure the crush, you had  
5 to come up with a range?

6 A. That's right.

7 Q. And you overstated that range; correct? You  
8 overestimated crush as a conservative measure?

9 A. That's right.

10 Q. Would you agree with me that, in order to  
11 conserve energy, as you have talked about doing in the  
12 laws of physics, that you've got a certain amount of  
13 energy that goes into an accident -- a collision, and  
14 those energies on one side have to equal the total  
15 energies on the other side?

16 A. You mean before and after the impact?

17 Q. Correct.

18 A. That's correct.

19 Q. So if there's more crush, there's less  
20 delta-v of Ms. Garcia's vehicle, because more of the  
21 energy, holding speed constant, angles constant, more  
22 crush equals less delta-v?

23 A. In general that's the right idea. In the  
24 number ranges that we're talking about, it makes a very  
25 minor impact. No pun intended.

1 Q. Mr. Garcia's vehicle was damaged on the  
2 passenger side; correct?

3 THE COURT: Ms. Garcia or Mr. Awerbach's?

4 MR. ROBERTS: I'm sorry, Your Honor. It gets  
5 that time of day; I start misstating everything.

6 BY MR. ROBERTS:

7 Q. Mr. Awerbach's vehicle was damaged on the  
8 passenger side; right?

9 A. That's correct. The passenger side of the  
10 front -- I'm sorry. It's front damage, more on the  
11 passenger side.

12 Q. Okay. So -- so you've got his vehicle. The  
13 angle goes like this; right?

14 A. Not sure which way is front on your paper for  
15 the vehicle.

16 Q. Okay. If this is Mr. Garcia's vehicle --

17 A. Why don't we use -- can we use something else  
18 where -- something that's more directional?

19 THE WITNESS: Can we use the tissue box, Your  
20 Honor?

21 THE COURT: How about this?

22 MR. ROBERTS: Okay.

23 THE WITNESS: Thanks.

24 MR. ROBERTS: Thank you.

25 /////

1 BY MR. ROBERTS:

2 Q. All right. So the spine is the front of the  
3 vehicle. You got Mr. Awerbach coming in like this, and  
4 then you got him turning left; right?

5 A. Correct.

6 Q. Assuming Ms. Garcia's going straight down the  
7 road, the vehicle -- the damage to Mr. Garcia's vehicle  
8 would be on the driver's side; right?

9 MR. SMITH: Mr. Awerbach.

10 BY MR. ROBERTS:

11 Q. Mr. Awerbach's vehicle would be on the  
12 driver's side. So if Mr. Awerbach turns left as you  
13 state, the -- and Ms. Garcia's parallel, the damage is  
14 going to be on the driver's side; right?

15 A. If you angle it in like that, sure. But if  
16 you have the contact -- may I?

17 Q. Sure.

18 A. Okay.

19 If you have the contact coming in like this,  
20 and she's swerving this way (witness indicating) -- and  
21 I am pointing -- she is driving down the street swerved  
22 to the left. So on the paper she's going to the right.  
23 He's coming in this way, to the right on the paper.  
24 And, remember, there's contact with the wheel. And  
25 that's contacting the driver's side of his vehicle.



1           The wheel rotates around as she's moving out  
2 this direction. That would account for the scuffs, the  
3 marks that we see on the bumper of the Forenza, and it  
4 matches up well with how the impact that actually  
5 created the force on both vehicles.

6           Q. But in order to make that work, you've got to  
7 turn Ms. Garcia's vehicle at an angle heading over into  
8 the northbound lanes; right?

9           A. A slight degree, which is what she testifies  
10 to.

11          Q. Does she testify to what the angle was or did  
12 you have to guess at that?

13          A. I wouldn't say it's a guess. I would say  
14 we'd --

15               MR. MAZZEO: Objection, Judge. There's  
16 nothing in -- in -- in the -- the amount of angle by  
17 Ms. Garcia. There's no testimony regarding that.

18               THE COURT: So you didn't want him to testify  
19 about it?

20               MR. MAZZEO: Withdrawn.

21               THE COURT: The question was did she testify  
22 to what the angle was, or did you have to guess; right?

23               MR. ROBERTS: That was the question.

24               MR. TINDALL: The objection, then, would be  
25 vagueness, whether he was guessing about the testimony

1 or guessing about the angle.

2 THE COURT: I'm going to let him answer.

3 THE WITNESS: I used what I thought were  
4 reasonable estimates of what it could be.

5 BY MR. ROBERTS:

6 Q. And the reason that you felt your estimates  
7 are reasonable is that's the angles that you had to use  
8 in order for the rest of your calculations to come up  
9 the way you wanted them to; right?

10 A. Well, I wouldn't quite say it like that  
11 because I didn't have any way that I wanted them to  
12 come up with. What I would say is that, in order for  
13 everything to be consistent, it had a very narrow range  
14 of angles that she could have turned at. She can't  
15 turn 45 degrees and then have the damage to her  
16 vehicle, the damage to Awerbach's vehicle, her rotation  
17 of 180 degrees match up. It wouldn't work.

18 Q. And -- and, actually, if you read her whole  
19 testimony, she says she saw something coming really  
20 fast at the corner of her eye and tried to swerve. But  
21 as a reconstructionist, you know about  
22 perception-reaction time, and you know that she  
23 probably didn't have time to turn at all. In the time  
24 where she barely saw him out of the corner of her eye,  
25 she didn't have 2.5 seconds to perceive and react and

1 input steering motion, did she?

2 MR. MAZZEO: Objection, Judge. Relevance to  
3 the scope of inquiry for -- for establishing his  
4 credibility for doing the PC-Crash analysis. This --

5 THE COURT: Overruled.

6 THE WITNESS: I think it is possible for her  
7 to have initiated a swerving motion.

8 THE COURT: Finish up, Mr. Roberts.

9 MR. ROBERTS: Thank you.

10 BY MR. ROBERTS:

11 Q. And, in fact, her quote from her deposition  
12 was, "I thought I could swerve because I did see him  
13 coming really fast."

14 MR. STRASSBURG: Page 22.

15 BY MR. ROBERTS:

16 Q. And, finally, you're not telling us that your  
17 report is incorrect when it says in two places that you  
18 tried to validate your PC-Crash inputs and your  
19 simulation by verifying that the final resting place of  
20 the vehicle matched the location set forth by the  
21 witnesses; right?

22 A. I probably should have been more precise in  
23 my language in terms of what I meant by that, and,  
24 specifically, it's Ms. Garcia's vehicle rotating  
25 180 degrees.

1           Sorry. I'm not a lawyer. I'm an engineer.  
2 I don't use words as well as you guys.

3           Q.    Okay. So when you said "final resting  
4 place," you didn't mean final resting place; you meant  
5 the rotation and motion of the vehicle before it ended  
6 up in the resting place.

7           A.    No. I mean the final orientation of the  
8 vehicle.

9           MR. ROBERTS: Okay. Your Honor, I'm sorry.  
10 Thank you for your indulgence.

11          THE COURT: You guys done?

12          MR. MAZZEO: Yes.

13          MR. STRASSBURG: Sure.

14          MR. MAZZEO: Judge, I'd just like to make  
15 one -- not for the witness. I'm done with the witness.  
16 But I -- I -- you cited Hallmark earlier, and I just  
17 wanted to distinguish that from this case.

18          THE COURT: Okay.

19          MR. MAZZEO: All right. So Hallmark is the  
20 distinguishable, as you -- as you put into the record,  
21 you had stated that Tradewinds did not introduce any  
22 evidence; that Dr. Bowles attempted to recreate the  
23 collision by performing an experiment.

24               Well, in this case Dr. Scher did recreate the  
25 collision by -- by -- he performed a check and actual

1 were unknown and no marks were made by the motorcycle  
2 upon the pavement at the time that the impact occurred.

3 He did testify as to -- the expert did --  
4 testify as to the range of probabilities, which  
5 included the possibility that the accident had occurred  
6 in the northbound lane.

7 So based on the cases that we cited and the  
8 testimony of Dr. Scher, as to all the data that he  
9 relied upon and the fact that it satisfies the  
10 requirements of the PC-Crash analysis, I would  
11 encourage the Court to change its prior decision or  
12 ruling in excluding him as an expert with respect to  
13 the accident -- the PC-Crash analysis.

14 MR. ROBERTS: And in Provence, it was  
15 rebuttal evidence that was deemed admissible and the  
16 court said, "You just put on a witness that had no  
17 greater foundation than him. You can't now be heard to  
18 say that their rebuttal expert can't give opinions on  
19 the same level of information. So it's not in  
20 evidence."

21 THE COURT: Okay, guys. I understand the  
22 distinction that you have tried to draw.  
23 Unfortunately, I think his calculations in MADYMO are  
24 still based on the output from the PC-Crash. The  
25 PC-Crash analysis is based on speed, angles -- I mean,

1 that's where you get the delta-v from. And I think all  
2 of the information that went into that is,  
3 unfortunately, more assumption, conjecture, and  
4 generalization.

5 I don't take any pleasure in not allowing you  
6 to put him on. That's -- I think that's what I have to  
7 do in the case. You haven't changed my mind. I'm  
8 sorry.

9 So thanks for being here, Dr. Scher. I don't  
10 think we're going to need you any further. Appreciate  
11 your time.

12 When we start tomorrow morning, I'm guessing  
13 that you guys have more witnesses.

14 MR. ROBERTS: Well, they had originally asked  
15 to take Poindexter, I believe, out of order tomorrow  
16 because of his schedule. We're still willing to  
17 accommodate that, but we're also ready to go if they  
18 don't need that anymore.

19 MR. MAZZEO: Yeah. No, we didn't ask to take  
20 him out order. We had scheduled Dr. Poindexter for the  
21 defense case, which we anticipated starting days before  
22 Friday. So he's been scheduled for Friday for several  
23 weeks now. And so we -- yeah, we do plan on calling  
24 him tomorrow morning. That's his only --

25 THE COURT: Okay.

# EXHIBIT 11

# EXHIBIT 11

1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

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\* \* \* \* \*

8

9 EMILIA GARCIA, individually, )

10 Plaintiff, )

11 vs. )

12 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

13 DOES I-X, and ROE CORPORATIONS) )

I-X, inclusive, )

14 )

Defendants. )

15 )

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17

REPORTER'S TRANSCRIPT

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OF

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JURY TRIAL

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED FRIDAY, FEBRUARY 26, 2016

23

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

25



1 the jury?

2 MR. ROBERTS: Yes, Your Honor.

3 MR. MAZZEO: Yes, Your Honor.

4 MR. STRASSBURG: Yes, Judge.

5 THE COURT: Okay. Folks, so you got stuck  
6 out in the hallway yesterday, and then I sent you home  
7 without bringing you back in. Sometimes things like  
8 that happen. And I know I told you at the beginning of  
9 trial, sometimes scheduling things like that -- and  
10 it's just outside of our control.

11 I'm going to tell you that the Court  
12 concluded yesterday that there was inadequate  
13 foundation for Dr. Scher's testimony. So you're  
14 instructed to disregard his testimony that you heard  
15 yesterday.

16 This morning -- we are still not finished  
17 with the plaintiff's case, but I believe the defense  
18 has another expert that is scheduled to be here. So  
19 we're going to take that expert out of order.

20 Mr. Mazzeo, go ahead.

21 MR. MAZZEO: Yes, Your Honor. Thank you.

22 At this time we call Dr. Curtis Poindexter.

23 THE COURT: Come on up, Doctor. If you come  
24 all the way up on the witness stand. Once you get  
25 there, please remain standing and raise your right hand

# EXHIBIT 12

# EXHIBIT 12

1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

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\* \* \* \* \*

8

9 EMILIA GARCIA, individually, )

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11 vs. )

12 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

13 DOES I-X, and ROE CORPORATIONS )

I-X, inclusive, )

14 )

Defendants. )

15 )

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REPORTER'S TRANSCRIPT

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OF

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JURY TRIAL

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED THURSDAY, FEBRUARY 18, 2016

23

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

25

1 if he did something wrong and led to this kind of a  
2 situation where the patient can't pay me.

3 Q. But the -- ultimately, your -- the reason why  
4 you would have a medical lien -- or typically you'll  
5 have patients of yours sign a medical lien when they  
6 have a claim against a third party, usually a  
7 medical-legal claim of a car accident or -- or some  
8 type of injury where a third party is responsible;  
9 correct?

10 A. I'm not following what you just asked me.

11 Q. Okay. Let me rephrase it.

12 A. Please.

13 Q. Typically, you'll have patients in your  
14 office with -- where you'll provide and -- and --  
15 medical treatment on a medical lien with patients who  
16 have medical-legal claims, typically.

17 A. That is correct. Somebody who gets into a --  
18 some kind of a battle and has no way to pay me at the  
19 moment, can owe me the money at a later date. And I  
20 have them sign a lien because trying to collect money  
21 after a date of service isn't as easy as you would  
22 think.

23 Q. And you understand, Doctor, that if the jury  
24 ultimately determines that the services that you or any  
25 other provider provided, which are not related to the

1 subject accident, that you may not be compensated for  
2 it by way of the third party.

3 Do you understand that?

4 A. No, that's not true.

5 Q. Okay. I'm not saying you won't be  
6 compensated at all. I'm saying you won't be  
7 compensated if the jury determines that -- that the  
8 services you provided, or any other doctor provided,  
9 are not related to the subject accident for which gives  
10 rise to -- to the medical-legal claim, then you may not  
11 be compensated by way of moneys coming from the third  
12 party involved in the legal claim.

13 You understand that; right?

14 A. I understand what you're saying, but you're  
15 not accurate.

16 Q. Okay. You're still -- ultimately, your  
17 client or your patient is still responsible, and/or as  
18 you said, plaintiff's counsel, for the payment of  
19 the -- for the medical services you provided to the  
20 patient; correct?

