

Case No. 78085

In the Supreme Court of Nevada

CHEYENNE NALDER, an individual; and
GARY LEWIS,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, in and for the
County of Clark; THE HONORABLE DAVID M.
JONES, District Judge; and THE HONORABLE
ERIC JOHNSON, District Judge,

Respondents,

and

UNITED AUTOMOBILE INSURANCE COMPANY,
Real Party in Interest.

Electronically Filed
Jul 10 2019 04:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**UNITED AUTOMOBILE INSURANCE COMPANY'S APPENDIX
VOLUME 10
PAGES 2251-2500**

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

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*Attorneys for Real Party in Interest
United Automobile Insurance Company*

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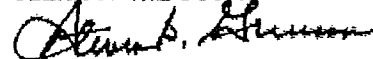
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Exhibit 2

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Steven D. Grierson
CLERK OF THE COURT



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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

07A549111
CASE NO: A549111
DEPT. NO: XXIX

Plaintiff,

vs.

GARY LEWIS,

Defendant.

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:

...

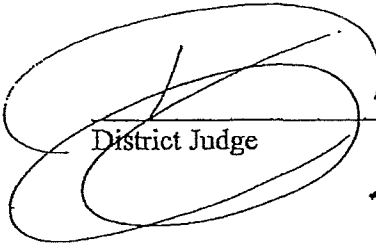
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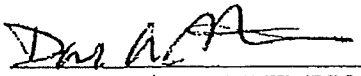
...

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

21
22
23
24
25
26
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28

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


/ CLERK OF THE COURT

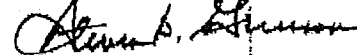
JAN 23 2019

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Exhibit 3

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Steven D. Grierson
CLERK OF THE COURT



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES NALDER,
Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive

Defendants,

CASE NO: 07A549111

DEPT. NO: XX

Consolidated with

CASE NO: 18-A-772220

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.


JUDGMENT PURSUANT TO NRCP 68 IN CASE NO 18-A-772220

It appearing from the Notice of Acceptance of Offer of Judgment in the above-entitled matter that Cheyenne Nalder has accepted the Offer of Judgment served by Gary Lewis pursuant to NRCP 68, therefore, Judgment shall be entered as follows:

Judgment is hereby entered in favor of Plaintiff, Cheyenne Nalder, and against Defendant, Gary Lewis, in the sum of five million six hundred ninety-six thousand eight hundred ten dollars and forty-one cents, (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. All court costs and attorney's fees are included in this Judgment.

Dated this ____ day of January, 2019.

STEVEN D. GRIERSON
CLERK OF THE COURT

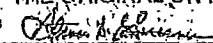

Deputy Clerk
07A549111 1/23/2019

Michelle McCarthy

Submitted by:


E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
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breen@breen.com

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

JAN 23 2019

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Exhibit 4

Case: 13-17441, 01/29/2019, ID: 11171327, DktEntry: 52, Page 24 of 34

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp FILED Superior Court of California County of Los Angeles
COURTHOUSE ADDRESS: Pomona Courthouse, 400 Civic Center Plaza, Pomona CA 91766		JUL 24 2018
PLAINTIFF/PETITIONER: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder		Sherri R. Carter, Executive Officer/Clerk
DEFENDANT/RESPONDENT: Gary Lewis		By: <u>G. Moreno</u> Deputy
JUDGMENT BASED ON SISTER-STATE JUDGMENT (Code Civ. Proc., § 1710.25)		CASE NUMBER KS021378

An application has been filed for entry of judgment based upon judgment entered in the State of:
Nevada

BY FAX

Pursuant to Code of Civil Procedure section 1710.25, judgment is hereby entered in favor of plaintiff/judgment creditor

James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

and against defendant/judgment debtor

Gary Lewis

For the amount shown in the application remaining unpaid under said Judgment in the sum of \$ 3,485,000, together with interest on said Judgment in the sum of \$ 2,174,998.52, Los Angeles Superior Court filing fees in the sum of \$ 435, costs in the sum of \$ 0, and interest on said judgment accruing from the time of entry of Judgment at the rate provided by law.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: JUL 24 2018

By: G. MORENO
Deputy Clerk

CERTIFICATE OF MAILING

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment Based on Sister-State Judgment (Code Civ. Proc., § 1710.25) upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed herein in a separate sealed envelope for each address as shown below with the postage thereon fully prepaid.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: _____

By: _____
Deputy Clerk

LACIV 209 (Rev. 09/13)
LASC Approved
For Optional Use

JUDGMENT BASED ON SISTER-STATE JUDGMENT
(Code Civ. Proc., § 1710.25)

Code Civ. Proc., § 1710.25

14:29:38 2018-07-17

Case: 13-17441, 01/29/2019, ID: 11171327, DktEntry: 52, Page 25 of 34

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name): Mark J. Linderman (State Bar No. 144685) mlinderman Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.co 311 California Street San Francisco, California 94104		TELEPHONE NO.: 415-956-2821 415-956-2828	FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles JUL 24 2018 Sherri R. Carter, Executive Officer/Clerk By <u>G. Moreno</u> Deputy
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder		RECEIVED JUL 17 2018 EAST DISTRICT	
NAME OF COURT: Superior Court of California, County of Los Angeles STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: CITY AND ZIP CODE: Pomona 91766 BRANCH NAME: Pomona Courthouse			
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis			
NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT			CASE NUMBER: KS021378

1. TO JUDGMENT DEBTOR (name): Gary Lewis
 733 S. Minnesota Ave, Glendora, CA 91740

BY FAX

2. YOU ARE NOTIFIED

a. Upon application of the judgment creditor, a judgment against you has been entered in this court as follows:

(1) Judgment creditor (name): James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

(2) Amount of judgment entered in this court: \$5,660,433.52

b. This judgment was entered based upon a sister-state judgment previously entered against you as follows:

(1) Sister state (name): Nevada

(2) Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada
 200 Lewis Ave, Las Vegas, NV. 89155

(3) Judgment entered in sister state on (date): June 2, 2008

(4) Title of case and case number (specify): Nalder v. Lewis, Case No. A549111

3. A sister-state judgment has been entered against you in a California court. Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final.

This court may order that a writ of execution or other enforcement may issue. Your wages, money, and property could be taken without further warning from the court.

If enforcement procedures have already been issued, the property levied on will not be distributed until 30 days after you are served with this notice.

Date: JUL 24 2018

SHERRI R. CARTER, Clerk, by G. MORENO, Deputy

4. ☒ NOTICE TO THE PERSON SERVED: You are served

a. ☒ as an individual judgment debtor.

b. ☐ under the fictitious name of (specify):

c. ☐ on behalf of (specify):

Under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

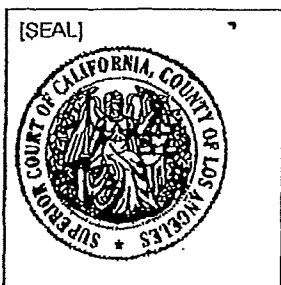
☐ other:

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☒ CCP 416.90 (individual)

(Proof of service on reverse)



Form Approved by the
 Judicial Council of California
 EJ 110 (Rev. July 1 1983)

NOTICE OF ENTRY OF JUDGMENT ON
 SISTER-STATE JUDGMENT

CCP 1710.30, 1710.40
 1710.45

14:29:38 2018-07-17

PROOF OF SERVICE
(Use separate proof of service for each person served)

1. I served the Notice of Entry of Judgment on Sister-State Judgment as follows:

a. on judgment debtor (name): **GARY LEWIS**

b. by serving ☒ judgment debtor ☐ other (name and title or relationship to person served):

c. ☒ by delivery ☒ at home ☐ at business

(1) date: **07/26/18**

(2) time: **7:00 p.m.**

(3) address: **733 S. Minnesota Ave**

Glendora, CA 91740

d. ☐ by mailing

(1) date:

(2) place:

2. Manner of service (check proper box):

a. ☒ Personal service. By personally delivering copies. (CCP 415.10)

b. ☐ Substituted service on corporation, unincorporated association (including partnership), or public entity. By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))

c. ☐ Substituted service on natural person, minor, conservatee, or candidate. By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)

d. ☐ Mail and acknowledgment service. By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)

e. ☐ Certified or registered mail service. By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)

f. ☐ Other (specify code section):

☐ Additional page is attached.

3. The "Notice to the Person Served" was completed as follows:

a. ☒ as an individual judgment debtor.

b. ☐ as the person sued under the fictitious name of (specify):

c. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (individual)

☐ other:

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

a. ☐ California sheriff, marshal, or constable.

b. ☒ Registered California process server.

c. ☐ Employee or independent contractor of a registered California process server.

d. ☐ Not a registered California process server.

e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

Jorge Rivera (Reg# 4690 Los Angeles County)

52 Second Street, 3rd Floor

San Francisco, California 94105


(415) 546-6000

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

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: **07/27/18**

Date:


(SIGNATURE)


(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Mark J. Linderman (State Bar No. 144685) mlinderman 415-956-2828 Joshua M. Deitz (State Bar No. 267454) jdcitz@rjo.com 415-956-2828 311 California Street San Francisco, California 94104		TELEPHONE NO.: 415-956-2828	FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles RECEIVED JUL 17 2018 EAST DISTRICT By: <u>Sherril R. Carter</u> Executive Officer/Clerk <u>G. Moreno</u> Deputy
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder NAME OF COURT: Superior Court of California, County of Los Angeles STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: CITY AND ZIP CODE: Pomona 91766 BRANCH NAME: Pomona Courthouse			
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis			
Amended. APPLICATION FOR ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT <input type="checkbox"/> AND ISSUANCE OF WRIT OF EXECUTION OR OTHER ENFORCEMENT <input type="checkbox"/> AND ORDER FOR ISSUANCE OF WRIT OR OTHER ENFORCEMENT		CASE NUMBER KS021378	

Judgment creditor applies for entry of a judgment based upon a sister-state judgment as follows:

BY FAX

1. Judgment creditor (name and address):

James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder
 5037 Sparkling Sky Avenue
 Las Vegas, Nevada, 89130

2. a. Judgment debtor (name): Gary Lewis

b. ☒ An individual (last known residence address): 733 S. Minnesota Ave, Glendora, CA 91740

c. ☐ A corporation of (specify place of incorporation):

(1) ☐ Foreign corporation

☐ qualified to do business in California

☐ not qualified to do business in California

d. ☐ A partnership (specify principal place of business):

(1) ☐ Foreign partnership which

☐ has filed a statement under Corp C 15700

☐ has not filed a statement under Corp C 15700

3 a. Sister state (name): Nevada

b. Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada
 200 Lewis Ave, Las Vegas, NV. 89155

c. Judgment entered in sister state on (date): June 2, 2008

4. An authenticated copy of the sister-state judgment is attached to this application. Include accrued interest on the sister-state judgment in the California judgment (item 5c).

a. Annual interest rate allowed by sister state (specify): 6.5%

b. Law of sister state establishing interest rate (specify): NRS 17.130

5. a. Amount remaining unpaid on sister-state judgment: \$ 3,485,000

b. Amount of filing fee for the application: \$ 435

c. Accrued interest on sister-state judgment: \$ 2,174,998.52

d. Amount of judgment to be entered (total of 5a, b, and c): \$ 5,660,433.52

(Continued on reverse)

Amended

SHORT TITLE: Nalder v. Lewis

CASE NUMBER:

KS021378

6. ☐ Judgment creditor also applies for issuance of a writ of execution or enforcement by other means before service of notice of entry of judgment as follows:
- a. ☐ Under CCP 1710.45(b).
- b. ☐ A court order is requested under CCP 1710.45(c). Facts showing that great or irreparable injury will result to judgment creditor if issuance of the writ or enforcement by other means is delayed are set forth as follows:

☐ continued in attachment 6b.

7. An action in this state on the sister-state judgment is not barred by the statute of limitations.

8. I am informed and believe that no stay of enforcement of the sister-state judgment is now in effect in the sister state.

9. No action is pending and no judgment has previously been entered in any proceeding in California based upon the sister-state judgment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters which are stated to be upon information and belief, and as to those matters I believe them to be true.

Date:

7/17/18

Joshua M. Deitz
(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGMENT CREDITOR OR ATTORNEY)

EXHIBIT A

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 5 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

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CERTIFICATE OF SERVICE

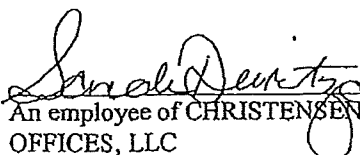
Pursuant to NRCp 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC., and that on this 5th day of June, 2008, I served a copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

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

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

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

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


An employee of CHRISTENSEN LAW
OFFICES, LLC

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

CRP
 CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 JAMES NALDER,)
 as Guardian ad Litem for)
 10 CHEYENNE NALDER, a minor.)
 11 Plaintiffs,)
 12)

13 vs.)

CASE NO: A549111
 DEPT. NO: VI

14 GARY LEWIS, and DOES I)
 through V, inclusive)
 15)
 16 Defendants.)
 17)

18 JUDGMENT

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

26 ...

27 ...

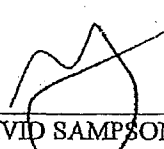
28 ...

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 ^{June} day of ~~May~~, 2008.

7
8 ~~_____
DISTRICT JUDGE~~
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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Case: 13-17441, 01/29/2019, ID: 11171327, DktEntry: 52, Page 34 of 34

002268

002268

CERTIFIED COPY.
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

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

EXHIBIT “R”

1 JOIN (CIV)

David A. Stephens, Esq.

2 Nevada Bar No. 00902

STEPHENS & BYWATER, P.C.

3 3636 North Rancho Drive

Las Vegas, Nevada 89130

4 Telephone: (702) 656-2355

Facsimile: (702) 656-2776

5 Email: dstephens@sgblawfirm.com

Attorney for Cheyenne Nalder

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 CHEYENNE NALDER,

CASE NO.: 07A549111

9 Plaintiff,

DEPT NO.: XX

10 vs.

Consolidated with A-18-772220-C

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

13 Defendants.

14 AND OTHER RELATED CLAIMS.

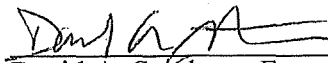
15 **JOINDER IN MOTION FOR RECONSIDERATION OF ORDERS**
16 **SIGNED 2/11/2019, MOTION FOR HEARING, AND**
17 **MOTION FOR RELIEF FROM ORDERS**

18 Date: April 10, 2019

19 Time: 8:30 a.m.

20 Plaintiff Cheyenne Nalder, through her attorneys, Stephens and Bywater, P.C., hereby joins
21 in the Motion for Reconsideration of Orders Signed 2/11/2019, Motion for Hearing, and Motion for
22 Relief from Orders.

23 Dated this 13 day of March 2019.

24 

25 David A. Stephens, Esq.
26 Nevada Bar No. 00902
27 Stephens & Bywater, P.C.
28 3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Plaintiff

1 **CERTIFICATE OF MAILING**

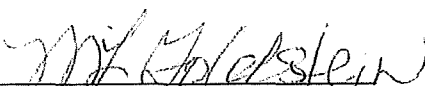
2 I hereby certify that service of this **JOINDER IN MOTION FOR RECONSIDERATION**
3 **OF ORDERS SIGNED 2/11/2019, MOTION FOR HEARING, AND MOTION FOR RELIEF**
4 **FROM ORDERS** was made this ~~11~~¹⁴ day of March, 2019, by depositing a copy thereof in the U.S.

5 Mail, first class postage prepaid, addressed to:

6 Thomas F. Christensen, Esq.
7 Christensen Law Offices
8 1000 S. Valley View Blvd.
9 Las Vegas, NV 89109


E. Breen Arntz, Esq.
4454 Mountain Vista, #E
Las Vegas, NV 89120

10 Matthew J. Douglas, Esq.
11 1117 S. Rancho Drive
12 Las Vegas, NV 89102

13 
14 An Employee of Stephens & Bywater, P.C.
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1 JOIN (CIV)
David A. Stephens, Esq.
2 Nevada Bar No. 00902
STEPHENS & BYWATER, P.C.
3 3636 North Rancho Drive
Las Vegas, Nevada 89130
4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 Email: dstephens@sdblwfir.com
Attorney for Cheyenne Nalder

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

9 CHEYENNE NALDER,

CASE NO.: 07A549111

10 Plaintiff,

DEPT NO.: XX

11 vs.

Consolidated with A-18-772220-C

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

14 Defendants.

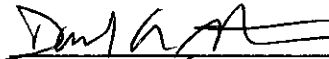
15 AND OTHER RELATED CLAIMS.

16 **JOINDER IN MOTION FOR RECONSIDERATION OF ORDERS**
17 **SIGNED 2/11/2019, MOTION FOR HEARING, AND**
18 **MOTION FOR RELIEF FROM ORDERS**

19 Date: April 10, 2019
Time: 8:30 a.m.

20 Plaintiff Cheyenne Nalder, through her attorneys, Stephens and Bywater, P.C., hereby joins
21 in the Motion for Reconsideration of Orders Signed 2/11/2019, Motion for Hearing, and Motion for
22 Relief from Orders.

23 Dated this 13 day of March 2019.

24
25 
26 David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater, P.C.
27 3636 N. Rancho Drive
Las Vegas, NV 89130
28 Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that service of this **JOINDER IN MOTION FOR RECONSIDERATION OF ORDERS SIGNED 2/11/2019, MOTION FOR HEARING, AND MOTION FOR RELIEF FROM ORDERS** was made this 14th day of March, 2019, by depositing a copy thereof in the U.S.

Mail, first class postage prepaid, addressed to:

Thomas F. Christensen, Esq.
Christensen Law Offices
1000 S. Valley View Blvd.
Las Vegas, NV 89109

E. Breen Arntz, Esq.
4454 Mountain Vista, #E
Las Vegas, NV 89120

Matthew J. Douglas, Esq.
1117 S. Rancho Drive
Las Vegas, NV 89102

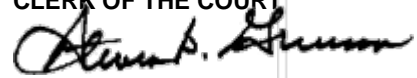

An Employee of Stephens & Bywater, P.C.

32

32

RPLY

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



**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES NALDER,
Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive

Defendants,

CASE NO: 07A549111
DEPT. NO: XX

(consolidated with 18-772220)

UNITED AUTOMOBILE INSURANCE
COMPANY,
Intervenor.

**REPLY IN SUPPORT OF MOTION FOR
RECONSIDERATION, MOTION FOR
HEARING AND MOTION FOR RELIEF
FROM ORDER AND REPLY IN SUPPORT
OF MOTION FOR RECONSIDERATION
OF ORDERS SIGNED 2/11/19, MOTION
FOR HEARING AND MOTION FOR
RELIEF FROM ORDERS**

GARY LEWIS,
Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, And DOES I through V,
Third Party Defendants.

Third party Plaintiff, Gary Lewis, by and through his counsel, Thomas Christensen, Esq.,
hereby presents this Reply in support of Motion for Reconsideration, Motion for Hearing and

1 Motion for Relief from Order and this Reply in Support of Motion for Reconsideration of Orders
2 signed 2/11/19, Motion for Hearing and Motion for Relief from Orders. UAIC continues to
3 confuse issues and misstate the facts and the law in an effort to gain advantage over its insured,
4 Gary Lewis. UAIC opposes the Motions for Reconsideration on only four grounds, each of
5 which is not based in fact or law. UAIC admits, contrary to its statement, (1) that the Court ruled
6 on its motion prior to any opposition or hearing in the case. This is, by definition, “ex-parte” and
7 an appalling breach of the constitutional protection of Due Process. Contrary to UAIC’s basis for
8 its objection number (2), the only thing tentatively stayed at the January 9, 2019 hearing was the
9 Court’s ruling on UAIC’s motion to dismiss claim one of Plaintiff’s complaint. The Court
10 specifically stated that ruling on striking the settlement agreement was still to be heard on
11 January 23, 2019, along with the other motions set for January 23, 2019, which included Nalder’s
12 motion for summary judgment against Lewis on claim one. In addition, the Court stated, on the
13 record, it was going to look at the *Dangberg* case again, as it related to UAIC, seeing as how
14 UAIC is in the case as an intervenor. Further proof, not that further proof is required, is that the
15 Court didn’t stay the action until a January 22, 2019 minute order rendered (without a hearing),
16 delivered to counsel when they all appeared ready for oral argument on the various motions. If
17 the case was “conclusively” stayed on January 9th, 2019, why did all counsel appear for a hearing
18 and what was the purpose of the Court’s January 22, 2019 minute order?

22 Lewis does not take “umbrage” with this appalling procedure by the Court, as is alleged by
23 UAIC, but instead is “OUTRAGED.” Lewis agrees with UAIC’s objection (3), ground that it is
24 immaterial when any stay was made by the Court, but this fact has the opposite result. The
25 parties always have the ability to settle cases, even when a stay is in place. This is obvious from
26 the Supreme Court Settlement program to common sense principles of judicial administration.

1 The only reason this Court can't see this clearly in this case is because the Court continues to
2 cling to the improper ruling allowing intervention by UAIC, which is a complete stranger to the
3 action between Nalder and Lewis. The Court should not continue to force litigants, who have
4 long settled their dispute, to engage in litigation and incur fees and costs at the request of a
5 non-party insurance company that breached its contract. Finally, UAIC has no standing but
6 certainly Gary Lewis has standing even in his capacity as third party plaintiff. UAIC's basis
7 number (4) prevents UAIC's motion because it is UAIC who does not have standing to force
8 these two litigants to continue to incur fees and costs at no expense to UAIC. UAIC's lack of
9 standing is yet another reason for the Court to void its erroneous appalling order. These four
10 grounds, while insufficient to justify the order standing, do controvert the main factual and legal
11 support of the order. Therefore, the order must be voided. Because UAIC's four points do not
12 justify the order and UAIC did not contest the other points made by Lewis, the order must be
13 voided and the judgment must be reinstated and stand.

