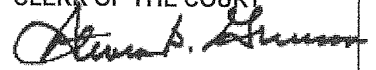


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EXHIBIT 8



1 MCSD
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2 Nevada Bar No. 5168
MATTHEW J. DOUGLAS
3 Nevada Bar No. 11371
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Las Vegas, Nevada 89102
5 Phone (702) 243-7000
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6 mdouglas@awslawyers.com

7 *Attorneys for Intervenor United Automobile Insurance Company*

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

A-18-772220-C

10 CHEYANNE NALDER,

CASE NO.: 07A549111

11 Plaintiff,

DEPT. NO.: XX

12 vs.

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


15 Defendants.
16
17

18 **INTERVENOR'S MOTION TO CONSOLIDATE ON ORDER SHORTENING TIME**

19 COMES NOW, Intervenor, United Automobile Insurance Company, by and through their
20 counsel of record, Thomas E. Winner and Matthew J. Douglas of the law firm Atkin Winner &
21 Sherrod, hereby moves this Court for an Order to Consolidate Case No. A-18-772220-C into the
22 preceding case, Case No. 07A549111, pursuant to Nev. R. Civ. P. 42(a) and EDCR 2.50(a). This
23 Motion is based upon the pleadings and papers on file herein, the Memorandum of Points and
24 Authorities attached hereto and any oral arguments this Court may entertain at the hearing of this
25 Motion.
26
27
28

DATED this 5 day of November, 2018.

ATKIN WINNER & SHERROD


Thomas E. Winner
Nevada Bar No. 5168
Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor

ORDER SHORTENING TIME


Good cause appearing therefore, IT IS HEREBY ORDERED that the time for hearing the Motion to Consolidate on an Order Shortening Time is hereby shortened to the 20TH day of November 2018 at the hour of 10:30 a.m./p.m. or as soon as counsel may be heard in the above-entitled Department of the District Court, Clark County, Nevada.

DATED this 21 day of November 2018


DISTRICT COURT JUDGE
ERIC JOHNSON *ss*

Submitted by,

ATKIN WINNER & SHERROD


Thomas E. Winner
Nevada Bar No. 5168
Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Defendant

AFFIDAVIT OF COUNSEL IN SUPPORT OF DEFENDANT'S
MOTION TO CONSOLIDATE AND FOR ORDER SHORTENING TIME

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

Matthew J. Douglas, Esq., having been first duly sworn, deposes and states:

1. I am a duly licensed and practicing attorney of the State of Nevada and I am partner of the law firm of Atkin Winner & Sherrod maintaining offices at 1117 South Rancho Drive, Las Vegas, Nevada 89102.
2. I represent Intervenor, UAIC, in the above-captioned action as well as in another cases titled *Nalder v Lewis*, Case No. A-18-772220-C.
3. I have reviewed the facts and circumstances surrounding this matter and I am competent to testify to those facts contained herein upon personal knowledge, or if so stated, upon my best information and belief.
4. That the following is true and accurate to the best of affiant's knowledge and information.
5. That prior to October 24, 2018 both the instant action and, *Nalder v Lewis*, Case No. A-18-772220-C were proceeding together before the same judge, The Honorable David Jones, Department 29
6. on October 24, 2018, for a hearing, Additional Counsel for Gary Lewis in Case No. A-18-772220-C, Thomas Christensen, Esq., asked the Court to recuse itself for what Counsel perceived as a conflict.
7. At that time, Judge Jones recused himself on both cases and the matters were sent to the Clerk to be re-assigned and, thereafter, on October 29, 2018, the Clerk randomly re-assigned this action to this Department, but re-assigned Case No. A-18-772220-C to Department 1. However, following a challenge, Case No. A-18-772220-C was then re-assigned to Department 19, Judge Kephart, on October 31, 2018 and, accordingly, these to cases are proceeding in different Departments.

- 1 8. Moreover, each case had similar Motions pending before it at the time of the re-
2 assignments and, accordingly, each newly assigned Department has issued new hearing
3 dates on the pending Motions.
- 4 9. That, currently, in Case No. A-18-7722220-C there are hearing set for November 8, 2018
5 (in Chambers) as well as December 11, 2018 and December 13, 2018. *A copy of the Order*
6 *re-assigning Case No. A-18-7722220-C to Department 19 with attendant hearing dates is*
7 *attached hereto as Exhibit 'A.'*
- 8 10. That although the parties are attempting to agree on a stipulation to move all hearings in
9 both cases to one date for each case, there is no agreement as of yet and, further, the
10 Plaintiff has not agreed to consolidation.
- 11 11. That Intervenor requests this order be heard on an Order shortening time so that this
12 motion may be heard and, these cases may be consolidated, prior to the first currently set
13 Chambers hearing date in Case No. A-18-7722220-C, which is set for November 8, 2018.
- 14
- 15 12. The cases that are the subject of Intervenor's Motion to Consolidate arise from the
16 same motor vehicle accident, which occurred on July 8, 2007 in Pioche, Nevada, and in
17 regards to the same policy of insurance between United Automobile Insurance
18 Company ("UAIC") and Gary Lewis.¹
- 19
- 20 13. That is has been alleged that, Gary Lewis was operating his vehicle when he backed
21 into and hit Plaintiff Cheyanne Nalder causing injury in the July 8, 2007 accident. A
22 Suit was brought for same injuries in this matter and, a judgment entered against Lewis
23 in 2008.
- 24 14. Thereafter, Plaintiff Nalder alleging to have an assignment from Defendant Lewis, filed
25 a bad faith action against UAIC. UAIC defended that claim asserting Lewis' policy
26

27 ¹ See Complaint, Case No. 07A549111, attached hereto as **Exhibit "B"**; See also Complaint, Case No.
28 A-18-772220-C, attached hereto as **Exhibit "C"**;

- 1 8. Moreover, each case had similar Motions pending before it at the time of the re-
2 assignments and, accordingly, each newly assigned Department has issued new hearing
3 dates on the pending Motions.
- 4 9. That, currently, in Case No. A-18-7722220-C there are hearing set for November 8, 2018
5 (in Chambers) as well as December 11, 2018 and December 13, 2018. *A copy of the Order*
6 *re-assigning Case No. A-18-7722220-C to Department 19 with attendant hearing dates is*
7 *attached hereto as Exhibit 'A.'*
- 8 10. That although the parties are attempting to agree on a stipulation to move all hearings in
9 both cases to one date for each case, there is no agreement as of yet and, further, the
10 Plaintiff has not agreed to consolidation.
- 11 11. That Intervenor requests this order be heard on an Order shortening time so that this
12 motion may be heard and, these cases may be consolidated, prior to the first currently set
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- 14 12. The cases that are the subject of Intervenor's Motion to Consolidate arise from the
15 same motor vehicle accident, which occurred on July 8, 2007 in Pioche, Nevada, and in
16 regards to the same policy of insurance between United Automobile Insurance
17 Company ("UAIC") and Gary Lewis.¹
- 18 13. That is has been alleged that, Gary Lewis was operating his vehicle when he backed
19 into and hit Plaintiff Cheyanne Nalder causing injury in the July 8, 2007 accident. A
20 Suit was brought for same injuries in this matter and, a judgment entered against Lewis
21 in 2008.
- 22 14. Thereafter, Plaintiff Nalder alleging to have an assignment from Defendant Lewis, filed
23 a bad faith action against UAIC. UAIC defended that claim asserting Lewis' policy
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26

27 ¹ See Complaint, Case No. 07A549111, attached hereto as **Exhibit "B"**; See also Complaint, Case No.
28 A-18-772220-C, attached hereto as **Exhibit "C"**;

1 expired and, was not renewed prior to the loss. The Federal District Court judge hearing
2 that case agreed with UAIC and granted summary judgment. Plaintiff appealed to the
3 Ninth Circuit and that court found an ambiguity in the renewal statement and
4 remanded. Back in the district Court, on subsequent cross-Motions for summary
5 judgment, the Court found that, due to the ambiguity in the renewal, the Court implied
6 a policy at law as between UAIC and Lewis for the July 2007 loss – however, the Court
7 also specifically found no bad faith on the part of UAIC as they had issued a reasonable
8 denial. UAIC paid its applicable \$15,000 to Nalder, plus her attorney’s fees of nearly
9 \$90,000.00.
10

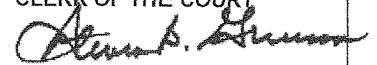
11 15. Plaintiff, however, appealed to the Ninth Circuit again, claiming, among other things,
12 that UAIC owed them the 2008 default judgment (for \$3.5 million) as a consequential
13 damage of their breach of the duty to defend and, the Ninth Circuit certified this
14 question to the Nevada Supreme Court. While that matter was pending before the
15 Nevada Supreme Court UAIC noticed that Plaintiff had failed to renew the 2008
16 judgment against Lewis in 2014 and, thus, moved to dismiss the appeal as the judgment
17 had expired. The Ninth Circuit then certified that issue to the Nevada Supreme Court,
18 where it remains pending.
19

20 16. While Plaintiff’s other counsel in the appeals moved for extensions to file their brief
21 earlier this year, Plaintiff here filed her ex-parte motion to “amend the judgment” in
22 March 2018 in this case. Thereafter, Plaintiff then filed a “new” action against Lewis in
23 Case No. A-18-7722220-C.
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25 17. As this Court can see, both actions involve the same parties, for issues regarding
26 damages for the same loss and, indeed, regarding issues of the legitimacy of the
27 judgment in this case.
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EXHIBIT 7



MATTHEW J. DOUGLAS
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Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

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

ORDER

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

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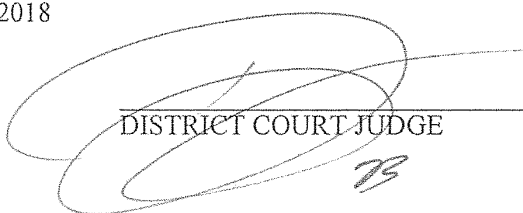
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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Intervenor UNITED
AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene is GRANTED;


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

DATED this 11 day of October 2018


DISTRICT COURT JUDGE

Submitted by:

ATKIN WINNER & SHERROD


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

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EXHIBIT 6

Steven D. Grierson

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Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

B
James
CHEYANNE NALDER,

Plaintiff,

CASE NO.: 07A549111
DEPT. NO.: 29

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

ORDER

Intervenor UNITED AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene came on for hearing on the Chambers Calendar before the Honorable Judge David Jones, on September 19, 2018, and upon review of and consideration of the proceedings and circumstances of this matter, the papers and pleadings on file, and for good cause appearing, ~~and the Court's minute order stating there being no Opposition,~~

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

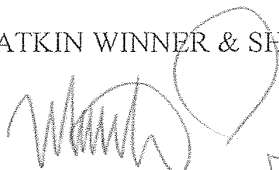
3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Intervenor
4 UNITED AUTOMOBILE INSURANCE COMPANY'S shall file its responsive pleading within
5 seven (7) days from the date of entry of this Order.

6 DATED this 11 day of October 2018

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8 
DISTRICT COURT JUDGE

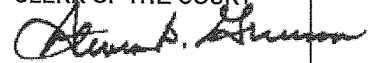
9 Submitted by:

10 ATKIN WINNER & SHERROD

11 
12 _____
13 Matthew J. Douglas
14 Nevada Bar No.11371
15 1117 South Rancho Drive
16 Las Vegas, Nevada 89102
17 Attorneys for Intervenor UNITED
18 AUTOMOBILE INSURANCE COMPANY
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EXHIBIT 5



OPPS (CIV)
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Email: dstephens@sdblawnfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,)	
Plaintiff,)	Case No. A-18-772220-C
vs.)	Dept. No. XXIX
GARY LEWIS,)	
Defendant.)	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Date: 10/31/2018
Time: 9:00 a.m.

Cheyenne Nalder, through her attorney, David A. Stephens, Esq., opposes the Defendant's Motion to Dismiss, as follows:

POINTS AND AUTHORITIES

I. INTRODUCTION

Cheyenne Nalder, ("Nalder"), by and through her attorney, David A. Stephens, Esq., opposes Defendant's Motion to dismiss. UAIC's motion, which was modified slightly from the motion attached to its own Motion to Intervene, was filed on behalf of Gary Lewis, ("Lewis").

The UAIC motion to dismiss is based only on the mistaken belief that the original judgment is not valid. As set forth in the opposition to the motion to set aside the judgment and here, this motion should be denied because the three actions alternatively pled are valid actions. First, Nalder has pled an action on the judgment to obtain a new judgment not an amended judgment as misstated by UAIC.

1 This option is specifically authorized by NRS 11.190a)(1). "A judgment
2 creditor may enforce his judgment by the process of the court in which he obtained it,
3 or he may elect to use the judgment as an original cause of action and bring suit
4 thereon and prosecute such suit to final judgment." *Mandlebaum v. Gregovich*, 24
5 Nev. 154, 161, 50 P. 849, 851 (1897) (emphasis added). This is Nalder's main claim.

6
7 The other two actions are pled in the alternative only if the court finds the
8 action on the judgment is no longer available in Nevada. If Nalder's main claim, an
9 action on the judgment, is not available Nalder requests declaratory relief as to when
10 a renewal under NRS 17.214 must be filed. Finally, if the answer to the declaratory
11 relief action is that the time for filing under NRS 17.214 has gone by and the
12 Judgment is no longer valid then Nalder brings her personal injury actions within two
13 years of her majority.