21 A. I want to say, as we sit here right now, I've  
22 been paid on everything I'm going to get paid on.  
23 Nothing is weighted on my testimony. Patient's bills  
24 have been covered already.

25 Q. I understand -- and we understand --

1           A.     So I've already been paid.  So I don't know  
2 what you're asking me.  You keep asking me if something  
3 is weighted on a payment afterward, but it's not.

4           MR. MAZZEO:  Judge, can we approach, please?

5           THE COURT:  Sure.

6                    (A discussion was held at the bench,  
7                    not reported.)

8           MR. MAZZEO:  May I proceed, Your Honor?

9           THE COURT:  You may.

10 BY MR. MAZZEO:

11          Q.     Dr. Lemper, isn't it a fact that -- well, you  
12 said a moment ago that you were paid for -- for the  
13 medical bills that you had charged in this case;  
14 correct?

15          A.     Correct.

16          Q.     But isn't it a fact that you weren't paid the  
17 full amount for the -- that you had told us a few  
18 minutes ago?

19          MR. ROBERTS:  Objection, Your Honor.

20          THE COURT:  That's what we just talked about.  
21 Come up here.

22                    (A discussion was held at the bench,  
23                    not reported.)

24          THE COURT:  All right, folks.  I'm going to  
25 get you guys to lunch so we can have a little argument.

1           During our break, you're instructed not to  
2 talk with each other or with anyone else about any  
3 subject or issue connected with this trial. You are  
4 not to read, watch, or listen to any report of or  
5 commentary on the trial by any person connected with  
6 this case or by any medium of information, including,  
7 without limitation, newspapers, television, the  
8 Internet, or radio. You are not to conduct any  
9 research on your own, which means you cannot talk with  
10 others, Tweet others, text others, Google issues, or  
11 conduct any other kind of book or computer research  
12 with regard to any issue, party, witness, or attorney  
13 involved in this case. You're not to form or express  
14 any opinion on any subject connected with this trial  
15 until the case is finally submitted to you.

16           Take till about 1:15. See you back then.

17                   (The following proceedings were held  
18                   outside the presence of the jury.)

19           THE COURT: We're outside the presence of the  
20 jury.

21           Do you guys want Dr. Lemper here for the  
22 argument, or we can excuse him?

23           MR. MAZZEO: Yes, please.

24           THE COURT: Just come back quarter after  
25 1:00. Thanks, Doc.

1 THE WITNESS: Thank you.

2 THE COURT: So the issue is whether or not  
3 I'm going to allow you to ask Dr. Lemper if he  
4 collected less than the full amount of his bills. I  
5 think we've discussed this. We discussed it at the  
6 bench. You thought that he had opened the door by  
7 saying that his bills were paid, but you pressed him  
8 to -- to say whether or not he -- he wasn't going to  
9 get paid if -- by a third party, by your client, if the  
10 plaintiff wasn't successful in the case. I mean, he --  
11 he couldn't have agreed to that because that's not the  
12 truth because he's already been paid.

13 So I think you forced him into saying my  
14 bills have been paid, and then you -- you think that  
15 that opened the door for you to ask questions about the  
16 fact that he hasn't been paid in full. My  
17 understanding from Mr. Roberts is that he sold the lien  
18 for 100 percent, so there is still a full amount of the  
19 lien out there. And I mean, I don't understand the  
20 argument.

21 MR. MAZZEO: Well, the argument is pretty  
22 simple, Judge. Dr. Lemper, all he needed to say was no  
23 to my question. That's all he had to say. But he  
24 added to it. He said that I've been paid for my bills  
25 indicating -- and I don't remember the exact answer



1 that he gave, but he indicated that he was paid for the  
2 full amount of -- for his services for his bills. And  
3 I established on the record that the full bills that he  
4 had submitted in this case came out to approximately  
5 2 -- I'm sorry, \$43,159, somewhere around there.

6 Now, I know from his deposition testimony  
7 that he sold those at a discount, which I wasn't going  
8 to elicit, for around 50 percent or somewhere around  
9 there or less. So -- so he gave the -- his answer  
10 opened up the door. I didn't press him to give that  
11 answer. All he needed to say to my question, again,  
12 was no.

13 So by him saying -- saying to the jury -- he  
14 made a misstatement to the jury, to this Court under  
15 oath, that -- indicating that he was paid for the full  
16 amount. And that's -- that was improper. So I should  
17 be able to ask him that he did not receive -- or that  
18 he received a -- sold them at a discounted amount or  
19 received moneys at a discounted amount for his bills.

20 THE COURT: I'm guessing that he was probably  
21 told by plaintiff's counsel what he could and couldn't  
22 say because what he said is, "I want to say, as we sit  
23 here right now, I've been paid on everything I'm going  
24 to get paid on. Nothing is weighted on my testimony.  
25 Patient's bills have been covered already." So I think

1 he was trying to be as honest as he could while staying  
2 within the bound of what he could and couldn't say. I  
3 think he did a good job answering that and trying to  
4 stay within the rulings.

5 MR. MAZZEO: Well, and I disagree. I think  
6 that by him saying that, he opened up the door for me  
7 to inquire about what he was paid with respect to the  
8 overall bills that he had originally submitted.

9 MR. ROBERTS: And, Your Honor, I would point  
10 out several things for the record. One, as Mr. Mazzeo  
11 just acknowledged, they asked him the question about  
12 selling his lien. He didn't discount to us and we paid  
13 him less than full value. What he did was there's a  
14 market for medical liens out there and they're  
15 discounted based on the difficulty of collection and  
16 the length of time that it's going to take to collect.  
17 And in this case, the lienholder now holds 100 percent  
18 of the value of the lien, but they didn't pay  
19 Dr. Lemper for it one hundred percent. And he made  
20 that financial decision to get money now rather than to  
21 wait on payment.

22 But what -- what we can see happened here is  
23 that Mr. Mazzeo, with full knowledge that Dr. Lemper  
24 had sold his lien and that Dr. Lemper had no financial  
25 interest in the outcome of this trial and the testimony

1 today, and knowing that he had no financial interest to  
2 collect against the third party, pointing to the  
3 clients over here, knowing that he had no bias and no  
4 interest, continued to press him on that issue with no  
5 reasonable basis to believe he had a bias or an  
6 interest in the outcome because he knew from the  
7 deposition.

8           And he did it anyway. He got an answer he  
9 didn't like. He came up to Court, and it's not on the  
10 record, but he made his argument, and the Court  
11 expressly told him, No, you can't ask that question.  
12 You can't go there, Mr. Mazzeo. He walked right back  
13 after the conference and asked the question anyway in  
14 blatant defiance of this Court's order because he  
15 didn't agree with it.

16           And -- and I just want the record to reflect  
17 that this is intentional misconduct. The Court told  
18 him not to go there, and he did anyway with knowledge  
19 that this witness has no bias and no interest in the  
20 outcome.

21           MR. MAZZEO: And I -- and I -- I object to  
22 that, Your Honor. I disagree with Mr. Roberts. I  
23 wasn't told not to ask that specific question. I  
24 wasn't going to go into how much. I was going to ask  
25 him that one question, and I don't think the Court had

1 instructed me not to ask that specific question.

2           Secondly, with regard to Dr. Lemper's  
3 interests in the outcome of the litigation, well, yes,  
4 he certainly does because at the time that he provided  
5 these services, he had not sold any liens to any third  
6 party. He had an actual interest in -- in -- in the  
7 totality of his -- of the medical bills that he had  
8 provided. And at the time that he -- he rendered the  
9 opinions in this case, which we saw on the screen all  
10 morning, he related everything to the subject accident.

11           So at the time that he had Ms. Garcia sign  
12 the lien and at the time that he provided the services,  
13 he definitely had an interest in the outcome of this  
14 litigation. And that doesn't -- that -- that's not --  
15 that's still relevant to this case, notwithstanding the  
16 fact that he sold his lien -- his -- his lien to a  
17 third party. So yeah, he does have an interest.

18           And he has an interest as he's testifying  
19 because all of what he testified to he related to the  
20 subject accident. So I think that I have -- I have a  
21 right to explore that area.

22           MR. STRASSBURG: Judge, joining with  
23 Mr. Mazzeo, we would also reiterate that at the time  
24 that the witness prepared the medical records that  
25 Mr. Roberts has been essentially reading to him on

1 direct, he hadn't been paid. And he knew that his  
2 prospects of being paid were related to the litigation.

3 Further, the credibility is always relevant.  
4 And when a witness says the billings are reasonable in  
5 amount, it -- it is certainly appropriate for purposes  
6 of credibility to test his statement by eliciting the  
7 evidence that he sold those bills for a lesser amount  
8 and what that amount was as an alternative refuting  
9 evidence of the actual value of those services.

10 If he wants to explain that, you know, I  
11 needed the money or there were other factors that led  
12 me to take less than what I really think was reasonable  
13 value, well, okay. He gets to explain that, and  
14 Mr. Roberts gets to elicit that. But he places his  
15 credibility at issue when he talks about the  
16 reasonableness of the bills. And we should have the  
17 right, and do, to fully probe all issues of credibility  
18 for this witness for his particular bills.

19 I mean, if they want to bring this kind of  
20 evidence in through a consulting expert like Oliveri,  
21 well, that's a different way. But this is the witness  
22 that sold those bills and gave that testimony, and his  
23 credibility is directly implicated.

24 MR. ROBERTS: Your Honor, this had been  
25 excluded.

1           THE COURT: We're not going to argue anymore.  
2 Sorry. I don't -- I think my ruling at the bench may  
3 have been vague enough that Mr. Mazzeo's statement may  
4 not have been intentionally in violation of what I had  
5 instructed. So I'm not going to find it was  
6 intentional misconduct. But I think that was the  
7 intention of my ruling is to keep you away from that  
8 subject.

9           I think the fact that a doctor sold his lien  
10 to some company that thereafter goes and tries to  
11 collect the lien, I don't think has any bearing on  
12 whether or not it's reasonable or not. You got to have  
13 somebody that has medical expertise to talk about  
14 whether a bill is reasonable or usual and customary.  
15 So I'm not going to let you get into it.

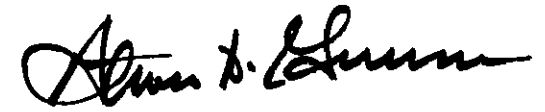
16           MR. MAZZEO: If I may, Your Honor, just --  
17 but prior to him selling his lien, he definitely had an  
18 interest in the outcome of the litigation.

19           THE COURT: That's not what you were asking  
20 him.

21           MR. MAZZEO: And do you have any -- do you  
22 have any opposition -- objection to me asking him about  
23 that? The fact that --

24           THE COURT: No.

25           MR. MAZZEO: Prior to him -- prior to him



CLERK OF THE COURT

**MJUD**

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*Attorneys for Plaintiff Emilia Garcia*

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

**PLAINTIFF'S RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF LAW**

1 Plaintiff Emilia Garcia ("Plaintiff"), by and through her counsel, hereby files this *Renewed*  
2 *Motion for Judgment as a Matter of Law* pursuant to NRCP 50(b). This Motion is made and based  
3 upon the attached Memorandum of Points and Authorities, the pleadings and papers on file herein,  
4 and any oral argument that this Court may allow.

5 DATED this 26<sup>th</sup> day of May, 2016.

6  
7  
8 

9 D. Lee Roberts, Jr., Esq.  
10 Timothy A. Mott, Esq.  
11 Marisa Rodriguez-Shapoval, Esq.  
12 WEINBERG, WHEELER, HUDGINS,  
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**NOTICE OF MOTION**

TO: All Interested Parties; and

TO: Their Respective Counsel.

PLEASE TAKE NOTICE that **PLAINTIFF'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW** ("Motion") will come on for hearing in the above-entitled Court on the 23<sup>rd</sup> day of June, 2016, at the hour of 9:00 a.m., in Department XXX, or as soon thereafter as counsel may be heard. This Motion in being heard on said date and time in accordance with this Court's instruction on May 10, 2016, at the Post-Trial Motion Status Check hearing.

DATED this 26<sup>th</sup> day of May, 2016.



D. Lee Roberts, Jr., Esq.  
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**ORDER SHORTENING TIME**

Good cause appearing, it is ordered that the hearing on **PLAINTIFF'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW** shall be heard on the 23<sup>rd</sup> day of June, 2016, in Department XXX at 9:00 a.m.

  
JERRY A. WIESS II  
DISTRICT COURT JUDGE  


*Submitted by:*

  
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Marisa Rodriguez-Shapoval, Esq.  
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**AFFIDAVIT OF COUNSEL IN SUPPORT OF ORDER SHORTENING TIME**

STATE OF NEVADA            )  
                                          ) ss:  
COUNTY OF CLARK        )

Timothy A. Mott, being first duly sworn, deposes and says:

1. I am over the age of eighteen, of sound mind, and give the following affidavit based on my personal knowledge.

2. I am an attorney with WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, and counsel of this matter for Plaintiff Emilia A. Garcia ("Plaintiff").

3. On May 10, 2016, this court held a status check hearing on post-trial motions and at that time, this Court ordered that any and all post trial motions be heard on June 23, 2016 and that such motions be filed by May 26, 2016.

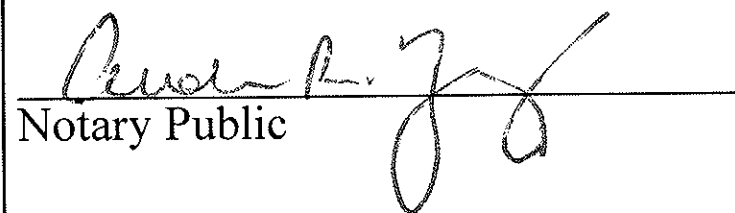
4. If this post-trial motion is filed without an Order Shortening Time ("OST"), master calendar may schedule the motion for a day other than June 23, 2016, as ordered by this Court.