14
15
16 As to UAIC's other opposition, it admits the Court did not enter a proper order that reflects
17 the ruling denying UAIC's motion for relief from the amended judgment. In addition, UAIC
18 admits that no findings of fact and conclusions of law supporting the court's decision were placed
19 in the order. Instead, UAIC now refers to the transcript, which is also devoid of supporting basis
20 in law and fact. Finally, UAIC sets up the straw man that these actions are substantially related to
21 the Ninth Circuit Appeal. As is clearly explained below, that is simply not the issue. Of course
22 the matters are substantially related. The parties have always admitted the relationship. That is
23 not news. What the Court has mistakenly concluded is that the issue before the Supreme court is
24 the same issue in these cases. That is not true. UAIC did not contest, in its lengthy brief, that the
25 Supreme Court is not deciding whether Nalder can bring an action on the judgment under
26
27
28

1 Mandelbaum. The Supreme Court is deciding the legal issue of whether a claim against an
2 insurer can continue if the underlying judgment has not been renewed pursuant to NRS 17.214
3 the renewal statute. The Mandelbaum analysis on appeal has to do with the case against UAIC,
4 not an action on the judgment against Lewis. This distinction must be acknowledged by the
5 Court so that the Court can make the correct rulings in reconsidering.
6

7 I. FACTS

8 The Court is well aware of the factual posture of this case, but has adopted some inaccurate
9 facts put forth by UAIC. Because UAIC wants the court to continue with its slanted view of the
10 facts in this case, UAIC does not contest any individual fact, but instead claims the facts cited to
11 the record recitation is somehow slanted because the truth does not line up with UAIC's previous
12 pronouncements which have been adopted by the Court. The most important fact for this motion
13 is what issue is and, more importantly, is not before the Nevada Supreme Court. UAIC contested
14 the following paragraphs regarding the question before the Supreme Court. The Nevada Supreme
15 Court is **NOT deciding if the judgment is expired** as UAIC claims. Rather, it is deciding a very
16 narrow question of law regarding just renewing a judgment statutorily pursuant to NRS 17.214:
17

18 In an action against an insurer for breach of the duty to
19 defend its insured, can the plaintiff continue to seek
20 consequential damages in the amount of a default judgment
21 obtained against the insured when the judgment against the
22 insured was not renewed and the time for doing so expired
while the action against the insurer was pending?

23 This is the way the question is phrased.

24 By definition of a certified question, the Nevada Supreme Court is answering **only** the
25 narrow **question of law** as set forth in the above question, as phrased by the certifying court,
26 which is the Ninth Circuit Court of Appeals. It is obvious that the Nevada Supreme Court *is not*
27
28

1 ruling on the factual question of whether or not the time for renewal has passed; instead, that is
2 assumed in the hypothetical question. It is also obvious that the question does not even address
3 the timing of an action on the judgment. And, certainly the certified question does not say
4 anything about an “expired judgment” or “void judgment” as UAIC would have the Court
5 believe. The factual assumption in the question is that the time for filing a renewal has passed.
6 The Ninth Circuit made that factual assumption in phrasing the question. The trial court, where
7 issues of fact are necessarily decided, like the Federal District Court on remand, or this court,
8 which has jurisdiction over the parties to the judgment, will ultimately have to determine the
9 factual basis of this question.
10

11
12 The question presented *in this case* is whether a party can bring an action on a judgment if
13 there are applicable tolling statutes that toll the statute of limitations. **This is not a renewal of**
14 **the judgment.** An action on a judgment results in a new judgment, not a renewed judgment.
15 The issue in this case is not being dealt with in the certified question.

16
17 The certified question came about after UAIC’s argument to the Ninth Circuit that Nalder
18 should have taken action to renew the judgment during the pendency of the appeal. Nalder then
19 took action through new counsel, David A. Stephens, to obtain a new judgment during the appeal.
20 Nalder did this at UAIC’s suggestion, in an abundance of caution. Now, UAIC has been allowed
21 to improperly intervene and get this Court to forstall entry of the new judgment so that its own
22 position that “Nalder did nothing to preserve the action” can be used against the insured, Lewis,
23 and Nalder. This would be to the benefit UAIC. This action, by definition, is a new breach of the
24 covenant of good faith and fair dealing. It is also a breach of the principle of claim preclusion.
25

26 Also, Attached to the motion as Exhibit 2 was the transcript from the January 9, 2019 hearing.
27 This was the only hearing that has been held in this case. The transcript clearly demonstrates that
28

1 this court *did not completely stay* this action, even orally, on the 9th of January, 2019. The Court
2 specifically says, regarding issues surrounding the settlement agreement of Nalder and Lewis,
3 that the Court will deal with that at the January 23, 2019 hearing. The Offer of Judgment was
4 made on January 11, 2019. It was accepted, filed and judgment entered on January 22, 2019.
5 The Court then issued a minute order to stay the cases and vacate the January 23, 2019 hearing.
6 This Order was not reduced to a written, enforceable **order until February 11, 2019**. It was not
7 served on the parties until February 15, 2019.
8

9 10 **III. ISSUES PRESENTED**

11 Can this Court, or any Court, rule on an ex-parte motion denying the parties the opportunity to
12 be heard and void a judgment entered by the clerk, without having issued an order staying the
13 proceedings.
14

15 16 **IV. ARGUMENT**

17 Nalder served an Offer of Judgment on Lewis on January 11, 2019. This offer was accepted
18 and judgment was entered by the Court Clerk pursuant to NRCP 68 on January 22, 2019. The
19 only written order staying anything in these consolidated cases was not signed until February 11,
20 2019 and it was thereafter served on February 15, 2019. The Court's ex-parte ruling on February
21 14, 2019, that the judgment was void because the case was stayed at the time judgment was
22 entered is clearly erroneous and void. This type of error allows for relief pursuant to NRCP 60.
23
24 **Until a written order is entered, the case could not have been stayed.** The Nevada Supreme
25 Court has stated, "Consequently, we hold that dispositional court orders that are not
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1 administrative in nature, but deal with the procedural posture or merits of the underlying
2 controversy, **must be written, signed, and filed before they become effective.** *State, Div. Child*
3 *Fam. Servs. v. Dist. Ct.*, 120 Nev. 445, 92 P.3d 1239 (Nev. 2004). The reasons for that are many.
4 “Prior to the entry of a final judgment, the district court remains free to reconsider and issue a
5 written judgment different from its oral pronouncement.” *Rust v. Clark County School Dist.*, 747
6 P. 2d 1380 - Nev: Supreme Court 1987 *citing Tener v. Babcock*, 97 Nev. 369, 632 P.2d 1140
7 (1981); *Lagrange Constr. v. Del E. Webb Corp.*, 83 Nev. 524, 435 P.2d 515 (1967); See also *Rae*
8 *v. All American Life & Cas. Co.*, 95 Nev. 920, 605 P.2d 196 (1979).

12 Even if the case was stayed, which it clearly was not, the parties can still settle and resolve the
13 case during a stay. In fact, third party plaintiff Lewis and third party Defendant Tindall resolved
14 and dismissed their claims during this same time frame. The case, *Westside Chtr. Serv. v. Gray*
15 *Line Tours*, 99 Nev. 456 (Nev. 1983), which has been cited by UAIC as authority for interfering
16 with the parties settlement of the claims, is totally inapplicable to this situation. That case
17 involved administrative action while a prior written judgment had been entered by a reviewing
18 court and that judgment was on appeal to the Nevada Supreme Court.

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V. CONCLUSION

The Court must vacate its order and reinstate the judgment reached by the parties, or in the alternative, vacate its order, allow for briefing and set a hearing to provide an opportunity to be heard. The Court should also give appropriate relief from the orders signed 2/11/19.

DATED this 4th day of April , 2019.



THOMAS F. CHRISTENSEN, ESQ.

Nevada Bar 2326

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Attorney for third party plaintiff Gary Lewis

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC and that on this 4th day of April, 2019, I served a copy of the foregoing **MOTION FOR RECONSIDERATION, MOTION FOR HEARING AND MOTION FOR RELIEF FROM ORDER AND REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDERS SIGNED 2/11/19, MOTION FOR HEARING AND MOTION FOR RELIEF FROM ORDERS** as follows:

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

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

E. BREEN ARNTZ, ESQ.
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07A549111

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

April 10, 2019

07A549111 James Nalder
 vs
 Gary Lewis

April 10, 2019 08:30 AM All Pending Motions

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Skinner, Linda

RECORDER: Calvillo, Angie

REPORTER:

PARTIES PRESENT:

David Allen Stephens

Attorney for Plaintiff

Matthew J Douglas

**Attorney for Intervenor, Third Party
Defendant**

JOURNAL ENTRIES

THIRD PARTY PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDERS SIGNED 2/11/19,
MOTION FOR HEARING AND MOTION FOR RELIEF FROM ORDERS...THIRD PARTY PLAINTIFF'S
MOTION FOR RECONSIDERATION, MOTION FOR HEARING AND MOTION FOR RELIEF FROM
ORDER...PLAINTIFF'S JOINDER IN MOTION FOR RECONSIDERATION OF ORDERS SIGNED
2/11/12019, MOTION FOR HEARING, AND MOTION FOR RELIEF FROM ORDERS

Also present, Thomas Christensen, representing Third Party Plaintiff.

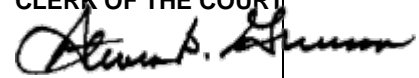
Arguments by Mr. Christensen in support of his position. Statements by Mr. Stephens and Mr. Douglas.
Following, COURT ORDERED, all Motions are DENIED. Colloquy as to the Supreme Court decision.
Following, COURT ORDERED, status check date of 10/23 is MOVED UP to the end of August.

8/28/19 10:30 AM STATUS CHECK: SUPREME COURT DECISION

34

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TRAN



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER,
Plaintiff,

CASE NOS. 07A549111
A-18-772220-C
DEPT. XX

vs.

GARY LEWIS,
Defendant.

BEFORE THE HONORABLE ERIC JOHNSON,
DISTRICT COURT JUDGE

WEDNESDAY, APRIL 10, 2019

**TRANSCRIPT OF HEARING
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff: DAVID ALLEN STEPHENS, ESQ.

For the Defendant: THOMAS F. CHRISTENSEN, ESQ.

For the Intervenor: MATTHEW J. DOUGLAS, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1 Las Vegas, Nevada, Wednesday, April 10, 2019

2
3 [Case called at 8:58 a.m.]

4 THE COURT: All right. James Nalder versus Gary Lewis,
5 Case Number 07 -- oh, excuse me -- A5 -- thrown off here. A549111.
6 Counsel, please note your appearances for the record.

7 MR. CHRISTENSEN: Tom Christensen for Third Party
8 Plaintiff, Gary Lewis.

9 MR. STEPHENS: David Stephens, Plaintiff James Nalder.

10 THE COURT: Okay.

11 MR. DOUGLAS: Matthew Douglas for Defendant, United
12 Auto.

13 THE COURT: All right. We're here on Third Party Plaintiff's
14 Motion for Reconsideration of Orders Signed on 2/11/19. And Third
15 Party Plaintiff's Motion for Reconsideration, Motion for Hearing, Motion
16 for Relief from Order. And Plaintiff's Joinder.

17 So I got in the motions, got in the Oppositions, got the Reply.
18 Let's see, this is essentially -- looks like your ballgame, Mr. Christensen,
19 I mean, do you -- what else would you like to add to the record at this
20 point in time?

21 MR. CHRISTENSEN: I don't have anything thing to add. I
22 would be interested in responding to any questions that the Court might
23 have. I think we fully briefed the issues.

24 THE COURT: No, I -- I mean, the paperwork is very good,
25 both sides, with substantial exhibits that I do appreciate. But -- I mean, I

1 don't have any particular questions, Mr. Christensen. Let me tell you
2 where I'm sort of looking at in terms of the motions. As -- you know, my
3 general perspective is I Stayed the proceedings as it related to the
4 Motions for Summary Judgment, Motion to Dismiss, and as to -- and
5 made clear that we weren't going to move forward with any separate
6 settlement, pending either -- the end of the Stay in the case.

7 When I've learned that you had moved through Rule 68 to --
8 and had gone through the Clerk's office or you -- not you -- I guess the --
9 I apologize. Although the lady's motions and everything keep getting
10 filed in this, Mr. Christensen, it's often hard to tell who you actually
11 represent on this.

12 But I mean, when I found that through 68, there had been a
13 judgment entered, essentially I acted, both I think appropriately under
14 60(b), but also my ability to ensure that substantial justice is in the case
15 to essentially go back and void, I guess you'd say, the Clerk's entry of
16 the judgment and put us back to where we were at the time that we had
17 the last hearing on this matter. So I'm generally comfortable with that at
18 this point in time.

19 I have gone back, I've looked at the -- I know you feel that we
20 shouldn't be holding things up for the Supreme Court to consider the
21 certified question. I do think it is relevant in terms of how this Court
22 would potentially resolve a number of the issues that I anticipate coming
23 up in this case, so I don't have an issue with that.

24 I guess the biggest concern I have is how long it's been up at
25 the Supreme Court. And I went back and looked and apparently the

1 question was certified and accepted up there January of 2018. So I
2 have some concerns about how long the Supreme Court may take, so I
3 do think it is important to move the litigation on below here. So I am
4 looking at the question of how long I want to let the Stay stay in place.

5 But at the moment I'm generally comfortable with what I've
6 done so far. So that's where I'm starting out today so I'll be glad to hear
7 further from you.

8 MR. CHRISTENSEN: And that -- even though the action that
9 you took, setting aside the settlement between the real parties in interest
10 was done ex parte, you're okay with that?

11 THE COURT: I'm generally okay with that because what I
12 wanted to do was to put us back. I think I was fairly clear because the
13 stipulation for a judgment was presented to me and I said that I wasn't
14 going to sign it for specific reasons that I had Stayed consideration of
15 issues here pending the Supreme Court's decision relating to the
16 certified question.

17 And so yeah, I essentially acted, in my opinion, to put us back
18 to where I thought I clearly had indicated I wanted us to be.

19 MR. CHRISTENSEN: Okay. Well then the only other -- well,
20 you know, we respectfully disagree with that --

21 THE COURT: Yeah. And Mr. Christensen, I've read --

22 MR. CHRISTENSEN: And --

23 THE COURT: -- your paperwork and I have no issues -- I
24 mean, your points were well taken, don't get me wrong. I mean, we got
25 to -- but I feel very comfortable in terms of what I've done and so that's

1 where I'm leaning at this point in time, at the end of this today.

2 MR. CHRISTENSEN: Right. And I understand that and I
3 accept that. I just want to make it clear on the record that that is directly
4 beneficial to UAIC because any delays here is what they are interested
5 in doing, preventing you from doing your judicial duties in ruling on this
6 issue. And from my perspective with -- regarding to representing Gary
7 Lewis as the Third Party Plaintiff against UAIC, all he wants is a ruling
8 one way or the other --

9 THE COURT: And I appreciate that.

10 MR. CHRISTENSEN: -- as opposed to a, I'm not going to rule
11 because he believes this is the proper court to make those rulings, not
12 the Supreme Court. Nor does he believe that the Supreme Court is
13 ruling on this issue that's before this court. So by delaying it, you're just
14 supporting UAIC's oppression against their insured, Gary Lewis.

15 But -- and having said that, at the very least -- so I'm not going
16 to argue against going forward, although I don't agree with it, but --

17 THE COURT: No, I appreciate that.

18 MR. CHRISTENSEN: -- that's fine. But at the very least then,
19 UAIC -- this action by UAIC, setting aside the offer of judgment
20 settlement that occurred here is the same as rejecting the offer of
21 judgment. And so for two reasons, UAIC should be held liable -- if this
22 all plays out as I expect it will and that is Nalder will end up with a
23 judgment against Gary Lewis -- enforceable judgment against Gary
24 Lewis, more than the amount that they could have had with regard to the
25 settlement and more than they could have had with regard to the settle --

1 the previous settlement the Court has refused to sign at the request of
2 UAIC, again.

3 And so all of those fees that are incurred on both sides of this
4 litigation, that's Nalder and Lewis, are going to be UAIC's responsibility,
5 both through the offer of judgment process, from the offer of judgment
6 that Nalder has given, and also because of the improper intervention,
7 which, you know, it's now a Writ --

8 THE COURT: No, I --

9 MR. CHRISTENSEN: -- and the Supreme Court has
10 requested a response from UAIC.

11 THE COURT: Nope, I saw that.

12 MR. CHRISTENSEN: And so when that comes down, as I
13 expect it will in our favor and UAIC will no longer be intervening and their
14 intervention will have been improper, under the intervention statute,
15 they're responsible for all the fees that they cost.

16 THE COURT: And I think you've got a very -- I mean --

17 MR. CHRISTENSEN: Okay.

18 THE COURT: -- Mr. Christensen, I think you got a very -- I
19 mean --

20 MR. CHRISTENSEN: That's okay.

21 THE COURT: -- I'll be frank, you know, I think UAIC was
22 idiotic in not just simply paying -- you know, doing what they should have
23 done 11 years ago. It certainly would have been much cheaper for
24 UAIC 11 years ago than what it's looking at now.

25 MR. CHRISTENSEN: Okay.

1 THE COURT: No, I think you've got --

2 MR. CHRISTENSEN: Okay.

3 THE COURT: -- very good -- I'm not ruling on that today.

4 MR. CHRISTENSEN: Okay.

5 THE COURT: Obviously that's not here today. But I think you
6 got a -- you know, if it plays out like you say we'll see what happens with
7 the Writ. I saw the report and I -- and we've dis -- I know you don't think
8 I was as clear as I should have been in reference to that but I mean, we
9 did discuss it at the last hearing. And I see your point and I -- on a
10 surface position I think, you know, you have a very good point.

11 I did, as I said, consider this to be a materially different
12 situation than those cases which, you know, precluded intervention after
13 entry of the judgment in view of the issues surrounding the continued
14 validity of the judgment, but -- you know -- so that's why I reached my
15 decision in terms of the intervention.

16 You know, if I'm wrong on that then that sets a precedent for
17 everyone and I'll be the first one, Mr. Christensen, to admit that I'm
18 wrong. And you know I can be wrong as you know -- and I -- as we've
19 talked about the Kansas Supreme Court liquor by the drink decision,
20 which you got me the subsequent case law on. I don't know if you
21 remember that about four years ago. Either you -- you may not --

22 MR. CHRISTENSEN: I'm old.

23 THE COURT: You're a -- but we had some case where
24 something came up where we were discussing the Kansas liquor by the
25 drink law versus the constitutional amendment and I remember the

1 statute creating a redefinition of saloon and -- in terms of discussing the
2 argument and then you went back and I think right before you went on
3 your mission sent me a case law where the Supreme Court had struck
4 down the statute. So anyway.

5 No, in any case what I'm saying is I see where you're coming
6 from and if -- you know, I think, you know, the insurance company -- I
7 think this is litigation, I'm going to follow it. If you get -- if the intervention
8 comes back wrong, I'll be the first to admit it and we'll move quick -- I
9 assure you I will move quickly in terms of dealing with it at that point in
10 time.

11 MR. CHRISTENSEN: Thank you, Your Honor.

12 THE COURT: All right. Do you want to add anything --

13 MR. STEPHENS: I just want to factually --

14 THE COURT: -- since you joined?

15 MR. STEPHENS: Yeah, I do. Factually I served an offer to
16 accept judgment on Mr. Arntz, who represents Mr. Lewis and that's the
17 offer to accept -- just factually so it's clear who did that part but --

18 THE COURT: That was my understanding.

19 MR. STEPHENS: Right.

20 THE COURT: I mean, the -- that's --

21 MR. STEPHENS: Yes.

22 THE COURT: -- probably a quarter of the insurance
23 company's response to the motion.

24 MR. STEPHENS: Right. Anyway, I have nothing to add
25 beyond that. I just wanted to make that representation.

1 MR. DOUGLAS: Just trying to make a record, Your Honor.

2 THE COURT: Okay. No, no, I mean, that's what everybody's
3 doing. So I have no issue with that.

4 Do you want to add anything? I'm -- you're essentially winning
5 at this point in time --

6 MR. DOUGLAS: Yeah.

7 THE COURT: -- but if you want to --

8 MR. DOUGLAS: Well which motion --

9 THE COURT: If you want to put anything on the record I'll be
10 glad to --

11 MR. DOUGLAS: No, I would just obviously say I -- you know,
12 all the little exchange you and Mr. Christensen, I mean, all of those
13 issues are ifs, that's why --

14 THE COURT: I'm not ruling on them today.

15 MR. DOUGLAS: Right.

16 THE COURT: I think he's got a -- I think he has good points
17 that I'm ruling against today, but I mean, I'm not rule -- I think he's got -- I
18 mean, I think, you know, you all -- you set yourself up in this mess a long
19 time ago and, you know, we'll see how it plays out. I'm not -- so I think
20 you got -- that's why I did let you intervene, I think you have your own
21 good points in this and we'll see how that's segregated from the other
22 cases, we'll see how it plays out but.

23 MR. DOUGLAS: Thank you, Your Honor. That's all I wanted
24 to make clear. I mean, both sides, that's why we have wise minds of the
25 Supreme Court that we have.

1 THE COURT: Well, we'll see. We'll see if Mr. Christensen
2 agrees with their wise minds or I agree with them. We'll see at the end.

3 MR. DOUGLAS: The only thing I would say, Your Honor, I
4 don't know -- that was -- I think we were mostly just discussing the
5 Motion to Reconsider your February 14th Order. There was also a
6 second Motion for Reconsideration filed. I -- so I'm assuming where
7 the -- so we're all clear for the order --

8 MR. CHRISTENSEN: Yes.

9 MR. DOUGLAS: -- as we stand right now, Your Honor is
10 denying Third Party Plaintiffs Motion to Reconsider your February 14th,
11 2019 Order, is that correct?

12 THE COURT: Right.

13 MR. DOUGLAS: And then there was a second motion filed
14 which wanted you to reconsider two orders signed February 11th, so I
15 didn't know where you were on that?

16 THE COURT: I was -- essentially I'm not reconsidering, so
17 I'm --

18 MR. DOUGLAS: Okay.

19 THE COURT: -- denying that.

20 MR. DOUGLAS: All right. So we're denying both motions for
21 Reconsideration today?

22 THE COURT: Right.

23 MR. CHRISTENSEN: Just one --

24 THE COURT: You -- sure.

25 MR. CHRISTENSEN: -- housekeeping matter then because

1 there was one aspect of the February 11th -- is that what we -- February
2 11th?