14 If the two claims set forth above do not provide relief for Nalder then this
15 action is not the subject of claim preclusion because the parties are different, the
16 claims for relief are different and the judgment would have been found by the court to
17 be invalid

18 **II. Factual background of the underlying case and the insurance coverage**

19 The underlying matter arises from an auto accident that occurred on July 8,
20 2007, wherein Lewis accidentally ran over Nalder. Nalder was born April 4, 1998
21 and was a nine-year-old girl at the time.

22 At the time of the accident Lewis maintained an auto insurance policy with
23 United Auto Insurance Company ("UAIC"), which was renewable on a monthly
24 basis. Before the subject incident, Lewis received a statement from UAIC
25 instructing him that his renewal payment was due by June 30, 2007. The renewal
26 statement also instructed Lewis that he remit payment prior to the expiration of his
27 policy "[t]o avoid lapse in coverage." The statement provided June 30, 2007 as the
28 effective date of the policy. The statement also provided July 31, 2007 as the

1 expiration date of the policy. On July 10, 2007, Lewis paid UAIC to renew his auto
2 policy. Lewis's policy limit at this time was \$15,000.00.

3 Following the incident, Cheyenne's father, James Nalder, extended an offer to
4 UAIC to settle Nalder's injury claim for Lewis's policy limit of \$15,000.00. UAIC
5 never informed Lewis that James Nalder offered to settle Cheyenne Nalder's claim.
6 UAIC never filed a declaratory relief action. UAIC rejected Nalder's offer. UAIC
7 rejected the offer because it believed that Lewis was not covered under his insurance
8 policy given that he did not renew his policy by June 30, 2007.

9 After UAIC rejected Nalder's offer, Nalder, on behalf of Cheyenne, filed a
10 lawsuit against Lewis in the Nevada state court. UAIC was notified of the lawsuit
11 but declined to defend Lewis or file a declaratory relief action regarding coverage.
12 Lewis failed to appear and answer the complaint. As a result, Nalder obtained a
13 default judgment against Lewis for \$3,500,000.00. Notice of entry of judgment was
14 filed on August 26, 2008. (See case number 07A549111).

15 **III. Factual Background of the Claims Handling Case Against UAIC**

16 On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of
17 contract, breach of the implied covenant of good faith and fair dealing, bad faith,
18 fraud, and violation of NRS 686A.310. Lewis assigned to Nalder his right to "all
19 funds necessary to satisfy the Judgment" and retaining to himself any funds
20 recovered above the judgment.

21 Lewis left the state of Nevada and relocated to California prior to 2010.
22 Neither Lewis, nor anyone on his behalf, has been subject to service of process in
23 Nevada since 2010.

24 Once UAIC removed the underlying case to federal district court, UAIC filed a
25 motion for summary judgment as to all of Lewis and Nalder's claims, alleging Lewis
26 did not have insurance coverage on the date of the subject collision. The U.S.
27 District Court court granted UAIC's summary judgment motion because it
28 determined the insurance contract was not ambiguous as to when Lewis had to make

1 payment to avoid a coverage lapse. Nalder and Lewis appealed this decision to the
2 Ninth Circuit. The Ninth Circuit reversed and remanded the matter because Lewis
3 and Nalder had facts to show the renewal statement was ambiguous regarding the
4 date when payment was required to avoid a coverage lapse.

5 On remand, the U.S. District Court concluded the renewal statement was
6 ambiguous and therefore, Lewis was covered on the date of the incident because the
7 court construed this ambiguity against UAIC. The U. S. District Court also
8 determined UAIC breached its duty to defend Lewis, but did not award damages
9 because Lewis did not incur any fees or costs in defense of the Nevada state court
10 action. Based on these conclusions, the U.S. District Court ordered UAIC to pay the
11 policy limit of \$15,000.00. UAIC then made three payments on the judgment: June
12 23, 2014; June 25, 2014; and March 5, 2015.

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

17 After the first certified question was fully briefed and pending before the
18 Nevada Supreme Court, UAIC had the idea that the underlying judgment could only
19 be renewed pursuant to NRS 17.214. Even though UAIC knew at this point that they
20 owed a duty to defend Lewis, they did not undertake to investigate the factual basis
21 or the legal grounds, or discuss this idea with Lewis, or seek declaratory relief on
22 Lewis' behalf regarding the statute of limitations on the judgment. All of these
23 actions would have been a good faith effort to protect Lewis. Instead, UAIC filed a
24 motion to dismiss Lewis and Nalder's appeal with the Ninth Circuit for lack of
25 standing. This allegation had not been raised in the trial court. It was something
26 UAIC concocted solely for its own benefit. This allegation was brought for the first
27 time in the appellate court. If UAIC's self-serving affidavit is wrong, this action will
28 leave Lewis with a valid judgment against him and no cause of action against UAIC.

1 UAIC ignored all of the tolling statutes and presented new evidence into the
2 appeal process, arguing Nalder's underlying \$3,500,000.00 judgment against Lewis
3 is not enforceable because the six-year statute of limitation to institute an action upon
4 the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired. The
5 only proof that it expired was UAIC counsel's affidavit that no renewal pursuant to
6 NRS 17.124 had been filed. As a result, UAIC contends Nalder can no longer
7 recover damages above the \$15,000.00 policy limit for breach of the contractual duty
8 to defend because the judgment lapsed after the judgment (in the case against UAIC)
9 was entered in the U.S. District Court. This would be similar to arguing on appeal
10 that a plaintiff is no longer entitled to medical expenses awarded because the time to
11 file a lawsuit to recover them expired while the case was on appeal.

12 Even though Nalder believes the law is clear that UAIC is bound by the
13 judgment, regardless of its continued validity against Lewis, Nalder, in an abundance
14 of caution, took action in Nevada and California to demonstrate the continued
15 validity of the judgment against Lewis. These Nevada and California state court
16 actions will demonstrate that UAIC has again tried to escape responsibility by
17 making misrepresentations to the Federal and State Courts.

18 **IV. Factual Background of 2018 cases**

19 Nalder reached the age of majority on April 4, 2016. Nalder hired David A.
20 Stephens, Esq. to maintain her judgment. First, counsel obtained an amended
21 judgment in Nalder's name as a result of her reaching the age of majority. This was
22 done appropriately, by demonstrating to the court that the judgment, as a result of the
23 tolling provisions, was still within the applicable statute of limitations.

24 Nalder then filed a separate action with three distinct claims for relief, pled in
25 the alternative. The first claim is an action on the amended judgment which will
26 result in a new judgment which will have the total principal and post judgment
27 interest reduced to judgment, so that interest would now run on the new, larger
28 principal amount.

1 The second alternative claim is for declaratory relief as to when a renewal
2 under NRS 17.214 must be filed and when the statute of limitations, which is subject
3 to tolling provisions, is running on the judgment. And finally, the third claim, should
4 the Court determine that the judgment is invalid, is an action on the injury claim
5 within the applicable statute of limitations for injury claims, that is, two years after
6 her reaching the age of majority.

7 Nalder also retained California counsel, who filed a judgment in California,
8 which has a ten-year statute of limitations regarding actions on a judgment. Nalder
9 maintains that all of these actions are unnecessary to the questions on appeal, and
10 most are unnecessarily early; however, out of an abundance of caution, she brings
11 them to maintain a judgment against Lewis and to demonstrate the actual way this
12 issue should have been litigated in the Eighth Judicial District Court of Nevada, not
13 midway into an appeal by a self-serving affidavit of counsel for UAIC.

14 UAIC made representations that it would be responsible for any judgment
15 entered in this case in order to gain intervention. UAIC also mischaracterized the
16 position Lewis took regarding representation appointed by UAIC in order to gain
17 intervention. Lewis made it clear that if he felt the proposed course by UAIC was not
18 just a frivolous delay and was based on sound legal research (and not just the opinion
19 of UAIC's counsel), that it could be pursued. UAIC did not provide any Nevada
20 authority for this unique reading of the chapter on statutes of limitation with their
21 tolling provisions. UAIC instead used the confidential client communications
22 requesting the legal basis for UAIC's position, then misstated it to the Court.

23 UAIC, without notice to Lewis or any attorney representing him, filed two
24 motions to intervene which were both defective in service on the face of the pleading.
25 Counsel for Nalder, through diligence, discovered the filings on the court website and
26 obtained them through the court's attorney portal. As noted in the Affidavit attached
27 hereto as Exhibit 1, Counsel for Nalder contacted Matthew Douglas, Esq. to advise
28

1 that he had not been served and asked for additional time to file an opposition.¹ His
2 requests were denied in violation of NRPC 3.5A. Oppositions were filed and
3 courtesy copies supplied to the court. Replies were also filed---all before the in
4 “chambers hearing,” but the Court granted the motions and cited “no opposition was
5 filed.”

6 No order has been issued and UAIC has yet to file any pleading in intervention
7 in this case, but, suddenly, Randall Tindall, Esq., another attorney being paid by
8 UAIC, has filed almost an identical pleading to the pleading attached to UAIC’s
9 motion to intervene. He filed this pleading on behalf of Lewis.

10 V. LAW ON MOTION TO DISMISS

11 A court considering a Rule 12(b)(5) motion must accept the plaintiff’s factual
12 allegations as true and draw every reasonable inference in the plaintiff’s favor to
13 determine whether the allegations are sufficient to state a claim for relief. *Jacobs v.*
14 *Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285, reh’g denied (Aug. 7, 2014). It
15 may not grant the motion without also granting leave to amend unless there is no set
16 of facts the Plaintiff can allege that would state a valid claim.

17 VI. ARGUMENT

18 The validity of the judgment against UAIC is the only issue before the Ninth
19 Circuit. The basis for the enforceability against UAIC is the nature of the action filed
20 against UAIC, the effect of the assignment and the timing of the judgment. The
21 continued enforceability against Lewis is not determinative. All of those arguments
22

23 ¹ See Exhibit 2 attached hereto, which includes copies of the first page of each Motion to
24 Intervene as well as each Certificate of Service. In case number 18-772220, electronic service is
25 marked. In case number 07A549111, no type of service is marked. Exhibit 3 attached here to is a
26 print out of the Service Contact History from the Court’s efilng system for each case. This
27 Exhibit demonstrates that David A. Stephens, Esq., was not added to the electronic service contact
28 list until September 4, 2018 and September 18, 2018 respectively. Filing and serving through the
Court’s efilng system requires affirmative clicks by the filer wherein it would have been obvious
to the filer that he/she was not really serving anyone with the Motions to Intervene on August 16th
and 17th, 2018.

1 would result in UAIC being liable for the judgment, even if it was expired as to Lewis
2 now. As a result, Nalder is not required to have a continuing valid judgment against
3 Lewis.

4 Whether UAIC is responsible for the judgment is the issue before the Supreme
5 Court of Nevada. Independent from that issue, Nalder has now instituted an action on
6 the Nevada State Court judgment to demonstrate and maintain its continued validity
7 against Lewis.

8 **A. The Judgment is not expired because the statute is tolled**

9 The Nevada six-year statute of limitations to pursue an action on the judgment was
10 tolled by the three payments UAIC made on the judgment. NRS 11.200. As a result of
11 just that tolling statute, the Nevada statute of limitations on the judgment would not
12 expire until March 5, 2021 six years from the last payment.

13 The Nevada statute of limitations was also tolled during the period of time that
14 Nalder was a minor. NRS 11.250. She reached the age of majority on April 4, 2018.
15 As a result, the statute of limitations does not run until April 4, 2022.

16 Lewis' California residency also continues to toll the six-year statute of limitations
17 because Lewis has not been subject to service of process in the State of Nevada from
18 2010 to the present. NRS 11.300. The Nevada statute of limitations has not run and is
19 still tolled to this day.

20 Finally, California's statute of limitations on a judgment is ten years from the date
21 the judgment became final. There are also applicable tolling statutes in California. The
22 Nevada judgment became final, at the earliest, August 26, 2008. Nalder obtained the
23 sister state judgment in California prior to August 26, 2018.

24 Though the statute of limitations on Nalder's judgment is not even close to
25 running, this action was taken because Nalder's tort statute of limitations was about to
26 run. If the judgment is deemed not valid, then Nalder still wants to protect her tort
27 claim. Also, this action is the appropriate way to litigate and clarify the Nevada
28 statutory scheme for actions on a judgment and judgment renewal.

1 The judgment remains collectible even in the absence of an action upon the
2 judgment or renewal of the judgment for three reasons. UAIC made three undisputed
3 payments toward the judgment on June 23, 2014; June 25, 2014; and March 5, 2015.
4 Pursuant to “**NRS 11.200 Computation of time.** The time in NRS 11.190 shall be
5 deemed to date from the last transaction . . . the limitation shall commence from the
6 time the last payment was made.” Further, when any payment is made, “the
7 limitation shall commence from the time the last payment was made.” Therefore,
8 UAIC’s last payment on the judgment extended the expiration of the six-year statute
9 of limitations to March 5, 2021.

10 Additionally, NRS 11.250 outlines various circumstances that prevent the running
11 of the statute of limitations and states, in relevant part:

12 “If a person entitled to bring an action other than for the recovery of real
13 property be, at the time the cause of action accrued, either:

14 “1. Within the age of 18 years;

15 . . .