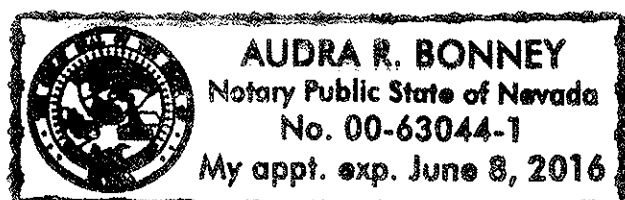
5. Thus, there is good cause to grant Plaintiff's request to hear this motion on an OST and schedule the hearing for June 23, 2016.



Timothy A. Mott, Esq.

Subscribed and Sworn before me  
this 7<sup>th</sup> day of May, 2016

  
Notary Public



## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION & SUMMARY OF THE ARGUMENT

This personal injury action arose on January 2, 2011, when Defendant Jared Awerbach (“Jared”), driving a car owned by his mother, Defendant Andrea Awerbach (“Andrea”), failed to yield the right of way and made an improper left turn in front of Plaintiff Emilia Garcia’s (“Emilia”) approaching vehicle. Following the accident, Jared was determined to have illegal levels of marijuana metabolite in his blood. Emilia sued Jared for negligence and negligence *per se*, Andrea for negligent entrustment and joint liability pursuant to NRS 41.440, and asserted a claim for punitive damages against both Jared and Andrea.

Prior to trial, it was established as a matter of law that Jared was operating Andrea’s car with her permission (“permissive use”). Both sides prepared for trial with this knowledge. On the first day of jury selection, this Court drastically reversed and modified two sanctions orders issued by Judge Allf (a year prior) that conclusively established permissive use as a matter of law. The last minute reversal was made in conjunction with 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 subjective intention when issuing an order one year prior is conclusively rebutted not only by the objective 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

1 provided fabricated testimony on two occasions while apparently believing the concealed evidence  
2 would never see the light of day. The orders were always intended to be a punitive sanction and  
3 there is nothing on the face of the written orders that would indicate a rebuttable presumption was  
4 intended by the Court. Judge Allf's orders precluded Andrea from disputing permissive use at trial,  
5 and relieved the Plaintiff of its obligation to come forward with any evidence on this issue. Of  
6 note, the orders were drafted by Judge Allf herself, not counsel.

7 Judge Allf had no proper ability or power to change her written orders or influence this  
8 Court to modify her orders once she recused herself in August, 2015. The law is abundantly clear  
9 that a judge must not substantively influence a case after her recusal. Once Judge Allf voluntarily  
10 recused herself from the case, her involvement ended and any influence by her was improper and  
11 constitutes reversible error.

12 Additionally, and of great significance, Andrea had conclusively admitted permissive use on  
13 two prior occasions. First, in her Answer to Plaintiff's Complaint she admitted permissive use,  
14 only to recant the admission in her Answer to Plaintiff's Amended Complaint. Second, in her  
15 responses to Plaintiff's requests for admissions Andrea again admitted permissive use ("permissive  
16 use admission"). *This permissive use admission is binding in the absence of the court affirmatively*  
17 *relieving her of the admission.* Andrea later attempted to change her position in these responses—  
18 almost one and a half years later and only after obtaining new counsel—amended responses were  
19 served, but without leave of Court and without compliance with NRCP 36(b). Thus, Andrea's  
20 attempt to recant her permissive use admission was of no legal effect.

21 Prior to trial, Andrea did not move to be relieved from her permissive use admission nor  
22 was such relief granted. Indeed, all of the parties likely assumed this issue was moot in light of the  
23 conclusive finding of permissive use by Judge Allf. At trial, finally realizing that Andrea's  
24 permissive use admission conclusively established permissive use as a matter of law in the absence  
25 of a motion and court order, Andrea's counsel orally moved for Andrea to be relieved from her  
26 permissive use admission *after Plaintiff rested her case*. This Court denied this Motion, but  
27 nonetheless refused to give preclusive effect to the admission. When Andrea rested her case,  
28

1 Plaintiff moved for directed verdict (*i.e.*, judgment as a matter of law) on the “permissive use”  
2 issue, preserving this issue. This Court denied Plaintiff’s request.

3 Before jury deliberation, the jury was presented with Jury Instruction No. 14, which stated:  
4 “Plaintiff, Emilia Garcia, served on the Defendant, Andrea Awerbach, a written request for the  
5 admission of the truth of certain matters of fact. You will regards as being conclusively proved all  
6 such matters of fact which were expressly admitted by the Defendants, Andrea Awerbach . . .” In  
7 other words, Jury Instruction No. 14, presented the jury with no choice but to find that permissive  
8 use had been conclusively established. Nonetheless, the jury returned a verdict finding Andrea did  
9 not give permission to Jared to use her vehicle on January 2, 2011.

10 In sum, the issue of permissive use should never have been presented to the jury as  
11 permissive use had already been established as a matter of law, not only by Judge Allf’s Orders but  
12 by Andrea’s own admission. No reasonable jury could have found a lack of permission in light of  
13 Jury Instruction No. 14. Plaintiff renews her motion for judgment as a matter of law and asks this  
14 Court to find that “permissive use” was established as a matter of law.

15 **II. STANDARD FOR RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW**

16 “Motions for judgment notwithstanding verdict [*i.e.*, renewed motion for a judgment as a  
17 matter of law] presents solely a question of law to be determined by court.” *Dudley v. Prima*, 84  
18 Nev. 549, PIN CITE, 445 P.2d 31, PIN CITE (1968). Pursuant to NRCP 50(b), a party may move  
19 to “renew its request for judgment as a matter of law by filing a motion no later than 10 days after  
20 service of written notice of entry of judgment.” The Court may then “direct entry of judgment as a  
21 matter of law.” NRCP 50(b)(1)(C).

22 Here, it is proper for this Court to enter judgment as a matter of law with regard to  
23 permissive use and find that Andrea is liable under the negligent entrustment cause of action and  
24 jointly liable pursuant to NRS 41.440. First, this Motion presents solely a question of law proper  
25 for judicial adjudication. Second, this Motion is timely as it is being filed before a Notice of Entry  
26 of Judgment. Finally, this is a renewed motion, filed after Plaintiff already sought judgment as a  
27 matter of law (*i.e.*, directed verdict) at trial, after presentation of the evidence, and before jury  
28 deliberation.

1 **III. FACTUAL BACKGROUND**

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

3 This collision occurred on January 2, 2011. (*See* Complaint (3/25/11), ¶ 9, attached as  
4 Exhibit 1). Emilia initiated the lawsuit on March 25, 2011. (*See id.*) Defendants answered  
5 Emilia's Complaint on January 23, 2012, and, of great significance, admitted that "Defendant  
6 ANDREA AWERBACH, did entrust the vehicle to the control of Defendant JARED  
7 AWERBACH." (*See* Complaint (3/25/11), ¶ 23, attached as Exhibit 1; Defendants' Answer to  
8 Complaint, ¶ 2, attached as Exhibit 2) One year later, in response to Plaintiff's Amended  
9 Complaint, Andrea conveniently flipped her answer on this critical issue. (*See* Amended Complaint  
10 (1/14/13), ¶ 23, on file with this Court; *see also* Answer to Amended Complaint (2/7/13, ¶ 17, on  
11 file with this Court)

12 **B. ANDREA'S RESPONSE TO EMILIA'S REQUEST FOR ADMISSION.**

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

15 **REQUEST NO. 2:**

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

18 **RESPONSE TO REQUEST NO. 2:**

19 Admit.

20  
21 (*See* Defendant Andrew Awerbach's Responses to Request for Admissions, Req., no. 2, attached as  
22 Exhibit 3).

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

24 On July 22, 2013, after Emilia filed a motion to compel, Andrea produced what appeared to  
25 be the complete claims notes from her claim with Liberty Mutual in a pleading styled *Second*  
26 *Supplement to List of Witnesses and Documents And Tangible Items Produced At Early Case*  
27 *Conference*. (*See* Second Supplement to List of Witnesses and Documents And Tangible Items  
28 Produced At Early Case Conference, attached as Exhibit 4) What Andrea did not tell Emilia was

1 that one of the notes dated January 17, 2011, at 4:44 p.m., had been secretly redacted making it  
2 appear as if that note never existed. In fact, Andrea furthered the ruse by producing a misleading  
3 disclosure and privilege log that further concealed the existence of the 4:44 p.m. note. Specifically,  
4 Andrea's disclosure indicated that "Adjustor's Claims Notes between January 2-17, 2011 (Bates  
5 Labels LM001-LM006; LM019-027)" were disclosed, and only "notes after January 17, 2011,  
6 [were being] withheld (Bates labels LM007-018)." *Id.* Indeed, Andrea's privilege log indicated  
7 she was only claiming a privilege for claims notes dated "**January 18, 2011, et seq.**", *i.e.*, notes  
8 dated on or after January 18, 2011. It is now obvious this was misleading because the January 17,  
9 2011, note from 4:44 p.m. was not contained in the disclosure or identified on the privilege log.  
10 Instead, that note was whited-out, making it appear as if the note never existed. It was  
11 surreptitiously redacted.

12 **D. ANDREA FURTHERED THE CONCEALMENT THROUGH HER DEPOSITION**  
13 **TESTIMONY.**

14 Emilia first deposed Andrea on September 12, 2013, approximately two months after  
15 Andrea served Emilia with the whited-out claims note. During the deposition, Andrea testified  
16 inconsistently with the whited-out claims note, which, of course, had not yet been uncovered by  
17 Emilia's counsel. (*See e.g.*, Andrea Awerbach's Depo. Tran. Vol I (09/12/13), at 21:1-23, attached  
18 as Exhibit 5 (testifying Jared did not ask for permission to drive the car that day, that she did not  
19 know where Jared got the keys, that there was no regular place where she would leave the keys, and  
20 that she constantly hid the keys)). Andrea also admitted speaking with her insurer following the  
21 collision, but claimed ignorance whether the conversation was recorded or when the conversations  
22 occurred. (*Id.* at 26:12-19).

23 In fact, Andrea furthered the ruse shortly after her first deposition by filing a Motion for  
24 Summary Judgment claiming it was undisputed she did not give Jared permission to drive her car  
25 on January 2, 2011. (*See* Defendant Andrea Awerbach's Motion for Partial Summary Judgment, on  
26 file with this Court) Again, this motion was made while Andrea was actively concealing evidence  
27 that contradicted her motion. Andrea ultimately withdrew her Motion for Partial Summary  
28 Judgment. Andrea was deposed again on October 24, 2014, and again testified extensively to



1 material information that clearly contradicted the claims note, which, at that point, had still not yet  
2 been uncovered by Emilia's counsel. (*See e.g.*, Andrea Awerbach's Depo. Tran. Vol II (10/24/14),  
3 at 82:1-18, attached as Exhibit 6 (testifying she hid the keys)). As detailed below, the withheld  
4 information did not come to light until Emilia independently obtained it from Andrea's insurer.

5 **E. THE HIDDEN CLAIMS NOTE, WHICH WAS UNCOVERED ONLY THROUGH THE**  
6 **DILIGENCE OF PLAINTIFF'S COUNSEL, CONTRADICTED ANDREA'S DEPOSITION**  
7 **TESTIMONY.**

8 Emilia discovered the concealed claims note on November 10, 2014, when Andrea's  
9 insurer, Liberty Mutual, produced the note in response to Emilia's subpoena *duces tecum*. The  
10 Liberty Mutual adjuster who created the note subsequently testified to the note's authenticity and  
11 confirmed the note accurately memorialized the adjuster's January 17, 2011, conversation with  
12 Andrea. (*See* Teresa Meraz's Depo. Transcript (11/10/14), at 15:19-23, attached as Exhibit 7).

13 The contents of the concealed note contradict Andrea's adamant testimony at both of her  
14 depositions, wherein she vehemently claimed (i) that she constantly hid her keys for fear that her  
15 drug abusing son might have access to the car, (ii) that she never gave Jared permission to drive her  
16 vehicle, and (iii) that she had no idea how Jared obtained the keys on the day of the crash. The  
17 surreptitiously concealed portions of the claims note establish that Andrea told her insurer days  
18 after the crash that she had previously let Jared drive her car, she gave him the keys earlier in the  
19 day, and she usually kept the keys on the mantle. Amazingly, when Andrea was asked under oath  
20 about Jared claiming Andrea left the keys out, Andrea claimed her son was mistaken. (*See* Andrea  
21 Awerbach's Depo. Tran. Vol II (10/24/14), at 161:9-19, attached as Exhibit 6). It is clear, however,  
22 that Andrea was changing her story and trying to cover for herself once she understood the legal  
23 ramifications of permissive use.

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

25 Conveniently, on October 20, 2014, almost eighteen months after Andrea admitted in her  
26 Responses to Plaintiff's Requests for Admissions that she gave Jared permission to use her vehicle  
27 on January 2, 2011, and only after Andrea changed counsel, Andrea attempted to improperly  
28 modify the aforementioned response, *without leave of court*, to state that "Andrea admits she  
learned after the accident that Jared Awerbach had operated her vehicle on January 2, 2011 but

Andrea denies she gave him permission.” (See Defendant Andrea Awerbach’s Correction to her Responses to Request for Admissions, Req., no. 2, attached as Exhibit 8).

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

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

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

COURT FURTHER FINDS after review the Court took Plaintiffs Motion to Strike Defendant Andrea Awerbach’s Answer under submission on January 15, 2015. Plaintiff moves to strike Defendant Andrea’s answer under NRCP 37(b)(C) for conduct in discovery relating to concealment of an entry on her insurance claim log. COURT FURTHER FINDS after review that striking the answer in [sic] inappropriate because Plaintiff became aware of the concealed 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.