3 MR. DOUGLAS: Yeah --

4 THE COURT: Okay.

5 MR. CHRISTENSEN: One aspect of that and that's the denial
6 of the -- of UAIC's Motion to Set Aside the Judgment in this case, the --
7 in the 2009 case. And basically they've admitted that they failed to
8 include that in the order and that we should submit a separate order for
9 that. And so I'll submit that but --

10 MR. DOUGLAS: That's fine with me. That's what I was going
11 to say, Your Honor, I mean, the way it worked when I -- since they had
12 prevailed on that particular motion I'd assumed they had done an order.
13 I admitted from the joint -- the order that we hope would be joint. But if
14 you want to propose something and send it over I think we can just take
15 care of it --

16 MR. CHRISTENSEN: Okay.

17 MR. DOUGLAS: -- by subsequent order.

18 THE COURT: One -- you'll do that --

19 MR. CHRISTENSEN: Okay.

20 THE COURT: -- Mr. Christensen?

21 MR. CHRISTENSEN: Okay.

22 MR. DOUGLAS: Okay.

23 THE COURT: Okay.

24 MR. CHRISTENSEN: Thank you.

25 THE COURT: All right. Let me -- I -- do I have a status check

1 on the Stay set yet? Anything?

2 MR. STEPHENS: I don't believe so, Your Honor.

3 MR. CHRISTENSEN: Well --

4 THE CLERK: You have a status check --

5 MR. CHRISTENSEN: -- way in October.

6 MR. STEPHENS: Yes.

7 THE CLERK: -- on the Supreme Court decision.

8 THE COURT: On the Supreme Court decision.

9 MR. DOUGLAS: I thought we set one in October.

10 THE CLERK: It's October 23rd.

11 MR. CHRISTENSEN: Yeah.

12 THE COURT: Yeah, I mean, -- like I said I went back and
13 looked at when this hit the Supreme Court. When did the -- when did
14 you all finish your briefing to the --

15 MR. DOUGLAS: February --

16 THE COURT: -- Supreme Court?

17 MR. DOUGLAS: January.

18 THE COURT: Of this year?

19 MR. DOUGLAS: Yes.

20 MR. CHRISTENSEN: January.

21 MR. DOUGLAS: There was --

22 THE COURT: I was going to say, the -- like I said, I looked
23 and this thing was certified January of 2018. So.

24 MR. DOUGLAS: There was a -- there were a number of
25 delays and then there was some additional briefing done because of the

1 new case that came down in December. So I think we're now fully
2 briefed. It's been fully briefed for about two months.

3 THE COURT: The Supreme Court, that's -- well let's give
4 them nine months to do something with it. I looked at other cases with
5 certified questions and generally they got them out within a year. That's
6 why I'm sort of surprised that there wasn't something here. So let's
7 move this up to the end -- something in the end of August and we'll take
8 a -- we'll talk about whether or not we think there's going to be a
9 decision soon or --

10 MR. DOUGLAS: Okay.

11 THE COURT: -- what will happen then.

12 So I don't want --

13 MR. CHRISTENSEN: Well and --

14 THE COURT: I don't want this to go on forever either.

15 MR. CHRISTENSEN: Well and obviously if they rule on the
16 Writs --

17 THE COURT: If they rule --

18 MR. CHRISTENSEN: -- then we'll be back here for --

19 THE COURT: The Writ -- if you -- contact my office and we'll
20 move forward -- we'll consider it -- if they rule on the Writ, come -- you
21 know, I'll know. We'll be setting a hearing and we can discuss the issue
22 of the Stay at that hearing.

23 MR. CHRISTENSEN: Right.

24 THE COURT: But for right now, I don't want to let this just --

25 MR. CHRISTENSEN: Right.

1 THE COURT: -- devolve into nothingness --

2 MR. DOUGLAS: Sure.

3 THE COURT: -- because I -- it is an old case as you point --
4 you got your client's interest and your client, obviously this has been an
5 albatross around his neck for a long, long time. And as I like to tell the
6 juries, there is no part of government that will touch on a more personal
7 basis than the justice department. So it's been touched for a long, long
8 time. Not the justice department, the -- you know, the third branch
9 judicial system. So he's been touched a long, long time. So I don't want
10 this to fall.

11 So we'll set it for end of August. If we get a decision on the
12 Writ, we'll take a look at it -- we'll have another hearing at that point and
13 take a look at the Stay at that point in time. All right?

14 MR. STEPHENS: Thank you, Your Honor.

15 MR. CHRISTENSEN: Thank you, Your Honor.

16 THE COURT: All right.

17 THE CLERK: August 28th at 10:30. And that's -- will be the
18 Supreme Court decision --

19 THE COURT: Right.

20 THE CLERK: Okay.

21 THE COURT: That's -- well yeah, it's --

22 MR. DOUGLAS: Thank you.

23 THE COURT: -- to see the status of the Supreme Court
24 decision.

25 MR. DOUGLAS: Should we put that in the order for today or

1 will you issue an order?

2 THE COURT: Well we'll put it in the minute order. I mean, I
3 don't care if you put it in the order or not.

4 MR. DOUGLAS: Thank you, Your Honor.

5 MR. CHRISTENSEN: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 [Proceeding concluded at 9:16 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24

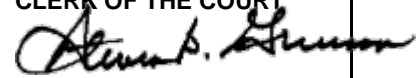
25



Brittany Mangelson
Independent Transcriber

35

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Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: ~~A-549111~~ A-18-772220-C

DEPT NO.: ~~XXIX~~ Department 29

COMPLAINT

Date: n/a
Time: n/a

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

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

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

3. That the true names or capacities, whether individual, corporate, associate or
otherwise, of Defendants names as DOES 1 through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this
9 action.

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

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

- 20 A. In failing to keep Defendant's vehicle under proper control;
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;
22 C. In failing to keep a proper lookout for plaintiffs
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of
9 Court will be requested to include said additional damages when the same have been fully
10 determined.

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

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer
28 on February 5, 2015. This payment extends any statute of limitation.

1 15. After reaching the age of majority an amended judgment was entered in Cheyenne
2 Nalder's name.

3 16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment
4 against Gary Lewis including the full damages assessed in the original judgment plus interest and
5 minus the one payment made.

6 17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of
7 limitations on the judgments expire.

8 18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to
9 prosecute this action, and is entitled to a reasonable attorney's fee.

10 CLAIM FOR RELIEF;

11 1. General damages in an amount in excess of \$10,000.00;

12 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently
14 unascertainable amount;

15 3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of
16 Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's
17 earning capacity in a presently unascertainable amount;

18 4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of
19 \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20 5. A declaration that the statute of limitations on the judgment is still tolled as a result of
21 the Defendant's continued absence from the state.

22 4. Costs of this suit;

23 5. Attorney's fees; and

24 ///

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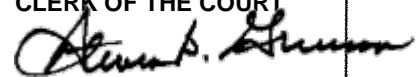
STEPHENS GOURLEY & BYWATER

/s David A. Stephens

David A. Stephens, Esq.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

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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@sdblawnfirm.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.

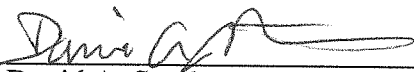
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.


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
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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.)	

JUDGMENT

Date: n/a
Time: n/a

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

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

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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

DISTRICT JUDGE

8

9 Submitted by:

10 STEPHENS & BYWATER, P.C.

11

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

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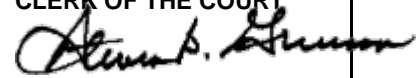
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Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE

Date: 9/19/2018
Time: Chambers

Cheyenne Nalder, through her attorney, David A. Stephens, Esq., opposes the Motion to Intervene filed by United Automobile Insurance Company, as follows:

POINTS AND AUTHORITIES

I. INTRODUCTION

Counsel for Plaintiff apologizes for the lateness in filing of this opposition to the motion to intervene. Counsel first learned of this motion to intervene on September 10, 2018. Counsel then contacted Matthew J. Douglas, Esq., by email requesting an extension of time to respond to the motion in that he had never received the motion to intervene.¹

¹ Counsel for Plaintiff does not mean to imply, by this statement, that counsel for UAIC did not serve the motion properly. He can only represent that he did not receive the motion. He does not know the reason why it was not received. It may have been because he was not yet registered for eservice when the motion was filed.

1 Mr. Douglas responded by stating that the motion to intervene was eserved on August
2 16, 2018 on Counsel's email.² Counsel for Plaintiff indicated that it had not been received.
3 Mr. Douglas then indicated that he needed to know the grounds for opposing the motion
4 before he could agree to an extension. Thus, it became easier to do the research and file an
5 opposition than do the research on the grounds for the opposition than to get an extension of
6 time to file an opposition. Thus, this opposition is being filed late.

7 Additionally, the motion to intervene was never served on Mr. Lewis or his attorneys,
8 which would be required in that he is a party and has not been defaulted. (See proof of service
9 on Motion to Intervene).

10 II. FACTS

11 On the 8th day of July, 2007, Defendant, Gary Lewis, ("Lewis"), ran over Cheyenne
12 Nalder, ("Cheyenne"), while he was driving his vehicle on private property located in Lincoln
13 County, Nevada.

14 Cheyenne was a minor at the time of the accident.

15 The negligence of Gary Lewis was the cause of the accident.

16 Cheyenne suffered serious injuries due to this accident.

17 On June 3, 2008, Cheyenne, with her father as her guardian ad litem, obtained a default
18 judgment against Lewis for \$3,500,00.00.

19 At the time the judgment was entered Cheyenne was represented by Christensen Law
20 Offices.³

21 None of that judgment has ever been paid, with the exception of \$15,000.00, which was
22 later paid by United Auto Insurance Company, ("UAIC"), as a result of a suit filed against
23 UAIC, which was alleged to be the insurer for Lewis at the time of the accident, for bad faith,

24
25 ² Mr. Stephens is not sure when he set up eservice on him in this matter, but he believes that
it was in early September, 2018, which was after the date the motion was filed and eserved.

26
27 ³ It is counsel's understanding that Cheyenne is represented by Tom Christensen, Esq., and
Dennis Prince, Esq., in the litigation and pending appeals involving UAIC.

1 failure to defend, and other claims for relief.

2 Out of an abundance of caution, upon learning that UAIC was maintaining that her
3 judgment against Lewis had expired, Cheyenne filed this suit through Stephens & Bywater,
4 P.C.

5 By filing this suit, Cheyenne is not seeking a double recovery, which would be
6 impossible because she has never recovered anything, except the \$15,000.00 payment from
7 UAIC. Cheyenne will credit that payment against any judgment she receives in this suit.

8 **III. UAIC SHOULD NOT BE ALLOWED TO INTERVENE IN THIS MATTER**

9 NRCP 24 states:

10 **(a) Intervention of Right.** Upon timely application anyone shall be permitted
11 to intervene in an action: (1) when a statute confers an unconditional right to
12 intervene; or (2) when the applicant claims an interest relating to the property or
13 transaction which is the subject of the action and the applicant is so situated that the
14 disposition of the action may as a practical matter impair or impede the applicant's
15 ability to protect that interest, unless the applicant's interest is adequately
16 represented by existing parties.

17 **(b) Permissive Intervention.** Upon timely application anyone may be
18 permitted to intervene in an action: (1) when a statute confers a conditional right to
19 intervene; or (2) when an applicant's claim or defense and the main action have a
20 question of law or fact in common. In exercising its discretion the court shall
21 consider whether the intervention will unduly delay or prejudice the
22 adjudication of the rights of the original parties.

23 **(c) Procedure.** A person desiring to intervene shall serve a motion to
24 intervene upon the parties as provided in Rule 5. The motion shall state the grounds
25 therefor and shall be accompanied by a pleading setting forth the claim or defense for
26 which intervention is sought. The same procedure shall be followed when a statute
27

1 gives a right to intervene.

2 UAIC does not argue for permissive intervention under NRCP 24(b), so the opposition will
3 focus on NRCP 24(a).

4 **A. UAIC HAS NO INTEREST TO PROTECT**

5 UAIC does not point to any statute that gives it an unconditional right to intervene.

6 Thus, to intervene, UAIC must claim “an interest relating to the property or transaction which
7 is the subject of the action and the applicant is so situated that the disposition of the action may as a
8 practical matter impair or impede the applicant’s ability to protect that interest.” (NRCP 24(a)(2)).

9 What is the interest that UAIC seeks to protect? That interest is ill-defined, at best.

10 UAIC does not have a direct interest in the claims at issue. Neither it nor its employees were
11 involved in the accident. Thus, it has no direct liability for the accident.

12 It did not defend Lewis when Cheyenne initially filed suit against him in 2007 following the
13 accident. UAIC denied that Lewis was covered by a UAIC policy at the time of the accident. When
14 the US District Court found that there may have been coverage due to an ambiguity, UAIC still did
15 not move to reopen the case in order to attempt to set aside the default judgment Cheyenne obtained
16 against Lewis in 2008. It simply tendered the \$15,000.00 policy limits to Cheyenne. Having paid
17 Cheyenne the policy limits of the insurance policy which insured Lewis, UAIC has no risk under the
18 insurance policy itself.

19 What UAIC appears to be worried about is some contingent and unliquidated liability, based
20 on allegations of breach of the duty to defend or tort liability arising out of that same failure to defend
21 in the original suit filed in 2007. Those issues are being litigated in US District Court and the Ninth
22 Circuit. They are not plead in this matter. If UAIC is not willing to pay any judgment that might be
23 awarded in this matter, then UAIC has no interest to protect in this suit and it should not be allowed
24 to intervene. If intervention is allowed, then UAIC must consent to be liable for any judgment
25 ultimately entered in this action.

1 **B. ANY CLAIMED UAIC INTERESTS ARE ADEQUATELY REPRESENTED**

2 UAIC has misread or misconstrued the language of Exhibit H⁴, attached to the moving papers.
3 UAIC argues that in Exhibit H, Mr. Christensen prohibits UAIC from appearing in this matter.
4 However, that is not what Exhibit H states. In Exhibit H, Mr. Christensen advises Mr. Rogers that
5 Lewis does not want Mr. Rogers to take positions that are frivolous, not well supported, and might
6 result in increased damages against Mr. Lewis unless UAIC is willing to be responsible for those
7 increased damages and for any judgment ultimately entered against Mr. Lewis. This request makes
8 sense. Why should Lewis consent to carte blanche representation by UAIC if the only person
9 benefitting from the representation is UAIC, and UAIC's approach may cause greater harm to Lewis
10 if UAIC's position is found to be frivolous? If Lewis is an insured of UAIC, it must put his interests
11 equal to its own interests. There is no exhibit attached to the motion which explains why UAIC
12 representing Lewis benefits Lewis. If there was such a communication, Plaintiff believes that it would
13 have been attached to the motion to intervene. Apparently, rather than explaining to Lewis how the
14 UAIC representation could benefit him and getting consent to represent him, UAIC has decided to
15 just attempt to intervene.

16 **III. CHEYENNE IS RENEWING THE JUDGMENT IN THE ONLY WAY**
17 **THAT IS CURRENTLY AVAILABLE**

18 UAIC implies that there is some perfidy on the part of Cheyenne in filing this suit. However,
19 nothing could be further from the truth. Statutes of limitation wait for no man, or woman, or for that
20 matter appellate court decisions. Due to Cheyenne reaching the age of majority she has a risk that
21 certain statutes of limitation may expire. She has every right to file suit to protect the loss of a right
22 due to the running of any applicable statutes of limitation. She is not required to sit on her hands and
23

24 ⁴ While the privilege is not Cheyenne's to claim, this letter appears to be a confidential
25 communication between Tom Christensen, Esq., and Stephen Rogers, Esq., who were both
26 representing Mr. Lewis at the time the letter was written, discussing the best litigation strategy for Mr.
27 Lewis as to this lawsuit. Thus, it should be privileged from disclosure unless Mr. Lewis has
28 consented to such disclosure. See NRS 49.095.

1 patiently await for an appellate decision which may not be issued before statutes run.

2 In the alternative, Cheyenne is renewing her judgment in the only way that is currently
3 available to her an action on the judgment pursuant to *Mandlebaum v. Gregovich*, 50 P. 849, 24 Nev.
4 154 (Nev. 1897). This is the only avenue clearly available to renew because NRS 17.214, the
5 judgment renewal statute, allows for renewal “within 90 days before the date the judgment expires
6 by limitation.” The six-year statute of limitations on the judgment was tolled by three separate tolling
7 statutes and is still tolled today by NRS 11.300 because Mr. Lewis has been continually absent from
8 the State of Nevada and not capable of service of process in the state since at least 2010. Thus a
9 renewal under NRS 17.214 would be unnecessary, and even worse it could be invalid because it is
10 too early.

11 As Plaintiff understands it, the issue certified to the Nevada Supreme Court, and accepted by
12 them, is whether consequential damages based on a judgment that was not renewed are recoverable
13 against an insurance carrier. That issue is much more narrow than the issues in this case. One of the
14 issues plead in this case is whether the statute of limitation on the judgment was even running such
15 that she needed to renew the judgment. If the judgment did not have to be renewed because the six-
16 year statute was not running, or was tolled, then the issue certified to the Nevada Supreme Court is
17 actually moot because the judgment is still valid. At minimum that issue is not before the Nevada
18 Supreme Court.

19 IV. UAIC’S MOTION IS NOT TIMELY

20 It is difficult to see what interest UAIC has that needs protection in this lawsuit that is not
21 adequately represented by Lewis. Apparently, UAIC, at some point prior to March 14, 2017, (the
22 date UAIC filed to dismiss the *Nalder & Lewis v. UAIC* federal court lawsuit), came to the flawed
23 conclusion that the statute of limitations on the *Nalder* judgment against Lewis had expired.
24 UAIC did not attempt to test that hypothesis for the benefit of Lewis by filing a declaratory relief
25 action on his behalf or attempting to intervene to assert the statute of limitations as a defense on
26 Lewis’ behalf. UAIC instead filed a motion to dismiss the *Nalder & Lewis* federal lawsuit against
27

1 UAIC which had been pending for nearly eight years had two judgments entered, two appeals
2 argued and one certified question to the Nevada Supreme Court. Waiting to “protect” Lewis for
3 over a year is not timely.

4 For these reasons the motion to intervene must be denied.

5 Dated this 17th day of September, 2018

6
7
8 s/ David A Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2018, I served the following document: **PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

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

Matthew J. Douglas, Esq.
Atkin Winner & Sherrod
117 S. Rancho Drive
Las Vegas, NV 89102

☐ 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:

E. Breen Arntz, Esq.
5545 Mountain Vista, Suite E
Las Vegas, NV 89120
Attorney for Gary Lewis

☒ 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).

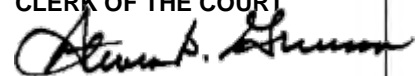
E. Breen Arntz, Esq., 702-446-8164

☐ 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

38

38



MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
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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 REPLY IN SUPPORT OF ITS
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 Reply in support of its Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached to its initial Motion, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this 10 day of SEPTEMBER, 2018.

ATKIN WINNER & SHERROD



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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
REPLY IN SUPPORT OF MOTION FOR INTERVENTION

I.

Response to Plaintiff's Fact Section

UAIC notes that it has set forth the factual background in regards to this matter in its initial motion and refers the Court to same. However, UAIC must also briefly respond to Plaintiff's fact section.

Plaintiff notes that the original judgment in this case was filed August 26, 2008. What Plaintiff fails to mention, however, is that, thereafter, Plaintiff failed to renew this 2008 judgment against Lewis pursuant to Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for action to execute on such a judgment would be six (6) years, unless renewed under N.R.S. 17.214. Accordingly, the date to renew said judgment would have been, by the latest, August 26, 2014. This was never done and, as such, **Plaintiff's judgment in this matter expired as a matter of law in 2014.** Accordingly, Plaintiff's *ex parte* attempts to amend this judgment without advising the Court of same was improper.

Additionally, Plaintiff agrees she filed suit against UAIC alleging bad faith for failure to defend Lewis, but fails to note that two United States District court judges found and, the Ninth Circuit for the U.S. Court of Appeals has affirmed, **that UAIC committed no bad faith in the handling of Plaintiff's claims against Lewis.** However, the Court also found, in late 2013, that UAIC had a duty to defend Lewis. Initially, in late 2013, there was no active need to defend Lewis as, this suit had gone to judgment and, the time to vacate this judgment under N.R.C.P. 60 had passed. Only after the completely opaque attempt to try an 'end around' the expiration of this judgment and, the jurisdiction of the Nevada Supreme Court and Ninth Circuit, by Plaintiff's amendment of the judgment here, did a 'new' controversy arise for which UAIC believes its duty to defend has again been triggered. Of course, as set forth in UAIC's initial Motion, its initial

1 attempt to retain counsel for Mr. Lewis to defend him and seek relief from this alleged ‘amended
 2 judgment’ has been thwarted by Plaintiff’s own counsel who claims he also represents Lewis
 3 and has attempted to forbid any action on his behalf.