16 “the time of such disability *shall not* be a part of the time limited for the
17 commencement of the action.”

18 NRS 11.250 (emphasis added).

19 Nalder was a minor when she obtained the judgment. She turned 18 on April 4,
20 2016. Therefore, the earliest that the six-year statute of limitations runs is April of 2022.
21 This judgment was never recorded and the provisions of NRS 17.214 relating to real
22 property have no application here.

23 Pursuant to NRS 11.300, the absence of Lewis from the State of Nevada tolls the
24 statute of limitations to enforce a judgment and it remains tolled because of his absence.
25 *See Bank of Nevada v. Friedman*, 82 Nev. 417, 421, 420 P.2d 1, 3 (1966).

26 UAIC submits that North Dakota is a state with similar renewal methods to
27 Nevada. While UAIC is partially correct, the language of the renewal statute in North
28 Dakota contains a ten year period in the body of the statute and does not refer back to

1 the chapter on statutes of limitations and its tolling provisions as does Nevada's statute.
2 Further, the case cited by UAIC, *F/S Manufacturing v. Kensmoe*, 798 N.W.2d 853 (N.D.
3 2011) supports Nalder's contentions here. (See, Exhibit 4 attached hereto for a
4 complete copy of the case decision, which is provided for the Court's convenience.) As
5 that North Dakota Court notes:

6 "Of course, it may be easier to renew a judgment by affidavit; but it by no
7 means follows that the old judgment may not be made the basis of a new
8 suit, and *many cases arise where it is an advantage to be able to bring suit,*
9 *instead of renewing by affidavit — the case at bar being an example.* It is
10 our conclusion that the two remedies are not inconsistent, and that a
11 judgment creditor may either sue upon his judgment, or renew it by
12 affidavit, *if he complies with the respective laws.*"

13 *Id.* at 857, emphasis added.

14 "We express no opinion, however, whether the statute of limitations for an
15 action on a judgment was tolled during the pendency of the bankruptcy
16 automatic stay. See N.D.C.C. §§ 28-01-15(1) (ten-year statute of
17 limitations for an action upon a judgment), 28-01-29 ('When the
18 commencement of an action is stayed by injunction or other order of a
19 court, or by a statutory prohibition, the time of the continuance of the stay
20 is not a part of the time limited for the commencement of the action.')."

21 *Id.* at 862.

22 These tolling statutes present a catch-22 for the use of NRS 17.214 and the "strict
23 compliance" interpretation given by the Nevada Supreme Court. One of the terms of the
24 statute in Nevada is that the renewal needs to be brought within 90 days of the expiration
25 of the statute of limitations. If that 90-day period is strictly construed, any renewal
26 attempt pursuant to NRS 17.214 by Nalder at the present time, or earlier as argued by
27 UAIC, would be premature and therefore ineffective because it would not be filed within
28 the 90-day window prior to expiration of the statute of limitations.

1 NRS 17.214 was enacted to give an optional, not “mandatory,” statutory
2 procedure in addition to the rights created at common law for an action on the judgment.
3 UAIC claims the plain, permissive language of NRS 17.214: “A judgment creditor
4 . . . **may** renew a judgment,” (emphasis added), mandates use of NRS 17.214 as the only
5 way to renew a judgment. This is contrary to the clear wording of the statute and the
6 case law in Nevada. See *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851
7 (1897) and general statutory interpretation.

8 UAIC cites no authority for this mandated use of NRS 17.214. The legislative
9 history demonstrates that NRS 17.214 was adopted to give an easier way for creditors
10 to renew judgments. This was to give an option for renewal of judgments that was easier
11 and more certain, not make it a trap for the unwary and cut of rights of injured parties.

12 Where as here, the timing of the expiration is in doubt, the best way to renew the
13 judgment is the common law method, which is only supplemented by the statutory
14 method, not replaced.

15 **B. The Statute of Limitations in California on a Judgment of a Sister State is**
16 **Ten Years**

17 Lewis now resides in California. In California, an action upon a judgment must
18 be commenced within 10 years of entry of the judgment. See Cal. Code Civ. P. § 337.5.
19 Alternatively, a judgment must be renewed within 10 years of entry of the judgment.
20 *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 372, 8 Cal. Rptr. 3d 907, 911 (Cal. Ct. App.
21 2004); see also, Cal. Code Civ. P. §§ 683.020, 683.120, 683.130. Out of an abundance
22 of caution, Nalder has incurred the expense to renew her judgment by filing actions in
23 both Nevada and California. In spite of this action, Nalder contends that she timely
24 instituted an action on the judgment or, alternatively, that the six-year limitations period
25 has not yet expired.

26 ///

27 ///

1 **C. The Underlying Judgment Did Not Expire As To Lewis Because Nalder Was**
2 **Not Required to Institute an Action on the Judgment and Renew the**
3 **Judgment**

4 An action on a judgment is distinguishable from the treatment of an application
5 to renew the prior judgment. *Pratali v. Gates*, 4 Cal. App. 4th 632, 637, 5 Cal. Rptr. 2d
6 733, 736 (Cal. Ct. App. 1992). This distinction is inherently recognized in the Nevada
7 Revised Statutes' treatment of both courses of action. "A judgment creditor may enforce
8 his judgment by the process of the court in which he obtained it, *or he may elect to use*
9 *the judgment as an original cause of action and bring suit thereon and prosecute such*
10 *suit to final judgment.*" *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851
11 (1897) (emphasis added). NRS 11.190(a)(1) provides the option that either an action
12 upon the judgement or a renewal of the judgment be commenced. The limitation period
13 for judgments runs from the time the judgment becomes final. Statutes of limitations
14 are intended to ensure pursuit of the action with reasonable diligence, to preserve
15 evidence and avoid surprise, and to avoid the injustice of long-dormant claims. *Petersen*
16 *v. Bruen*, 106 Nev. 271, 273-74, 792 P.2d 18, 19-20 (1990).

17 NRS 17.214 provides the procedural steps necessary to renew a judgment before
18 the expiration of the statute of limitations set forth in NRS 11.190(1)(a). NRS 17.214
19 provides that a judgment creditor may renew a judgment that has not been paid by filing
20 an affidavit with the clerk of the court where the judgment is entered, "...within 90 days
21 before the date the judgment expires by limitation." NRS 11.190(a)(1), NRS 11.200,
22 NRS 11.250, NRS 11.300 must be read together with NRS 17.214 because they relate
23 to the same subject matter and are not in conflict with one another. *Piroozi v. Eighth*
24 *Judicial Dist. Court*, 131 Nev. Adv. Op. 100, 363 P.3d 1168, 1172 (2015). When these
25 five statutes are read together, they establish that a party must either file an action on the
26 judgment or renew the judgment under NRS 17.214 before the statute of limitations runs.

27 The Nevada Supreme Court expressly adopted this result in *Levin v. Frey*,
28 123 Nev. 399, 403, 168 P.2d. 712, 715 (2007): "An action on a judgment *or* its renewal

1 must be commenced within six years under NRS 11.190(1)(a); thus a judgment expires
2 by limitation in six years.”

3 The Nevada Supreme Court held that the time to file a renewal under NRS 17.214
4 is subject to statutory and equitable tolling provisions. See *O’Lane v. Spinney*, 110 Nev.
5 496, 874 P.2d 754 (1994). The statute of limitation tolling provisions in NRS 11.200,
6 NRS 11.250, NRS 11.300 apply to the computation of the time for filing for renewal
7 under NRS 17.214.

8 The Nevada Supreme Court also recognizes the well-established rule that it will
9 not look beyond the plain language of the statute when the words “have a definite and
10 ordinary meaning.” *Harris Associates. v. Clark County School. District*, 119 Nev. 638,
11 642, 81 P.3d 532, 534 (2003). “Normal principles of statutory construction also
12 preclude interpreting a statute to render part of it meaningless.” *United States v. Bert*,
13 292 F.3d 649, 652 n.11 (9th Cir. 2002).

14 UAIC’s apparent position is that even though Nalder filed an action upon the
15 judgment, she was also required to file a renewal of the judgment. This interpretation
16 ignores the clarity of the disjunctive “or”. UAIC’s proposed interpretation of the statute
17 effectively renders the “or” used NRS 11.190(1)(a) meaningless. If the Nevada
18 Legislature intended to require a judgment creditor to file an action on the judgment and
19 renew the judgment, then the Nevada Legislature would have used the word “and”.
20 However, the Nevada Legislature uniquely understood that a party was only required to
21 proceed with one course of action to ensure the validity of a judgment. This
22 understanding is reflected in the permissive language of NRS 17.214(1), which states
23 that a judgment creditor “*may* renew a judgment which has not been paid. . . .”

24 Based on the unambiguous language of NRS 11.190(1)(a), NRS 11.200, NRS
25 11.250, NRS 11.300 and NRS 17.214, the underlying judgment did not expire in this
26 matter. Indeed, any renewal pursuant to NRS 17.214 filed by Nalder would be
27 premature and possibly held to be ineffective. Nalder timely commenced her action on
28 the judgment before the statute of limitations expired. As a result, the judgment does not

1 have to be renewed and any renewal under NRS 17.214 is not possible at this time. This
2 is the reason for the declaratory relief allegation in Nalder's 2018 complaint.

3 **VII. CLAIM AND ISSUE PRECLUSION DO NOT APPLY**
4 **TO THE CLAIMS OF THIS COMPLAINT**

5 Under *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-1055, 194 P.3d 709,
6 713 (2008), the Nevada Supreme Court laid out the elements of claim preclusion as
7 follows:

8 [T]he following factors must be met: (1) the same parties or their privies
9 are involved in both cases, (2) a valid final judgment has been entered, and
10 (3) the subsequent action is based on the same claims or any part of them
11 that were or could have been brought in the first case.

12 The Court cannot grant a motion to dismiss based on claim preclusion as to any
13 of the three claims for relief pled by Nalder in this case.

14 Nalder's first claim is to renew the judgment, which is a statutorily allowed
15 process. Assuming *arguendo*, the parties are the same and valid judgment has been
16 entered, the action to renew the judgment could not have been brought as part of the
17 original action because until a judgment was entered in the first case there was no
18 judgment to renew.

19 To follow UAIC's logic would result in the statutorily authorized process to file
20 suit to renew a judgment is subject to claim preclusion would mean that a plaintiff
21 could never file suit to renew a judgment. That makes no sense, at all.

22 The analysis is exactly the same as to the second claim for relief which asks the
23 court to determine when a renewal under NRS 17.214 must be filed. The second claim
24 is pled in the alternative. Assuming *arguendo*, the parties are the same and valid
25 judgment has been entered, a suit for a determination of when a judgment must be
26 renewed could not have been brought as part of the original action because until a
27 judgment was entered in the first case there was no judgment to renew.

28 The analysis as to the third claim is different. The third claim, which is pled in

1 the altaernative, is for personal injuries suffered in the car accident when Nalder was a
2 minor.

3 If the answer to the declaratory relief action is that the time for filing for renewal
4 under NRS 17.214 has gone by and the judgment is no longer valid then Nalder brings
5 her personal injury actions within two years of her majority. If the two actions above
6 do not provide relief for Nalder then this action is not the subject of claim preclusion
7 because the parties are different, the claims for relief are different and the prior judgment
8 would have been found by the court to be invalid. Thus, there would be no valid
9 judgmetn arising out of the prior matter while Nalder was in her minority.

10 **VIII. CONCLUSION**

11 For the reasons set forth above, Nalder respectfully requests that this Court deny
12 the Motion to Dismiss brought by Lewis, (without his consent).

13 Dated this 8th day of October, 2018.

14 STEPHENS & BYWATER, P.C.

15
16 S/David A Stephens
17 David A. Stephens, Esq.
18 Nevada Bar No. 00902
19 3636 North Rancho Drive
20 Las Vegas, Nevada 89130
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2018, I served the following document: **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

☒ VIA ELECTRONIC FILING; (N.E.F.R. 9(b))

Matthew Douglas, Esq.

Randall Tindall, Esq.

☐ VIA ELECTRONIC SERVICE (N.E.F.R. 9)

☐ BY MAIL: by placing the documents(s) listed above in a sealed envelope, postage prepaid in the U. S. Mail at Las Vegas, Nevada, addressed as set forth below:

☐ BY FAX: by transmitting the document(s) listed above via telefacsimile to the fax number(s) set forth below. A printed transmission record is attached to the file copy of this document(s).

☐ BY HAND DELIVER: by delivering the document(s) listed above to the person(s) at the address(es) set forth below.

S/David A Stephens
An Employee of Stephens & Bywater

EXHIBIT 1

EXHIBIT 1

**AFFIDAVIT IN SUPPORT OF OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

STATE OF NEVADA)
COUNTY OF CLARK)ss

David A. Stephens, Esq., being first duly sworn, deposes and says:

1. I am the attorney for Plaintiff Cheyenne Nalder in this matter.

2. I am licensed to practice law before all Courts of the State of Nevada.

3. I make this affidavit based upon facts within my own knowledge, and I can so testify in a court of law, save and except as those facts alleged upon information and belief, and as to those facts I believe them to be true.

4. Cheyenne Nalder, ("Cheyenne"), who had reached the age of majority, asked me to file a motion to amend the judgment in this case where a judgment had previously been entered against Mr. Lewis in favor of her father, as her Guardian ad Litem.