(See Decision and Order, filed with this Court February 25, 2015 (emphasis added), attached as Exhibit 9) On March 13, 2015, Andrea filed a motion seeking reconsideration of the Court’s order. (See Defendant Andrea Awerbach’s Motion for Relief from Final Court Order (3/13/15), on file with this Court). The Court denied Andrea’s motion and issued a second written decision, again drafted by Judge Allf, not counsel:

COURT FURTHER FINDS after review that here the Court did consider the Ribeiro factors and did enter the less severe sanction of finding there was permissive use rather than striking Defendant Andrea’s answer as requested by Plaintiff’s Motion. The finding of permissive use specifically relates to the content of the improperly withheld claims note, which included a statement by Defendant

Andrea that she had given Defendant Jared permission to use her car at the time of the accident. The finding of permissive use does not prevent adjudication on the merits because Plaintiff still maintains the burden of showing causation and damages. The withholding of the note and the misleading privilege log was willful, and sanctions are necessary to “deter the both the parties and future litigants from similar abuses.” *Id.* Although the note was withheld by previous counsel, Defendant Andrea’s deposition testimony at both of her depositions was contrary to her statement to her insurance carrier. The sanction was crafted to provide a fair result to both parties, given the severity of the issue.

(See Decision and Order (4/27/15) (emphasis added), attached as Exhibit 10)

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

#### **H. JUDGE ALLF RECUSES HERSELF.**

On August 27, 2015, Judge Allf recused herself because of a conflict with Jared’s newly associated counsel, Randall Tindall. (See Notice of Department Reassignment, on file with this Court) On September 8, 2015, 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) (See Plaintiff’s Motion to Disqualify Defendant Jared Awerbach’s Counsel Randall Tindall and Motion for Reassignment to Department 27 on Order Shortening Time (9/8/15), on file with this Court). 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 Hearing Transcript, at 20:19:20, attached as Exhibit 11)

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

On February 8, 2016, one year after Judge Allf issued her sanction order, ten months after she reaffirmed that order, six months after Judge Allf recused herself from the action, and a half day into jury selection, this Court overruled both of Judge Allf's permissive use orders, *sua sponte*:

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

(See Feb. 8, 2016, Hearing Transcript, at 61:8-25 (emphasis added), attached as Exhibit 12) The reversal was based upon a discussion with Judge Allf (who had long ago recused herself due to a conflict and should no longer had been influencing the rulings of this court). Moreover, it is without dispute that the Court's decision contradicts the plain language of both of the orders drafted by Judge Allf:

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

THE COURT: I know.

(*Id.* at 63:11-17)

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.

(*Id.* at 62:20-63:1)

**J. EMILIA FILES A BRIEF ASKING THE COURT TO RECONSIDER ITS DECISION.**

On February 10, 2016, two days after this Court's oral pronouncement of his intention to *sua sponte* amend Judge Allf's prior orders, and before he drafted an order officially amending the orders, Emilia filed a brief asking the court to reconsider its decision. (*See* Plaintiff's Trial Brief Regarding Permissive Use (2/10/16), attached as Exhibit 13). Emilia explained in detail how permission had been established as a matter of law by Judge Allf's orders, by Andrea's Answer to the original Complaint, and by her permissive use admission. (*See generally id.*) Plaintiff's counsel also argued these points in open court. (*See* Trial Transcript (2/10/16), at 139:24-143:11, attached as Exhibit 14). The Court did not issue an order from the bench. (*Id.* at 147:19-148:2). On February 12, 2016, the Court filed an Order he drafted modifying Judge Allf's prior orders, which reversed Judge Allf's sanction that permissive use was established as a matter of law; and, imposing a rebuttable presumption that permissive use was established against Andrea Awerbach. (*See* Order Modifying Prior Order of Judge Allf (2/12/16), attached as Exhibit 15). The 2/12/16 Order did not address Plaintiff's argument with regard to Andrea's permissive use admission. (*See generally id.*)

**K. ANDREA TESTIFIES ABOUT THE ADMISSIONS.**

At trial, Andrea testified that in her written response to Plaintiff's Request for Admissions, Request No. 2, which stated, "[a]dmit that Jared Awerbach was operating your vehicle on January 2<sup>nd</sup>, 2011, with your permission;" her "attorney admitted this on her behalf." (*See* Trial Transcript (3/7/16), at 115:13-18, attached as Exhibit 16)

**L. EMILIA ASKS FOR A DIRECTED VERDICT.**

Also on March 7, 2016, once both sides had rested, counsel for Plaintiff requested a directed verdict on the issue of permissive use. (*See* Trial Transcript (3/7/16), at 146:25-148:25) attached as Exhibit 16). Counsel addressed the lack of "evidence from which a reasonable juror could find that [Andrea], indeed, met [her] burden of proof" as it related to the 2/12/16 Order establishing a rebuttable presumption of permissive use. (*See id.* at 146:25-146:13). Counsel further stressed how Andrea's permissive use "admission conclusively established permissive as a matter of law,"

1 entitling plaintiff “to directed verdict [*i.e.*, judgment as a matter of law] on that motion.” (*Id.* at  
2 147:15-20) This Court denied Plaintiff’s request. (*Id.* at 148:25).

3 **M. THE JURY RECEIVES JURY INSTRUCTION NO. 14, ESSENTIALLY OBLIGATING THEM TO**  
4 **FIND PERMISSIVE USE HAD BEEN CONCLUSIVELY ESTABLISHED.**

5 On March 8, 2016, the jury received the Jury Instructions. (*See* Jury Instructions (3/8/16),  
6 attached as Exhibit 17) Jury Instruction No. 14 stated as follows:

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

13 In other words, Jury Instruction No. 14, coupled with Andrea’s testimony regarding her  
14 permissive use admission, gave the jury with no choice but to find that permissive use had been  
15 conclusively established.

16 **N. THE JURY RETURNS A VERDICT OF “NO PERMISSIVE USE”**

17 On March 10, 2016, the jury returned a verdict. (*See* Jury Verdict (2/10/16), attached as  
18 Exhibit 18) In spite of Jury Instruction No. 14 and Andrea’s testimony regarding her permission  
19 use admission the jury found that that Andrea did not give permission to Jared to use her vehicle on  
20 January 2, 2011. (*See id.* at 2)

21 **IV. ARGUMENT**

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

23 “Patently a judge who is disqualified from acting must not be able to affect the  
24 determination of any case from which he is barred.” *Arnold v. E. Air Lines*, 712 F.2d 899, 904 (4th  
25 Cir. 1983); *see also Doe v. Louisiana Supreme Court*, 1991 WL 121211 (E.D. La. June 24, 1991).  
26 “[C]ourts have almost uniformly held that a trial judge who has recused [herself] should take no  
27 other action in the case except the necessary ministerial acts to have the case transferred to another  
28

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.” *Legget v. Kumar*, 212 Ill. App. 3d 255, 274 (Ill. 1991). “In the context of discovery, it is particularly appropriate for a judge before whom a motion for reconsideration is pending to exercise considerable restraint in reversing or modifying previous rulings. A successor judge should revise or modify previous discovery rulings only if there is a change of circumstances or additional facts which would warrant such action.” *Id.* In other words, it is improper to reverse an order the parties “justifiably relied upon . . . for over a year . . . as they prepared the case for trial.” *Franklin v. Franklin*, 858 So. 2d 110, 122 (Miss. 2003) (Mississippi Supreme Court overturning trial court’s order that reversed the original trial court’s ruling since the original ruling was made within the



1 judge's discretion and the "lawyers justifiably relied upon th[e] order for over a year . . . as they  
2 prepared the case for trial"; and further finding that the reversal of the original trial court's ruling  
3 "reache[d] an inequitable result"). This case is no different.

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

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

9 Second, Andrea admitted permissive use in her responses to Plaintiff's requests for  
10 admissions, again only to later switch positions almost one and a half years later, and after retaining  
11 new counsel, to claim no permissive use. Of great significance, however, Andrea's attempted  
12 "amendment" of her binding admission fails as a matter of law as "[a]ny matter admitted under  
13 [Rule 36] is conclusively established unless the court on motion permits withdrawal or  
14 amendment of the admission." NRCP 36(b) (emphasis added). Since Andrea admitted permissive  
15 use and never filed a motion to change her admission, *Andrea must be bound by the admission*,  
16 irrespective of any modifications to Judge Allf's long standing orders. It was too late to file a  
17 motion once jury selection started.

18 Finally, Judge Allf conclusively found permissive use based on Andrea's blatant discovery  
19 violations and issued two separate orders establishing the permissive use, only to have this court  
20 reverse the rulings.

21 Allowing Andrea to dispute permissive use allowed Andrea to continue committing the  
22 same conduct that resulted in the Court's sanctions in the first place. By the time Emilia  
23 independently found the hidden claims note in late November, 2014, Emilia had already deposed  
24 Andrea twice. Each time, Andrea's testimony contradicted the hidden claims note and Jared's  
25 testimony that he obtained the keys from the counter of their home. In other words, Andrea  
26 claimed she did not give Jared permission, hid evidence that showed otherwise, and prevented  
27 Emilia from discovering the evidence that directly contradicted her deposition testimony. That was  
28 the basis for Judge Allf's sanction orders. Judge Allf's orders preventing Andrea from challenging



1 permissive use at trial entered the only logical sanction that could have been imposed at that point  
2 because it was Andrea's concealment and deceptive deposition testimony that prevented Emilia  
3 from being able to properly conduct discovery on the issue. It was also a lesser sanction than the  
4 one sought by Emilia. Consequently, it would be patently inequitable to allow Andrea to dispute  
5 permission after she (1) intentionally concealed critical evidence that would allow Emilia to prove  
6 permissive use and (2) admitted permissive in her Answer and responses to requests for admissions.  
7 Allowing Andrea to challenge permissive use gave her the best of both worlds: she was allowed to  
8 dispute permission at trial after thwarting Emilia's attempts to prove permissive use by hiding  
9 evidence during discovery.

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

11 The Court's intention to reverse Judge Allf's sanction order is also improper because the  
12 parties relied on the order for an entire year. *See Franklin*, 858 So. 2d at 122. Emilia adjusted her  
13 discovery strategy accordingly, and prepared for trial for a year in reliance on the Court's order that  
14 she would not have to prove permission at trial. In other words, after Judge Allf issued her order  
15 and confirmed it in a second order, Emilia no longer needed to seek leave to conduct discovery on  
16 the issue, and, as a result, she did not seek to re-open discovery, she did not seek to re-depose  
17 Andrea or Jared, and she did not seek testimony from other knowledgeable witnesses. Emilia  
18 appropriately relied on the Court's order rendering permissive use a non-issue for trial. Now, after  
19 jury selection had started and after the parties spent an enormous amount of time preparing for trial  
20 not knowing permissive use was an issue, Emilia's entire trial strategy had to be readjusted without  
21 the ability to vet evidence that would have been obtainable in discovery. Emilia had to be prepared  
22 to rebut Andrea's testimony regarding permissive use, despite the fact that Andrea's prior  
23 deposition testimony is unhelpful because it consists of a string of untruths that misled Emilia  
24 throughout years of discovery.

25 **D. "PERMISSIVE USED" SHOULD NOT HAVE BEEN AN ISSUE FOR THE JURY BECAUSE**  
26 **ANDREA'S ADMISSION CONCLUSIVELY ESTABLISHED AS A MATTER OF LAW THIS**  
27 **ISSUE.**

28 NRCP 36(b) states, in part, "[a]ny matter admitted under this rule is conclusively  
established *unless the court on motion* permits withdrawal or amendment of the admission."

(emphasis added) In this case, Andrea expressly admitted Jared was driving her vehicle on January 2, 2011 with her permission. (See Defendant Andrea Awerbach's Responses to Request for Admissions, Req., no. 2, attached as Exhibit 3). Although Andrea attempted to recant her admission, she did not file a motion seeking permission to withdraw or amend her admission. In fact, prior to trial Andrea never sought leave of court to amend her permissive use admission. It was not until Plaintiff had rested her case in chief, that Andrea's counsel orally moved for permission to amend the response. This motion was unequivocally denied. Consequently, Andrea's admission conclusively establishes as matter of law that she gave permission to Jared to driver her car on January 2, 2011. Thus, the issue of permissive use should have never been presented to the jury. As such, Plaintiff renews her motion for judgment as a matter of law regarding permissive use.

#### IV. CONCLUSION

For the reasons set forth above, Emilia requests that this Court issue an Order finding that "permissive use" has been established as a matter of law and enter judgment with regard to finding Andrea liable for negligent entrustment and joint liability pursuant to NRS 41.440.

DATED this 26<sup>th</sup> day of May, 2016.



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of May, 2016, a true and correct copy of the foregoing **PLAINTIFF'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW** 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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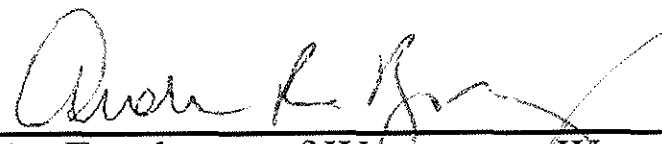
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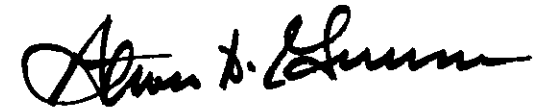
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11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 EMILIA GARCIA, individually,  
14 Plaintiff,

15 v.

16 JARED AWERBACH, individually; ANDREA  
17 AWERBACH, individually; DOES I – X, and  
18 ROE CORPORATIONS I – X, inclusive,  
19 Defendants.

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

**APPENDIX OF EXHIBITS:**  
**PLAINTIFF'S RENEWED MOTION FOR**  
**JUDGMENT AS A MATTER OF LAW**

20 Timothy A. Mott, Esq., a resident of the State of Nevada, declares as follows:

21 1. I am a licensed attorney currently in good standing to practice law in the state of  
22 Nevada and before this Court.