4 Indeed, UAIC must note that Plaintiff’s counsel admits in his response that Mr.
 5 Christensen continues to represent his client on this original judgment and in the ongoing
 6 Appellate matters. Accordingly, for Plaintiff’s co-counsel in this case, Mr. Stephens, to allege he
 7 was merely seeking to amend the judgment for Cheyenne upon reaching majority, while ignoring
 8 Mr. Christensen’s continued representation of her and, apparently, the judgment-debtor, Mr.
 9 Lewis – as well as the ongoing appellate matters – stretches the bounds of reality. As will be set
 10 forth in detail below, we see an attempt of fraud upon the court which should not be
 11 countenanced.
 12

13 II.

14 ARGUMENT

15 It is clear from Plaintiff’s Opposition that it is late and, as such, this Court may disregard
 16 it and grant UAIC’s Motion. Alternatively, should this Court consider the merits of the
 17 Opposition it is also clear that Plaintiff does not dare dispute that UAIC has properly followed
 18 the procedure for intervention pursuant to NRCP 24(a)(2) nor, that UAIC does not have an
 19 interest which will negatively impacted should its intervention be denied as it is not adequately
 20 represented herein. Rather, the Plaintiff’s sole argument appears to be a technical one – that as
 21 judgment has been entered, UAIC can no longer intervene. However, UAIC will note that the
 22 cases cited by Plaintiff are distinguishable and, more importantly, what Plaintiff is attempting is
 23 a fraud upon the court which should overcome the normal prohibition against such an
 24 intervention. Accordingly, UAIC asks this Court to grant its Motion to intervene. Alternatively,
 25 that this Court may vacate or set aside the Amended Judgment on its own Motion.
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///

A. Plaintiff's Opposition is clearly late and, as such, should be stricken or disregarded.

As this Court knows, E.D.C.R. 2.20(e) requires any Opposition to be a Motion to be filed within 10 days of service. Here, as the present Motion was filed and served August 16, 2018, allowing 3 days for mailing, the Opposition was due no later than September 4, 2018. As the present Opposition was filed on September 14, 2018 it is technically late and this Court may disregard it and grant UAIC's Motion.

E.D.C.R. 2.20(e) states, as follows:

(e) Within 10 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of nonopposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied. **Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.** (emphasis added).

As this Court can see, Plaintiff's Opposition is clearly late pursuant to rule. Moreover, Plaintiff, while alleging she did not receive the Motion, makes no argument that it was not properly served. As such, this Court can exercise its discretion and choose to disregard this Opposition.

Given the lateness of the Opposition and lack of valid excuse justifying same, UAIC asks this Court to disregard the late Opposition and instead construe the failure to timely file an Opposition as an admission the Motion is meritorious and grant same.

B. Alternatively, Plaintiff's Opposition that UAIC is not Entitled to Intervene is Based on Distinguishable Case Law and, in any event, this Court should Exercise its Equitable Authority and Allow said Intervention Based upon Fraud Upon the Court.

For her Opposition, Plaintiff essentially makes one argument – that as this case involves a recently amended judgment which Plaintiff argues is “final” and, thus, UAIC is “too late” to intervene. However, some of the cases cited are distinguishable and, additionally, UAIC argues this involves a ‘fraud upon the court’ and, as such, this Court may exercise its discretion and allow this Intervention or, vacate the Amended Judgment on the Court's own Motion.

1 First, Plaintiff cites to the case of *SFPP, LP v District Court*, 123 Nev. 608 (2007) for the
2 proposition that, generally, a court loses jurisdiction of a case after entry of a final judgment.
3 However, as Plaintiff's own brief notes, the Court in *SFPP* clearly noted an exception to this rule
4 when a party seeks "to alter, set aside, or vacate its judgment in conformity with the Nevada
5 Rules of Civil Procedure." *Id.* Here, UAIC has sought this intervention so as to file just such a
6 Motion, under NRCP 60, and seek relief from a final judgment. *Attached to UAIC's Initial*
7 *Motion, as Exhibit "I", is a copy of UAIC's proposed responsive pleading to this action, a*
8 *Motion for Relief from the Judgment pursuant to N.R.C.P. 60.* As UAIC seeks a Motion for relief
9 from judgment under Rule 60, it falls into the exception outlined by the Court in *SPFF* and,
10 accordingly, that case serves as no bar to UAIC's Motion.

12 Similarly, Plaintiff relies upon *Lee v GNLV Corp.*, 116 Nev. 424 (2000), for the general
13 proposition that a final judgment is one that disposes of all the issues in this case. In so ruling,
14 the court in *Lee* was explaining that the Respondent's motion to dismiss the appeal, which the
15 Appellant therein had filed on the judgment, because a post-judgment motion (regarding costs
16 was still pending) was not well taken because the post-judgment proceeding on fees did delay
17 enforcement of the judgment. Accordingly, the rule set forth in *Lee* only concerns the
18 appealability of a final order has absolutely nothing to do with the separate concerns of a Rule 60
19 Motion for Relief from judgment. As such, like the *SPFF* case discussion above, the present
20 matter is distinguishable because UAIC seeks to intervene to file a timely and good faith Motion,
21 under NRCP 60, seeking relief from a final judgment. As such, the *Lee* case also serves as no bar
22 to Plaintiff's Motion.

25 Finally, Plaintiff relies on *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993), for its main
26 argument that NRS 12.130 does not permit entry intervention subsequent to entry of a final
27 judgment. First, UAIC would like to point out that this case is distinguishable from the
28 standpoint that *Lopez* dealt with a situation where an insurer was seeking to intervene in a case

filed by its insured against an alleged tortfeasor and, not as here, where **UAIC is seeking to intervene to protect its insured from a judgment on a suit filed by a claimant.** As this Court is likely aware, the case of *Allstate Ins. Co. v Pietrosh*, 454 P.2d 106 (1969), provides generally that an insurer is bound by judgments in favor of its insured against a tortfeasor, when it fails to intervene, for purposes of any Underinsured Motorist claim made by its insured. Accordingly, the Court in *Lopez* was dealing with a completely different situation than the case at bar in that, in *Lopez*, the insurer was seeking intervention after judgment to potentially alleviate its Underinsured motorist obligations on a judgment *in favor of its insured and against a tortfeasor where it had an affirmative obligation to intervene before judgment to do so.*

Quite simply, that is not the situation here. UAIC *not Plaintiff's insurer* and, more importantly, *UAIC had no such opportunity to intervene prior to entry of this 'amended judgment.'* As discussed in UAIC's initial Motion, Plaintiff failed to renew the original, 2008, judgment in this case pursuant to Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for action to execute on such a judgment would be six (6) years, unless renewed under N.R.S. 17.214. Upon realizing the judgment had never been timely renewed, UAIC filed a Motion to Dismiss the Appeal for Lack of Standing with the Ninth Circuit (in the sister litigation on appeal, which is also set forth in UAIC's initial Motion) on March 14, 2017. Thereafter, on February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified question and ordered Appellants to file their Opening brief within 30 days, or by March 26, 2018. *A copy of the Order accepting the second certified question was attached as Exhibit 'B' to UAIC's initial Motion.* In accepting the certified question, the Nevada Supreme Court rephrased the question as follows:

In an action against an insurer for breach of the duty to defend its insured, can the plaintiff continue to seek consequential damages in the amount of a default judgment obtained against the insured when the judgment against the insured was not renewed and the time for doing so expired while the action against the insurer was pending?

On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC has yet to file its Response Brief and, accordingly, the above-quoted question and, issue, remains pending before the Nevada Supreme Court. Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on March 22, 2018 seeking to "amend" the 2008 expired judgment to be in the name of Cheyenne Nalder individually. *A copy of the Ex Parte Motion is attached to UAIC's initial Motion as Exhibit 'C.'* Thereafter, this Court, obviously not having been informed of the above-noted Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of entry on May 18, 2018. *A copy of the filed Amended Judgment is attached to UAIC's initial Motion as Exhibit 'D.'* Upon learning of this "amended judgment" and "new" action (the sister case A-18-772220-C), on July 19, 2018¹, and, given the prior United States District Court's ruling that Gary Lewis is an insured under an implied UAIC policy for the loss belying these judgments, UAIC immediately sought to engage counsel to appear on Lewis' behalf in the present action. *A copy of the Judgment of the U.S. District Court finding coverage and implying an insurance policy is attached to UAIC's initial Motion as Exhibit 'G.'* Following retained defense Counsel's attempts to communicate with Mr. Lewis to defend him in this action and, potentially, vacate this improper amendment to an expired judgment – retained defense counsel was sent a letter by Tommy Christensen, Esq. – the other Counsel for Plaintiff judgment-creditor herein and in the above-referenced appeal – stating in no uncertain terms that Counsel could not communicate with Mr. Lewis, nor appear and defend him in this action and take action to get relief from this amended judgment. *A copy of Tommy Christensen's letter of August 13, 2018 is attached to UAIC's initial Motion as Exhibit 'H.'*

¹ UAIC was only informed of this alleged 'amended judgment' when it received a 3 day notice of intent to take default against Gary Lewis in the 'new' action filed by Nalder on the amended judgment on July 19, 2018.

1 In this way, the case at bar is simply not analogous to *Lopez* as UAIC simply never had a
2 duty to intervene prior to this amended judgment, much less ability to do so. That is, the original
3 2008 judgment was expired and only by Plaintiff's improper attempt to file this 'amended
4 judgment' earlier this year did a need to intervene arise. Moreover, UAIC never even knew of
5 these surreptitious actions on the expired judgment until July 2018 and, thus, intervening prior to
6 that date would have been an impossibility. Accordingly, given the circumstances – Plaintiff
7 attempting to improperly amend an expired judgment while such issues were on appeal in
8 another matter – this Court should use its equitable and discretionary authority to allow such
9 intervention here even if technically 'after judgment.'

11 Additionally, UACI argues that the circumstances set forth above also offer additional
12 reasons to allow UAIC's intervention in this circumstance. That is, the clear conflict of interest
13 and attempts at perpetrating a fraud upon the court by Plaintiff. As noted above, Plaintiff is
14 represented by Mr. Christensen. Mr. Christensen also purports to be counsel for Lewis and has
15 informed UAIC's first retained counsel for Lewis that he may not appear and attempt to vacate
16 this judgment. Now, after learning of this and trying to intervene itself to protect Lewis and, its
17 own interests, UAIC is told by Plaintiff it cannot intervene. So, per Plaintiff, UAIC's retained
18 defense counsel cannot move to vacate this amended judgment and – UAIC cannot either. This is
19 clearly an attempt at a fraud upon the court solely to benefit Plaintiff and her counsel - and same
20 should not be tolerated.²

23 In *NC-DSH, Inc. v Garner*, 125 Nev. 647 (2009) the Nevada Supreme Court set forth the
24 definition of a fraud upon the Court in considering motion for relief from judgment under NRCP
25 60. In *NC-DSH, Inc.* the lawyer for a plaintiff's malpractice case forged settlement documents
26 and disappeared with the settlement funds. *Id.* In allowing the Plaintiff's Rule 60 motion to set
27 aside the dismissal (and settlement) the Court set forth the following definition for such a fraud,
28

as follows:

“The most widely accepted definition, which we adopt, holds that the concept embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases ... and relief should be denied in the absence of such conduct.

Id at 654.

In the case at bar it seems clear that Plaintiff’s counsel (Mr. Christensen) is attempting just such a fraud. That is, besides the original judgment being expired and, the effect of its expiration on appeal before both the Nevada Supreme Court and the U.S. Court of Appeals for the Ninth Circuit, Plaintiff still attempted this ‘amendment of judgment’. Moreover, Mr. Christensen (Plaintiff’s additional Counsel) represents **both the judgment-creditor and judgment-debtor**. Further, in his role as counsel for Plaintiff and Defendant, Mr. Christensen is attempting, as an officer of the court, to prevent UAIC from exercising its contractual and legal duty to defend Mr. Lewis and vacate this farce of a judgment by telling UAIC’s first retained counsel to not file the motion for relief from this judgment. Additionally, Plaintiff is now seeking to deny UAIC a chance to intervene. UAIC pleads this clearly a **fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases**. In other words, Mr. Christensen, Counsel for Plaintiff, is seeking on the one hand to enforce an invalid judgment and, with the other, prevent anyone from contesting it – **by representing both sides. This is the definition of a conflict of interest.** After all, Plaintiff’s is attempting to improperly “fix” an expired multi-million judgment, while at the same time Counsel for Plaintiff is also claiming to represent the judgment-debtor (Lewis) and arising retained counsel not to vacate the amended judgment. How could this possibly benefit Mr. Lewis? Is having a multi-million dollar judgment against him which had expired be resurrected by an improper amendment of the judgment to his benefit? Is preventing anyone

(Cont.)

² Indeed, perhaps this should be reported to the State bar.

1 from vacating or setting aside this improper amended judgment to his benefit? In short, it does
2 not – **it only benefits Plaintiff and her counsel**. UAIC argues this is clear fraud and collusive
3 conduct and, at the very least, the Court should therefore exercise its equitable power and allow
4 UAIC's intervention and, thereafter, hold an evidentiary hearing on this fraud.

5
6 Should this Court decline to allow UAIC to intervene, UAIC further pleads, in the
7 alternative, that this Court vacate the 2018 "amended judgment" on its own Motion given the
8 clear fraud that appears to have been perpetrated and is set forth herein. As this Court is aware,
9 District Courts have the inherent power to set aside judgments procured by extrinsic fraud. *Lauer*
10 *v District Court*, 62 Nev. 78, 140 P.2d 953. In the case at bar the potential extrinsic fraud
11 abounds. Besides the inherent conflict of interest of Plaintiff's Counsel, it also true that Plaintiff
12 failed to advise this court that 1) the 2008 judgment had expired and, 2) that the issue over the
13 effect of same expired judgment was before both the Nevada Supreme Court and the U.S. Court
14 of Appeals for the Ninth Circuit when it filed its *ex parte* Motion to amend this judgment.
15 Extrinsic fraud is usually found when conduct prevents a real trial on the issues or, prevents the
16 losing party from having a fair opportunity of presenting his/her defenses. *Murphy v Murphy*, 65
17 Nev. 264 (1948). The Court may vacate or set aside a judgment under Rule 60 on its own
18 Motion. *A-Mark Coin Co. v. Estate of Redfield*, 94 Nev. 495 (1978).

19
20
21 Given the fairly egregious attempt to prevent UAIC from vacating the improper attempt
22 to amend an expired judgment, when such judgment was procured without notice, while these
23 issues were on appeal and, with Plaintiff's counsel representing both sides – UAIC pleads with
24 this Court to exercise its own discretion and authority to vacate the amended judgment based on
25 all of the above.

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III.

CONCLUSION

Based on the foregoing, UAIC asks this Court grant it leave to intervene in this matter to protect its interests and LEWIS'. Alternatively, that this court exercise its inherent authority and discretion to vacate or set aside the improperly obtained amended judgment for the reasons set forth above.

DATED this 18th day of September, 2018.

ATKIN WINNER & SHERROD


Matthew Douglas, Esq.
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for UAIC

CERTIFICATE OF SERVICE

I certify that on this 18th day of September, 2018, the foregoing **UAIC's REPLY IN SUPPORT OF 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

39

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07A549111

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

September 19, 2018

07A549111 James Nalder
 vs
 Gary Lewis

September 19, 2018 3:00 AM Motion to Intervene

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Haly Pannullo

RECORDER: Melissa Murphy-Delgado

JOURNAL ENTRIES

- There being no opposition, COURT ORDERED, Motion GRANTED.

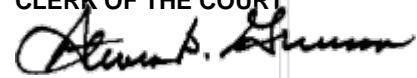
CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve *hvp/9/26/18*

40

40

OPPM

E. Breen Arntz
Nevada Bar #3853
5545 S. Mountain Vista Street, Suite F
Las Vegas, NV 89120
breen@breen.com



DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

Date: 9/19/2018

Time: 3am Chambers

**DEFENDANT'S OPPOSITION TO MOTION TO INTERVENE AND JOINDER TO
PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

Gary Lewis, through his attorney, E. Breen Arntz, Esq., opposes the Motion to Intervene filed by United Automobile Insurance Company (UAIC). UAIC's Motion should be denied because it was not served on Defendant, UAIC has no interest to be protected, any alleged interest is adequately protected by Lewis' counsel, is not timely, and UAIC's statute of limitations defense is frivolous. Defendant joins in the opposition filed by David A. Stephens, Esq., counsel for Cheyenne Nalder.

I. FACTS

On the 8th day of July, 2007, Defendant, Gary Lewis, ("Lewis"), ran over Cheyenne Nalder, ("Cheyenne"), while he was driving his vehicle on private property located in Lincoln County, Nevada.

1 Cheyenne was a minor at the time of the accident.

2 The negligence of Gary Lewis was the cause of the accident.

3 Cheyenne suffered serious injuries due to this accident.

4 On June 3, 2008, Cheyenne, with her father as her guardian ad litem, obtained a default
5 judgment against Lewis for \$3,500,000.00.

6 At the time the judgment was entered Cheyenne was represented by Christensen Law
7 Offices. It is counsel's understanding that Cheyenne Lewis are still represented by Thomas
8 Christensen, Esq., and Dennis Prince, Esq., in the litigation and pending appeals involving UAIC.
9

10 None of that judgment has ever been paid, with the exception of \$15,000.00, which was
11 later paid by United Auto Insurance Company, ("UAIC"), as a result of a suit filed by Nalder and
12 Lewis against UAIC, which was the insurer for Lewis at the time of the accident, for bad faith,
13 failure to defend, and other claims for relief.

14 UAIC never approached Lewis with the idea that the judgment had expired. UAIC never
15 gathered any facts regarding Lewis' absence from the State of Nevada since 2010. UAIC never
16 gathered any facts regarding Lewis not being subject to service of process in the State of Nevada
17 since 2010 to the present. UAIC never attempted to defend Lewis and have the statute of
18 limitations on the judgment declared expired. Upon learning that UAIC was maintaining that
19 Nalder's judgment against Lewis had expired, Cheyenne filed this suit through Stephens &
20 Bywater, P.C.

21 UAIC attempted to mislead various defense counsel to interpose a frivolous defense on
22 behalf of Gary Lewis without his knowledge or consent. UAIC misused information obtained
23 from Mr. Lewis to attempt to intervene in this action without notifying Mr. Lewis.
24

25 **II. UAIC SHOULD NOT BE ALLOWED TO INTERVENE IN THIS MATTER**

26 NRCP 24 states:
27
28

1 **(a) Intervention of Right.** Upon timely application anyone shall be permitted to
2 intervene in an action: (1) when a statute confers an unconditional right to intervene; or
3 (2) when the applicant claims an interest relating to the property or transaction which is
4 the subject of the action and the applicant is so situated that the disposition of the action
5 may as a practical matter impair or impede the applicant's ability to protect that interest,
6 unless the applicant's interest is adequately represented by existing parties.
7

8 **(b) Permissive Intervention.** Upon timely application anyone may be permitted to
9 intervene in an action: (1) when a statute confers a conditional right to intervene; or (2)
10 when an applicant's claim or defense and the main action have a question of law or fact in
11 common. In exercising its discretion the court shall consider whether the intervention will
12 unduly delay or prejudice the adjudication of the rights of the original parties.
13

14 **(c) Procedure.** A person desiring to intervene shall serve a motion to intervene
15 upon the parties as provided in Rule 5. The motion shall state the grounds therefor and
16 shall be accompanied by a pleading setting forth the claim or defense for which
17 intervention is sought. The same procedure shall be followed when a statute gives a right
18 to intervene.
19

20 UAIC does not argue for permissive intervention under NRCP 24(b), so the opposition will
21 focus on NRCP 24(a).

22 UAIC does not point to any statute that gives it an unconditional right to intervene.

23 **III. UAIC HAS NO INTEREST TO PROTECT**

24 Thus, to intervene, UAIC must claim "an interest relating to the property or transaction
25 which is the subject of the action and the applicant is so situated that the disposition of the action
26 may as a practical matter impair or impede the applicant's ability to protect that interest." (NRCP
27 24(a)(2)). UAIC does not have an interest in the claims at issue. Neither it nor its employees
28

1 were involved in the accident. Thus, it has no direct liability for the accident. In addition, UAIC
2 has paid their policy limits and contend that they are not liable for any other payments to or on
3 behalf of Lewis.
4

5 UAIC did not defend Lewis when Cheyenne Nalder initially filed suit against him in 2007
6 following the accident. UAIC denied that Lewis was covered by a UAIC policy at the time of the
7 accident. When the Federal District Court found there was coverage, UAIC still did not move to
8 set aside the default judgment Cheyenne obtained against Lewis in 2008. It simply tendered the
9 \$15,000.00 policy limits to Cheyenne.
10

11 What UAIC appears to be worried about is some contingent and unliquidated liability,
12 based on allegations of breach of the duty to defend or tort liability arising out of that same
13 failure to defend in the original suit filed in 2007. If UAIC is not willing to pay any part of any
14 judgment that might be awarded against Lewis, then UAIC has no interest to protect in this suit
15 and it should not be allowed to intervene. If intervention is allowed, then UAIC has consented to
16 be liable for any judgment against Lewis ultimately entered in this action.
17

18 **IV. ANY CLAIMED UAIC INTERESTS ARE ADEQUATELY REPRESENTED**

19 UAIC has misread or misconstrued the language of Exhibit H¹, attached to the moving
20 papers. UAIC argues that in Exhibit H, Mr. Christensen prohibits UAIC from appearing in this
21 matter. However, that is not what Exhibit H states. In Exhibit H, Mr. Christensen advises Mr.
22 Rogers that Lewis does not want Mr. Rogers to take positions that are frivolous, not well
23 supported, and might result in increased damages against Mr. Lewis unless UAIC is willing to be
24 responsible for those increased damages and for any judgment ultimately entered against Mr.
25 Lewis. This request makes sense. Why should Lewis consent to cart blanche representation by
26
27

28 ¹ This letter is a confidential communication between Tom Christensen, Esq., and Stephen Rogers, Esq., who
were both representing Mr. Lewis at the time, discussing the best litigation strategy for Mr. Lewis as to this lawsuit.
Thus, it is privileged from disclosure and Mr. Lewis objects to its disclosure and suggests this indicates that UAIC is
using its "duty to defend" to harm Mr. Lewis. See NRS 49.095.