5. On March 22, 2018, I filed an Ex Parte Motion to Amend the Judgment to change the name on the judgment to Cheyenne Nalder, individually.

6. That Motion was granted by this Court and the amended judgment was filed on March 28, 2018.

7. I filed a Notice of Entry of Judgment on this matter on May 18, 2018 and served that Notice of Entry of Judgment on Mr. Lewis at his address in California.

8. During this time I filed and served a separate lawsuit against Mr. Lewis to protect Cheyenne's claims from the possible running of the statute of limitations.

9. Since that time I have dealt with a myriad of attorneys claiming to be acting on behalf of Mr. Lewis.

10. Approximately 30 days after serving Mr. Lewis, on July 17, 2018, I filed a Three Day Notice of Intent to Take Default in the second matter. I served it on Mr. Lewis, and Tom Winner, Esq., who was representing Mr. Lewis in another matter.

11. On July 19, 2018, Matthew Douglas, Esq., who I understand to be an associate with Mr. Winner's law firm, called me regarding not filing a default against Mr. Lewis in the second case.

1 12. On July 24, 2018, Stephen Rogers, Esq., called me and indicated to me that he was
2 representing Mr. Lewis, and that he needed a two-week extension of time in which to respond in the
3 second suit. I granted the two weeks request requested by Mr. Rogers.

4 13. Having heard nothing further, on August 8, 2018, I sent a letter to Mr. Rogers, by
5 email, regarding whether he was representing Mr. Lewis.

6 14. In a letter dated August 10, 2018, Mr. Rogers indicated he had been retained to
7 represent Mr. Lewis and sent a medical authorization for my client to sign.

8 15. In a letter dated August 23, 2018, Mr. Rogers indicated that he was not going to be able
9 to represent Mr. Lewis. Based on his letter, it was my understanding that Mr. Rogers was having some
10 discussions with respect to his representation of Mr. Lewis, with Thomas F. Christensen, Esq. who
11 represented Mr. Lewis personally.

12 16. In the meantime on August 15, 2018, Matthew Douglas, Esq., representing United
13 Automobile Insurance Company, ("UAIC"), which I understood to be Mr. Lewis' automobile
14 insurance company at the time of the accident, filed a Motion to Intervene in this matter. At about the
15 same time, Mr. Douglas also filed a motion to intervene on behalf of UAIC in the second suit.

16 17. The certificate of service on the Motion to Intervene filed in this case states that it was
17 mailed to me the following day.

18 18. In September, 2018, while preparing to submit a default in the second suit, I first
19 learned of the motions to intervene.

20 19. I never received the Motions to Intervene and only discovered that the Motions even
21 existed after the date for filing a response to that motion had passed, assuming the Motion s had been
22 served on me.

23 20. On September 11, 2018, I emailed Mr. Douglas indicating that I had not been served
24 with either motion and requesting that he serve me and continue the hearing on both motions.

25 21. On September 11, 2018, Mr. Douglas emailed me and indicated that he had served both
26 motions on me. He stated that he had served the motion in this case by mail and by eservice in the
27 other case. He then asked for the basis for my opposition to both motions.

28 22. I have never received a proof of eservice on me in the second case.

1 23. On September 12, 2018, I emailed Mr. Douglas indicating I could have an opposition
2 filed within one week, and then he could have the time he needed to file a reply.

3 24. On September 13, 2018, Mr. Douglas responded, by email, and stated again that he
4 needed to know the basis of my opposition to the motions before he could consider granting an
5 extension of time to respond to them.

6 25. I emailed Mr. Douglas on September 14, 2018, indicating that I would have to research
7 to see if there were grounds to oppose the motions to intervene and indicated that as to this case, that
8 I thought the motion was too late.

9 26. I filed an Opposition to the Motion to Intervene filed by UAIC in this case on
10 September 17, 2018. I received a filed stamped copy of the Opposition early on the morning of
11 September 18, 2018.

12 27. I filed an Opposition to the Motion to Intervene filed by UAIC in the second case on
13 September 17, 2018. I received a filed stamped copy of the Opposition early on the morning of
14 September 18, 2018.

15 28. I personally dropped both of the Oppositions to the Motions to Intervene in this Court's
16 box on September 18, 2018. I do not know the exact time, but I know it was before 10:00 a.m. because
17 I had a 10:00 a.m. appearance before the Discovery Commissioner and I dropped the papers into the
18 Court's box prior to that appearance.

19 29. I subsequently received a minute order from the Court indicating that the motion to
20 intervene in this case had been granted because no opposition had been filed.

21 30. In the meantime I had been negotiating with another attorney, E. Breen Arntz, Esq. on
22 behalf of Mr. Lewis in the second matter. Mr. Arntz and I arrived at what I thought was a stipulation
23 which would resolve the matter. That stipulation was filed and a judgment and the stipulation were
24 dropped in the Court's box for signature by the Court. As of today's date I have not received the
25 signed judgment based on the stipulation from the Court.

26 31. Now, another attorney, claiming to represent Mr. Lewis, has filed this Motion to Set
27 Aside the Judgment. Based on my negotiation with Mr. Arntz, I believe that these issues raised by this
28 Motion to Set Aside the Judgment, along with the issues in the other law suit have been resolved.

1 32. The Stipulation for Judgment essentially stipulated that the judgment in this case is
2 valid and stipulated to the amount of the judgment. In return Cheyenne Nalder waived her claim to
3 court costs, and attorney's fees incurred by her in her efforts to collect this judgment.

4 33. Thus it appears at this time that Mr. Lewis has yet another attorney and appears to be
5 backing out of the settlement negotiations which were signed by his prior counsel.

6 Dated this 8 day of October, 2018.

7
8 David A. Stephens
David A. Stephens, Esq.

9 Subscribed and Sworn to before me
10 this 8th day of October, 2018.

11 M. L. Goldstein
12 Notary Public in and for
said County and State

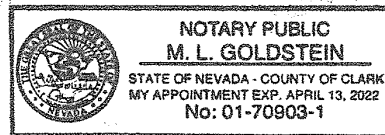
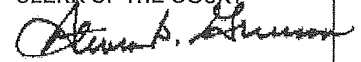


EXHIBIT 2

EXHIBIT 2



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

Attorneys for Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

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

vs.

UAIC'S MOTION TO INTERVENE

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

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

DATED this 16 day of August, 2018.

ATKIN WINNER & SHERROD



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

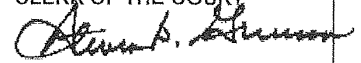
CERTIFICATE OF SERVICE

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

PLAINTIFFS' COUNSEL

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


An employee of ATKIN WINNER & SHERROD



MATTHEW J. DOUGLAS
Nevada Bar No. 11371
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Las Vegas, Nevada 89102
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Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.


CASE NO.: 07A549111
DEPT. NO.: 29

UAIC'S MOTION TO INTERVENE

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

DATED this 17th day of August, 2018.

ATKIN WINNER & SHERROD



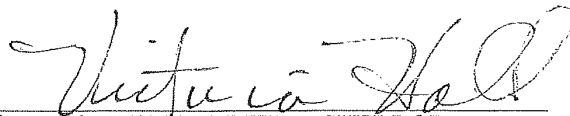
Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor

CERTIFICATE OF SERVICE

I certify that on this 17th day of August, 2018, the foregoing MOTION TO INTERVENE was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☐ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

PLAINTIFFS' COUNSEL

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



An employee of ATKIN WINNER & SHERROD

EXHIBIT 3

EXHIBIT 3

A-18-772220-C

Service Contact History

THE LATE REV. JAMES DOUGLAS

Name	Action	Date/Time
Matthew Douglas	Attach	8/16/2018 4:50 PM PST
Victoria Hall	Attach	8/16/2018 4:50 PM PST
AWS E-Services	Attach	8/16/2018 4:50 PM PST
David A. Stephens	Attach	9/4/2018 9:00 AM PST
Randall Tindall	Attach	9/26/2018 4:39 PM PST
Lisa Bell	Attach	9/26/2018 4:40 PM PST
Shayna Ortega-Rose	Attach	9/26/2018 4:42 PM PST

Name	Email	Phone
Matthew Douglas	mdouglas@awsllawyers.com	714.447.1130
AWS E-Services	eservices@awsllawyers.com	
Victoria Hall	vhall@awsllawyers.com	
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EXHIBIT 4

EXHIBIT 4

No. 20100167.
Supreme Court of North Dakota

F/S Manufacturing v. Kensmoe

798 N.W.2d 853 (N.D. 2011)

Decided June 21st, 2011

VANDE WALLE, Chief Justice.

[¶ 1] Lesa Kensmoe, now known as Lesa Bergson, appealed from a district court order granting F/S Manufacturing renewal by affidavit of its 1998 judgment against her. We reverse, holding the district court erred in ordering a cancelled judgment renewed by filing an affidavit under N.D.C.C. § 28-20-21.

I

[¶ 2] On March 9, 1998, F/S Manufacturing obtained a default judgment in the amount of \$450,894.78 against Kensmoe. When the action was commenced in 1995, Kensmoe was a resident of Moorhead, Minnesota. On April 4, 2008, F/S Manufacturing's judgment against Kensmoe was cancelled of record under N.D.C.C. § 28-20-35. On March 8, 2010, almost two years after the 1998 judgment was cancelled, *855 F/S Manufacturing filed an affidavit attempting to renew the judgment under N.D.C.C. § 28-20-21. After being informed the judgment could not be renewed because it had expired, F/S Manufacturing filed a motion on March 11, 2010, requesting the district court to order the clerk of court to renew the judgment by affidavit under N.D.C.C. § 28-20-21.

[¶ 3] In its motion and supporting brief, F/S Manufacturing asserted that the "statute of limitations" for renewing a judgment by affidavit was tolled because Kensmoe had been absent from North Dakota for at least five years living in Georgia or, alternatively, because Kensmoe had filed for bankruptcy in Georgia on

May 5, 2003, and had purportedly been involved in bankruptcy proceedings until May 10, 2005. With its motion, F/S Manufacturing submitted evidence that the 1998 North Dakota judgment had been filed in Liberty County, Georgia, and that on March 8, 2010, a Georgia state court in Liberty County had denied Kensmoe's motion to set aside the judgment. The Georgia court order found that "the statute of limitations on the underlying North Dakota judgment . . . was tolled during the pendency of Defendant's two bankruptcy proceedings from May 5, 2003 through May 10, 2005" and held that the underlying North Dakota judgment was still valid and enforceable and F/S Manufacturing could "continue its collection efforts to enforce the judgment."

[¶ 4] On May 5, 2010, the North Dakota district court granted F/S Manufacturing's motion and ordered the clerk of court to renew the 1998 judgment. In its order, the district court stated: "This Court adopts the reasoning and rationale of the March 8, 2010, State Court of Liberty County, Georgia, order, and [F/S Manufacturing's] Brief in Support of Motion of Renewal of Judgment, as its own for the purposes of this Order."

II

[¶ 5] Kensmoe argues that F/S Manufacturing may not renew a cancelled judgment, asserting the period to renew the judgment under N.D.C.C. § 28-20-21 was not tolled. F/S Manufacturing asserts, however, the time period for renewing a judgment under

N.D.C.C. § 28-20-21 was tolled under N.D.C.C. § 28-01-32, based on Kensmoe's absence from North Dakota. F/S Manufacturing also contends that Kensmoe waived any issues regarding whether or not her prior bankruptcy proceedings tolled the "statute of limitations," because she did not raise those issues on appeal. The issues raised by the parties require interpretation of N.D.C.C. §§ 28-20-21 and 28-01-32.

Statutory interpretation is a question of law, fully reviewable on appeal. *Kadlec [v. Greendale Twp. Bd. of Supervisors]*, 1998 ND 165, 1112, 583 N.W.2d 817. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. Statutes are construed as a whole and are harmonized to give meaning to related provisions. N.D.C.C. § 1-02-07. If the language of a statute is clear and unambiguous, "the letter of [the statute] is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05. The language of a statute must be interpreted in context and according to the rules of grammar, giving meaning and effect to every word, phrase, and sentence. N.D.C.C. §§ 1-02-03 and 1-02-38(2). The primary objective in interpreting a statute is to determine the intention of the legislation. *Amerada Hess Corp. v. State ex rel. Tax Comm'r*, 2005 ND 155, ¶ 12, 704 N.W.2d 8.

Skogen v. Hemen Twp. Bd. of Twp. Supervisors, 2010 ND 92, ¶ 20, 782 N.W.2d 638. *856 We construe statutes to avoid absurd or illogical results. *County of Stutsman v. State Historical Soc'y*, 371 N.W.2d 321, 325 (N.D. 1985).

A

[¶ 6] In North Dakota the duration of a judgment is governed by N.D.C.C. § 28-20-35, which provides for cancellation of a judgment after certain time periods:

After ten years after the entry of a judgment that has not been renewed, or after twenty

years after the entry of a judgment that has been renewed, the judgment must be canceled of record.