23 2. I am an attorney in the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL,  
24 LLC, 6385 South Rainbow Boulevard, Suite 400, Las Vegas, Nevada 89118, and I am one of the  
25 counsel representing Emilia Garcia, in this action.

26 3. I have personal knowledge of the matters contained in this declaration and am  
27 competent to testify regarding them.

28 4. The exhibits below are true and correct copies as noted:

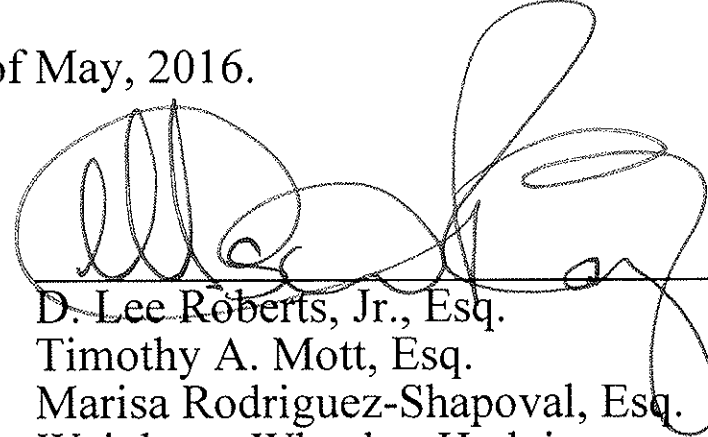
| <u>Exhibit</u> | <u>Description</u>                                                                                        |
|----------------|-----------------------------------------------------------------------------------------------------------|
| 1.             | Complaint 03/25/2011                                                                                      |
| 2.             | Defendants' Answer                                                                                        |
| 3.             | Defendant Andrea Awerbach's Responses to Request for Admissions                                           |
| 4.             | Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference |
| 5.             | Selected pages of Deposition of Andrea Awerbach, Volume I, taken 09/12/2013                               |
| 6.             | Selected pages of Deposition of Andrea Awerbach, Volume II, taken 10/24/2014                              |
| 7.             | Selected pages of Deposition of Teresa Merez taken 11/10/2014                                             |
| 8.             | Defendant Andrea Awerbach's Correction to Her Responses to Request for Admissions                         |
| 9.             | Decision and Order 02/25/2015                                                                             |
| 10.            | Decision and Order 04/27/2015                                                                             |
| 11.            | Hearing Transcript 09/15/2015                                                                             |
| 12.            | Hearing Transcript 02/08/2016                                                                             |
| 13.            | Plaintiff's Trial Brief Regarding Permissive Use 02/10/2016                                               |
| 14.            | Trial Transcript 02/10/2016                                                                               |
| 15.            | Order Modifying Prior Order 02/12/2016                                                                    |
| 16.            | Trial Transcript 03/07/2016                                                                               |
| 17.            | Jury Instructions 03/08/2016                                                                              |

18.

Jury Verdict 02/10/2016

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 26<sup>th</sup> day of May, 2016.



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of May, 2016, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS: PLAINTIFF'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW** 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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# EXHIBIT 1

# EXHIBIT 1



## CIVIL COVER SHEET

Clark County, Nevada

A-11-637772-C

Case No. \_\_\_\_\_

XXVII I

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone): EMILIA GARCIA

Defendant(s) (name/address/phone): JARED AWERBACH, individually, ANDREA AWERBACH, individually, DOES I - X, and ROE CORPORATIONS I - X, inclusive

Attorney (name/address/phone):

THE POWELL LITIGATION GROUP; Paul D. Powell, Esq.  
9525 Hillwood Drive, Suite 100 Las Vegas, NV 89134Attorney (name/address/phone):  
UNKNOWN**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

| Real Property                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Torts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> <b>Landlord/Tenant</b><br><input type="checkbox"/> Unlawful Detainer<br><input type="checkbox"/> <b>Title to Property</b><br><input type="checkbox"/> Foreclosure<br><input type="checkbox"/> Liens<br><input type="checkbox"/> Quiet Title<br><input type="checkbox"/> Specific Performance<br><input type="checkbox"/> <b>Condemnation/Eminent Domain</b><br><input type="checkbox"/> <b>Other Real Property</b><br><input type="checkbox"/> Partition<br><input type="checkbox"/> Planning/Zoning | <input type="checkbox"/> <b>Negligence</b><br><input checked="" type="checkbox"/> Negligence - Auto<br><input type="checkbox"/> Negligence - Medical/Dental<br><input type="checkbox"/> Negligence - Premises Liability (Slip/Fall)<br><input type="checkbox"/> Negligence - Other                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <input type="checkbox"/> <b>Product Liability</b><br><input type="checkbox"/> Product Liability/Motor Vehicle<br><input type="checkbox"/> Other Torts/Product Liability<br><input type="checkbox"/> <b>Intentional Misconduct</b><br><input type="checkbox"/> Torts/Defamation (Libel/Slander)<br><input type="checkbox"/> Interfere with Contract Rights<br><input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination)<br><input type="checkbox"/> <b>Other Torts</b><br><input type="checkbox"/> Anti-trust<br><input type="checkbox"/> Fraud/Misrepresentation<br><input type="checkbox"/> Insurance<br><input type="checkbox"/> Legal Tort<br><input type="checkbox"/> Unfair Competition                                                                                                                                                                                  |
| Probate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Other Civil Filing Types                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <input type="checkbox"/> Summary Administration<br><input type="checkbox"/> General Administration<br><input type="checkbox"/> Special Administration<br><input type="checkbox"/> Set Aside Estates<br><input type="checkbox"/> Trust/Conservatorships<br><input type="checkbox"/> Individual Trustee<br><input type="checkbox"/> Corporate Trustee<br><input type="checkbox"/> Other Probate                                                                                                                                 | <input type="checkbox"/> <b>Construction Defect</b><br><input type="checkbox"/> Chapter 40<br><input type="checkbox"/> General<br><input type="checkbox"/> <b>Breach of Contract</b><br><input type="checkbox"/> Building & Construction<br><input type="checkbox"/> Insurance Carrier<br><input type="checkbox"/> Commercial Instrument<br><input type="checkbox"/> Other Contracts/Acct/Judgment<br><input type="checkbox"/> Collection of Actions<br><input type="checkbox"/> Employment Contract<br><input type="checkbox"/> Guarantee<br><input type="checkbox"/> Sale Contract<br><input type="checkbox"/> Uniform Commercial Code<br><input type="checkbox"/> <b>Civil Petition for Judicial Review</b><br><input type="checkbox"/> Other Administrative Law<br><input type="checkbox"/> Department of Motor Vehicles<br><input type="checkbox"/> Worker's Compensation Appeal | <input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box)<br><input type="checkbox"/> Transfer from Justice Court<br><input type="checkbox"/> Justice Court Civil Appeal<br><input type="checkbox"/> <b>Civil Writ</b><br><input type="checkbox"/> Other Special Proceeding<br><input type="checkbox"/> <b>Other Civil Filing</b><br><input type="checkbox"/> Compromise of Minor's Claim<br><input type="checkbox"/> Conversion of Property<br><input type="checkbox"/> Damage to Property<br><input type="checkbox"/> Employment Security<br><input type="checkbox"/> Enforcement of Judgment<br><input type="checkbox"/> Foreign Judgment - Civil<br><input type="checkbox"/> Other Personal Property<br><input type="checkbox"/> Recovery of Property<br><input type="checkbox"/> Stockholder Suit<br><input type="checkbox"/> Other Civil Matters |

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)☐ NRS Chapters 78-88  
☐ Commodities (NRS 90)  
☐ Securities (NRS 90)☐ Investments (NRS 104 Art. 8)  
☐ Deceptive Trade Practices (NRS 598)  
☐ Trademarks (NRS 600A)☐ Enhanced Case Mgmt/Business  
☐ Other Business Court Matters3/25/11  
Date

Signature of initiating party or representative

1 **COMP**  
2 Paul D. Powell, Esq.  
3 Nevada Bar No. 7488  
4 THE POWELL LITIGATION GROUP  
5 9525 Hillwood Drive, Suite 100  
6 Las Vegas, Nevada 89134  
7 (702) 288-7200  
8 (702) 288-7300 – FAX  
9 ppowell@powelllit.com

10 Attorneys for EMILIA GARCIA

Electronically Filed  
03/25/2011 10:30:42 AM

  
CLERK OF THE COURT

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

13 EMILIA GARCIA,

14 Plaintiff,

15 vs.

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

19 Defendants.

)  
)  
)  
) CASE NO. A - 11 - 637772 - C  
) DEPT. NO. XXVIII

20 EMILIA GARCIA COMPLAINT

21 Plaintiff EMILIA GARCIA, by and through attorney of record, PAUL D. POWELL, ESQ.,  
22 of THE POWELL LITIGATION GROUP, complains against Defendants as follows:

23 GENERAL ALLEGATIONS

- 24 1. That Plaintiff EMILIA GARCIA (hereinafter "Plaintiff") is, and at all times  
25 mentioned herein was, a resident of the County of Clark, State of Nevada.  
26 2. That Defendant JARED AWERBACH is, and at all times mentioned herein was, a  
27 resident of the County of Clark, State of Nevada.  
28 3. That Defendant ANDREA AWERBACH is, and at all times mentioned herein was, a  
resident of the County of Clark, State of Nevada.  
4. That the true names and capacities of the Defendants designated herein as Doe or  
Roe Corporations are presently unknown to Plaintiff at this time, who therefore sues

- 1 said Defendants by such fictitious names. When the true names and capacities of  
2 these defendants are ascertained, Plaintiff will amend this Complaint accordingly.  
3  
4 5. That at all times pertinent, Defendants were agents, servants, employees or joint  
5 venturers of every other Defendant herein, and at all times mentioned herein were  
6 acting within the scope and course of said agency, employment, or joint venture,  
7 with knowledge and permission and consent of all other named Defendants.  
8  
9 6. That at all times mentioned herein, Plaintiff was the owner and operator of a 2001  
10 Hyundai Santa Fe.  
11  
12 7. That at all times mentioned herein Defendant JARED AWERBACH was the  
13 operator of a 2007 Suzuki Forenza (hereinafter referred to as the "Vehicle").  
14  
15 8. That at all times mentioned herein Defendant ANDREA AWERBACH was the  
16 owner of the Vehicle.  
17  
18 9. That on January 2, 2011, in Clark County, Nevada, Defendant JARED AWERBACH  
19 negligently failed to yield to Plaintiff's right-of-way, causing a collision with  
20 Plaintiff.  
21  
22 10. At the time of the crash, Defendant JARED AWERBACH was driving under the  
23 influence of alcohol and/or an illegal drug substance.  
24  
25 11. That as a direct and proximate result of the negligence of Defendant JARED  
26 AWERBACH, Plaintiff sustained injuries to Plaintiff's shoulders, back, bodily  
27 limbs, organs and systems, all or some of which condition may be permanent and  
28 disabling, and all to Plaintiff's damage in a sum in excess of \$10,000.  
12. That as a direct and proximate result of the negligence of Defendant JARED  
AWERBACH, Plaintiff received medical and other treatment for the aforementioned

injuries, and that said services, care, and treatment are continuing and shall continue in the future, all to the damage of Plaintiff.

13. That as a direct and proximate result of the negligence of Defendant JARED AWERBACH, Plaintiff has been required to, and has limited occupational and recreational activities, which have caused and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.
14. That as a direct and proximate result of the negligence of Defendant JARED AWERBACH, Plaintiff's vehicle was damaged and Plaintiff lost the use of that vehicle.
15. That as a direct and proximate result of the aforementioned negligence of all Defendants, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

**FIRST CAUSE OF ACTION**

16. Plaintiff incorporates paragraphs 1 through 15 of the Complaint as though said paragraphs were fully set forth herein.
17. Defendant JARED AWERBACH owed Plaintiff a duty of care to operate the Vehicle in a reasonable and safe manner. Defendant JARED AWERBACH breached that duty of care by striking Plaintiff's vehicle on the roadway. As a direct and proximate result of the negligence of Defendant JARED AWERBACH, Plaintiff has been damaged in an amount in excess of \$10,000.00.
18. The actions or omissions of Defendant JARED AWERBACH, at least in part, were willful and/or wanton and oppressive, in conscious disregard of the safety of others,

1 and therefore, an award of punitive damages is appropriate in an amount to be  
2 determined at trial.

3 **SECOND CAUSE OF ACTION**  
4

5 19. Plaintiff incorporates paragraphs 1 through 18 of the Complaint as though said  
6 paragraphs were fully set forth herein.

7 20. The acts of Defendant JARED AWERBACH as described herein violated the traffic  
8 laws of the State of Nevada and Clark County, constituting negligence per se, and  
9 Plaintiff has been damaged as a direct and proximate result thereof in an amount in  
10 excess of \$10,000.00.  
11

12 **THIRD CAUSE OF ACTION**

13 21. Plaintiff incorporates paragraphs 1 through 20 of the Complaint as though said  
14 paragraphs were fully set forth herein.

15 22. Defendant ANDREA AWERBACH was the owner, or had custody and control, of  
16 the Vehicle.  
17

18 23. That Defendant ANDREA AWERBACH, did entrust the Vehicle to the control of  
19 Defendant JARED AWERBACH.

20 24. That Defendant JARED AWERBACH was incompetent, inexperienced, or reckless  
21 in the operation of the Vehicle.  
22

23 25. That Defendant ANDREA AWERBACH actually knew or, by the exercise of  
24 reasonable care, should have known that Defendant JARED AWERBACH was  
25 incompetent, inexperienced, or reckless in the operation of motor vehicles.

26 26. That Plaintiff was injured as a proximate consequence of the negligence and  
27 incompetence of Defendant JARED AWERBACH, concurring with the negligent  
28

entrustment of the Vehicle by Defendant ANDREA AWERBACH.