1 UAIC if the only person benefiting from the representation is UAIC, and the approach may cause
2 greater harm to Lewis if UAIC's position is found to be frivolous? There is no exhibit attached to
3 the motion which explains why UAIC representing Lewis in this suit is a benefit to Lewis. There
4 is no exhibit attached to the motion which explains why the statute of limitations on the judgment
5 is not tolled by Mr. Lewis' absence from the State of Nevada. This is because no such letter
6 exists. Rather than showing Mr. Lewis how the representation could benefit him and getting
7 consent to represent him, UAIC has decided to just attempt to intervene.
8

9 **V. UAIC'S STATUTE OF LIMITATIONS DEFENSE IS FRIVOLOUS**

10 UAIC claims the statute of limitations on judgments is the only statute of limitations that is
11 not tolled by the various tolling statutes. This defense is frivolous. UAIC implies that there is
12 some perfidy on the part of Cheyenne in filing this suit. However, nothing could be further from
13 the truth. Statutes of limitation wait for no man, or woman, or for that matter appellate court
14 decisions. Due to Cheyenne reaching the age of majority she has a risk that certain statutes of
15 limitation may expire. She has every right to file suit to protect the loss of a right due to the
16 running of any applicable statutes of limitation. She is not required to sit on her hands and
17 patiently await for an appellate decision which may not be issued before statutes run.
18

19 In the alternative, Cheyenne is renewing her judgment in the only way that is currently available
20 to her -- an action on the judgment pursuant to *Mandlebaum v. Gregovich*, 50 P. 849, 24 Nev. 154
21 (Nev. 1897). This is the only avenue clearly available to renew because NRS 17.214 the renewal
22 statute allows for renewal "within 90 days before the date the judgment expires by limitation."
23

24 The 6 year statute of limitations on the judgment was tolled by three separate tolling statutes and
25 is still tolled today by NRS 11.300. This is because Mr. Lewis has been continually absent from
26 the state of Nevada and not capable of service of process in the state since at least 2010 through
27 the present. Thus a renewal under NRS 17.214 would be unnecessary or may be invalid because
28

1 it is too early. No such time frame applies to an action on a judgment which Cheyenne brought in
2 the alternative.

3 4 **VI. UAIC'S MOTION IS NOT TIMELY**

5 It is difficult to see what interest UAIC has that needs protection in this lawsuit that is not
6 adequately represented by Lewis. Apparently, UAIC at some point prior to March 14, 2017 (the
7 date UAIC filed to dismiss the Nalder & Lewis v. UAIC federal court lawsuit) came to the flawed
8 conclusion that the statute of limitations on the Nalder judgment against Lewis had expired.
9 UAIC did not attempt to test that hypothesis for the benefit of Lewis by asking Lewis if he would
10 like to file a declaratory relief action or attempt to invalidate the judgment as a result of the
11 expiration of the statute of limitations. UAIC instead filed a motion to dismiss the Nalder &
12 Lewis federal lawsuit against UAIC which had been pending for nearly eight years had two
13 judgments entered, two appeals argued, one reversal, and one certified question to the Nevada
14 Supreme Court. This would have left Lewis with a valid judgment and no claim against UAIC
15 for abandoning their insured. Waiting to "protect" Lewis for over a year is not timely.
16 Maintaining a frivolous defense does not protect Lewis either.

17 18 **VII. CONCLUSION**

19 Based upon the foregoing, UAIC's motion to intervene should be denied.

20 Dated this 21 day of September, 2018

21
22 /s/ E. Breen Arntz

23 E. Breen Arntz
24 Nevada Bar #3853
25 5545 S. Mountain Vista Street, Suite F
26 Las Vegas, NV 89120
27 breen@breen.com
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September, 2018, I served the following document: **DEFENDANT'S OPPOSITION TO MOTION TO INTERVENE & JOINDER TO PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

 VIA ELECTRONIC FILING;

 X VIA ELECTRONIC SERVICE

 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:

Matthew J. Douglas, Esq.
Atkin Winner & Sherrod
117 S. Rancho Drive
Las Vegas, NV 89102

David A. Stephens
3636 North Rancho Drive
Las Vegas, NV 89130

 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).

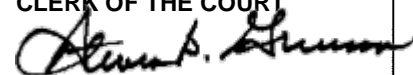
Matthew J. Douglas, Esq., 702-243-7059
David A. Stephens, Esq., 702-656-2776

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

 /s/ Breen Arntz
Employee of Breen Arntz, Esq.

41

41



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 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,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

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

**UAIC'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT & MOTION
FOR COURT TO DENY STIPULATION
TO ENTER JUDGMENT BETWEEN
PLAINTIFF AND LEWIS AND/OR, IN
THE ALTERNATIVE TO STAY SAME
PENDING HEARING ON MOTION TO
DISMISS**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Motion to Dismiss Plaintiff's Complaint in its entirety and Motion for Court to Deny Entry of Stipulation to Enter Judgment as between Plaintiff and Lewis and/or, in the alternative, to Stay same pending hearing on the instant Motion. Plaintiff's personal injury claims have been previously litigated, and judgment entered. Plaintiff's request for a second amended judgment should be dismissed because the original judgment expired in 2014, was not properly renewed, and cannot be revived via an amended judgment more than four years after it expired. Moreover, Plaintiff and Lewis' collusive attempt to enter a stipulated judgment should be denied or, alternatively, stayed, pending resolution of this Motion as UAIC has standing to oppose this Complaint and stipulation as intervenor.

///

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM


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3 This Motion s made and based upon the papers and pleadings on file herein, the
 4 Memorandum of Points and Authorities attached hereto, and such oral argument as the Court
 5 may permit.

6 DATED this 19th day of OCTOBER, 2018.

7 ATKIN WINNER & SHERROD

8 
 9 _____
 10 Matthew J. Douglas
 11 Nevada Bar No. 11371
 12 1117 South Rancho Drive
 13 Las Vegas, Nevada 89102
 14 Attorneys for Intervenor UAIC

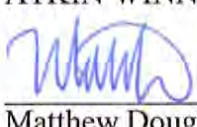
15 **NOTICE OF MOTION**

16 TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

17 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring
 18 the foregoing Motion to Dismiss and Motion to Deny Stipulated Judgment and/or, stay same
 19 stipulated judgment, for hearing before the above-entitled Court Department 29 on the 12 day
 20 of December, 2018, at the hour of 9:00 a. .m. in the forenoon of said date, or as soon
 21 thereafter as counsel can be heard.

22 DATED this 19th day of OCTOBER, 2018.

23 ATKIN WINNER & SHERROD

24 
 25 _____
 26 Matthew Douglas, Esq.
 27 Nevada Bar No. 11371
 28 117 South Rancho Drive
 Las Vegas, Nevada 89102
 Attorneys for Intervenor UAIC

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION TO DISMISS**

3 **I.**

4 **INTRODUCTION**

5 Cheyenne Nalder, ("Cheyenne") alleges in her Complaint that she was injured in an
6 accident in 2007. Cheyenne was 11 years old at the time. She did not wait until she reached the
7 age of majority to pursue her claim for damages against the alleged at-fault driver, Gary Lewis
8 ("Lewis"). Guardian ad litem, James Nalder, was appointed to pursue her claim. He did so, filing
9 a complaint on her behalf and obtaining a Judgment for \$3.5 million. Nalder filed suit against
10 UAIC (as Lewis' insurer), eventually obtained an assignment from Lewis and ultimately
11 received Lewis' \$15,000 auto policy limit on the Judgment. That case remains on Appeal before
12 the United States Court of Appeals for the Ninth Circuit and, the Nevada Supreme Court on a
13 certified question of law wherein the viability of said expired judgment is before those courts. It
14 is unknown what efforts James Nalder made to enforce the Judgment prior to this action, if any.
15 What is known is that he did not renew the Judgment before it expired in 2014 while Cheyenne
16 was still a minor.
17

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

23 Cheyenne also seeks a second amended judgment from the Court. Seeking an amended
24 judgment is not a cause of action; rather, it is a motion. Cheyenne's request for a second
25 amended judgment should be dismissed and she should be directed to file a motion.
26

27 Finally, Cheyenne seeks a declaration from the court that the statute of limitations to
28 enforce an Amended Judgment (and the second amended judgment she seeks in her Complaint)

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

6
7 In summary, the court should dismiss the Complaint as there are no facts under which
8 Cheyenne is entitled to relief. UAIC has intervened as the insurer for Lewis, per a 2013 Federal
9 Court order finding an implied policy of insurance existed between Lewis and UAIC for the
10 above-noted loss and, as it appears Lewis is attempting to collude with Plaintiff in this action,
11 UAIC has an interest to protect.

12 Moreover, as this Court can plainly see, in a collusive attempt to try and prevent UAIC
13 from contesting this action, Plaintiff and Lewis filed, on September 13, 2018, a stipulation to
14 enter judgment. *See* Exhibit "F." UAIC had previously filed its Motion to Intervene in this cause
15 nearly a month prior, on August 16, 2018, and, thus, this sham stipulation was obviously filed in
16 attempt to pre-empt UAIC's Motion to dismiss this action by filing same before UAIC
17 intervention had been granted. The court should see through this sham and deny the stipulation
18 or, in the alternative, stay same pending resolution of this Motion and other issues as UAIC has
19 standing and, an interest, as Lewis insurer, to contest this matter.
20

21 II.

22 STATEMENT OF FACTS

23 This case involves a July 8, 2007 accident, Cheyenne Nalder, ("Cheyenne") who was
24 then a minor, alleged injuries. On October 9, 2007, Cheyenne's guardian ad litem, James Nalder,
25 filed a Complaint against Gary Lewis ("Lewis"). See Complaint attached hereto as Exhibit "A."
26

27 UAIC, the putative insurer for Lewis, initially denied coverage due to a lapse in
28

coverage¹. Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June 3, 2008, a judgment was entered against him in the amount of \$3.5 million with a Notice of Entry filed August 26, 2018.² See Judgment attached hereto as Exhibit “B.” James Nalder as guardian ad litem for Cheyenne was the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless it is timely renewed. As such, the Judgment expired on June 3, 2014 as no timely renewal was filed.

On March 22, 2018 nearly 10 years after the Judgment was entered, and nearly four (4) years after it expired, Cheyenne filed an “Ex Parte Motion to Amend Judgment in the Name of Cheyenne Nalder, Individually” (“Ex Parte Motion”) in her personal injury case, Case No. A-07-54911-C, which is also assigned to this Court. See Exhibit “C.” Her Motion did not advise the Court that the Judgment she sought to amend had expired. *Id.* The Court granted Cheyenne’s Ex Parte Motion and issued an Amended Judgment on March 28, 2018. See Exhibit “D.” Contemporaneous with the filing of the instant motion, UAIC will be moving, in the original case, Case No. A-07-549111-C, for Motion for Relief from Judgment, detailing the reasons the Court should void the Amended Judgment.

On April 3, 2018, one day before the statute of limitations ran for Cheyenne to file a personal injury claim (but ten years after she already obtained a judgment), she filed a Complaint alleging identical injuries from the same accident. *See* Exhibit “A,” the 2007 Complaint, and the 2018 Complaint, attached as Exhibit “E.” In the 2018 Complaint, she does not explain why she believes she is entitled to damages for the same injuries for which she received a judgment in

¹ Later, during the subsequent action against UAIC (which remains on appeal in the Ninth Circuit for the U.S. Court of Appeals and, currently, on a 2nd certified question to the Nevada Supreme Court) the Court found an ambiguity in the renewal statement for Lewis’ policy and, accordingly, *implied* a policy of insurance for Lewis’ \$15,000 policy limits in December 2013. Importantly, the Ninth Circuit has affirmed there was no “bad faith” on the part of UAIC. Regardless, per the orders of the Federal District Court and Ninth Circuit, UAIC has now been found to be Lewis’ insurer, under this implied policy.

² Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(c).

2008. *See* Exhibit “E.” However, the 2018 Complaint does acknowledge that she already received a judgment against Lewis. *Id.* At p.3,11.10-11.

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

As the judgment had expired and an Amended Judgment could not be issued to revive it and this action is improper. UAIC brings the instant Motion to dismiss, as it has now been found to be the insurer of Lewis under an implied policy and, thus, has an interest in this matter, and seeks to avoid the Amended Judgment and declare that the original Judgment has expired.

III.

MOTION TO DISMISS STANDARD

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

In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint. *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev Adv. Op. 76,357 P 3d at 930 (2015) “the court is not limited to the four corners of the complaint.” Citing 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure: Civil § 1357, at 376 (3d ed. 2004). The *Baxter* Court also held that courts “may also consider unattached evidence on which the complaint necessarily relies if (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the document.” *Id.*, citing United States v. Corinthian Colleges 655 F. 3d 984, 999 (9th Cir. 2011) (internal quotation omitted). The *Baxter* Court continued “while presentation of matters outside

1 the pleadings will convert the motion to dismiss to a motion for summary judgment,
 2 Fed.R.Civ.P. 12(d); NRCP 12 (b), such conversion is not triggered by a court's consideration of
 3 matters incorporated by reference or integral to the claim," *Id.* Citing 5B Wright & Miller, *supra*,
 4 §1357, at 376.

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

11 IV.

12 ARGUMENT

13 A. *The Doctrine of Claim Preclusion Mandates Dismissal of Plaintiff's Claims Related to* 14 *the July 8, 2007 Accident*

15 The October 9, 2007 Complaint filed by Cheyenne's guardian ad litem, James Nalder,
 16 alleged personal injuries caused by the July 8, 2007 accident. See Complaint attached hereto as
 17 Exhibit "A." When Lewis did not respond to that Complaint, a Default was entered against him.
 18 On June 3, 2008, a Judgment in the amount of \$3.5 million was entered against Lewis. See
 19 Judgment, attached hereto as Exhibit "B." Plaintiff acknowledged this in Paragraph 10 of her
 20 2018 Complaint. Because the personal injury claims in the 2018 Complaint have already been
 21 litigated, it should be dismissed.

22 Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In
 23 2008, the Nevada Supreme Court set forth a three-part test to be applied to determine when claim
 24 preclusion applies. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713
 25 (2008), holding modified by *Weddell v Sharp* 151 Nev. Adv. Op. 28, 3520 P.3d 80 (2015) (the
 26
 27
 28

1 modification is not applicable to this case); (2) the final judgment is valid; and (3) the new action
 2 is based on the same claims that were or could have been brought in the first action. Cheyenne's
 3 claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for
 4 dismissal under the doctrine of claim preclusion.

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

7 Second, the final judgment is valid. There is no question that the Judgment issued in 2008
 8 was valid until it expired in 2014. It could have been renewed, and if so, would have still been
 9 valid today. However, it was not renewed. Cheyenne's (or rather her guardian ad litem's) failure
 10 to fully execute on the Judgment while it was valid does not open the door for her to re-litigate
 11 her claims.
 12

13 Third, the same claims are involved in both actions. A review of the 2008 Complaint and
 14 the 2018 Complaint reveal that the personal injury claims are identical.
 15

16 As the *Five Star* Court noted, public policy support claims preclusion in situations such
 17 as this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a),
 18 noting that "the purposes of claim preclusion are 'based largely on the ground that fairness to the
 19 defendant, and sound judicial administration require that at some point litigation over the
 20 particular controversy come an end; and that such reasoning may apply ;even though the
 21 substantive issues have not been tried ... *Id.* At 1058, 194 P..3d at 715, These policy reasons are
 22 applicable here. Lewis and UAIC are entitled to finality. A Judgment was already entered against
 23 Lewis. Renewing the Judgment was not Lewis' responsibility-that was the responsibility of
 24 Cheyenne's guardian ad litem, James Nalder. Lewis should not be exposed to judgment being
 25 entered against him a second time due to Nalder's failure to act.
 26

27 Cheyenne's personal injury claims are the very type to which claims preclusion applies.
 28 The public policy considerations supporting claims preclusion cited with approval the court in

1 *Five Star* apply to this action. The claims for personal injuries alleged in the Complaint should
2 be dismissed.

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

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

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

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

16 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons
17 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in
18 the controversy, and (3) the issue is ripe for judicial determination." *City. Of Clark, ex rel. Univ.*
19 *Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d, 764, 756 (1998), citing *Knittle v.*
20 *Progressive Casualty Ins. Co.*, 112 Nev. 8,10,908 P. 2d,724,725 (1996). Here, declaratory relief
21 is not available because the issue as to whether the Amended Judgment or any future amended
22 judgment is enforceable, or whether the statute of limitations has expired, is not ripe.

23 The conditions under where a justiciable controversy exists were addressed by the Nevada
24 Supreme Court in *Kress v Corey*, 65 Nev. 1, 189 P,2d 352 (1948), where the Court noted a
25 justiciable controversy does not exist, where damage "... is merely apprehended or feared..." *Id.*

At 28-29, 189 P.2d at 366. As the Court in *Doe v Bryan*, 102 Nev.523.728 P.2d 433 (1986) noted, “the requirement of an actual controversy has been construed as requiring a concrete dispute admitting of an immediate and definite determination of the parties’ rights.” *Id.* At 526, 728 P.2d at 444. Cheyenne’s concern that any effort to enforce the Amended Judgment will be thwarted by a determination that the applicable statute of limitations bars such action is “apprehended or feared” but not existing presently, because she has not taken any action to enforce the Amended Judgment.

Likewise, there is no “concrete dispute” that the statute of limitations would bar an attempt by Cheyenne to collect on the Amended Judgment because she has not tried. Unless and until Cheyenne actually tried to enforce the Amended Judgment, there is no ‘immediate’ need for a “definite” determination of the parties’ rights. Therefore, there is no justiciable controversy regarding Cheyenne’s ability to seek to enforce the Amended Judgment at this time.

“Ripeness focuses on the timing of the action rather than on the party bringing the action... The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the hardship of the parties of withholding judicial review, and (2) the suitability of the issues for review.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1244, 1230-31 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003). In the unpublished decision in *Cassady v. Main*, 2016 WL412835, a copy of which is attached hereto as Exhibit “E.” the Nevada Supreme Court noted that the plaintiff in that case would suffer no harm if declaratory relief were not considered, because he could file a complaint seeking direct redress for complaints. *Id.* At *2. Similarly here, Cheyenne could seek to have a court address her statute of limitations concerns in an action to execute on the Amended Judgment. There is no need for such a determination at this time.

Regardless as to whether Cheyenne’s request for declaratory relief is appropriate at this juncture, Cheyenne’s request for declaratory relief should be dismissed because there is no valid

1 judgment to enforce. The original Judgment issued on June 3, 2008 expired on June 3, 2014. No
2 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an
3 Amended Judgment, entered on March 28, 2018. As demonstrated in Intervenor's Motion for
4 Relief From Judgment Pursuant to NRCP 60, the Court should not have entered and Amended
5 Judgment, and no other amended judgments should be entered. Nevada law does not permit
6 renewal of expired judgments by amendment.
7

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

16
17 **V.**

18 **MOTION TO DENY THE STIPULATION TO ENTER JUDGMENT AND OR, IN THE**
19 **ALTERNATIVE, TO STAY SAME**

20
21 As this Court knows, an Intervenor is allowed to come in and contest a matter where it
22 has interest to protect. Here, UAIC, as the insurer for Lewis, has an interest in preventing a new
23 judgment from being entered against him and/or having declarations made about the validity of
24 an expired judgment which is currently on appeal before the Ninth Circuit and the Nevada
25 Supreme Court on a second certified question. *See* UAIC's Motion to Intervene herein, with
26 attached exhibits, Exhibit "G." Despite filing its Motion to Intervene on August 16, 2018,
27 Plaintiff and Lewis attempted to enter a collusive and sham "stipulation to enter judgment, which
28 they filed on September 13, 2018. *See* Exhibits "F" and "G." This clear attempt to pre-empt

1 UAIC's right to contest this action should be denied or, alternatively, stayed.

2 NRCP 24(a)(2) provides for the intervention of right under the following circumstances:

3 Upon timely application anyone shall be permitted to intervene an action: . . . (2)
4 when the applicant claims an interest relating to the property or transaction which
5 is the subject of the action and he is so situated that the disposition of the action
6 may as a practical matter impair or impede his ability to protect that interest,
7 unless the applicant's interest is adequately represented by existing parties.

8 Once a party intervenes, said party is afforded all the rights of a party to the
9 action. *Las Vegas Police Protective Ass'n Metro, Inc. v Eight Jud. Dist. Court*, 122 Nev.
10 230, 130 P.2d 182 (2006).

11 UAIC has been granted intervention. Moreover, it is clear UAIC has an interest to
12 protect and has all the rights afforded to it of any party – including the right to contest
13 any judgment on the action. Accordingly, UAIC has the right to contest this action with
14 the present Motion to dismiss. As such, Plaintiff and Lewis sham attempt to try and
15 quickly enter a “stipulated judgment” prior to UAIC's intervention should be seen for
16 what it is – a ruse intended to deny UAIC the right to contest this action. Accordingly, as
17 UAIC filed its Motion to intervene prior to this attempted “stipulated judgment”, UAIC
18 prays this court deny same stipulation or, alternatively, stay same pending resolution.

19 VI.

20 **UAIC also asks this Court to consider, based on all of the above, that there has been**
21 **an attempt at a fraud upon the Court and hold an evidentiary hearing on this issue.**

22 UAIC argues that the circumstances set forth in this matter show clear conflict of interest
23 and attempts at perpetrating a fraud upon the court by Plaintiff. Plaintiff is represented by Mr.
24 Christensen. Mr. Christensen also purports to be counsel for Lewis and has informed UAIC's
25 first retained counsel for Lewis that he may not appear and attempt to defend this action. Indeed,
26 Breen Arntz, Esq. has stated to retained defense counsel and, this office, that Mr. Christensen
27 retained him to defend Lewis. Now, after learning of all of this and trying to intervene to protect
28

1 Lewis and, its own interests, UAIC was told by Plaintiff it cannot intervene. So, per Plaintiff,
 2 UAIC's retained defense counsel cannot defend this case and – *UAIC cannot either*. Then, while
 3 UAIC's Motion to intervene is pending, new counsel for Nalder and Mr. Arntz for Lewis attempt
 4 to file a stipulation for judgment to try and quickly avoid any attempt to contest this sham action.
 5 This is clearly an attempt at a fraud upon the court solely to benefit Plaintiff and her counsel —
 6 and same should not be tolerated.³

8 In *NC-DSH, Inc. v Garner*, 125 Nev. 647 (2009) the Nevada Supreme Court set forth the
 9 definition of a fraud upon the Court in considering motion for relief from judgment under NRC
 10 60. In *NC-DSH, Inc.* the lawyer for a plaintiff's malpractice case forged settlement documents
 11 and disappeared with the settlement funds. *Id.* In allowing the Plaintiff's Rule 60 motion to set
 12 aside the dismissal (and settlement) the Court set forth the following definition for such a fraud,
 13 as follows:

15 **"The most widely accepted definition, which we adopt, holds that the concept
 16 embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of
 17 the court itself, or is a fraud perpetrated by officers of the court so that the judicial
 18 machinery cannot perform in the usual manner its impartial task of adjudging cases ...
 19 and relief should be denied in the absence of such conduct.**

18 *Id* at 654.