See *Investors Title Ins. Co. v. Herzig*, 2011 ND 7, ¶ 11, 793 N.W.2d 371. "After the time periods set forth in the statute governing cancellation of judgments have passed, a judgment is unenforceable against the judgment debtor." *Id.* (citing *Jahner v. Jacob*, 515 N.W.2d 183, 186 (N.D. 1994)). A judgment creditor may commence a separate action to renew a judgment. See, e.g., *Union Nat'l Bank v. Ryan*, 23 N.D. 482, 483, 137 N.W. 449 Syl. 2 (1912) ("judgment creditor may renew his judgment by either affidavit or by action if he pursues the remedies provided by said sections"). North Dakota law also provides for a concurrent, simplified procedure to renew a judgment by filing an affidavit. See N.D.C.C. §§ 28-20-21, 28-20-22, and 28-20-23.

[¶ 7] Section 28-20-21, N.D.C.C., provides the required contents of a renewal affidavit and states, in part:

Any judgment which in whole or in part directs the payment of money and which may be docketed in the office of the clerk of any district court in this state may be renewed by the affidavit of the judgment creditor or of the judgment creditor's personal representative, agent, attorney, or assignee at any time within ninety days preceding the expiration of ten years from the first docketing of such judgment.

(Emphasis added.) If the judgment to be renewed was rendered in this state, "the affidavit for renewal must be filed with the clerk of court where the judgment was first docketed. . . . The clerk of court shall immediately enter in the judgment docket the fact of renewal, the date of renewal, and the amount for which the judgment is renewed." N.D.C.C. § 28-20-22 (emphasis added). Section 28-20-23, N.D.C.C., provides that "[t]he entry and docketing of an affidavit of renewal of a judgment operates to continue the lien of the judgment to the

extent of the balance due" on the judgment for a period of ten years from the affidavit's docketing.

[¶ 8] This Court has said that renewal by affidavit is purely a statutory matter and the procedure must be substantially complied with, since "[t]he courts are not at liberty to say that any of the statutory requirements to perfect or continue a lien may be omitted." *Groth v. Ness*, 65 N.D. 580, 584, 260 N.W. 700, 701 (1935). "Where the Legislature has clearly prescribed what facts shall be set forth in the statement, the courts have no power to add to or subtract therefrom." *Id.* Thus, "[a]n original judgment is renewed for an additional ten years by filing an affidavit of renewal within 90 days of expiration of the original judgment." *Jahner*, 515 N.W.2d at 186 (citing N.D.C.C. §§ 28-20-21, 28-20-22, and 28-20-23). "If the judgment creditor does not file an affidavit of renewal within the original ten-year period, NDCC 28-20-35 declares that the judgment is canceled of record and is un-enforceable." *Jahner*, at 186.

[¶ 9] It is undisputed that F/S Manufacturing did not file a renewal affidavit "within ninety days preceding the expiration of ten years from the first docketing" of its 1998 judgment against Kensmoe, *857 and it is undisputed that the 1998 judgment was cancelled of record on April 4, 2008. Relying on *Ryan*, 23 N.D. 482, 137 N.W. 449, and N.D.C.C. § 28-01-32, F/S Manufacturing argues the time period provided in N.D.C.C. § 28-20-21 to renew the judgment by affidavit was tolled. Under N.D.C.C. § 28-01-32, the statute of limitations for "an action" against a person may be tolled based on that person's absence from the state:

If any person is out of this state at the time a claim for relief accrues against that person, an action on such claim for relief may be commenced in this state at anytime within the term limited in this chapter for the bringing of an action on such claim for relief after the return of such person into this state. If any person departs from and resides out of this state and remains continuously absent therefrom for the space of

one year or more after a claim for relief has accrued against that person, the time of that person's absence may not be taken as any part of the time limited for the commencement of an action on such claim for relief. The provisions of this section, however, do not apply to the foreclosure of real estate mortgages by action or otherwise and do not apply if this state's courts have jurisdiction over a person during the person's absence.

(Emphasis added.) Although F/S Manufacturing asserts that Kensmoe has been absent from the state for at least five years, that the two exceptions in N.D.C.C. § 28-01-32 do not apply, and that Kensmoe has waived any argument regarding jurisdiction, F/S Manufacturing's reliance on N.D.C.C. § 28-01-32 and *Ryan* is misplaced.

[¶ 10] *Ryan* involved an action for renewal of a domestic judgment against a judgment debtor, who had been absent from the state after judgment was entered. 23 N.D. at 484, 137 N.W. at 449. If the judgment debtor's absence was counted, the action would have been barred under the 10-year statute of limitations for an action upon a judgment in an earlier version of N.D.C.C. § 28-01-15(1); but if the debtor's absence tolled the statute of limitations, under an earlier version of N.D.C.C. § 28-01-32, the original expired judgment could serve as the basis for the action to renew. *Ryan*, at 484, 137 N.W. at 449. The *Ryan* Court held that the judgment debtor's absence from the state tolled the statute of limitation for bringing a separate action on the judgment, even though the original judgment may have expired without being renewed. *Id.* at 487, 137 N.W. at 450. More importantly, the Court specifically distinguished between a separate action to renew a judgment and the statutory renewal by affidavit, holding the legislature's adoption of statutes for renewal by affidavit neither repealed the statute tolling an action based on a person's absence, nor precluded the separate action on the judgment for renewal:

Of course, it may be easier to renew a judgment by affidavit; but it by no means follows that the old judgment may not be made the basis of a new suit, and *many cases arise where it is an advantage to be able to bring suit, instead of renewing by affidavit — the case at bar being an example.* It is our conclusion that the two remedies are not inconsistent, and that a judgment creditor may either sue upon his judgment, or renew it by affidavit, *if he complies with the respective laws.*

Id. at 487-88, 137 N.W. at 450 (emphasis added). See also *Herzig*, 2011 ND 7, ¶ 12, 793 N.W.2d 371 (holding no tolling under *Ryan* and N.D.C.C. § 28-01-32 when there was no claim judgment debtor was absent from the state); *Jahner*, 515 N.W.2d at 186 (holding *Ryan* case inapposite because there was no allegation the judgment debtor 'was absent from the '858 state to toll the statute of limitations, nor [was it] a separate action upon the original judgment' (emphasis added)).

[¶ 11] Here, F/S Manufacturing has not commenced a separate action for renewal on the 1998 judgment, but has instead sought to renew its judgment by filing an affidavit with the clerk of court under N.D.C.C. § 28-20-21. That statute provides the specific time period for compliance with this simplified procedure, i.e., "within ninety days preceding the expiration of ten years from the first docketing of such judgment." However, N.D.C.C. § 28-01-32, by its terms applies only to toll the time for commencing "an action" on a claim for relief. Filing an affidavit with the clerk of court to renew a judgment under N.D.C.C. § 28-20-21 is not akin to commencing an action, nor is filing an affidavit an "action upon the judgment" under N.D.C.C. § 28-01-15(1). See N.D.R.Civ.P. 3 ("A civil action is commenced by the service of a summons."); N.D.C.C. § 28-01-38 (an action is commenced when the summons is served on the defendant); N.D.C.C. § 32-01-01 (remedies in the courts are divided into actions and special proceedings); N.D.C.C. § 32-01-02 ("An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the

enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."); cf. *Blomdahl v. Blomdahl*, 2011 ND 78, ¶¶ 6-8, 796 N.W.2d 649 (contempt proceedings under N.D.C.C. § 14-05-25.1 held not an "action upon the judgment" under N.D.C.C. § 28-01-15(1)).

[¶ 12] Because the statutory procedure for renewal by affidavit is not a separate action to renew the judgment, the specific time period in N.D.C.C. § 28-20-21 cannot be tolled under N.D.C.C. § 28-01-32 based on a judgment debtor's absence from the state. We therefore conclude N.D.C.C. § 28-01-32 does not apply to toll the time period in which F/S Manufacturing had to renew its judgment by affidavit.

B

[¶ 13] Although F/S Manufacturing asserts Kensmoe waived any issues "regarding [whether] her bankruptcy toll[ed] the statute of limitations," the district court's order, which Kensmoe has directly challenged, explicitly adopted the Georgia state court's conclusion that "the statute of limitations on the underlying North Dakota judgment . . . was tolled during the pendency of [Kensmoe's] two bankruptcy proceedings from May 5, 2003 through May 10, 2005." Kensmoe argues on appeal that the time period to renew the judgment by affidavit under N.D.C.C. § 28-20-21 was not tolled and the "Georgia rulings should not be used in the decision of a North Dakota judgment." In her reply brief, Kensmoe also distinguishes F/S Manufacturing's reliance on *In re Lobherr*, 282 B.R. 912 (Bankr.C.D.Cal. 2002). Kensmoe's argument necessarily includes whether the district court erred in deciding the time period in N.D.C.C. § 28-20-21 was tolled by her prior bankruptcy proceedings, and we reject F/S Manufacturing's claim about waiver.

[¶ 14] We approach with caution the complexity of interpreting the Bankruptcy Code and its interplay with state law. See, e.g., *Production Credit Ass'n v. Burk*, 427 N.W.2d 108 (N.D. 1988) (holding 11 U.S.C. §

108(b)(2) applied to extend unexpired 60-day period to file notice of appeal to 60 days after order for relief, but that appeal was untimely), disagreed with by *In re Hoffinger Indus., Inc.*, 329 F.3d 948, 952-54 (8th Cir. 2003) (holding § 108(c)(2) applied to extend the deadline to file a notice of appeal in state court until at least 30 days after notice of the stay's termination "859 or expiration), and criticized by *In re Ingeniero*, No. 06-42512J11, 2007 WL 1453132, at *1 (Bankr.N.D.Cal. May 17, 2007) (stating *Burk* did not even consider § 108(c)). But see *Autoskill Inc. v. National Educ. Support Sys., Inc.*, 994 F.2d 1476, 1483 n. 3 (10th Cir. 1993) (agreeing with *Burk* that § 108(b) applies to filing of a notice of appeal); *Di Maggio v. Blache*, 466 So.2d 489, 490-91 (La.Ct.App. 1985) (holding § 108(b)(2) extended unexpired period for filing appeal, but holding appeal was untimely).

[¶ 15] In support of its position that bankruptcy tolled the time to renew by affidavit, F/S Manufacturing cites *In re Lobherr*, 282 B.R. at 916-17, for the proposition that the "statute of limitations" for renewing a judgment against a debtor is tolled during the time that the debtor is in bankruptcy. The bankruptcy court in *Lobherr*, 282 B.R. at 914-16, held that renewal of the judgment during the pendency of the debtor's bankruptcy was a "continuation of a proceeding" against the debtor under 11 U.S.C. § 362(a)(1) and thus violated the automatic stay. The court reasoned that California's statutory scheme for renewing judgments "more closely resembles a judicial action or proceeding," included in acts prohibited by the automatic stay. *Lobherr*, at 915. The court continued, "The renewal of judgment was not an action that could have been taken *ex parte*, without notice. Rather, the renewal process required service of the application for renewal on the judgment debtor, thus affording the judgment debtor the opportunity to object to the renewal." *Id.* at 916. The court also explained that:

[11 U.S.C.] § 108(c) was intended to give the state court creditor a way to keep her rights intact (including the renewal of judgments) for

30 days after notice of the termination of the automatic stay[, and therefore] [the respondent ... was not precluded from protecting its rights to the judgment. [The judgment creditor] instead improperly renewed the judgment in accordance with the state statutory scheme, when the Bankruptcy Code specifically contained a provision for the tolling of the statute of limitations for the renewal of that judgment, preempting state law.

Lobherr, at 917.

[¶ 16] Although the statute is not cited in its brief, based on its reliance on *Lobherr*, F/S Manufacturing appears to assert 11 U.S.C. § 108(c) operated to toll the period of time for a judgment creditor to renew the North Dakota judgment by affidavit under N.D.C.C. § 28-20-21. Specifically, § 108(c) applies to the commencement or continuation of actions that are stayed by 11 U.S.C. §§ 362, 922, 1201, or 1301. See 2 *Collier on Bankruptcy* ¶ 108.04 (16th ed. 2010).

[¶ 17] 11 U.S.C. § 108(c) provides, in relevant part:

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of —

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

*860 [¶ 18] One commentator has discussed the scope and extension of time provided by 11 U.S.C. § 108(c), stating in part:

[S]ection 108(c) is narrower in scope than section 108(b). It applies only to civil actions in courts on claims against the debtor, or against codebtors protected by the codebtor stay. Courts have generally held that it does apply to time periods within which a creditor must bring an action to enforce a lien before the lien expires. *It also applies to the time period to renew a judgment to maintain its enforceability.* But it does not appear to apply to other types of acts against the debtor or codebtor that do not involve litigation, such as the filing of documents other than in court proceedings.

....

Section 108(c) permits the commencement or continuation of an action until the later of two periods. The first is the end of a time period fixed by applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding or an agreement. Such time period expressly includes "any suspension of such period occurring on or after the commencement of the case." Such a suspension may result from either state or federal law.

....

In some jurisdictions state law may dictate suspension of a statute of limitations when a bankruptcy or another court proceeding has stayed the initiation of an action. Such suspensions would presumably be included within the terms of section 108(c), adding the entire duration of the automatic stay to the applicable time period.

However, absent such a provision in applicable nonbankruptcy law, a statute of limitations or other deadline for an action against a debtor which would have expired while an automatic stay was applicable is extended by only the

second period set forth in section 108(c), 30 days after notice of the termination or expiration of the automatic stay barring the action. It is important to note that this extension continues not simply until 30 days after the termination of the stay, but until 30 days after *notice* of that termination. When a party has no such notice, the 30 days never begin to run.