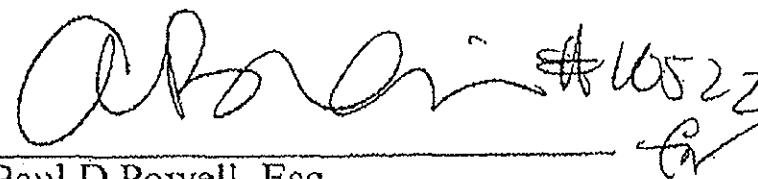
27. That as a direct and proximate cause of the negligent entrustment of the Vehicle by Defendant ANDREA AWERBACH to Defendant JARED AWERBACH, Plaintiff has been damaged in an amount in excess of \$10,000.00.

WHEREFORE, Plaintiff, expressly reserving the right to amend this complaint prior to or at the time of trial of this action to insert those items of damage not yet fully ascertainable, prays judgment against all Defendants, and each of them, as follows:

1. For general damages sustained by Plaintiff in an amount in excess of \$10,000.00;
2. For special damages sustained by Plaintiff in an amount in excess of \$10,000.00;
3. For punitive damages in an amount to be determined at trial;
4. For property damages sustained by Plaintiff;
5. For reasonable attorney's fees and costs;
6. For interest at the statutory rate; and
7. For such other relief as the Court deems just and proper.

DATED this 24<sup>th</sup> day of March 2011.

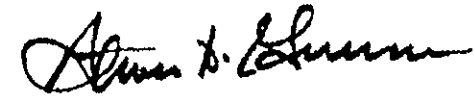
THE POWELL LITIGATION GROUP



Paul D Powell, Esq.  
Nevada Bar No. 7488  
9525 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134  
Attorneys for EMILIA GARCIA

# EXHIBIT 2

# EXHIBIT 2



CLERK OF THE COURT

1 ANS  
2 Alexandra B. McLeod  
3 Nevada Bar No. 8185  
4 BRADY, VORWERCK, RYDER & CASPINO  
5 A Law Corporation  
6 2795 East Desert Inn Road, Suite 200  
7 Las Vegas, Nevada 89121-3635  
8 Telephone: (702) 697-6500  
9 Fax: (702) 697-6505  
10 [amcleod@bvrclaw.com](mailto:amcleod@bvrclaw.com)  
11 Attorneys for Defendants  
12 Jared Awerbach and Andrea Awerbach

8  
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 EMILIA GARCIA,

12  
13 Plaintiffs,

14 v.

15 JARED AWERBACH, individually,  
16 ANDREA AWERBACH, individually,  
17 DOES I – X, and ROE CORPORATIONS I  
– X, inclusive,

18 Defendants.  
19

Case No.: A-11-637772-C

Dept. No.: XXVIII

[ELECTRONIC FILING CASE]

**DEFENDANTS' ANSWER TO  
COMPLAINT**

20  
21 COMES NOW Defendants, JARED AWERBACH and ANDREA AWERBACH, by and  
22 through their counsel of record, ALEXANDRA B. MCLEOD, ESQ., of the law firm of BRADY,  
23 VORWERCK, RYDER & CASPINO, and hereby answer the allegations of Plaintiff's  
24 Complaint as follows:

25 1. In answering Paragraphs 1, 4 and 6 of Plaintiff's Complaint, Defendants state that they  
26 do not have sufficient knowledge or information upon which to base a belief as to the truth or  
27 validity of the allegations contained therein, and upon such grounds, deny each and every  
28 allegation contained therein.



1           2. In answering Paragraphs 2, 3, 7, 8, 22 and 23 of Plaintiff's Complaint, Defendants  
2 admit the allegations contained therein.

3           3. In answering Paragraphs 5, 9, 10, 17, 18, 20, 24, 25 and 26 of Plaintiff's Complaint,  
4 Defendants deny each and every allegation contained therein.

5           4. In answering Paragraphs 11, 12, 13, 14, 15 and 27 of Plaintiff's Complaint, these  
6 answering Defendants deny as to the claims of negligence and/or gross negligence of  
7 Defendants, but are without sufficient knowledge or information to form a belief as to the truth  
8 or falsity of the residual of said allegations contained therein, and therefore deny the same.

9           5. In answering Paragraphs 16, 19, and 21, Defendants repeat and reallege their answers  
10 to the preceding Paragraphs, respectively, and incorporate the same as if fully set forth herein.

11                                   FIRST AFFIRMATIVE DEFENSE

12           Plaintiff's Complaint fails to state a claim against these answering Defendants upon  
13 which relief can be granted.

14                                   SECOND AFFIRMATIVE DEFENSE

15           Plaintiff's Complaint fails to join a party necessary for just adjudication under NRCP 19.

16                                   THIRD AFFIRMATIVE DEFENSE

17           Plaintiff had notice of all the facts and acts of Defendants set forth in the Complaint, and  
18 has thereby been guilty of laches as should in equity bar the Plaintiff from maintaining this  
19 action.

20                                   FOURTH AFFIRMATIVE DEFENSE

21           Plaintiff has failed to mitigate Plaintiff's alleged injuries and damages, if any.

22                                   FIFTH AFFIRMATIVE DEFENSE

23           That, at the time and place alleged in Plaintiff's Complaint, and for a period of time prior  
24 thereto, Plaintiff did not exercise ordinary care, caution or prudence for the protection of  
25 Plaintiff's own safety and the injuries and damages complained of by the Plaintiff in the  
26 Complaint, if any, were directly and proximately caused or contributed to by the fault, failure to  
27 act, carelessness and negligence of the Plaintiff herself and, as such, is responsible for  
28 comparative fault in excess of fifty percent (50%), thereby exonerating any liability as against

1 these Defendants. Should Plaintiff's comparative fault be assessed at less than fifty percent  
2 (50%), these Defendants are entitled to reduce Plaintiff's recovery accordingly.

3 SIXTH AFFIRMATIVE DEFENSE

4 At all times referenced in Plaintiff's Complaint on file herein, and for a period of time  
5 prior thereto, Defendant JARED AWERBACH was operating a vehicle with due care and  
6 caution. All damages as allegedly sustained by Plaintiff in the Complaint on file herein were  
7 caused by the negligence, carelessness or want of care among the known third parties.

8 SEVENTH AFFIRMATIVE DEFENSE

9 The damages and injuries sustained by Plaintiff, as alleged in the Complaint herein, if  
10 any, were the result of an unavoidable accident.

11 EIGHTH AFFIRMATIVE DEFENSE

12 That at all times referenced in Plaintiff's Complaint on file herein, and for a period of  
13 time prior thereto, to the best of the knowledge of Defendant ANDREA AWERBACH,  
14 Defendant JARED AWERBACH was known to be a safe driver and to operate the vehicle with  
15 due care and caution. Defendant ANDREA AWERBACH had no knowledge nor should have  
16 had knowledge that JARED AWERBACH was an unsafe driver.

17 NINTH AFFIRMATIVE DEFENSE

18 That an award of punitive damages would be unconstitutional, in that it would deny the  
19 answering Defendants their rights as guaranteed in the Due Process and Equal Protection Clauses  
20 of both the United States and Nevada Constitutions.

21 TENTH AFFIRMATIVE DEFENSE

22 That an award of punitive damages would be unconstitutional, in that it would deny the  
23 answering Defendants, in theory and application, their rights under the Eighth and Fourteenth  
24 Amendment protections of the United States and Nevada Constitutions.

25 ELEVENTH AFFIRMATIVE DEFENSE

26 No award of punitive damages can be made against this answering Defendants pursuant  
27 to NRS 41.031, et seq.

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TWELFTH AFFIRMATIVE DEFENSE

That an award of punitive damages against the answering Defendants under NRS 42.010 would be unconstitutional, as such statute is a "vague sentencing provision."

THIRTEENTH AFFIRMATIVE DEFENSE

If punitive damages are recoverable in this case, which the answering Defendants specifically deny, such are criminal punishment in nature, and must be proven by at least clear and convincing evidence. Plaintiff has failed to allege any facts sufficient to satisfy Plaintiff's burden of proof *by convincing evidence* that Defendants engaged in any conduct that would support an award of punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE

If punitive damages are recoverable in this case which the answering Defendants specifically deny, such an award cannot be disproportionate to the actor's(s') alleged misconduct.

FIFTEENTH AFFIRMATIVE DEFENSE

No award of punitive damages can be awarded against these answering Defendants under the facts and circumstances alleged in Plaintiff's Complaint.

LAST AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer, and therefore Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.


WHEREFORE, Defendants prays that the Plaintiff take nothing by reason of the Complaint on file herein, and that Defendants recover from Plaintiff a reasonable attorney's fee,

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1 costs and disbursements in this action, and, for such other and further relief as the Court may  
2 deem proper.

3 DATED: January 23, 2012

BRADY, VORWERCK, RYDER & CASPINO

4  
5   
6 Alexandra B. McLeod  
7 Nevada Bar No. 8185  
8 2795 East Desert Inn Road, Suite 200  
9 Las Vegas, Nevada 89121-3635  
10 Telephone: (702) 697-6500  
11 Fax: (702) 697-6505  
12 [amcleod@bvrelaw.com](mailto:amcleod@bvrelaw.com)  
13 Attorneys for Defendants,  
14 JARED AWERBACH and  
15 ANDREA AWERBACH  
16  
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1 CERTIFICATE OF SERVICE

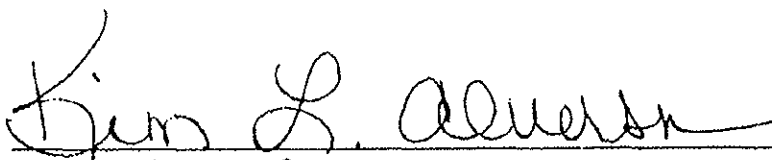
2 I HEREBY CERTIFY that on this 23 day of January, 2011, I served the foregoing  
3 documents described as **DEFENDANTS' ANSWER TO COMPLAINT**, on the parties set  
4 forth below by:

5 ☒ **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with  
6 postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada.

7 ☐ **VIA FACSIMILE:** pursuant to E.D.C.R. Rule 7.26, by sending a true and correct copy  
8 to counsel on the attached service list at the facsimile numbers specified.

9 ☐ **VIA PERSONAL OR HAND DELIVERY:**

10  
11 Adam D. Smith  
12 Glen Lerner & Associates  
13 4795 South Durango Drive  
14 Las Vegas NV 89147  
15 (702) 877-1500  
16 (702) 877-0110 - FAX  
17 *Attorneys for Plaintiff*

18   
19 An employee of  
20 BRADY, VORWERCK, RYDER & CASPINO  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 3

# EXHIBIT 3

Alexandra B. McLeod  
Nevada Bar No. 8185  
amcleod@bvrclaw.com  
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Las Vegas, Nevada 89121  
Telephone: (702) 697-6500  
Facsimile: (702) 697-6505  
  
Attorneys for Defendants, Jared Awerbach and  
Andrea Awerbach

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

EMILIA GARCIA,

Plaintiff,

v.

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

Defendants.

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

**DEFENDANT ANDREA AWERBACH'S  
RESPONSES TO REQUEST FOR  
ADMISSIONS**

COMES NOW, Defendant, ANDREA AWERBACH by and through her counsel of record,  
ALEXANDRA B. MCLEOD, ESQ., of the law firm of BRADY, VORWERCK, RYDER &  
CASPINO, and hereby responds to Plaintiff's Request for Admissions.

**PRELIMINARY STATEMENT**

It should be noted that this Responding Party has not fully completed its investigation of the  
facts relating to this case, has not fully completed discovery in this action, and has not completed  
preparation for trial. All of the responses contained herein are based only upon such information and  
documents which are presently available to and specifically known to this Responding Party and  
discloses only those contentions which presently occur to such Responding Party. It is anticipated that  
further discovery, independent investigation, legal research and analysis will supply additional facts,

1 add meaning to known facts, as well as establish entirely new factual conclusions and legal  
2 contentions, all of which may lead to substantial additions to, changes in, and variations from the  
3 responses herein set forth. The following responses are without prejudice to Responding Party's right  
4 to produce evidence of any subsequently discovered fact or facts which this Responding Party may  
5 later recall or discover. Responding Party accordingly reserves its right to change any and all  
6 responses herein as investigation is conducted, additional facts are ascertained, analyses are made,  
7 legal research is concluded and contentions are made. The responses contained herein are made in a  
8 good faith effort to supply as much factual information as is presently known but should in no way be  
9 to the prejudice of this Responding Party in relation to further discovery, research or analysis. These  
10 responses are made solely for the purpose of this action.

11 **RESPONSES TO REQUEST FOR ADMISSIONS**

12 **REQUEST NO. 1:**

13 Admit that on January 2, 2011, a traffic accident occurred between an automobile owned by  
14 you, and an automobile driven by Plaintiff Emilia Garcia in Clark County, Nevada.

15 **RESPONSE TO REQUEST NO. 1:**

16 Admit

17 **REQUEST NO. 2:**

18 Admit JARED AWERBACH was operating your vehicle on January 2, 2011, with your  
19 permission.

20 **RESPONSE TO REQUEST NO. 2:**

21 Admit

22 **REQUEST NO. 3:**

23 Admit JARED AWERBACH's negligent operation of your vehicle was the proximate cause of  
24 the subject accident occurring between Plaintiff Emilia Garcia and Jared Awerbach on January 2,  
25 2011.

26 **RESPONSE TO REQUEST NO. 3:**

27 Denied

28 **REQUEST NO. 4:**

Admit Plaintiff suffered injuries as a result of the crash.



1 **RESPONSE TO REQUEST NO. 4:**

2 Denied

3 **REQUEST NO. 5:**

4 Admit Plaintiff did not contribute to the crash.

5 **RESPONSE TO REQUEST NO. 5:**

6 Denied

7 **REQUEST NO. 6:**

8 Admit Plaintiff's medical treatment was reasonable and necessary and that the costs of  
9 Plaintiff's medical care was customary and in keeping with the standards of the community.