19 In the case at bar it seems clear that Plaintiff's counsel (Mr. Christensen) is attempting
 20 just such a fraud. That is, besides the original judgment being expired and, the effect of its
 21 expiration on appeal before both the Nevada Supreme Court and the U.S. Court of Appeals for
 22 the Ninth Circuit, Plaintiff still attempted this 'amendment of judgment' and, then, filed this new
 23 action. Moreover, Mr. Christensen (Plaintiff's additional Counsel) represents **both the**
 24 **Plaintiff/judgment-creditor and Defendant/judgment-debtor**. Further, in his role as counsel
 25 for Plaintiff and Defendant, Mr. Christensen is attempting, as an officer of the court, to prevent
 26 UAIC from exercising its contractual and legal duty to defend Mr. Lewis and defend this farce of
 27
 28

³ Indeed, perhaps this should be reported to the State bar.

lawsuit by telling UAIC's first retained counsel to not to appear or file anything to defend Lewis. Additionally, Plaintiff has sought to deny UAIC a chance to intervene and, now, MR. Artnz is retained for Lewis and he and Plaintiff file a "stipulation for judgment." UAIC pleads this clearly **a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases.** In other words, Mr. Christensen, Counsel for Plaintiff, is seeking on the one hand to enforce an invalid judgment and, with the other, prevent anyone from contesting it – **by representing both sides. This is the definition of a conflict of interest.** After all, Plaintiff's is attempting to improperly "fix" an expired multi-million judgment, while at the same time Counsel for Plaintiff is also claiming to represent the judgment-debtor (Lewis) and arising retained counsel not to vacate the amended judgment or contest this action. How could this possibly benefit Mr. Lewis? Is having a multi-million dollar judgment against him which had expired be resurrected by an improper amendment of the judgment to his benefit? Is preventing anyone from vacating or setting aside this improper amended judgment to his benefit? In short, it does not – **it only benefits Plaintiff and her counsel.** UAIC argues this is clear fraud and collusive conduct and, at the very least, the Court should therefore exercise its equitable power and allow UAIC's intervention and, thereafter, hold an evidentiary hearing on this fraud.

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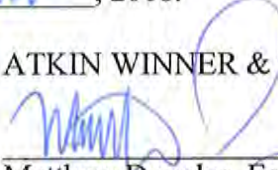
VII.

CONCLUSION

In her 2018 Complaint, Plaintiff sets forth no facts which, if true, would entitle her to the relief she seeks. Her Complaint should be dismissed in its entirety. Additionally, UAIC seeks an order denying Plaintiff and Lewis' "stipulation for entry of judgment" and/or, alternatively, staying same.

DATED this 19th day of October, 2018.

ATKIN WINNER & SHERROD


Matthew Douglas, Esq.
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for UAIC

CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2018, the foregoing **UAIC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT & MOTION FOR COURT TO DENY STIPULATION TO ENTER JUDGMENT BETWEEN PLAINTIFF AND LEWIS AND/OR, IN THE ALTERNATIVE TO STAY SAME PENDING HEARING ON MOTION TO DISMISS** 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:

David Stephens, Esq.
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, NV 89130

Randall Tindall, Esq.
Carissa Christensen, Esq.
RESNICK & LOUIS, P.C.
8925 West Russell Road Suite 220
Las Vegas, NV 89148

E. Breen Arntz, Esq.
5545 S. Mountain Vista Street, Suite F
Las Vegas, NV 89120


An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

002351

EXHIBIT “A”

1 **COM**
 2 THOMAS CHRISTENSEN, ESQ.
 3 Nevada Bar No. 2326
 4 DAVID F. SAMPSON, ESQ.
 5 Nevada Bar No. 6811
 6 CHRISTENSEN LAW OFFICES, LLC
 7 1000 S. Valley View Blvd.
 8 Las Vegas, Nevada 89107
 9 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

7 JAMES NALDER, Guardian Ad Litem for minor)
 8 Cheyanne Nalder, real party in interest, and)
 9 GARY LEWIS, Individually;)

10 Plaintiffs,)

11 vs.)

12 UNITED AUTOMOBILE INSURANCE CO,)
 13 DOES I through V, and ROE CORPORATIONS)
 14 I through V, inclusive)

15 Defendants.)

Case No.: A-09-590967-C
 Dept No.: II

FILED
 May 22 1 48 PM '09
 Clerk of the Court



COMPLAINT

16 COME NOW the Plaintiffs, James Nalder, Guardian Ad Litem for minor, Cheyanne
 17 Nalder, real party in interest in this matter, and Gary Lewis, by and through their attorneys of
 18 record, DAVID SAMPSON, ESQ., of the law firm of CHRISTENSEN LAW OFFICES, LLC,
 19 and for Plaintiffs' Complaint against the Defendants, and each of them, allege as follows:

20 1. That Plaintiff, James Nalder, Guardian Ad Litem for minor, Cheyanne Nalder real party
 21 in interest, was at all times relevant to this action a resident of the County of Clark, State of
 22 Nevada.
 23
 24



2. That Plaintiff, Gary Lewis, was at all times relevant to this action a resident of the County of Clark, State of Nevada.

3. That Defendant, United Automobile Insurance Co. (hereinafter "UAI"), was at all times relevant to this action an automobile insurance company duly authorized to act as an insurer in the State of Nevada and doing business in Clark County, Nevada.

4. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants, DOES I through V and ROE CORPORATIONS I through V, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated herein as DOE or ROE CORPORATION is responsible in some manner for the events and happenings referred to and caused damages proximately to Plaintiffs as herein alleged, and that Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names and capacities of DOES I through V and ROE CORPORATIONS I through V, when the same have been ascertained, and to join such Defendants in this action.

5. That, at all times relevant hereto, Gary Lewis was the owner of a certain 1996 Chevy Silverado with vehicle identification number 1GCEC19M6TE214944 (hereinafter "Plaintiff's Vehicle").

6. That Gary Lewis had in effect on July 8, 2007, a policy of automobile insurance on the Plaintiff's Vehicle with Defendant, UAI (the "Policy"); that the Policy provides certain benefits to Cheyanne Nalder as specified in the Policy; and the Policy included liability coverage in the amount of \$15,000.00/\$30,000.00 per occurrence (hereinafter the "Policy Limits").

1 7. That Gary Lewis paid his monthly premium to UAI for the policy period of June 30,
2 2007 through July 31, 2007.

3 8. That on July 8, 2007 on Bartolo Rd in Clark County Nevada, Cheyanne Nalder was a
4 pedestrian in a residential area, Plaintiff's vehicle being operated by Gary Lewis when Gary
5 Lewis drove over top of Cheyanne Nalder causing serious personal injuries and damages to
6 Cheyanne Nalder.

7 9. That Cheyanne Nalder made a claim to UAI for damages under the terms of the Policy
8 due to her personal injuries.

9 10. That Cheyanne Nalder offered to settle his claim for personal injuries and damages
10 against Gary Lewis within the Policy Limits, and that Defendants, and each of them, refused to
11 settle the claim of Cheyanne Nalder against Gary Lewis within the Policy Limits and in fact
12 denied the claim all together indicating Gary Lewis did not have coverage at the time of the
13 accident.

14 11. That Plaintiff, Gary Lewis has duly performed all the conditions, provisions and terms
15 of the Policy relating to the loss sustained by Plaintiff, Cheyanne Nalder, and has furnished and
16 delivered to the Defendants, and each of them, full and complete particulars of said loss and
17 have fully complied with all of the provisions of the Policy relating to the giving of notice of
18 said loss, and have duly given all other notices required to be given by the Plaintiffs under the
19 terms of the Policy, including paying the monthly premium.

20 12. That Plaintiff, Cheyanne Nalder, is a third party beneficiary under the Policy as well as a
21 Judgment Creditor of Gary Lewis and is entitled to pursue action against the Defendants directly
22 under Hall v. Enterprise Leasing Co., West, 122 Nev. 685, 137 P.3d 1104, 1109 (2006), as well as
23 Denham v. Farmers Insurance Company, 213 Cal.App.3d 1061, 262 Cal.Rptr. 146 (1989).

24



1 13. That Cheyanne Nalder conveyed to UAI her willingness to settle her claim against Gary
2 Lewis at or within the policy limits of \$15,000.00 provided they were paid in a commercially
3 reasonable manner.

4 14. That Cheyanne Nalder and Gary Lewis cooperated with UAI in its investigation
5 including but not limited to providing a medical authorization to UAI on or about August 2,
6 2007.

7 15. That on or about August 6, 2007 UAI mailed to Plaintiff, Cheyanne Nalders' attorney,
8 Christensen Law Offices, a copy of "Renewal Policy Declaration Monthly Nevada Personal
9 Auto Policy" for Gary Lewis with a note that indicated "There was a gap in coverage".

10 16. That on or about October 10, 2007 UAI mailed to Plaintiff, Cheyanne Nalders'
11 attorney, Christensen Law Offices, a letter denying coverage.

12 17. That on or about October 23, 2007, Plaintiff, Cheyanne Nalder provided a copy of the
13 complaint filed against UAI's insured Gary Lewis.

14 18. That on or about November 1, 2007, UAI mailed to Plaintiff, Cheyanne Nalders'
15 attorney, Christensen Law Offices, another letter denying coverage.

16 19. That UAI denied coverage stating Gary Lewis had a "lapse in coverage" due to non-
17 payment of premium.

18 20. That UAI denied coverage for non-renewal.

19 21. That UAI mailed Gary Lewis a "renewal statement" on or about June 11, 2007 that
20 indicated UAI's intention to renew Gary Lewis' policy.

21 22. That upon receiving the "renewal statement", which indicated UAI's intention to renew
22 Gary Lewis' policy, Gary Lewis made his premium payment and procured insurance coverage
23 with UAI.

24



23. That UAI was required under the law to provide insurance coverage under the policy Gary Lewis had with UAI for the loss suffered by Cheyenne Nalder, and was under an obligation to defend Gary Lewis and to indemnify Gary Lewis up to and including the policy limit of \$15,000.00, and to settle Cheyenne's claim at or within the \$15,000.00 policy limit when given an opportunity to do so.

24. That UAI never advised Lewis that Nalder was willing to settle Nalder's claim against Lewis for the sum of \$15,000.00.

25. UAI did not timely evaluate the claim nor did it tender the policy limits.

26. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Nalder, was forced to seek the services of an attorney to pursue his rights under her claim against Lewis.

27. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Cheyanne Nalder, was forced to file a complaint on October 9, 2007 against Gary Lewis for her personal injuries and damages suffered in the July 8, 2007 automobile accident.

28. The filing of the complaint caused additional expense and aggravation to both Cheyanne Nalder and Gary Lewis.

29. Cheyanne Nalder procured a Judgment against Gary Lewis in the amount of \$3,500,000.00.

30. UAI refused to protect Gary Lewis and provide Gary Lewis with a legal defense to the lawsuit filed against Gary Lewis by Cheyanne Nalder.

31. That Defendants, and each of them, are in breach of contract by their actions which include, but are not limited to:

- a. Unreasonable conduct in investigating the loss;
- b. Unreasonable failure to provide coverage for the loss;
- c. Unreasonable delay in making payment on the loss;
- d. Failure to make a prompt, fair and equitable settlement for the loss;
- e. Unreasonably compelling Plaintiffs to retain an attorney before making payment on the loss.

32. As a proximate result of the aforementioned breach of contract, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of \$3,500,000.00 plus continuing interest.

33. As a further proximate result of the aforementioned breach of contract, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of \$10,000.00.

34. As a further proximate result of the breach of contract, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

35. That Defendants, and each of them, owed a duty of good faith and fair dealing implied in every contract.

36. That Defendants, and each of them, were unreasonable by refusing to cover the true value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits when they had an opportunity to do so, and wrongfully denying coverage.

37. That as a proximate result of the aforementioned breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of \$3,500,000.00 plus continuing interest.





1 38. That as a further proximate result of the aforementioned breach of the implied covenant
2 of good faith and fair dealing, Plaintiffs have suffered anxiety, worry, mental and emotional
3 distress, and other incidental damages and out of pocket expenses, all to their general damage
4 in excess of \$10,000.00.

5 39. That as a further proximate result of the aforementioned breach of the implied covenant
6 of good faith and fair dealing, Plaintiffs were compelled to retain legal counsel to prosecute this
7 claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and
8 necessarily incurred in connection therewith.

9 40. That Defendants, and each of them, acted unreasonably and with knowledge that there
10 was no reasonable basis for its conduct, in its actions which include but are not limited to:
11 wrongfully refusing to cover the value of the claim of Cheyanne Nalder, wrongfully failing to
12 settle within the Policy Limits when they had an opportunity to do so and wrongfully denying
13 the coverage.

14 41. That as a proximate result of the aforementioned bad faith, Plaintiffs have suffered and
15 will continue to suffer in the future, damages in the amount of \$3,500,000.00 plus continuing
16 interest.

17 42. That as a further proximate result of the aforementioned bad faith, Plaintiffs have
18 suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of
19 pocket expenses, all to their general damage in excess of \$10,000.00.

20 43. That as a further proximate result of the aforementioned bad faith, Plaintiffs were
21 compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are
22 liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

23

24

1 44. That Defendants, and each of them, violated NRS 686A.310 by their actions, including
2 but not limited to: wrongfully refusing to cover the value of the claim of Cheyanne Nalder,
3 wrongfully failing to settle within the Policy Limits when they had an opportunity to do so and
4 wrongfully denying coverage.

5 45. That NRS 686A.310 requires that insurance carriers conducting business in Nevada
6 adopt and implement reasonable standards for the prompt investigation and processing of
7 claims arising under insurance policies, and requires that carriers effectuate the prompt, fair and
8 equitable settlements of claims in which liability of the insurer has become reasonably clear.

9 46. That UAI did not adopt and implement reasonable standards for the prompt
10 investigation and processing of claims arising under its insurance policies, and did not
11 effectuate the a prompt, fair and/or equitable settlement of Nalder's claim against Lewis in
12 which liability of the insurer was very clear, and which clarity was conveyed to UAI.

13 47. That NAC 686A.670 requires that an insurer complete an investigation of each claim
14 within 30 days of receiving notice of the claim, unless the investigation cannot be reasonably
15 completed within that time.

16 48. That UAI received notice of Nalder's claim against Lewis, at the very latest, on or
17 before August 6, 2007. That it was more than reasonable for UAI to complete its investigation of
18 Nalder's claim against Lewis well within 30 days of receiving notice of the claim.

19 49. That UAI did not offer the applicable policy limits.

20 50. That UAI did failed to investigate the claim at all and denied coverage.

21 51. That as a proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs
22 have suffered and will continue to suffer in the future, damages in the amount of \$3,500,000.00
23 plus continuing interest.

24



52. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of \$10,000.00.

53. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

54. That the Defendants, and each of them, have been fraudulent in that they have stated that they would protect Gary Lewis in the event he was found liable in a claim. All of this was done in conscious disregard of Plaintiffs' rights and therefore Plaintiffs are entitled to punitive damages in an amount in excess of \$10,000.00.

WHEREFORE, Plaintiffs, pray for judgment against Defendants, and each of them, as follows:

1. Payment for the excess verdict rendered against Lewis which remains unpaid in an amount in excess of \$3,500,000.00;

2. General damages for mental and emotional distress and other incidental damages in an amount in excess of \$10,000.00;

3. Attorney's fees and costs of suit incurred herein; and

4. Punitive damages in an amount in excess of \$10,000.00;

///

///

///

24

1 5. For such other and further relief as this Court deems just and proper.

2
3 DATED this 17 day of April, 2009.

4 CHRISTENSEN LAW OFFICES, LLC.

5 By: 

6 Thomas Christensen, Esq.
7 David F. Sampson, Esq.
8 Nevada Bar No. 6811
9 1000 South Valley View Blvd
10 Las Vegas, Nevada 89107
11 Attorneys for Plaintiffs



EXHIBIT “B”

1 **JUDG**

2 **DAVID F. SAMPSON, ESQ.,**

3 Nevada Bar #6811

4 **THOMAS CHRISTENSEN, ESQ.,**

5 Nevada Bar #2326

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,

10 **JAMES NALDER As Guardian Ad**

11 **Litem for minor, CHEYENNE NALDER**

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 **JAMES NALDER, individually**)

15 **and as Guardian ad Litem for**)

16 **CHEYENNE NALDER, a minor.**)

17 **Plaintiffs,**)

18 **vs.**)

19 **CASE NO: A549111**

20 **DEPT. NO: VI**

21 **GARY LEWIS, and DOES I**)

22 **through V, inclusive ROES I**)

23 **through V**)

24 **Defendants.**)

25 **NOTICE OF ENTRY OF JUDGMENT**

26 **PLEASE TAKE NOTICE** that a Judgment against Defendant, GARY LEWIS, was

27 entered in the above-entitled matter on June 2, 2008. A copy of said Judgment is attached

28 hereto.

DATED this 5 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

FILED

Aug 26 11 00 AM '08

Carly
CLERK OF THE COURT

CERTIFICATE OF SERVICE

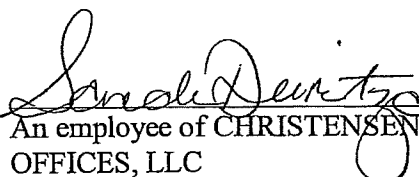
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC., and that on this 5th day of June, 2008, I served a copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

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

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

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

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


An employee of CHRISTENSEN LAW
OFFICES, LLC

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,

Chaf. Pen
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

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:

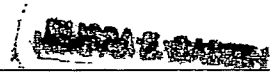
26 ...

27 ...

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, 2008.

7
8 
9 DISTRICT JUDGE

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

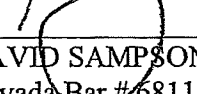

14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar #6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “C”

Electronically Filed
3/22/2018 11:15 AM
Steven D. Grierson
CLERK OF THE COURT



1 MTN
David A. Stephens, Esq.
2 Nevada Bar No. 00902
STEPHENS, GOURLEY & BYWATER
3 3636 North Rancho Drive
Las Vegas, Nevada 89130
4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 Email: dstephens@sdblawnfirm.com
Attorney for Cheyenne Nalder

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

9 CHEYENNE NALDER,

07-A-549111
CASE NO.: A549111

10 Plaintiff,

DEPT NO.: XXIX

11 vs.

12 GARY LEWIS,

13 Defendants.

14 **EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF**
15 **CHEYENNE NALDER, INDIVIDUALLY**
16

17 Date: N/A

18 Time: N/A

19 NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY
20 & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her
21 name as she has now reached the age of majority. Judgment was entered in the name of the
22 guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now
23 moves this court to issue the judgment in her name alone (See Exhibit 2) so that she may pursue
24 collection of the same. Cheyenne turned 18 on April 4, 2016. In addition, Defendant Gary Lewis,
25 has been absent from the State of Nevada since at least February 2010.

26
27
28 / / / /

002370

70

David A. M.

-2-

EXHIBIT “1”

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

CRaf
 CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

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

CASE NO: A549111
 DEPT. NO: VI

17 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
 26 ...
 27 ...
 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, 2008.

7
8 
9 DISTRICT JUDGE

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

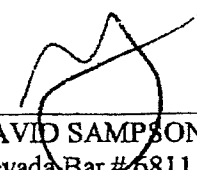
14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar #6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT "2"

1 **JMT**

2 DAVID A. STEPHENS, ESQ.

Nevada Bar No. 00902

3 STEPHENS GOURLEY & BYWATER

4 3636 North Rancho Dr

Las Vegas, Nevada 89130

5 Attorneys for Plaintiff

T: (702) 656-2355

6 F: (702) 656-2776

E: dstephens@sbglawfirm.com

7 *Attorney for Cheyenne Nalder*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11
12 CHEYENNE NALDER,

13 Plaintiff,

14 vs.

15 GARY LEWIS,

16 Defendant.

CASE NO: A549111

DEPT. NO: XXIX

17 **AMENDED JUDGMENT**

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

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2
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 _____ day of March, 2018.

7
8
9
10 _____
District Judge

11
12 Submitted by:
STEPHENS GOURLEY & BYWATER

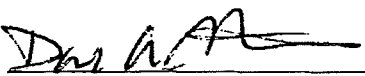
13
14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
17 3636 North Rancho Dr
Las Vegas, Nevada 89130
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

EXHIBIT “D”



1 **NOE**
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

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

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.
14

Case No. 07A549111

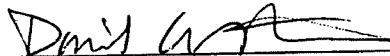
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26th day of March, 2018, the Honorable David
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

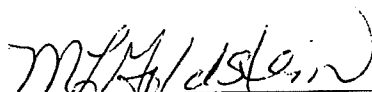
20 STEPHENS & BYWATER

21
22 
23 David A. Stephens, Esq.
24 Nevada Bar No. 00902
25 3636 North Rancho Drive
26 Las Vegas, Nevada 89130
27 Attorney for Brittany Wilson
28

CERTIFICATE OF MAILING

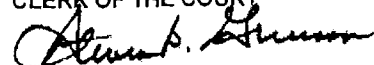
I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,
and that on the 18th day of May, 2018, I served a true copy of the foregoing **NOTICE OF**
ENTRY OF AMENDED JUDGMENT, by depositing the same in a sealed envelope upon
which first class postage was fully prepaid, and addressed as follows:

Gary Lewis
733 S. Minnesota Ave.
Glendora, California 91740



An employee of Stephens & Bywater

Electronically Filed
3/28/2018 3:05 PM
Steven D. Grierson
CLERK OF THE COURT



1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

19 AMENDED JUDGMENT

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

25 ...

26 ...

27 ...

28 ...

1 **JMT**

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbgllawfirm.com

11 *Attorney for Cheyenne Nalder*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

19 **AMENDED JUDGMENT**

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

25 ...