2 *Collier on Bankruptcy* at ¶¶ 108.04[1]-108.04[2] (16th ed. 2010) (emphasis added).

[¶ 19] "Technically speaking, the Bankruptcy Code does not provide that a statute of limitations is tolled during the period of bankruptcy." *In re Bigelow*, 393 B.R. 667, 670 n. 8 (B.A.P. 8th Cir. 2008) (quoting *C.H. Robinson Co. v. Paris Sons, Inc.*, 180 F.Supp.2d 1002, 1019 (N.D.Iowa 2001)). Further, "[section 108(c)(1) does not independently toll or suspend statutes of limitations which have not expired as of a bankruptcy petition date." *In re Bigelow*, at 670 (citing *In re Danzig*, 233 B.R. 85, 94 (B.A.P. 8th Cir. 1999)). "The reference in § 108(c) to "suspension" of time limits clearly does not operate in itself to stop the running of a statute of limitations; rather, this language merely incorporates suspensions of deadlines that are expressly provided in other federal or state statutes." *Bigelow*, at 670 (quoting *Danzig*, at 94).

[¶ 20] Some courts have held, however, that the automatic stay under 11 U.S.C. § 362 does not prevent the filing of a renewal affidavit. *See, e.g., In re Smith*, 209 Ariz. 343, 101 P.3d 637, 639 (2004) (holding ministerial action of filing renewal affidavit not prohibited by automatic bankruptcy stay); *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754, 755-56 (1994) (rejecting argument that automatic stay prevented filing a renewal affidavit); *Barber v. Emporium P'ship*, 800 P.2d 795, 797 (Utah 1990) (stating action to renew a judgment *861 does not violate automatic stay provisions because a renewal is not an attempt to enforce, collect, or expand the original judgment); *In re Morton*, 866 F.2d 561, 564 (2d Cir. 1989) (concluding automatic stay

does not eliminate state-law requirement of extending a judgment lien). *But see In re Lobherr*, 282 B.R. at 917 (filing of renewal application under California law violated automatic stay).

[¶ 21] For example, in *In re Smith*, 101 P.3d at 639, answering a certified question from the bankruptcy court, the Arizona Supreme Court held under Arizona law that the time for filing a renewal affidavit is not extended when the debtor has a bankruptcy proceeding pending and an automatic stay was in effect during the 90-day renewal period. The court held that "[a] judgment creditor's inability to enforce a judgment during the initial or a subsequent statutory five-year period, whether because of bankruptcy stay or other reasons, does not extend the dead-line imposed by [Arizona law] to file a renewal affidavit." *Id.* The court held as a matter of Arizona law that "the filing of an affidavit of renewal is simply a ministerial action intended in part to alert interested parties to the existence of the judgment." *Id.* "Such a ministerial filing serves a notice function and does not seek to enforce a judgment." *Id.* The court concluded that the filing of a renewal affidavit is not prohibited by an automatic bankruptcy stay or any stay of enforcement, such as filing a supersedeas bond. *Id.* The court held "the time to file an affidavit of renewal of judgment is not changed or extended by the pendency of a bankruptcy case." *Id.* at 640.

[¶ 22] In subsequent proceedings before the Ninth Circuit bankruptcy appellate panel, the court in *In re Smith*, 352 B.R. 702, 706 (B.A.P. 9th Cir. 2006), held that based on the Arizona Supreme Court's decision in *In re Smith*, 101 P.3d at 640, Arizona state law did not suspend the time to file a renewal affidavit during the pendency of the bankruptcy case. In reaching this conclusion, the court stated that "[i]n matters of state law, [the court is] compelled to defer to the interpretation given such law by the state's highest court." *In re Smith*, 352 B.R. at 706. The court reiterated that the phrase "suspension of such period" referenced in 11 U.S.C. § 108(c)(1) refers to "either state or federal nonbank-

ruptcy law." 352 B.R. at 706. As a result, 11 U.S.C. § 108(c)(1) did not operate without regard to existing non-bankruptcy law to stop the running of any periods of limitation. *In re Smith*, 352 B.R. at 706. The court held that, absent state law suspending the time for filing the renewal affidavit, the original limitation date applied and no additional time was afforded under 11 U.S.C. § 108(c)(1). *In re Smith*, 352 B.R. at 706.

[¶ 23] However, courts have held that 11 U.S.C. § 108(c) applies to the renewal of state court judgments. *See In re Spirtos*, 221 F.3d 1079, 1080-81 (9th Cir. 2000), *In re Smith*, 352 B.R. at 705; *In re Greenberg*, 288 B.R. 612, 614-15 (Bankr.S.D.Ga. 2002); *see also 2 Collier on Bankruptcy* at ¶ 108.04[1]. Nonetheless, "[t]he time for renewing a state court judgment does not expire until the later of the applicable state law, or 30 days after the termination of the automatic stay." *In re Smith*, 352 B.R. at 705 (citing 11 U.S.C. § 108(c)(1)(c)(2)) (emphasis in original); *see also In re Lobherr*, 282 B.R. at 916.

[¶ 24] Here, there is no assertion that Kensmoe was involved in bankruptcy proceedings or that an automatic stay was in place at the time F/S Manufacturing was required to file an affidavit for renewal under N.D.C.C. § 28-20-21. Unlike California law, North Dakota renewal statutes provide that once a proper, timely affidavit is filed with the clerk of court, the "clerk is required to 'immediately enter in the judgment docket the fact of renewal, the date of renewal, and the amount for which the judgment is renewed.'" *See N.D.C.C. § 28-20-22.* The *Lobherr* case is not controlling and does not support tolling the time period for filing an affidavit in the present case. In fact, in *Bergstrom v. Lobherr*, No. G035801, 2006 WL 2536462, at *5 (Cal.Ct.App. Sept. 5, 2006), an unpublished California court of appeals decision involving a subsequent action to enforce the prior judgment against *Lobherr*, the court said, "California law does not contain a tolling provision applicable to a judgment creditor's application to renew a judgment," and therefore, "when a judgment creditor seeks to renew a judgment,

the only applicable tolling provision is the 30-day extension authorized by section 108(c)(2)." However, in distinguishing the prior bankruptcy court proceedings, the court of appeals held the present case was an independent action to enforce the judgment, which was subject to being tolled under California law. *Id.*

[¶ 25] Thus, even if the filing of a renewal affidavit under N.D.C.C. § 28-20-21 was more than a "ministerial act," implicating 11 U.S.C. §§ 362 and 108(c), F/S Manufacturing filed the renewal affidavit well beyond 30 days after the time the parties have apparently agreed was the termination of bankruptcy proceedings, i.e., May 10, 2005. See, e.g., *In re Silva*, 215 B.R. 73, 77 (Bankr.D.Idaho 1997) (observing since 30-day extension of time provided under 11 U.S.C. § 108(c)(2) was prior in time to date judgment expired under California statute, § 108(c) had no tolling effect on the judgment, and judgment would thus expire unless validly renewed or revived under state law). F/S Manufacturing has not cited any nonbankruptcy federal or state law that either suspends or tolls the limitation period in N.D.C.C. § 28-20-21. We express no opinion, however, whether the statute of limitations for an action on a judgment was tolled during the pendency of the bankruptcy automatic stay. See N.D.C.C. §§ 28-01-15(1) (ten-year statute of limitations for an action upon a judgment), 28-01-29 ("When the commencement of an action is stayed by injunction or other order of a court, or by a statutory prohibition, the time of the continuance of the stay is not a part of the time limited for the commencement of the action.").

[¶ 26] We also note that F/S Manufacturing asserts for the first time on appeal that Kensmoe was actually involved in chapter 13 bankruptcy proceedings from May 9, 2003, until January 15, 2004, and involved in chapter 7 bankruptcy proceedings from June 20, 2004, until May 10, 2005, with over a five month gap between her two bankruptcy filings. However, none of Kensmoe's bankruptcy petitions or dispositive orders were submitted to the district court. Generally, "[a] party who claims the benefit of an exception to a

statute of limitations bears the burden of showing the exception." *Kimball v. Landeis*, 2002 ND 162, ¶ 29, 652 N.W.2d 330 (citing *Motley v. United States*, 295 F.3d 820, 824 (8th Cir. 2002)); see generally 54 C.J.S. *Limitations of Actions* § 429 (2010) ("The burden of proving absence or non-residence in avoidance of the statute of limitations rests on the party asserting such matters."). Nonetheless, the parties do not dispute that Kensmoe was not involved in bankruptcy proceedings nor was an automatic stay in place during the 90 days before the expiration of ten years from the first docketing of the 1998 North Dakota judgment. Under our construction, F/S Manufacturing was not prevented from filing a timely renewal affidavit.

[¶ 27] F/S Manufacturing also suggests this Court must give full faith and credit to the Georgia state court order regarding the underlying North Dakota *863 judgment under *1st Summit Bank v. Samuelson*, 1998 ND 113, ¶ 36, 580 N.W.2d 132 (full faith and credit given to the foreign judgment, even if a similar judgment could not be obtained in North Dakota). In *Samuelson*, this Court held a Pennsylvania judgment was enforceable in North Dakota under the Full Faith and Credit Clause, even though the foreign judgment did not comply with North Dakota's confession-of-judgment procedure. *Id.* at ¶ 37.

[¶ 28] Our decision here, however, only concerns application of our statutory procedure for renewing a judgment by affidavit under N.D.C.C. §§ 28-20-21, 28-20-22, and 28-20-23. The Georgia court order relied upon by F/S Manufacturing does not address application of these statutes. Further, we are not being asked to recognize the judgment of a foreign state; rather, we only address whether Kensmoe's bankruptcy proceedings tolled the time period provided within our state's renewal by affidavit statutes. Cf. 16B Am.Jur.2d *Constitutional Law* § 1031 (2009) ("Full faith and credit does not mean that states must adopt the practices of other states regarding the time, manner, and mechanisms for enforcing judgments[,] citing *Baker by Thomas v. General Motors Corp.*, 522 U.S.

222, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998); *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007)). We reject F/S Manufacturing's suggestion that this Court is bound by the Georgia state court's order regarding the validity of the 1998 North Dakota judgment.

[¶ 29] We hold the time period to file an affidavit to renew the 1998 judgment was not tolled under North Dakota law. We therefore conclude the district court erred in ordering the clerk of court to renew F/S Manufacturing's 1998 judgment against Kensmoe.

III

[¶ 30] We have considered the parties' remaining arguments and consider them unnecessary to our decision or without merit. The district court order is reversed.

[¶ 31] CAROL RONNING KAPSNER, MARY MUEHLEN MARING, DANIEL J. CROTHERS, and DALE V. SANDSTROM, JJ., concur.



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, RANDALL TINDALL,
ESQ., and RESNICK & LOUIS, P.C.
And DOES I through V,

Third Party Defendants.

CASE No: 07A549111
DEPT. NO: XX

Consolidated with
CASE No. 18-A-772220-C

**PLAINTIFF'S MOTION TO SET ASIDE ORDER, PURSUANT TO NRC
60(b), ALLOWING UAIC TO INTERVENE**

Date:

Time:

1 Plaintiff Cheyenne Nalder, by and through her attorney, David A. Stephens, Esq.,
2 and moves this Court for an order setting aside the Court's order allowing United
3 Automobile Insurance Company to intervene in this matter. This Motion is made and
4 based upon the Points and Authorities and Exhibits attached to this Motion and such
5 argument as may be made at the time of the hearing on this matter.
6
7

8 Dated this 12th day of December, 2018.
9

10 /s/ David A Stephens
11 DAVID A. STEPHENS, ESQ.
12 Nevada Bar No. 00902
13 Stephens & Bywater, P.C.
14 3636 N. Rancho Drive
15 Las Vegas, Nevada 89130
16 Attorney for Plaintiff
17
18
19

20 **NOTICE OF MOTION**

21 TO: Gary Lewis, Defendant; and,
22

23 TO: E. Breen Arntz, Esq., attorney for Defendant;

24 TO: Randall Tindall, Esq., attorney for Defendant;
25

26 TO: Thomas F. Christensen, Esq., attorney for Third Party Plaintiff

27 TO: United Automobile Insurance Company, Intervenor; and,
28

1 TO: Matthew J. Douglas, Esq., attorney for Intervenor:

2 YOU WILL PLEASE TAKE NOTICE that on the 23rd day of
3
4 January, 2019, at 8:30 a.m., the undersigned will bring the
5 foregoing **PLAINTIFF'S MOTION TO SET ASIDE ORDER, PURSUANT TO**
6 **NRCP 60(b), ALLOWING UAIC TO INTERVENE** on for hearing before the above-
7 entitled District Court.
8

9
10 DATED: December 13th, 2018.

11 /s/David A Stephens
12 DAVID A. STEPHENS, ESQ.
13 Nevada Bar No. 00902
14 Stephens & Bywater, P.C.
15 3636 N. Rancho Drive
16 Las Vegas, Nevada 89130
17 Attorney for Plaintiff

18
19 **POINTS AND AUTHORITIES**

20 **I. STATEMENT OF FACTS**

- 21
22 1. Cheyenne Nalder, ("Cheyenne"), was injured in a car accident on July 8, 2007.
23
24 2. Cheyenne was a minor at the time of the accident.
25
26 3. Gary Lewis, ("Lewis"), negligently and careless drove his car such that it
27 struck Cheyenne.
28 4. The accident caused serious injuries to Cheyenne.