10 **RESPONSE TO REQUEST NO. 6:**

11 Denied

12

13 DATED: June 5, 2012

BRADY, VORWERCK, RYDER & CASPINO  
A Law Corporation

14

15

16

By



ALEXANDRA B. MCLEOD

17

Nevada Bar No. 8185

18

2795 East Desert Inn Road, Suite 200

19

Attorneys for Defendants, Jared Awerbach and  
Andrea Awerbach

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12 day of May, 2012, I forwarded a copy of the above and foregoing **DEFENDANT ANDREA AWERBACH'S RESPONSES TO REQUEST FOR ADMISSIONS** as follows:

- ☒ by depositing in the United States mail, first-class postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, pursuant to NRCP 5(b)(2)(B) and EDCR 7.26(a)(1) [FRCP 5(b)(2)(C)]; and/or
- ☐ by facsimile transmission pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(3) [FRCP 5(b)(2)(E)]; as indicated below; and/or
- ☐ by electronic transmission [via CM/ECF], pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4) [FRCP 5(b)(2)(E)]; and/or
- ☐ by email as indicated below pursuant to NRCP 5(b)(2)(D) [FRCP 5(b)(2)(E)];

TO:

Adam D. Smith, Esq.  
Glen J. Lerner & Associates  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
(702) 877-1500  
(702) 933-7043 – Fax  
*Attorneys for Plaintiff*

Susan R. Zondelar  
Employee of  
BRADY, VORWERCK, RYDER & CASPINO

# EXHIBIT 4

# EXHIBIT 4

**APEN**

D. Lee Roberts, Jr., Esq.

[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

Nevada Bar No. 8877

Timothy A. Mott, Esq.

[tmott@wwhgd.com](mailto:tmott@wwhgd.com)

Nevada Bar No. 12828

Marisa Rodriguez-Shapoval, Esq.

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Nevada Bar No. 13234

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*Attorneys for Plaintiff*

*Emilia Garcia*

**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.: A-11-637772-c

Dept. No.: 30

**APPENDIX OF EXHIBITS:  
PLAINTIFF'S RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF LAW**

Timothy A. Mott, Esq., a resident of the State of Nevada, declares as follows:

1. I am a licensed attorney currently in good standing to practice law in the state of Nevada and before this Court.

2. I am an attorney in the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, 6385 South Rainbow Boulevard, Suite 400, Las Vegas, Nevada 89118, and I am one of the counsel representing Emilia Garcia, in this action.

3. I have personal knowledge of the matters contained in this declaration and am competent to testify regarding them.

4. The exhibits below are true and correct copies as noted:

| <u>Exhibit</u> | <u>Description</u>                                                                                        |
|----------------|-----------------------------------------------------------------------------------------------------------|
| 1.             | Complaint 03/25/2011                                                                                      |
| 2.             | Defendants' Answer                                                                                        |
| 3.             | Defendant Andrea Awerbach's Responses to Request for Admissions                                           |
| 4.             | Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference |
| 5.             | Selected pages of Deposition of Andrea Awerbach, Volume I, taken 09/12/2013                               |
| 6.             | Selected pages of Deposition of Andrea Awerbach, Volume II, taken 10/24/2014                              |
| 7.             | Selected pages of Deposition of Teresa Merez taken 11/10/2014                                             |
| 8.             | Defendant Andrea Awerbach's Correction to Her Responses to Request for Admissions                         |
| 9.             | Decision and Order 02/25/2015                                                                             |
| 10.            | Decision and Order 04/27/2015                                                                             |
| 11.            | Hearing Transcript 09/15/2015                                                                             |
| 12.            | Hearing Transcript 02/08/2016                                                                             |
| 13.            | Plaintiff's Trial Brief Regarding Permissive Use 02/10/2016                                               |
| 14.            | Trial Transcript 02/10/2016                                                                               |
| 15.            | Order Modifying Prior Order 02/12/2016                                                                    |
| 16.            | Trial Transcript 03/07/2016                                                                               |
| 17.            | Jury Instructions 03/08/2016                                                                              |

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| 18. | Jury Verdict 02/10/2016 |
|-----|-------------------------|

I declare under penalty of perjury that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of May, 2016.

\_\_\_\_\_  
D. Lee Roberts, Jr., Esq.  
Timothy A. Mott, Esq.  
Marisa Rodriguez-Shapoval, Esq.  
Weinberg, Wheeler, Hudgins,  
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*Emilia Garcia*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of May, 2016, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS: PLAINTIFF'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW** 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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Las Vegas, NV 89101

*Attorney for Defendant  
Andrea Awerbach*

---

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

1 **SUPP**  
2 Alexandra B. M<sup>c</sup>Leod  
3 Nevada Bar No. 8185  
4 amcleod@bvrclaw.com  
5 **BRADY, VORWERCK, RYDER & CASPINO**  
6 2795 East Desert Inn Road, Suite 200  
7 Las Vegas, Nevada 89121  
8 Telephone: (702) 697-6500  
9 Facsimile: (702) 697-6505

10 Attorneys for Defendants, JARED AWERBACH  
11 and ANDREA AWERBACH

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

14 EMILIA GARCIA,

15 Plaintiff,

16 v.

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

21 Defendants.

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

**DEFENDANTS' SECOND SUPPLEMENT  
TO LIST OF WITNESSES AND  
DOCUMENTS AND TANGIBLE ITEMS  
PRODUCED AT EARLY CASE  
CONFERENCE**

22 COMES NOW Defendants, JARED AND ANDREA AWERBACH, , by and through their  
23 counsel of record, ALEXANDRA B. M<sup>c</sup>LEOD, ESQ., of the law firm of BRADY, VORWERCK,  
24 RYDER & CASPINO, and hereby submits the following List of Witnesses and Documents and  
25 Tangible Items Produced at the Early Case Conference in the above-entitled action, pursuant to NRCP  
26 16.1. Supplemental information is presented in *bold italic type*.

27 **I.**

28 ***LIST OF WITNESSES***

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



1 EMILIA GARCIA is a Plaintiff in this matter and is expected to testify to the facts and  
2 circumstances surrounding the subject incident, as well as to her alleged injuries sustained thereby and  
3 medical treatment received therefor, and to all other relevant matters.

4  
5 2. JARED AWERBACH, Defendant  
6 c/o ALEXANDRA B. M<sup>C</sup>LEOD, ESQ.  
7 Brady, Vorwerck, Ryder & Caspino  
8 2795 East Desert Inn Road, Suite 200  
9 Las Vegas, Nevada 89121

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

12  
13 3. ANDREA AWERBACH, Defendant  
14 c/o ALEXANDRA B. M<sup>C</sup>LEOD, ESQ.  
15 Brady, Voerwerck, Ryder & Caspino  
16 2795 East Desert Inn Road, Suite 200  
17 Las Vegas, Nevada 89121

18 ANDREA AWERBACH is the Defendant in this matter and is expected to testify to the facts  
19 and circumstances surrounding the subject incident and to all other relevant matters.

20  
21 4. OFFICER D. FIGUEROA, ID/Badge #9693  
22 c/o Las Vegas Metropolitan Police Department  
23 400 East Stewart Avenue  
24 Las Vegas, Nevada 89101

25 OFFICER FIGUEROA was the investigating officer on the scene of the accident in question  
26 and is expected to testify as to the facts and circumstances surrounding the subject incident and to all  
27 other relevant matters.

28 5. PERSON MOST KNOWLEDGEABLE  
29 Employer of Plaintiff at the time of the subject incident

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

33 6. ANY AND ALL APPROPRIATE MEDICAL CARE  
34 PROVIDERS OF PLAINTIFF

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

4  
5 7. G. MICHAEL ELKANICH, M.D.  
6 2680 Crimson Canyon Drive  
7 Las Vegas, Nevada 89128  
8 (702) 228-7355

9 DR. G. MICHAEL ELKANICH is an orthopedic surgeon who is expected to testify  
10 concerning his Independent Medical Examination of Plaintiff EMILIA GARCIA on December 18,  
11 2012, his review of plaintiff's medical records and films, and concerning such issues as causation,  
12 reasonableness of injury claims, treatment and medical charges, and concerning his present status,  
13 physical condition, ability to work, prognosis, need for future treatment, and all relevant matters.

14  
15 8. ROBERT H. ODELL, JR., M.D., Ph.D.  
16 8084 W. Sahara, Suite E  
17 Las Vegas, Nevada 89117  
18 (702) 257-7246

19 DR. ROBERT H. ODELL is an anesthesiologist and pain management expert who is expected  
20 to testify concerning his review of plaintiff's medical records, and concerning such issues as causation,  
21 reasonableness of injury claims, treatment and medical charges, and concerning her present status,  
22 physical condition, ability to work, prognosis, need for future treatment, and all relevant matters.

23 Defendant hereby names, and incorporates by reference herein, any witness listed by any other  
24 party to this litigation. Defendant reserves the right to call as a witness any treating physicians named  
25 by Plaintiff or any other witness arising out of the subject incident. Defendant reserves the right to  
26 supplement this list of witnesses as discovery progresses.

## 27 *II.*

### 28 *DOCUMENTS AND TANGIBLE ITEMS PRODUCED*

- 29 A) Copy of State of Nevada Traffic Accident Report, six (6) pages;  
30 B) Transcript of recorded statement of Plaintiff, Emilia Garcia;  
31 C) Transcript of recorded statement of Defendant, Jared Awerbach;

- 1 E) Settlement statement for salvage title 2001 Hyundai Santa Fe;  
2 F) Property damage estimate from Ultimate Collision Repair Center;  
3 G) Autosource valuation for Plaintiff's 2001 Hyundai Santa Fe;  
4 H) Rental invoice;  
5 I) Authorization for payment by Plaintiff, Emilia Garcia;  
6 J) Liberty Mutual Policy A02-268-633569-400  
7 K) *Adjuster's Claims Notes between January 2-17, 2011(Bates labels LM001-006;  
8 LM019-027); notes after January 17, 2011 withheld (Bates labels LM007-018).*  
9 L) *Privilege log pertaining to redacted claims notes.*

10 Defendant hereby lists, and incorporates by reference herein, any and all documents set forth  
11 by any other party to this litigation. Defendant reserves the right to supplement this list of documents  
12 and tangible items produced as discovery progresses.  
13

14 DATED: July 22, 2013

BRADY, VORWERCK, RYDER & CASPINO

16  
17 By

  
ALEXANDRA B. McLEOD

Nevada Bar No. 8185

2795 East Desert Inn Road, Suite 200

Las Vegas, Nevada 89121

Attorneys for Defendants, JARED AND ANDREA  
AWERBACH

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 22<sup>nd</sup> day of July, 2013, I forwarded a copy of the above and  
3 foregoing **Defendants' Second Supplement to List of Witnesses and Documents and Tangible**  
4 **Items Produced at Early Case Conference** as follows:

- 5 ☒ by depositing in the United States mail, first-class postage prepaid, at Las Vegas,  
6 Nevada, enclosed in a sealed envelope, pursuant to NRCP 5(b)(2)(B) and EDCR  
7 7.26(a)(1) [FRCP 5(b)(2)(C)]; and/or  
8 \_\_\_\_\_ by facsimile transmission pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(3) [FRCP  
9 5(b)(2)(E)]; as indicated below; and/or  
10 \_\_\_\_\_ by electronic transmission [via CM/ECF], pursuant to NRCP 5(b)(2)(D) and EDCR  
11 7.26(a)(4) [FRCP 5(b)(2)(E)]; and/or  
12 \_\_\_\_\_ by email as indicated below pursuant to NRCP 5(b)(2)(D) [FRCP 5(b)(2)(E)];

13 TO:

14 Adam D. Smith, Esq.  
15 Glen Lerner & Associates  
16 4795 South Durango Drive  
17 Las Vegas, Nevada 89147  
18 (702) 877-1500  
19 (702) 877-0110 (Fax)  
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*Attorney for Defendant,*  
*Jared Awerbach*

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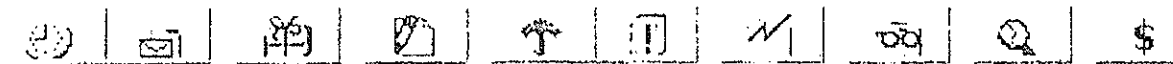
Employee of  
BRADY, VORWERCK, RYDER & CASPINO