26 ...

27 ...

28 ...

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 District Judge
11 *me*

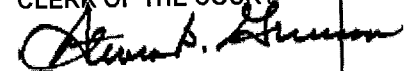
12 Submitted by:
13 STEPHENS GOURLEY & BYWATER

14 *David A. Stephens*
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “E”

1 **COMP**

2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & 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 and DOES I through V,
17 inclusive,

18 Defendants.

CASE NO.: A-549111 A-18-772220-C

DEPT NO.: ~~XXIX~~ Department 29

19 **COMPLAINT**

20 Date: n/a
21 Time: n/a

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

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

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

31 3. That the true names or capacities, whether individual, corporate, associate or
32 otherwise, of Defendants names as DOES 1 through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this
9 action.

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

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

- 20 A. In failing to keep Defendant's vehicle under proper control;
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;
22 C. In failing to keep a proper lookout for plaintiffs
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of
9 Court will be requested to include said additional damages when the same have been fully
10 determined.

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

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer
28 on February 5, 2015. This payment extends any statute of limitation.

1 15. After reaching the age of majority an amended judgment was entered in Cheyenne
2 Nalder's name.

3 16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment
4 against Gary Lewis including the full damages assessed in the original judgment plus interest and
5 minus the one payment made.

6 17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of
7 limitations on the judgments expire.

8 18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to
9 prosecute this action, and is entitled to a reasonable attorney's fee.

10 CLAIM FOR RELIEF;

11 1. General damages in an amount in excess of \$10,000.00;

12 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently
14 unascertainable amount;

15 3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of
16 Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's
17 earning capacity in a presently unascertainable amount;

18 4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of
19 \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20 5. A declaration that the statute of limitations on the judgment is still tolled as a result of
21 the Defendant's continued absence from the state.

22 4. Costs of this suit;

23 5. Attorney's fees; and

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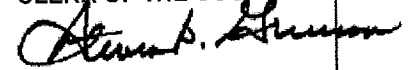
1 6. For such other and further relief as to the Court may seem just and proper in the
2 premises.

3 DATED this 3rd day of April, 2018.

4 STEPHENS GOURLEY & BYWATER

5
6 /s David A. Stephens
7 David A. Stephens, Esq.
8 Nevada Bar No. 00902
9 3636 North Rancho Drive
10 Las Vegas, Nevada 89130
11 Attorneys for Plaintiff
12
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EXHIBIT “F”



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
 Telephone: (702) 656-2355
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 Email: dstephens@sgblawfirm.com
 Attorney for Cheyenne Nalder

DISTRICT COURT
 CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

STIPULATION TO ENTER JUDGMENT

Date: n/a
 Time: n/a

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

1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.
2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the present.
3. Gary Lewis has been a resident and subject to service of process in California from 2010 to the present.
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.

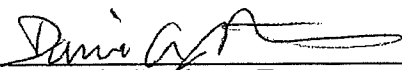
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.

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.

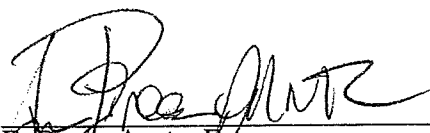
8 8. The parties stipulate to a judgment in favor of Cheyenne Nalder in the sum of
9 \$3,500,000.00, plus interest through September 4, 2018 of \$2,211,820.41 minus \$15,000.00 paid for
10 a total judgment of \$5,696,820.41, with interest thereon at the legal rate from September 4, 2018, until
11 paid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

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

Plaintiff,

11 vs.

12 GARY LEWIS,

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 ///

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28

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

DISTRICT JUDGE

8

9 Submitted by:

10 STEPHENS & BYWATER, P.C.

11

12 DAVID A. STEPHENS, ESQ.

13 Nevada Bar No. 00902
14 3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

15

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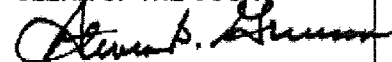
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EXHIBIT “G”

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Steven D. Grierson
CLERK OF THE COURT



MATTHEW J. DOUGLAS
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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.: 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

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

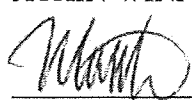
NOTICE OF MOTION

TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Intervene for hearing before the above-entitled Court on the 19 day of September, 2018, at the hour of In Chambers .m. in the forenoon of said date, or as soon thereafter as counsel can be heard.

DATED this 16th day of August, 2018.

ATKIN WINNER & SHERROD


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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR INTERVENTION

I.

Introduction & Factual Background

Although this action was only recently filed, this matter actually has a long history that dates back eleven (11) years, to July 2007 when the loss underlying this action occurred. Proposed Intervenor will not re-state the entire history as it is adequately set forth in Order Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals for the Ninth Circuit, which was filed on January 11, 2018. *A copy of the Order certifying the second question of law is attached hereto as Exhibit 'A.'* Rather, the salient points are that Plaintiff's causes of action are premised on a judgment which had been entered against Gary

1 Lewis on August 26, 2008. After obtaining the judgment, Counsel for Plaintiff¹ then filed an
 2 action against Mr. Lewis' insurer, United Automobile Insurance Company ("UAIC"), Proposed
 3 Intervenor herein. Despite the prohibition against direct actions against an insurer, Plaintiff failed
 4 to obtain an assignment prior to filing that action against UAIC and, only later, during the
 5 litigation obtained an assignment from Lewis.

6
 7 In any event, that action - on coverage for the 2008 judgment by Nalder against UAIC -
 8 has proceeded in the United States District Court for the District of Nevada and, the United
 9 States Court of Appeals for the Ninth Circuit, since 2009. During the pendency of those appeals
 10 it was observed that Plaintiff had failed to renew her 2008 judgment against Lewis pursuant to
 11 Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for
 12 action to execute on such a judgment would be six (6) years, unless renewed under N.R.S.
 13 17.214. Upon realizing the judgment had never been timely renewed, UAIC filed a Motion to
 14 Dismiss the Appeal for Lack of Standing with the Ninth Circuit on March 14, 2017. On
 15 December 27, 2017 the Ninth Circuit certified a second question to the Nevada Supreme Court -
 16 specifically certifying the following question:

17
 18 "Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a
 19 separate judgment against its insured, does the insurer's liability expire when the statute of
 20 limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life
 21 of the judgment?"

22 On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified
 23 question and ordered Appellants to file their Opening brief within 30 days, or by March 26,
 24 2018. *A copy of the Order accepting the second certified question is attached hereto as Exhibit*
 25 *'B.'* In accepting the certified question, the Nevada Supreme Court rephrased the question as
 26 follows:

27
 28 ¹ At that time, in 2008, Ms. Nalder was a minor so the judgment was entered in favor of her
 through her Guardian Ad Litem and, father, James Nalder.

1 **In an action against an insurer for breach of the duty to defend its insured, can the**
2 **plaintiff continue to seek consequential damages in the amount of a default**
3 **judgment obtained against the insured when the judgment against the insured was**
4 **not renewed and the time for doing so expired while the action against the insurer**
5 **was pending?**

6 On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC
7 has yet to file its Response Brief an, accordingly, the above-quoted question and, issue, remains
8 pending before the Nevada Supreme Court.

9 Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained
10 additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on
11 March 22, 2018 seeking, innocently enough, to "amend" the 2008 expired judgment to be in the
12 name of Cheyenne Nalder individually. *A copy of the Ex Parte Motion is attached hereto as*
13 *Exhibit 'C.'* Thereafter, this Court obviously not having been informed of the above-noted
14 Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of
15 entry on May 18, 2018. *A copy of the filed Amended Judgment is attached hereto as Exhibit 'D.'*

16 Furthermore, Plaintiff then initiated this "new" action in a thinly veiled attempt to have
17 this Court rule on issues pending before the Nevada Supreme Court and "fix" their expired
18 judgment. This intent appears clearly evidenced by paragraph five (5) of Plaintiff's prayer for
19 relief herein which states Plaintiff is seeking this Court to make "a declaration that the statute of
20 limitations on the judgment on the judgment is still tolled as a result of Defendant's continued
21 absence from the state." *A copy of Plaintiff's Complaint is attached hereto as Exhibit 'E.'*

22 Plaintiff then apparently served Lewis and, on July 17, 2018, sent a letter to UAIC's counsel
23 with a copy of a "three Day notice to Plead", and, as such, threatening default of Lewis on this
24 "new" action. *A copy of Plaintiff's letter and three day notice is attached hereto as Exhibit 'F.'*

25 Upon learning of this new action and, given the United States District Court's ruling that
26 Gary Lewis is an insured under an *implied* UAIC policy for the loss belying these judgments
27 and, present action, UAIC immediately sought to engage counsel to appear on Lewis' behalf in
28

the present action. *A copy of the Judgment of the U.S. District Court finding coverage and implying an insurance policy is attached hereto as Exhibit 'G.'* Following retained defense Counsel's attempts to communicate with Mr. Lewis to defend him in this action and, potentially, vacate this improper amendment to an expired judgment – retained defense counsel was sent a letter by Tommy Christensen, Esq. – the Counsel for Plaintiff judgment-creditor in the above-referenced action and appeal – stating in no uncertain terms that Counsel could not communicate with Mr. Lewis, nor appear and defend him in this action. *A copy of Tommy Christensen's letter of August 13, 2018 is attached hereto as Exhibit 'H.'*

Despite the apparent contradiction of counsel representing both the judgment-creditor and judgment-debtor in the same action, it is also clear that Mr. Christensen's letter has caused the need for UAIC to intervene in the present action and, this Motion follows.

II.

ARGUMENT

- A. The insurer UAIC must be permitted to intervene in this action because it has an interest to protect given UAIC's duty to defend LEWIS per the October 30, 2013 Order of the U.S. District court.**

NRCP 24(a)(2) provides for the intervention of right under the following circumstances:

Upon timely application anyone shall be permitted to intervene an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The named Defendant LEWIS has been found to be an insured per the United States District Court Order under an implied policy of insurance with UAIC policy at the time of the accident underlying the judgments for which Plaintiff seeks relief in the present action. *Exhibit 'G.'* When UAIC became informed of the present action and attempted to retain counsel to defend LEWIS, UAIC was informed by Counsel for Plaintiff that he would not allow retained defense

counsel to file any motion to defend LEWIS or vacate the amended judgment. *Exhibit "H."* Without the ability of retained defense counsel to appear and mount a defense on LEWIS' behalf, it is apparent that UAIC cannot provide him an effective defense. As long as UAIC is obligated to provide such a defense, and to potentially pay any judgment against LEWIS, UAIC's interests are clearly at stake in this action. Therefore, pursuant to NRCP 24(a)(2), UAIC should be allowed to intervene in this action.

Intervention is governed by NRCP 24 and NRS 12.130. Although strikingly similar, NRCP 24 requires "timely application" to intervene whereas NRS 12.130 merely requires intervention at the district court level. *Stephens v. First National Bank*, 64 Nev. 292, 182 P.2d 146 (1947). NRS 12.130(1)(c), however, specifically provides that intervention may be made as provided by the Nevada Rules of Civil Procedure. As such, given this mandate, the procedural rule will be specifically addressed in the instant Motion.

NRCP 24(a)(2) imposes four (4) requirements for the intervention of right: (1) the application must be timely; (2) it must show an interest in the subject matter of the action; (3) it must show that the protection of the interest may be impaired by the disposition of the action; and (4) it must show that the interest is not adequately represented by an existing party. *State Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 888 P.2d 911 (1995).²

When determining the timeliness of an application for intervention, it is not the length of the delay by the intervenor that is of primary importance, per se, but the extent of prejudice to the rights of existing parties resulting from the delay. *Lawler v. Ginocchio*, 94 Nev. 623, 584 P.2d 667 (1978). This determination is, of course, within the sound discretion of the court. *Id.* Here, this

² The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

1 matter is newly filed, LEWIS was only recently served, no default has been taken, no discovery
2 has progressed, and the matter has had no dispositive rulings made nor trial date set; as such,
3 UAIC'S intervention in the instant matter will not delay the trial proceedings and, thus, should
4 be considered timely.

5
6 Furthermore, as outlined above, it is clear that UAIC's Petition meets the other three
7 requirements for intervention as of right based upon the clear fact that UAIC has a significant
8 interest in the action as the insurer for LEWIS under the aforementioned U.S. District Court Order.
9 By dint of this fact UAIC could potentially be responsible for any damages LEWIS is found
10 liable for. This substantial interest serves to satisfy the two remaining requirements as protection
11 of the interest will be impaired by disposition of this action as any judgment entered against
12 LEWIS - without his ability to defend it - would necessarily impair UAIC. Finally, that as there is
13 currently no defendant defending this cause - UAIC's interest is not sufficiently protected.

14
15 Moreover, it also true that these very issues - the validity of the 2008 judgment against
16 Lewis - are also at issue in a case involving UAIC before the Nevada Supreme Court, as set for
17 above. The fact that Plaintiff now seeks this Court to make declarations about the validity to the
18 2008 judgment not only would appear to infringe upon issues before the Nevada Supreme Court
19 and, Ninth Circuit, but also may directly affect UAIC's interests, adding further good cause to
20 show UAIC is an interested third party whom should be allowed to intervene.

21
22 The final requirement under N.R.C.P. 24(c) is that the Motion to intervene "shall be
23 accompanied by a pleading setting forth the claim or defense for which intervention is sought.
24 Accordingly, *attached hereto as Exhibit "I"*, is a copy of UAIC's proposed responsive pleading
25 to this action, a Motion to Dismiss.

26 ///

27
28 ///


III.

CONCLUSION

Based on the foregoing, it is necessary for UAIC to intervene in this matter to protect its interests and LEWIS'.

DATED this 16th day of August, 2018.

ATKIN WINNER & SHERROD

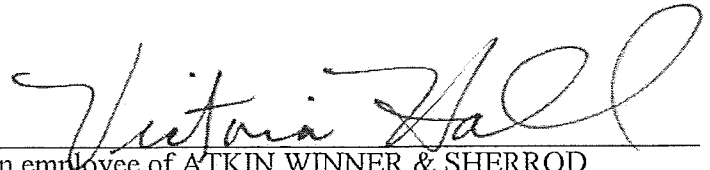

Matthew Douglas, Esq.
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for UAIC

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

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

002403

EXHIBIT “A”

FILED

JAN 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 70504

JAMES NALDER, Guardian
Ad Litem on behalf of
Cheyanne Nalder; GARY
LEWIS, individually,
Plaintiffs-Appellants,

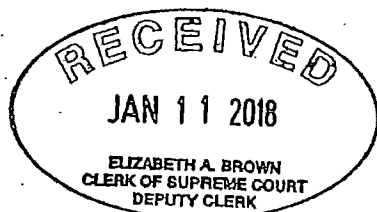
No. 13-17441

D.C. No.
2:09-cv-01348-RCJ-GWF

v.

UNITED AUTOMOBILE
INSURANCE COMPANY,
*Defendant-Appellee.*ORDER CERTIFYING
QUESTION TO THE
NEVADA SUPREME
COURTAppeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, PresidingArgued and Submitted January 6, 2016
San Francisco, California

Filed December 27, 2017

Before: Diarmuid F. O'Scannlain and
William A. Fletcher, Circuit Judges.** This case was submitted to a panel that included Judge Kozinski,
who recently retired.

18-01193

2 NALDER V. UNITED AUTO INS. CO.

SUMMARY**

Certified Question to Nevada Supreme Court

The panel certified the following question of law to the Nevada Supreme Court:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

ORDER

Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure, we certify to the Nevada Supreme Court the question of law set forth in Part II of this order. The answer to this question may be determinative of the cause pending before this court, and there is no controlling precedent in the decisions of the Nevada Supreme Court or the Nevada Court of Appeals.

Further proceedings in this court are stayed pending receipt of an answer to the certified question. Submission remains withdrawn pending further order. The parties shall notify the Clerk of this court within one week after the

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Nevada Supreme Court accepts or rejects the certified question, and again within one week after the Nevada Supreme Court renders its opinion.

I

Plaintiffs-appellants, James Nalder, guardian ad litem for Cheyanne Nalder, and Gary Lewis will be the appellants before the Nevada Supreme Court. Defendant-appellee, United Automobile Insurance Company ("UAIC"), a Florida corporation with its principal place of business in Florida, will be the respondent.

The names and addresses of counsel for the parties are as follows:

Thomas Christensen, Christensen Law Offices, LLC, 1000 South Valley View Boulevard, Las Vegas, Nevada 89107, and Dennis M. Prince, Eglet Prince, 400 South Seventh Street, Suite 400, Las Vegas, Nevada 89101, for appellants.

Thomas E. Winner, Susan M. Sherrod and Matthew J. Douglas, Atkin Winner & Sherrod, 1117 South Rancho Drive, Las Vegas, Nevada 89102, for respondent.

II

The question of law to be answered is:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the

statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

The Nevada Supreme Court may rephrase the question as it deems necessary.

III

A

This is the second order in this case certifying a question to the Nevada Supreme Court. We recount the facts essentially as in the first order.

On July 8, 2007, Gary Lewis ran over Cheyanne Nalder. Lewis had taken out an auto insurance policy with UAIC, which was renewable on a monthly basis. Before the accident, Lewis had received a statement instructing him that his renewal payment was due by June 30, 2007. The statement also specified that “[t]o avoid lapse in coverage, payment must be received prior to expiration of your policy.” The statement listed June 30, 2007, as the policy’s effective date and July 31, 2007, as its expiration date. Lewis did not pay to renew his policy until July 10, 2007, two days after the accident.

James Nalder (“Nalder”), Cheyanne’s father, made an offer to UAIC to settle her claim for \$15,000, the policy limit. UAIC rejected the offer, arguing Lewis was not covered at the time of the accident because he did not renew the policy by June 30. UAIC never informed Lewis that Nalder was willing to settle.

Nalder sued Lewis in Nevada state court and obtained a \$3.5 million default judgment. Nalder and Lewis then filed the instant suit against UAIC in state court, which UAIC removed to federal court. Nalder and Lewis alleged breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and breach of section 686A.310 of the Nevada Revised Statutes. UAIC moved for summary judgment on the basis that Lewis had no insurance coverage on the date of the accident. Nalder and Lewis argued that Lewis was covered on the date of the accident because the renewal notice was ambiguous as to when payment had to be received to avoid a lapse in coverage, and that this ambiguity had to be construed in favor of the insured. The district court found that the contract could not be reasonably interpreted in favor of Nalder and Lewis's argument and granted summary judgment in favor of UAIC.

We held that summary judgment "with respect to whether there was coverage" was improper because the "[p]laintiffs came forward with facts supporting their tenable legal position." *Nalder v. United Auto. Ins. Co.*, 500 F. App'x 701, 702 (9th Cir. 2012). But we affirmed "[t]he portion of the order granting summary judgment with respect to the [Nevada] statutory arguments." *Id.*

On remand, the district court granted partial summary judgment to each party. First, the court found the renewal statement ambiguous, so it construed this ambiguity against UAIC by finding that Lewis was covered on the date of the accident. Second, the court found that UAIC did not act in bad faith because it had a reasonable basis to dispute coverage. Third, the court found that UAIC breached its duty to defend Lewis but awarded no damages "because [Lewis] did not incur any fees or costs in defending the underlying

action” as he took a default judgment. The court ordered UAIC “to pay Cheyanne Nalder the policy limits on Gary Lewis’s implied insurance policy at the time of the accident.” Nalder and Lewis appeal.

B

Nalder and Lewis claim on appeal that they should have been awarded consequential and compensatory damages resulting from the Nevada state court judgment because UAIC breached its duty to defend. Thus, assuming that UAIC did not act in bad faith but did breach its duty to defend Lewis, one question before us is how to calculate the damages that should be awarded. Nalder and Lewis claim they should have been awarded the amount of the default judgment (\$3.5 million) because, in their view, UAIC’s failure to defend Lewis was the proximate cause of the judgment against him. The district court, however, denied damages because Lewis chose not to defend and thus incurred no attorneys’ fees or costs. Because there was no clear state law and the district court’s opinion in this case conflicted with another decision by the U.S. District Court for the District of Nevada on the question of whether liability for breach of the duty to defend included all losses consequential to an insurer’s breach, we certified that question to the Nevada Supreme Court in an order dated June 1, 2016. In that order, we also stayed proceedings in this court pending resolution of the certified question by the Nevada Supreme Court.

After that certified question had been fully briefed before the Nevada Supreme Court, but before any ruling or oral argument, UAIC moved this court to dismiss the appeal for lack of standing. UAIC argues that the six-year life of the

default judgment had run and that the judgment had not been renewed, so the judgment is no longer enforceable. Therefore, UAIC contends, there are no longer any damages above the policy limit that Nalder and Lewis can seek because the judgment that forms the basis for those damages has lapsed. For that reason, UAIC argues that the issue on appeal is moot because there is no longer any basis to seek damages above the policy limit, which the district court already awarded.

In a notice filed June 13, 2017, the Nevada Supreme Court stayed consideration of the question already certified in this case until we ruled on the motion to dismiss now pending before us.

IV

In support of its motion to dismiss, UAIC argues that under Nev. Rev. Stat. § 11.190(1)(a), the six-year statute of limitations during which Nalder could enforce his default judgment against Lewis expired on August 26, 2014, and Nalder did not renew the judgment. Therefore, says UAIC, the default judgment has lapsed, and because it is no longer enforceable, it no longer constitutes an injury for which Lewis or Nalder may seek damages from UAIC.

In response, Nalder and Lewis do not contest that the six-year period of the statute of limitations has passed and that they have failed to renew the judgment, but they argue that UAIC is wrong that the issue of consequential damages is mooted. First, they make a procedural argument that a lapse in the default judgment, if any, may affect the amount of damages but does not affect liability, so the issue is inappropriate to address on appeal before the district court

has evaluated the effect on damages. Second, they argue that their suit against UAIC is itself "an action upon" the default judgment under the terms of Nev. Rev. Stat. § 11.190(1)(a) and that because it was filed within the six-year life of the judgment it is timely. In support of this argument, they point out that UAIC has already paid out more than \$90,000 in this case, which, they say, acknowledges the validity of the underlying judgment and that this suit is an enforcement action upon it.