1 5. Cheyenne's father, as her guardian in litem, filed suit, ("Original Suit"), against
2 Lewis. (See Case No. 07A549111).

3
4 6. Neither UAIC nor Lewis responded to the Original Suit.

5 7. On June 3, 2008, Cheyenne obtained a default judgment against Lewis in the
6 Original Suit in the sum of \$3,500.000.00.

7
8 8. Notice of entry of this judgment was filed and served on August 26, 2008.

9
10 9. None of that judgment has ever been paid, with the exception of \$15,000.00
11 which was paid by UAIC following a suit filed by Lewis and Cheyenne against UAIC
12 for bad faith, and other relief.

13
14 10. UAIC paid the \$15,000.00 to Cheyenne in three separate payments. The last
15 payment of which was made on March 5, 2015.

16
17 11. On March 22, 2018, Cheyenne, due to the fact that she had reached the age
18 of majority, filed a motion to amend the judgment in the Original Suit to make herself
19 the Plaintiff, in place of her father who had been her Guardian ad Litem.

20
21 12. The amended judgment was signed and filed in the Original Suit on March
22 28, 2018.

23
24 13. On May 18, 2018, a Notice of Entry of Judgment was served on Lewis.

25 14. In 2018, Cheyenne filed a new lawsuit, ("2018 Suit"), (See, Case No. A-18-
26 772220.-C), in order to enforce the judgment and alternatively seek declaratory relief
27 that the judgment in the Original Suit is still valid and enforceable.
28

1 15. The 2018 Suit was resolved by stipulation of Cheyenne and Lewis signed on
2 September 12, 2018, and filed with this Court on September 13, 2018. (See Exhibit 1
3 attached to this Motion.)
4

5 16. UAIC, through its attorney, Matthew Douglas, Esq., filed motions to
6 intervene in the Original Suit and the 2018 Suit on or about August 15, 2018.
7

8 17. Cheyenne's attorney did not receive a copy of either motion. When he
9 learned of these motions on or about September 9, 2018, he contacted Matthew Douglas,
10 Esq., about getting an extension of time to respond in that he had not received either
11 motion. (See Declaration of David A. Stephens, Esq., attached as Exhibit 3 to this
12 Motion.)
13
14

15 18. The certificates of service on both motions were incomplete. The certificate
16 of service on the motion to intervene in the Original Case was not completed. The
17 certificate of service in the 2018 Case stated it was served on Cheyenne/s counsel by e-
18 service even though he was not then registered for e-service. (See Exhibit 2 attached
19 to this Motion.)
20
21

22 19. In spite of these errors in UAIC's own documents, UAIC did not agree to
23 extend additional time to respond. (See Declaration of David A. Stephens, Esq.,
24 attached as Exhibit 3 to this Motion.)
25
26
27
28

1 20. With little time to do so, Cheyenne's attorney filed an opposition to both
2 motions and delivered them to the Court's box on September 18, 2018. (See
3 Declaration of David A. Stephens, Esq., attached as Exhibit 3 to this Motion.)
4

5 21. Department 29 granted both motions to intervene.¹
6

7 22. The orders were noticed to Cheyenne's attorney on October 19, 2018.
8

9 **III. MOTION TO SET ASIDE UNDER NRCP 60(b)**

10 Cheyenne requests relief from the orders allowing UAIC to intervene in both
11 cases which were signed on October 19, 2018. Cheyenne requests relief pursuant to
12 NRCP 60(b). As is set forth below, UAIC's motions to intervene were improperly
13 noticed, both on the face of the pleading (not even saying the defendant was served),
14 and also the certificate of service is false (claiming to serve Cheyenne's attorney who
15 was not on the service list).
16
17

18 UAIC, rather than correcting the problem with service and notice, pushed
19 forward for the hearing to get an order. This failure to move the hearing or correct
20 the service issue forced Cheyenne's attorney to file a quick opposition without a full
21 opportunity to brief the issue.
22
23

24 NRCP 60(b) states:

25 "On motion and upon such terms as are just, the court may relieve
26

27 ¹ The minute order on the motions did not even mention the oppositions filed by
28 Cheyenne.

1 a party or his legal representative from a final judgment, order, or
2 proceeding for the following reasons: (1) mistake, inadvertence,
3 surprise, or excusable neglect; (2) . . . or other misconduct of an adverse
4 party which would have theretofore justified a court in sustaining a
5 collateral attack upon the judgment; (3) the judgment is void; . . . The
6 motion shall be made within a reasonable time, and for reasons (1) and
7 (2) not more than six months after the judgment, order, or proceeding
8 was entered or taken. A motion under this subdivision (b) does not affect
9 the finality of a judgment or suspend its operation. This rule does not
10 limit the power of a court to entertain an independent action to relieve a
11 party from a judgment, order, or proceeding, or to set aside a judgment
12 for fraud upon the court. . . .”

13 The orders allowing UAIC to intervene in both cases were entered due to
14 mistake, inadvertence, surprise, or excusable neglect.

15 Most of the Nevada case law interpreting NRCP 60(b) has arisen in efforts to
16 set aside default judgments. That law states that a Court has broad discretion in
17 vacating a default judgment under NRCP 60(b)(1). *Stoecklein v. Johnson Electric,*
18 *Inc.*, 109 Nev. 268, 271 849 P.2d 305 (1993). Courts evaluate several factors to
19 decide whether to vacate a default judgment. *Id.* 1- Whether the defendant promptly
20 applied to remove the judgment. *Id.* 2- Whether the defendant is only attempting to
21 delay the proceedings. *Id.* 3- Whether the defendant knew of the procedural
22 requirements. *Id.* 4- Whether the defendant is acting in good faith. *Id.* 5- Whether
23 the defendant has a meritorious defense. *Id.*

24 While the case law analyzing the setting aside of default judgments does not fit
25 exactly in setting aside other orders. It is still useful analysis.
26
27
28

1 **A. Prompt Application to Remove the Judgment**

2
3 NRCP 60 requires the movant to file the motion no more than six months after
4 the order was entered against him. This motion was filed about two months after the
5 entry of the orders allowing UAIC to intervene. The application is prompt.
6

7 **B. Delaying the Proceedings**

8 Cheyenne does not want to delay these proceedings. As to the 2007 case, she
9 maintains that that case is over. A judgment has been entered.
10

11 **C. Knowledge of the Procedural Requirements**

12 This particular factor does not really apply to this motion. Cheyenne has been
13 represented by counsel. This motion does not involve an error that something did not
14 get done on time or at all. Rather, it involves an error that the wrong decision was
15 made under Nevada law.
16
17

18 **D. Good Faith**

19 Cheyenne has acted in good faith. She moved to amend her judgment so she
20 was the named plaintiff and then filed an action, in her name, to enforce the
21 judgment.
22
23

24 **E. INTERVENTION IN 2007 CASE**

25 The granting of UAIC's motion to intervene in the 2007 case is a clear abuse
26 of discretion and contrary to the statutory and case law of Nevada.
27
28

1 “[T]he plain language of NRS 12.130 does not permit intervention
2 subsequent to the entry of a final judgment. *Lopez v. Merit Ins. Co.*, 109
3 Nev. 553, 556, 853 P.2d 1266, 1267-68 (1993). Additionally, in *Ryan v.*
4 *Landis*, 58 Nev. 253, 260, 75 P.2d 734, 735 (1938) (quoting *Henry Lee*
5 *Co. v. Elevator Co.*, 42 Iowa 33 (1918)), we reiterated that:
6 ‘intervention must be made before the trial commences. After the
7 verdict all would admit it would be too late to intervene. But a voluntary
8 agreement of the parties stands in the place of a verdict, and, as between
9 the parties to the record as fully and finally determines the controversy
10 as a verdict could do.’”

11 *Dangberg Holdings Nevada v. Douglas County*, 115 Nev. 129, 139, 978 P.2d 311,
12 317 (1999).

13 In *Gralnick v. Eighth Judicial District Court*, No. 72048 (Nev. App. Mar. 21,
14 2017), which is factually very similar to this case, the Nevada Court of Appeals held that
15 allowing intervention by an insurance company and then setting aside of a judgment on
16 the motion of the insurance company was improper. Thus the Nevada Court of Appeals
17 granted writ relief which reversed the trial court because intervention was allowed after
18 judgment contrary to NRS 12.130. The Court stated:

19 “Here, real party in interest Liberty Mutual Insurance Company moved to
20 intervene in the underlying action after judgment was entered against real
21 party in interest Tessea Munn. Because ‘NRS 12.130 does not permit
22 intervention subsequent to the entry of a final judgment,’ *Lopez v. Merit*
23 *Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993), the district court
24 was required, as a matter of law, to deny the motion to intervene.

25 “As the district court did not deny the motion to intervene, but
26 instead, granted intervention and then improperly set aside the judgment
27 based on Liberty Mutual's motion, *see id.* at 557, 853 P.2d at 1269
28 (explaining that, where an insurance company was improperly allowed to
intervene, it was not a party to the lawsuit and, thus, could not move to set

1 aside the judgment), writ relief is warranted. *See Smith v. Eighth Judicial*
2 *Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991)”

3 *Gralnick* at p. 2.

4 The Nevada Supreme Court noted in *A-Mark Coin v Estate of Redfield*, 94 Nev.
5 495, 582 P.2d 359 (1978), that the probate court had authority under NRCP 60(b) to set
6 aside an order, *sua sponte*, that was entered by mistake.

7 In the 2007 case the court allowed UAIC to intervene after a final judgment was
8 entered. That is contrary to Nevada law and the Court should correct this mistake and
9 set aside the order allowing UAIC to intervene in the 2007 case.

10 **E. INTERVENTION IN 2007 AND 2018 CASE**

11 In addition UAIC’s motion to intervene should have been denied in both cases
12 because UAIC waived its right to direct the defense and its right to intervene when it
13 refused to defend Lewis and failed to indemnify him.

14 UAIC claimed to have a direct and immediate interest in those cases sufficient to
15 warrant intervention. However the California Court of Appeals in *Hinton v. Beck*, 176
16 Cal.App.4th 1378 (Cal. Ct. App. 2009) held just the opposite: “Grange, having denied
17 coverage and having refused to defend the action on behalf of its insured, did not have
18 a direct and immediate interest to warrant intervention in the litigation.” *Id.* at 1380.

19 The *Hinton* court went on to note that an insurance company which denies
20 coverage and refuses to defend, except on a reservation of rights, has only a
21

1 “consequential interest,” which does not justify intervention into the suit between the
2 plaintiff and its alleged insured. *Id.* at 1383.

3
4 In this case UAIC denied coverage and never even offered to defend on a
5 reservation of rights. It has no right to intervene into these cases.

6
7 In addition, UAIC’s proposed defense is not supported by Nevada statutes or case
8 law. UAIC misstates Nevada’s statute of limitations and tolling statutes. UAIC
9 misstates Nevada case law regarding actions on a judgment to obtain a new judgment
10 and its relationship to the optional and additional process to renew a judgment by
11 affidavit.

12
13 Thus, UAIC should not have been allowed to intervene into the 2007 or 2018
14 cases. Allowing such intervention is an abuse of discretion and has delayed this
15 matter and costs the Plaintiff time and attorney’s fees in moving this matter forward.

16
17 For these reasons the Court should set aside the order allowing UAIC to
18 intervene, and strike and disregard all pleadings filed by UAIC.

19
20 Dated this 13th day of December, 2018.

21
22 /s/ David A Stephens
23 David A. Stephens, Esq.
24 Nevada Bar No. 00902
25 Stephens Gourley & Bywater
26 3636 N. Rancho Drive
27 Las Vegas, NV 89130
28 Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2018, I served the following document: **PLAINTIFF'S MOTION TO SET ASIDE ORDER, PURSUANT TO NRCP 60(b), ALLOWING UAIC TO INTERVENE**

☒ VIA ELECTRONIC FILING; (N.E.F.R. 9(b))

Randall Tindall, Esq.

E. Breen Arntz, Esq.

Matthew J. Douglas, Esq.

Thomas F. Christensen, Esq.

☐ BY MAIL: by placing the documents(s) listed above in a sealed envelope, postage prepaid in the U.S. Mail at Las Vegas, Nevada, addressed as set forth below:

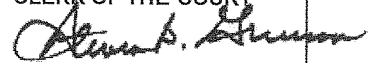
☐ BY FAX: by transmitting the document(s) listed above via telefacsimile to the fax number(s) set forth below. A printed transmission record is attached to the file by copy of this document(s).

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

_____/s/David A Stephens_____
An Employee of Stephens & Bywater, P.C.

EXHIBIT 1

EXHIBIT 1



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

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS,

17 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

18 STIPULATION TO ENTER JUDGMENT

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

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

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

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

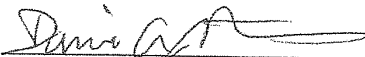
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.