# EXHIBIT "K"

| GARCIA, EMILIA - AWERBACH, ANDRE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 1078-0002 DOL: 01/02/2011 Investigation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                   | <input type="button" value="Print"/> <input type="button" value="Home"/> <input type="button" value="Exit"/> |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
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| <div style="display: flex; justify-content: space-between; font-size: small;"> <span>File Edit Claim Investigation Total Loss Subrogation No Fault/Med-Pay Tools Reports Financial Help</span> </div> <div style="display: flex; justify-content: space-between; font-size: x-small; margin-top: 5px;"> <span> <input type="button" value="New"/> <input type="button" value="Open"/> <input type="button" value="Save"/> <input type="button" value="Print"/> <input type="button" value="Undo"/> <input type="button" value="Redo"/> <input type="button" value="Find"/> <input type="button" value="Find Next"/> <input type="button" value="Find Previous"/> <input type="button" value="Find All"/> </span> <span> <input type="button" value="Total"/> <input type="button" value="Slvg"/> <input type="button" value="Subro"/> <input type="button" value="Assign"/> <input type="button" value="Close"/> <input type="button" value="Refresh"/> <input type="button" value="Next"/> <input type="button" value="Exit"/> </span> </div>                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| <div style="border: 1px solid black; padding: 2px; text-align: center;">Plan</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Policyholder</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Claimant</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Occurrence</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">ICP/First Call</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Medical</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Vehicle</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Structure</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Items</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Estimate/Repair</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Time</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Third Party</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Legal</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Financial</div> | <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><b>Claimant:</b><br/>Name: GARCIA, EMILIA</p> <p>Role: Owner/Operator Claimant's Car</p> <p>Home: (702)4739451 Bus: </p> <p>Office: 0647 - PHOENIX, AZ <b>Open</b></p> <p>Date of Loss: 01/02/2011 Report Date: 01/03/2011</p> </div> <div style="width: 45%;"> <p><b>Loss Location</b><br/>Street/PO: rainbow blvd</p> <p>City: las vegas</p> <p>ST/Prov: NV ZIP/Postal:</p> <p>Investigation Strategy: <b>Yellow</b></p> <p>Assignments...</p> </div> </div> <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th>Coverage Type</th> <th>Coverage</th> <th>Loss Cost Estimate</th> <th>Loss Paid to Date</th> </tr> </thead> <tbody> <tr> <td>Liability</td> <td>LIBI - LIABILITY - BOD</td> <td>\$50000.00</td> <td>\$0.00</td> </tr> <tr> <td>Liability</td> <td>LIPD - LIABILITY - PR</td> <td>\$6852.00</td> <td>\$6851.53</td> </tr> </tbody> </table> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div> <p>First Year: 2009</p> <p>CAT Code:</p> <p>Expense Cost Estimate: \$0</p> <p>Expense Paid to Date: \$0</p> </div> </div> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              | Coverage Type            | Coverage | Loss Cost Estimate | Loss Paid to Date | Liability | LIBI - LIABILITY - BOD | \$50000.00       | \$0.00 | Liability | LIPD - LIABILITY - PR | \$6852.00  | \$6851.53 |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Coverage Type                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Coverage                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Loss Cost Estimate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Loss Paid to Date |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Liability                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | LIBI - LIABILITY - BOD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | \$50000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | \$0.00            |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Liability                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | LIPD - LIABILITY - PR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | \$6852.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$6851.53         |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| <p><b>Occurrence Descriptions:</b></p> <p>MERAZ, TERESA, Liberty Mutual Employee, 01/06/2011 ✓</p> <p>Auto Claims</p> <p>Inception Date: 2009</p> <p>**If new policy-cancellation date with prior carrier: N/A</p> <p>Dual Coverage: No</p> <p>Policy in Force for DOL: Yes</p> <p>Vehicle Listed: Yes- 2007 SUZU FORENZA</p> <p>Listed Operator: No- Jared Awerbach</p> <p>**If no-permissive use verified: Yes</p> <p>**If UT/NV-reason for driving: Personal</p> <p>Coverage Limits: 50/100/50</p> <p>Applicable Endorsement/exclusions: None</p> <p>Multiple Policies: None</p> <p>**If yes- order of coverage: N/A</p> <p>Number of potential claimants: 0</p> <p>Number of pending BI claims: 1</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p><b>Injury/Damage Descriptions:</b></p> <p>MERAZ, TERESA, Liberty Mutual Employee, 04/05/2011 ✓</p> <p>Re-ran ISO: No new matches found</p> <p>MICHELLE COUSINS, Liberty Mutual Employee, 01/12/2011</p> <p>Settlement Macro: Version 1</p> <table style="width: 100%; font-size: x-small;"> <tr> <td>Appraisal Amt / % to ACV</td> <td>5,494.27</td> <td>93.19%</td> </tr> <tr> <td>Liability Status</td> <td colspan="2">INS'D AF</td> </tr> <tr> <td>File Disposition</td> <td colspan="2">CLOSE</td> </tr> <tr> <td>ACV</td> <td>\$5,896.00</td> <td></td> </tr> <tr> <td>Tax Rate 8.10%</td> <td>\$477.58</td> <td></td> </tr> <tr> <td>VLF</td> <td>\$-</td> <td></td> </tr> <tr> <td>TTF</td> <td>\$28.25</td> <td></td> </tr> <tr> <td>Gross</td> <td>\$6,401.83</td> <td></td> </tr> <tr> <td>Deductible</td> <td></td> <td></td> </tr> <tr> <td>Net Total</td> <td>\$6,401.83</td> <td></td> </tr> <tr> <td>Lien Payoff</td> <td>\$4,441.03</td> <td>til 2/1</td> </tr> <tr> <td>Payable to Clmt</td> <td>\$1,960.80</td> <td></td> </tr> </table> |                   |                                                                                                              | Appraisal Amt / % to ACV | 5,494.27 | 93.19%             | Liability Status  | INS'D AF  |                        | File Disposition | CLOSE  |           | ACV                   | \$5,896.00 |           | Tax Rate 8.10% | \$477.58 |  | VLF | \$- |  | TTF | \$28.25 |  | Gross | \$6,401.83 |  | Deductible |  |  | Net Total | \$6,401.83 |  | Lien Payoff | \$4,441.03 | til 2/1 | Payable to Clmt | \$1,960.80 |  |
| Appraisal Amt / % to ACV                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 5,494.27                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 93.19%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Liability Status                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | INS'D AF                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| File Disposition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | CLOSE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| ACV                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$5,896.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Tax Rate 8.10%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | \$477.58                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| VLF                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| TTF                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$28.25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Gross                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | \$6,401.83                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Deductible                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Net Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | \$6,401.83                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Lien Payoff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | \$4,441.03                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | til 2/1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |
| Payable to Clmt                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$1,960.80                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |                                                                                                              |                          |          |                    |                   |           |                        |                  |        |           |                       |            |           |                |          |  |     |     |  |     |         |  |       |            |  |            |  |  |           |            |  |             |            |         |                 |            |  |

Ready
NUM

File Edit Claim Investigation Total Loss Subrogation No Fault/Med-Pay Tools Reports Financial Help


 Total Slvg Subro Assign Close Refresh Next Exit

| Plan            | Claimant<br>Name: GARCIA, EMILIA                                                                                                                                                                                                                                                                                                                                               | Loss Location<br>Street/PO: rainbow blvd                                                                                          |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------------|--------------------|-------------------|-----------|------------------------|------------|--------|-----------|------------------------|-----------|-----------|------------------------------------------------------------------------------------------|
| Policyholder    | Role: Owner/Operator Claimant's Car<br>Home: (702)4739451 Bus:                                                                                                                                                                                                                              | City: las vegas<br>ST/Prow: NV ZIP/Postal:                                                                                        |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Claimant        | Office: 0647 - PHOENIX, AZ <b>Open</b>                                                                                                                                                                                                                                                                                                                                         | Investigation Strategy: <b>Yellow</b>                                                                                             |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Occurrence      | Date of Loss: 01/02/2011 Report Date: 01/03/2011                                                                                                                                                                                                                                                                                                                               | Assignments...                                                                                                                    |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| ICP/First Call  | <table border="1"> <thead> <tr> <th>Coverage Type</th> <th>Coverage</th> <th>Loss Cost Estimate</th> <th>Loss Paid to Date</th> </tr> </thead> <tbody> <tr> <td>Liability</td> <td>LIBI - LIABILITY - BOD</td> <td>\$50000.00</td> <td>\$0.00</td> </tr> <tr> <td>Liability</td> <td>LIPD - LIABILITY - PRO</td> <td>\$6852.00</td> <td>\$6851.53</td> </tr> </tbody> </table> | Coverage Type                                                                                                                     | Coverage          | Loss Cost Estimate | Loss Paid to Date | Liability | LIBI - LIABILITY - BOD | \$50000.00 | \$0.00 | Liability | LIPD - LIABILITY - PRO | \$6852.00 | \$6851.53 | First Year: 2009<br>CAT Code:<br>Expense Cost Estimate: \$0<br>Expense Paid to Date: \$0 |
| Coverage Type   | Coverage                                                                                                                                                                                                                                                                                                                                                                       | Loss Cost Estimate                                                                                                                | Loss Paid to Date |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Liability       | LIBI - LIABILITY - BOD                                                                                                                                                                                                                                                                                                                                                         | \$50000.00                                                                                                                        | \$0.00            |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Liability       | LIPD - LIABILITY - PRO                                                                                                                                                                                                                                                                                                                                                         | \$6852.00                                                                                                                         | \$6851.53         |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Medical         |                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                   |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Vehicle         | Occurrence Descriptions:                                                                                                                                                                                                                                                                                                                                                       | Injury/Damage Descriptions:                                                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Structure       | Number of potential claimants: 0<br>Number of pending BI claims: 1<br>Other Coverage Issues/Comments: None                                                                                                                                                                                                                                                                     | MERAZ, TERESA, Liberty Mutual Employee, 01/06/2011<br>ISO: No other matches found                                                 |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Items           | MERAZ, TERESA, Liberty Mutual Employee, 01/06/2011                                                                                                                                                                                                                                                                                                                             | MERAZ, TERESA, Liberty Mutual Employee, 01/06/2011                                                                                |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Estimate/Repair | Statements taken from both drivers. Opac making left turn from private drive. A bus in right lane to clmt's left was stopped and blocking opac's view. Clmt coming from opac's left in left lane of 2. Opac pulled out of driveway causing collision. POI was to opac's front end and clmt's p/s rear door and rear tire.                                                      | VT<br>1/6/11 ISO 1/6/11<br>LCE 1/6/11<br>Medicare 1/6/11<br>Detail Data 1/6/11<br>Opac RI 1/6/11<br>Clmt RI 1/6/11<br>P/R 1/31/11 |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Time            | Clmt attempted to swerve left to avoid.                                                                                                                                                                                                                                                                                                                                        | FIRST REPORT                                                                                                                      |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Third Party     |                                                                                                                                                                                                                                                                                                                                                                                | Injury                                                                                                                            |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Legal           |                                                                                                                                                                                                                                                                                                                                                                                | Back & Neck - Sprain/Strain                                                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Financial       |                                                                                                                                                                                                                                                                                                                                                                                | Back & neck pain                                                                                                                  |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
|                 | LVMP, Police/Fire/Other, 01/31/2011                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                   |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |

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File Edit Claim Investigation Total Loss Subrogation No Fault/Med-Pay Tools Reports Financial Help

Total Slvg Subro Assign Close Refresh Next Exit

| Plan            | Claimant<br>Name: GARCIA, EMILIA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Loss Location<br>Street/PO: rainbow blvd                              |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|-------------------|--------------------|-------------------|-----------|------------------------|------------|--------|-----------|------------------------|-----------|-----------|------------------------------------------------------------------------------------------|
| Policyholder    | Role: Owner/Operator Claimant's Car<br>Home: (702)4739451 Bus:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | City: las vegas<br>ST/Prov: NV ZIP/Postal:                            |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Claimant        | Office: 0847 - PHOENIX, AZ <b>Open</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Investigation Strategy: <b>Yellow</b>                                 |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Occurrence      | Date of Loss: 01/02/2011 Report Date: 01/03/2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Assignments...                                                        |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| ICP/First Call  | <table border="1"> <thead> <tr> <th>Coverage Type</th> <th>Coverage</th> <th>Loss Cost Estimate</th> <th>Loss Paid to Date</th> </tr> </thead> <tbody> <tr> <td>Liability</td> <td>LIBI - LIABILITY - BOD</td> <td>\$50000.00</td> <td>\$0.00</td> </tr> <tr> <td>Liability</td> <td>LIPD - LIABILITY - PRD</td> <td>\$6852.00</td> <td>\$6851.53</td> </tr> </tbody> </table>                                                                                                                                                                                                                                                                                                                                                          | Coverage Type                                                         | Coverage          | Loss Cost Estimate | Loss Paid to Date | Liability | LIBI - LIABILITY - BOD | \$50000.00 | \$0.00 | Liability | LIPD - LIABILITY - PRD | \$6852.00 | \$6851.53 | First Year: 2009<br>CAT Code:<br>Expense Cost Estimate: \$0<br>Expense Paid to Date: \$0 |
| Coverage Type   | Coverage                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Loss Cost Estimate                                                    | Loss Paid to Date |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Liability       | LIBI - LIABILITY - BOD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | \$50000.00                                                            | \$0.00            |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Liability       | LIPD - LIABILITY - PRD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | \$6852.00                                                             | \$6851.53         |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Medical         | Occurrence Descriptions:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Vehicle         | Injury/Damage Descriptions:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Structure       | approaching Peak Dr. V1 was traveling EB in a private drive N of Peak Dr approaching Rainbow Blvd V1 stated that he thought that rainbow Blvd was clear of traffic. V1 then traveled onto Rainbow Blvd into the path of V2 causing V1 front to hit V2 right. D1 admitted to drug involvement. No citations listed. TM                                                                                                                                                                                                                                                                                                                                                                                                                   | Detail Date 1/6/11<br>Opac RI 1/6/11<br>Clmt RI 1/6/11<br>P/R 1/31/11 |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Items           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Estimate/Repair | <b>FIRST REPORT</b><br>Injury<br>Back & Neck - Sprain/Strain<br>Back & neck pain<br>No insurance<br>Vehicle Damage<br>ps rear right tire and ps rear door wont open and smashed in and ps front door wont open - rear axle bent in and rear tire flat - and steering wheel shaking<br>Initial POI: 05-Right Rear Corner<br>Subsequent POI: 15-Total Loss                                                                                                                                                                                                                                                                                                                                                                                |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Time            | AWERBACH, JARED, Policyholder, 01/06/2011<br>Opac is insd's son. He did not ask insd to use the veh b/c he was not supposed to be driving. There was an issue w/ his permit. He thought he had a permit but didn't. Opac does not have a drivers license or valid permit. Opac has used insd veh in the past with and without permission. Insd has given him permission to use veh in the past to run errands. Opac could not say how many times. Opac states insd was home at the time. Keys were on the counter. Opac took the keys and was going to visit his child. Opac does not have his own veh/insurance. Opac was waiting to turn left out of the driveway of the apartment complex. There was a bus in right lane of 2 coming |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Third Party     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Legal           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |
| Financial       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                       |                   |                    |                   |           |                        |            |        |           |                        |           |           |                                                                                          |

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