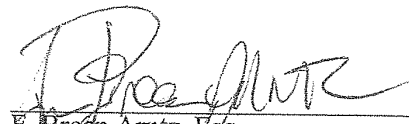
4 7. Cheyenne Nalder is willing to allow judgment to enter in the amount of the judgment plus
5 interest minus the payment of \$15,000.00 and without additional damages, attorney fees or costs.
6 Plaintiff is also willing to accept the judgment so calculated as the resulting judgment of the
7 alternatively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

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

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

13 Dated this 12 day of September, 2018

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

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

1 JMT (CIV)
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 Stephens & Bywater, P.C.
5 3636 North Rancho Drive
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Telephone: (702) 656-2355
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Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

14 JUDGMENT

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

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

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

23 ///

24 ///

25 ///

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

4 DATED this _____ day of September, 2018.

5
6
7 _____
8 DISTRICT JUDGE

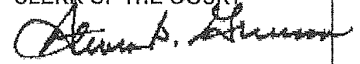
9 Submitted by:

10 STEPHENS & BYWATER, P.C.

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

EXHIBIT 2

EXHIBIT 2



MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
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Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.



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

UAIC'S MOTION TO INTERVENE

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

DATED this 16 day of August, 2018.

ATKIN WINNER & SHERROD

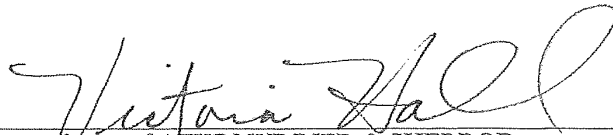


Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor

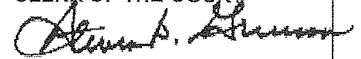
CERTIFICATE OF SERVICE

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

PLAINTIFFS' COUNSEL

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


An employee of ATKIN WINNER & SHERROD



MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
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mdouglas@awslawyers.com

Attorneys for Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.


CASE NO.: 07A549111
DEPT. NO.: 29

UAIC'S MOTION TO INTERVENE

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

DATED this 17th day of August, 2018.

ATKIN WINNER & SHERROD



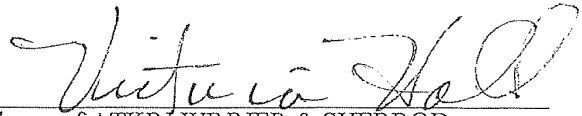
Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor

CERTIFICATE OF SERVICE

I certify that on this 17th day of August, 2018, the foregoing MOTION TO INTERVENE was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☐ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

PLAINTIFFS' COUNSEL

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



An employee of ATKIN WINNER & SHERROD

EXHIBIT 3

EXHIBIT 3

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION TO SET ASIDE ORDER**

STATE OF NEVADA)
COUNTY OF CLARK)ss

David A. Stephens, Esq., being first duly sworn, deposes and says:

1. I am the attorney for Plaintiff Cheyenne Nalder, ("Cheyenne"), in this matter.
2. I am licensed to practice law before all Courts of the State of Nevada.
3. I make this affidavit based upon facts within my own knowledge, and I can so testify in a court of law, save and except as those facts alleged upon information and belief, and as to those facts I believe them to be true.
4. On August 15, 2018, Matthew Douglas, Esq., filed a Motion to Intervene in the Original Suit for UAIC. At about the same time, Mr. Douglas also filed a motion to intervene on behalf of UAIC in the 2018 Suit.
5. In September, 2018, while preparing to submit a default in the 2018 Lawsuit, I first learned of the UAIC motions to intervene in both suits.
6. I never received the Motions to Intervene and only discovered that the Motions even existed after the date for filing a response to that motion had passed, assuming the Motions had been served on me.
7. On September 11, 2018, I emailed Mr. Douglas indicating that I had not been served with either motion to intervene and requesting that he serve the motions on me and continue the hearing on both motions.
8. On September 11, 2018, Mr. Douglas emailed me and indicated that he had served both motions on me. He stated that he had served the motion in this case by mail and by eservice in the 2018 Lawsuit. He also stated he needed me to provide the basis for my opposition to both motions before he could consider my request for a continuance.
9. Mr. Douglas did not provide me a copy of either motion to intervene, so I obtained a copy of each motion from the court clerk.
10. The certificates of service on both motions to intervene do not indicate that they were served on me.

1 11. The certificate of service on the Motion to Intervene filed in this case states that the
2 motion was mailed, but it does not indicate to whom it was mailed. Also, the check box for service
3 by mailing is not checked.

4 12. The certificate of service on the motion to intervene in the 2018 Lawsuit, stated that the
5 motion was served electronically. Again, it does not specifically indicate it was electronically served
6 on me or my office.

7 13. When a pleading is served electronically through the District Court electronic filing
8 system, a notice of service is generated and emailed to the parties served with the pleading attached
9 for download. Mr. Douglas should have received such a notice for his eservice in the 2018 Lawsuit.
10 That notice indicates which parties were served electronically.

11 14. I have checked my email during this time period and I did not receive a notice of service
12 of the motion to intervene in the 2018 Lawsuit.

13 15. I believe that if Mr. Douglas checks his email for this notice of service he will find that
14 I was not served UAIC's motion to intervene in the 2018 Lawsuit. I have not found a way to get this
15 notice of service myself, or I would check it myself.

16 16. Additionally, I could not have been electronically served the motion to intervene in the
17 2018 Lawsuit because I did not register for electronic service in the 2018 lawsuit until September 4,
18 2018.

19 17. On September 12, 2018, I emailed Mr. Douglas indicating I could have an opposition
20 filed within one week, and then he could have the time he needed to file a reply.

21 18. On September 13, 2018, Mr. Douglas responded, by email, and stated again that he
22 needed to know the basis of my opposition to the motions before he could consider granting an
23 extension of time to respond to them.

24 19. I emailed Mr. Douglas on September 14, 2018, indicating that I would have to research
25 to see if there were grounds to oppose the motions to intervene and indicated that as to this case, that
26 I thought the motion had been filed too late for intervention to be allowed under Nevada law.

27 20. I filed an Opposition to the Motion to Intervene filed by UAIC in this case on
28 September 17, 2018. I received a filed stamped copy of the Opposition early in the morning of

1 September 18, 2018.

2 21. I filed an Opposition to the Motion to Intervene filed by UAIC in the 2018 Lawsuit on
3 September 17, 2018. I received a filed stamped copy of the Opposition early in the morning of
4 September 18, 2018.

5 22. I personally dropped both of the Oppositions to the Motions to Intervene in this Court's
6 box on September 18, 2018. I do not know the exact time, but I know it was before 10:00 a.m. because
7 I had a 10:00 a.m. appearance before the Discovery Commissioner and I dropped the papers into the
8 Court's box prior to that appearance.

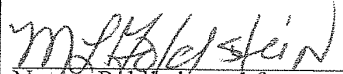
9 23. I subsequently received a minute order from the Court indicating that the motion to
10 intervene in this case had been granted because no opposition had been filed.

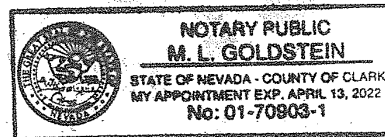
11 24. Exhibit 2 attached to the Motion is true and correct copies of the certificates of service
12 on the Motion to Intervene filed by UAIC.

13 Dated this 13 day of December, 2018.

14 
15 David A. Stephens, Esq.

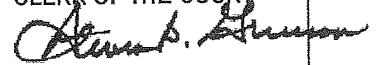
16 Subscribed and Sworn to before me
17 this 13th day of October, 2018.

18 
19 Notary Public in and for
20 said County and State



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EXHIBIT 4



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

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS,

17 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

18 STIPULATION TO ENTER JUDGMENT

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

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

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

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

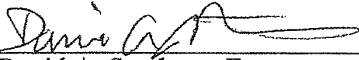
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.

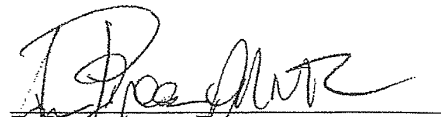
4 7. Cheyenne Nalder is willing to allow judgment to enter in the amount of the judgment plus
5 interest minus the payment of \$15,000.00 and without additional damages, attorney fees or costs.
6 Plaintiff is also willing to accept the judgment so calculated as the resulting judgment of the
7 alternatively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

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

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

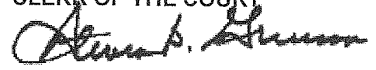
13 Dated this 12 day of September, 2018

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

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

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EXHIBIT 2



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

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

AMENDED JUDGMENT

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

...

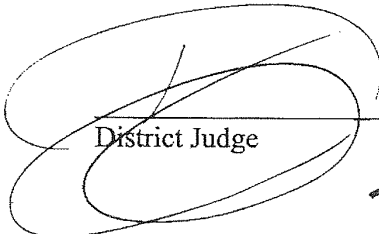
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...

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

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

7
8
9
10 
11 District Judge *me*

12 Submitted by:
13 STEPHENS GOURLEY & BYWATER

14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
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EXHIBIT 1

ORIGINAL

FILED

AUG 26 11 00 AM '08

CLERK

JUDG

DAVID F. SAMPSON, ESQ.,
Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326

1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000

Attorney for Plaintiff,

JAMES NALDER As Guardian Ad

Litem for minor, CHEYENNE NALDER

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

CASE NO: A549111
DEPT. NO: VI

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

Defendants.

NOTICE OF ENTRY OF JUDGMENT

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

DATED this 5th day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By:

DAVID F. SAMPSON, ESQ.
Nevada Bar #6811
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiff

CLERK OF THE COURT

RECEIVED
AUG 26 2008

1
2
3 **CERTIFICATE OF SERVICE**

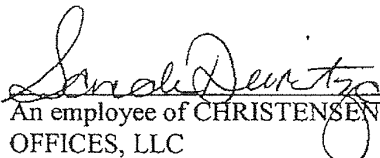
4 Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW
5 OFFICES, LLC., and that on this 5th day of June, 2008, I served a copy of the
6 foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:
7

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

10 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
11 number(s) shown below and in the confirmation sheet filed herewith. Consent to
12 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
13 facsimile transmission is made in writing and sent to the sender via facsimile within
14 24 hours of receipt of this Certificate of Service; and/or

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

16 Gary Lewis
17 5049 Spencer St. #D
18 Las Vegas, NV 89119

19 
An employee of CHRISTENSEN LAW
20 OFFICES, LLC
21
22
23
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25
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27
28

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

Clark
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A549111
DEPT. NO: VI

JUDGMENT

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

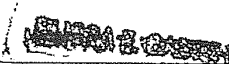
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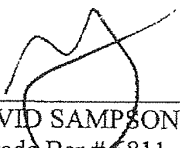
28 ...

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

5
6 DATED THIS 2 day of June ~~May~~, 2008.

7
8 
9 DISTRICT JUDGE

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

14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar #6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
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CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Alma L. Johnson
CLERK OF THE COURT 2-25-2010

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHEYENNE NALDER, an
individual, and GARY LEWIS
Petitioners and Real Parties in
Interest

vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA IN AND FOR THE
COUNTY OF CLARK THE
HONORABLE DAVID JONES
AND ERIC JOHNSON,
DISTRICT COURT JUDGES,

Respondents,

And
UNITED AUTOMOBILE
INSURANCE COMPANY,

Respondent.

Electronically Filed
Feb 08 2019 08:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 78085

District Court Case No. 07A549111
Consolidated with 18-A-772220
Dept. No. XX

PETITIONERS' APPENDIX

DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E.
Las Vegas, NV 89120
Telephone: (702) 384-8000
breen@breen.com
Attorney for defendant Gary Lewis

INDEX

- Exhibit 1: Notice of Entry of Judgment in favor of James Nalder (August 26, 2008) Bates No. p0001-p0005
- Exhibit 2: Amended Judgment in favor of Cheyenne Nalder (March 28, 2018) Bates No. p0006-p0007
- Exhibit 3: UAIC's Motions to Intervene (August 16, 2018 & August 17, 2018) Bates No. p0008-p0141
- Exhibit 4: Stipulation settling the case of 18-A-772220 (September 13, 2018) Bates No. p0142-p0143
- Exhibit 5: Nalder's Opposition (October 8, 2019) and subsequent Motion to Set Aside (December 13, 2018) Bates No. p0144-p0208
- Exhibit 6: Order filed granting Intervention in Case 07A549111 (October 19, 2019) Bates No. p0209-p0210
- Exhibit 7: Order filed granting Intervention in Case A-18-772220-C (October 19, 2019) Bates No. p0211-p0212
- Exhibit 8: UAIC's motion to consolidate on Order Shortening Time (sans exhibits) (November 26, 2018) Bates No. p0213-p0218

CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1) and NRAP 25(c)(1), I hereby certify that I am an employee of Stephens and Bywater and that on the 7th day of February, 2019, I caused the foregoing

PETITIONERS' APPENDIX to be served as follows:

☐ personal, including deliver of the copy to a clerk or other responsible person at the office of counsel; and/or

☐ by mail; and/or

The Honorable David Jones
Eighth Judicial District Court
Department XXIX
Regional Justice Center, Courtroom 3B
200 Lewis Ave.
Las Vegas, Nevada 89155
Respondent Judge

The honorable Eric Johnson
Eighth Judicial District Court
Department XX
Regional Justice Center, Courtroom 12A
200 Lewis Ave.
Las Vegas, Nevada 89155
Respondent Judge

Thomas Christensen, Esq.
Christensen Law Office
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107

Matthew Douglas, Esq.
Atkin Winner & Sherrod
1117 S. Rancho Dr.
Las Vegas, Nevada 89102


An Employee of Stephens & Bywater