Neither side can point to Nevada law that definitively answers the question of whether plaintiffs may still recover consequential damages based on the default judgment when six years passed during the pendency of this suit. Nalder and Lewis reach into the annals of Nevada case law to find an opinion observing that at common law "a judgment creditor may enforce his judgment by the process of the court in which he obtained it, or he may elect to use the judgment, as an original cause of action, and bring suit thereon, and prosecute such suit to final judgment." *Mandlebaum v. Gregovich*, 50 P. 849, 851 (Nev. 1897); *see also Leven v. Frey*, 168 P.3d 712, 715 (Nev. 2007) ("An action on a judgment *or* its renewal must be commenced within six years." (emphasis added)). They suggest they are doing just this, "us[ing] the judgment, as an original cause of action," to recover from UAIC. But that precedent does not resolve whether a suit against an insurer who was not a party to the default judgment is, under Nevada law, an "action on" that judgment.

UAIC does no better. It also points to *Leven* for the proposition that the Nevada Supreme Court has strictly construed the requirements to renew a judgment. *See Leven*, 168 P.3d at 719. Be that as it may, Nalder and Lewis do not

rely on any laxity in the renewal requirements and argue instead that the instant suit is itself a timely action upon the judgment that obviates any need for renewal. UAIC also points to Nev. Rev. Stat. § 21.010, which provides that “the party in whose favor judgment is given may, at any time before the judgment expires, obtain the issuance of a writ of execution for its enforcement as prescribed in this chapter. The writ ceases to be effective when the judgment expires.” That provision, however, does not resolve this case because Nalder and Lewis are not enforcing a writ of execution, which is a direction to a sheriff to satisfy a judgment. *See* Nev. Rev. Stat. § 21.020.

Finally, apart from Nalder and Lewis’s argument that it is inappropriate to address on appeal the effect of the statute of limitations on the size of damages they may collect, neither side squarely addresses whether the expiration of the judgment in fact reduces the consequential damages for UAIC’s breach of the duty to defend. Does the judgment’s expiration during the pendency of the suit reduce the consequential damages to zero as UAIC implies, or should the damages be calculated based on when the default judgment was still enforceable, as it was when the suit was initiated? Neither side provides Nevada law to answer the question, nor have we discovered it.

V

It appears to this court that there is no controlling precedent of the Nevada Supreme Court or the Nevada Court of Appeals with regard to the issue of Nevada law raised by the motion to dismiss. We thus request the Nevada Supreme Court accept and decide the certified question. “The written opinion of the [Nevada] Supreme Court stating the law

governing the question[] certified . . . shall be res judicata as to the parties." Nev. R. App. P. 5(h).

If the Nevada Supreme Court accepts this additional certified question, it may resolve the two certified questions in any order it sees fit, because Nalder and Lewis must prevail on both questions in order to recover consequential damages based on the default judgment for breach of the duty to defend.

The clerk of this court shall forward a copy of this order, under official seal, to the Nevada Supreme Court, along with copies of all briefs and excerpts of record that have been filed with this court.

IT IS SO ORDERED.

Respectfully submitted, Diarmuid F. O'Scannlain and
William A. Fletcher, Circuit Judges.

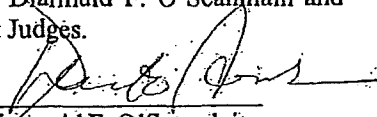

Diarmuid F. O'Scannlain
Circuit Judge

EXHIBIT “B”

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES NALDER, GUARDIAN AD
LITEM ON BEHALF OF CHEYANNE
NALDER; AND GARY LEWIS,
INDIVIDUALLY,
Appellants,
vs.
UNITED AUTOMOBILE INSURANCE
COMPANY,
Respondent.

No. 70504

FILED

FEB 23 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER ACCEPTING SECOND CERTIFIED QUESTION AND
DIRECTING SUPPLEMENTAL BRIEFING*

The United States Ninth Circuit Court of Appeals previously certified a legal question to this court under NRAP 5, asking us to answer the following question:

Whether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred by the insured in mounting a defense, or is the insurer liable for all losses consequential to the insurer's breach?

Because no clearly controlling Nevada precedent answers that legal question and the answer could determine part of the federal case, we accepted that certified question and directed the parties to file briefs addressing that question. After briefing had been completed, respondent United Automobile Insurance Company informed this court that it had filed a motion to dismiss in the federal case. We then stayed our consideration of the certified question because a decision by the Ninth Circuit granting the motion to dismiss would render the question before this court advisory.

The Ninth Circuit has now certified another legal question to this court under NRAP 5. The new question, which is related to the motion to dismiss pending in the Ninth Circuit, asks us to answer the following:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

That question is focused on the insurer's liability, but elsewhere in the Ninth Circuit's certification order, it makes clear that the court is concerned with whether the plaintiff in this scenario can continue to seek the amount of the separate judgment against the insured as consequential damages caused by the insurer's breach of the duty to defend its insured when the separate judgment was not renewed as contemplated by NRS 11.190(1)(a) and NRS 17.214 during the pendency of the action against the insurer. We therefore choose to accept the Ninth Circuit's invitation to "rephrase the question as [we] deem necessary." Consistent with language that appears elsewhere in the certification order, we rephrase the question as follows:

In an action against an insurer for breach of the duty to defend its insured, can the plaintiff continue to seek consequential damages in the amount of a default judgment obtained against the insured when the judgment against the insured was not renewed and the time for doing so expired while the action against the insurer was pending?

As no clearly controlling Nevada precedent answers this legal question and the answer may determine the federal case, we accept this certified question as rephrased. See NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).

Appellants shall have 30 days from the date of this order to file and serve a supplemental opening brief. Respondent shall have 30 days from the date the supplemental opening brief is served to file and serve a supplemental answering brief. Appellants shall then have 20 days from the date the supplemental answering brief is served to file and serve any supplemental reply brief. The supplemental briefs shall be limited to addressing the second certified question and shall comply with NRAP 28, 28.2, 31(c), and 32. See NRAP 5(g)(2). To the extent that there are portions of the record that have not already been provided to this court and are necessary for this court to resolve the second certified question, the parties may submit a joint appendix containing those additional documents. See NRAP 5(d). Given the relationship between the two certified questions, we lift the stay as to the first certified question.

It is so ORDERED.¹

Douglas, C.J.
Douglas

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Cherry, J.
Cherry

Pickering, J.
Pickering

Stiglich, J.
Stiglich

¹As the parties have already paid a filing fee when this court accepted the first certified question, no additional filing fee will be assessed at this time.

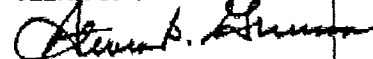
The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Eglet Prince
Christensen Law Offices, LLC
Atkin Winner & Sherrod
Cole, Scott & Kissane, P.A.
Lewis Roca Rothgerber Christie LLP/Las Vegas
Pursiano Barry Bruce Lavelle, LLP
Laura Anne Foggan
Mark Andrew Boyle
Matthew L. Sharp, Ltd.
Clerk, United States Court of Appeals for the Ninth Circuit

002419

EXHIBIT “C”

Electronically Filed
3/22/2018 11:15 AM
Steven D. Grierson
CLERK OF THE COURT



1 MTN
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & 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

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

07-A-549111
CASE NO.: ~~A549111~~

Plaintiff,

DEPT NO.: XXIX

vs.

GARY LEWIS,

Defendants.

EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF
CHEYENNE NALDER, INDIVIDUALLY

Date: N/A

Time: N/A

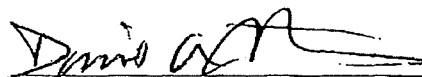
NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her name as she has now reached the age of majority. Judgment was entered in the name of the guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now moves this court to issue the judgment in her name alone (See Exhibit 2) so that she may pursue collection of the same. Cheyenne turned 18 on April 4, 2016. In addition, Defendant Gary Lewis, has been absent from the State of Nevada since at least February 2010.

/ / / /

1 Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of
2 \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

3 Dated this 19 day of March, 2018.

4
5 STEPHENS GOURLEY & BYWATER

6
7 

8 David A. Stephens, Esq.
9 Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT “1”

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

Chaf
 CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

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

CASE NO: A549111
 DEPT. NO: VI

17 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
 26 ...
 27 ...
 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, 2008.

7
8 
9 DISTRICT JUDGE

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

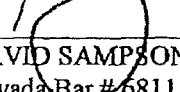
14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar # 6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “2”

1 **JMT**
2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbglawfirm.com
11 Attorney for Cheyenne Nalder

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

11
12 CHEYENNE NALDER,

13 Plaintiff,

14 vs.

15 GARY LEWIS,

16 Defendant.

CASE NO: A549111
DEPT. NO: XXIX

17 **AMENDED JUDGMENT**

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

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2
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 _____ day of March, 2018.

7
8
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10 _____
District Judge

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12 Submitted by:
STEPHENS GOURLEY & BYWATER

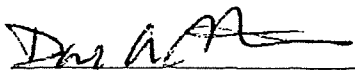
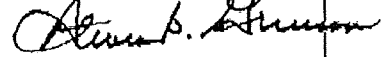
13
14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
17 3636 North Rancho Dr
Las Vegas, Nevada 89130
18 Attorneys for Plaintiff
19
20
21
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EXHIBIT “D”

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5/18/2018 3:37 PM
Steven D. Grierson
CLERK OF THE COURT



1 **NOE**
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3 3636 North Rancho Drive
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4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 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. 07A549111

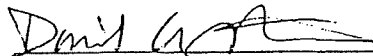
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26th day of March, 2018, the Honorable David
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

20 STEPHENS & BYWATER

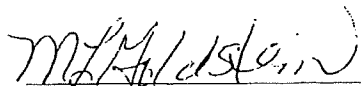
21 

22 David A. Stephens, Esq.
23 Nevada Bar No. 00902
24 3636 North Rancho Drive
25 Las Vegas, Nevada 89130
26 Attorney for Brittany Wilson

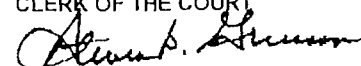
CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,
and that on the 15th day of May, 2018, I served a true copy of the foregoing **NOTICE OF**
ENTRY OF AMENDED JUDGMENT, by depositing the same in a sealed envelope upon
which first class postage was fully prepaid, and addressed as follows:

Gary Lewis
733 S. Minnesota Ave.
Glendora, California 91740


An employee of Stephens & Bywater

Electronically Filed
3/28/2018 3:05 PM
Steven D. Grierson
CLERK OF THE COURT



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

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

AMENDED JUDGMENT

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

...

...

...

...

1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbgllawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

19 AMENDED JUDGMENT

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

25 ...

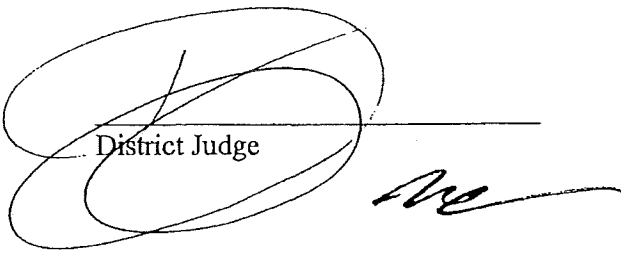
26 ...

27 ...

28 ...

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
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10 
11 District Judge

12 Submitted by:
13 STEPHENS GOURLEY & BYWATER

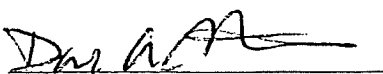
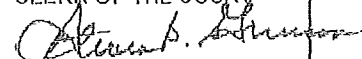
14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
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EXHIBIT “E”

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Steven D. Grierson
CLERK OF THE COURT



1 **COMP**
David A. Stephens, Esq.
2 Nevada Bar No. 00902
STEPHENS, GOURLEY & BYWATER
3 3636 North Rancho Drive
Las Vegas, Nevada 89130
4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

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

9 CHEYENNE NALDER,)
10)
Plaintiff,)
11)
vs.)
12)
13 GARY LEWIS and DOES I through V,
inclusive,)
14)
Defendants.)

CASE NO.: A-5494-H A-18-772220-C
DEPT NO.: XXXX Department 29

15 **COMPLAINT**

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

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

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

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

27 3. That the true names or capacities, whether individual, corporate, associate or
28 otherwise, of Defendants names as DOES I through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this
9 action.

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

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

- 20 A. In failing to keep Defendant's vehicle under proper control;
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;
22 C. In failing to keep a proper lookout for plaintiffs
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of
9 Court will be requested to include said additional damages when the same have been fully
10 determined.

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

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer
28 on February 5, 2015. This payment extends any statute of limitation.

1 15. After reaching the age of majority an amended judgment was entered in Cheyenne
2 Nalder's name.

3 16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment
4 against Gary Lewis including the full damages assessed in the original judgment plus interest and
5 minus the one payment made.

6 17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of
7 limitations on the judgments expire.

8 18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to
9 prosecute this action, and is entitled to a reasonable attorney's fee.

10 CLAIM FOR RELIEF;

11 1. General damages in an amount in excess of \$10,000.00;

12 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently
14 unascertainable amount;

15 3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of
16 Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's
17 earning capacity in a presently unascertainable amount;

18 4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of
19 \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20 5. A declaration that the statute of limitations on the judgment is still tolled as a result of
21 the Defendant's continued absence from the state.

22 4. Costs of this suit;

23 5. Attorney's fees; and

24 ///

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26 ///

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STEPHENS GOURLEY & BYWATER

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EXHIBIT “F”

STEPHENS & BYWATER, P.C.
ATTORNEYS AT LAW

David A. Stephens email: dstephens@sblawfirm.com

Gordon E. Bywater email: gbywater@sblawfirm.com

July 17, 2018

VIA REGULAR U.S. MAIL

Thomas E. Winner, Esq.
Atkin Winner & Sherrod
1117 S. Rancho Drive
Las Vegas, Nevada 89102

RE: Cheyenne Nalder vs. Gary Lewis

Dear Tom:

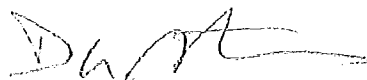
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

I recognize that you have not appeared in this matter. I served Mr. Lewis some time ago and he has never filed an answer. Thus, as a courtesy to you, who I understand to be representing Mr. Lewis in related cases, I am providing this Three Day Notice to you in addition to Mr. Lewis.

I appreciate your consideration.

Sincerely,

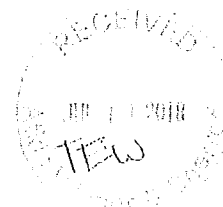
STEPHENS & BYWATER



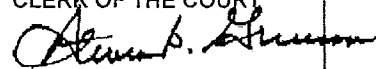
David A. Stephens, Esq.

DAS:mlg
enclosure

3636 N. Rancho Drive, Las Vegas, Nevada 89130
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Website: www.sblawfirm.com



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Steven D. Grierson
CLERK OF THE COURT



1 TDNP (CIV)
David A. Stephens, Esq.
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3 3636 North Rancho Drive
Las Vegas, Nevada 89130
4 Telephone: (702) 656-2355
Facsimile: (702) 656-2776
5 Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

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

9 CHEYENNE NALDER,

CASE NO.: A-18-772220-C

10 Plaintiff,

DEPT NO.: XXIX

11 vs.

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

14 Defendants.

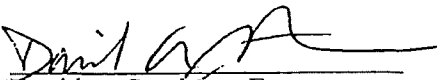
15 **THREE DAY NOTICE TO PLEAD**

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

18 To: Gary Lewis, Defendant

19 PLEASE TAKE NOTICE that the Plaintiff intends to take a default and default judgment
20 against you if you have not answered or otherwise filed a response of pleading within three (3) days
21 of the date of this notice.

22 Dated this 17 day of July 2018.



25 David A. Stephens, Esq.
Nevada Bar No. 00902
26 Stephens Gourley & Bywater
3636 N. Rancho Drive
27 Las Vegas, NV 89130
Attorney for Plaintiff
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CERTIFICATE OF MAILING

I hereby certify that service of this THREE DAY NOTICE TO PLEAD was made this 17th
day of July, 2018, by depositing a copy thereof in the U.S. Mail, first class postage prepaid,
addressed to:

Gary Lewis
733 Minnesota Avenue
Glendora, CA 91740

Thomas E. Winner, Esq.
Atkin Winner Shorrod
1117 S. Rancho Drive
Las Vegas, NV 89102



An Employee of
Stephens Gourley & Bywater

EXHIBIT “G”

UNITED STATES DISTRICT COURT

DISTRICT OF

Nevada

Nalder et al.,

Plaintiffs,

V.

United Automobile Insurance Company,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: 2:09-cv-01348-RCJ-GWF

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

☐ **Notice of Acceptance with Offer of Judgment.** A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED

The Court grants summary judgment in favor of Nalder and finds that the insurance renewal statement contained an ambiguity and, thus, the statement is construed in favor of coverage during the time of the accident. The Court denies summary judgment on Nalder's remaining bad-faith claims.

The Court grants summary judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant. The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewis's implied insurance policy at the time of the accident.

October 30, 2013

Date

/s/ Lance S. Wilson

Clerk

/s/ Summer Rivera

(By) Deputy Clerk



EXHIBIT “H”



CHRISTENSEN LAW
www.injuryhelpnow.com

August 13, 2018

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 S. Third Street
Las Vegas, Nevada 89101

VIA Fax: (702)384-1460
Email: srogers@rmcmlaw.com

Re: Gary Lewis

Dear Stephen:

I am in receipt of your letter dated Friday, August 10, 2018. I was disappointed that you have chosen to disregard my request that you communicate with me and not directly with my client. You say you have "been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions." Would you be so kind as to provide me with all communications written or verbal or notes of communications you have had with UAIC, their attorneys and/or Mr. Lewis from your first contact regarding this matter to the present?

Please confirm that UAIC seeks now to honor the insurance contract with Mr. Lewis and provide a defense for him and pay any judgment that may result? This is the first indication I am aware of where UAIC seeks to defend Mr. Lewis. I repeat, please do not take any actions, including requesting more time or filing anything on behalf of Mr. Lewis without first getting authority from Mr. Lewis through me. Please only communicate through this office with Mr. Lewis. If you have already filed something or requested an extension without written authority from Mr. Lewis, he requests that you immediately reverse that action. Please also only communicate with UAIC that any attempt by them to hire any other attorneys to take action on behalf of Mr. Lewis must include notice to those attorneys that they must first get Mr. Lewis' consent through my office before taking any action including requesting extensions of time or filing any pleadings on his behalf.

Regarding your statement that Mr. Lewis would not be any worse off if you should lose your motions. That is not correct. We agree that the validity of the judgment is unimportant at this stage of the claims handling case. UAIC, however, is arguing that Mr. Lewis' claims handling case should be dismissed because they claim the judgment is not valid. If you interpose an insufficient improper defense that delays the inevitable entry of judgment against Mr. Lewis and the Ninth Circuit dismisses the appeal then Mr. Lewis will have a judgment against him and no claim against UAIC. In addition, you will cause additional damages and expense to both parties for which, ultimately, Mr. Lewis would be responsible.



CHRISTENSEN LAW
www.injuryhelpnow.com

Could you be mistaken about your statement that "the original judgment expired and cannot be revived?" I will ask your comment on just one legal concept -- Mr. Lewis' absence from the state. There are others but this one is sufficient on its own. There are three statutes applicable to this narrow issue: NRS 11.190; NRS 11.300 and NRS 17.214.

NRS 11.190 Periods of limitation. ... actions .. may only be commenced as follows:

1. Within 6 years:

(a) ... an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

NRS 11.300 Absence from State suspends running of statute. If, ... after the cause of action shall have accrued the person (defendant) departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action.

NRS 17.214 Filing and contents of affidavit; recording affidavit; notice to judgment debtor; successive affidavits.

1. A judgment creditor or a judgment creditor's successor in interest may renew a judgment which has not been paid by:

(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation.

These statutes make it clear that both an action on the judgment or an optional renewal is still available through today because Mr. Lewis has been in California since late 2008. If you have case law from Nevada contrary to the clear language of these statutes please share it with me so that I may review it and discuss it with my client.

Your prompt attention is appreciated. Mr. Lewis does not wish you to file any motions until and unless he is convinced that they will benefit Mr. Lewis -- not harm him and benefit UAIC. Mr. Lewis would like all your communications to go through my office. He does not wish to have you copy him on correspondence with my office. Please do not communicate directly with Mr. Lewis.

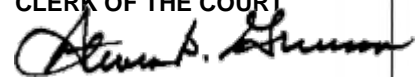
Very truly yours,

Tommy Christensen

CHRISTENSEN LAW OFFICE, LLC

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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 Intervenor United Automobile Ins. Co.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER,
Plaintiff,

vs.

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

CASE NO.: 07A549111
DEPT. NO.: XXIX

**NOTICE OF ENTRY OF ORDER ON
INTERVENOR UNITED AUTOMOBILE
INSURANCE COMPANY'S MOTION TO
INTERVENE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached **ORDER ON INTERVENOR
UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was
entered by the Court on the 19th day of October, 2018.

DATED this 19th day of October, 2018.

ATKIN WINNER & SHERROD



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

CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2018, the foregoing **NOTICE OF ENTRY OF ORDER ON INTERVENOR UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 - to all counsel on the service list ☐ 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:

David Stephens, Esq.
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, NV 89130

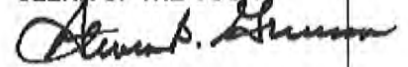
Randall Tindall, Esq.
Carissa Christensen, Esq.
RESNICK & LOUIS, P.C.
8925 West Russell Road Suite 220
Las Vegas, NV 89148


An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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CLERK OF THE COURT



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mdouglas@awslawyers.com

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,~~

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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

7
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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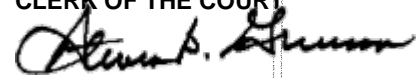
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TPC

Thomas Christensen, Esq.
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F: (702) 870-6152
courtnotices@injuryhelpnow.com
Attorney for Third Party Plaintiff



DISTRICT COURT

CLARK COUNTY, NEVADA

Cheyenne Nalder)	
Plaintiff,)	CASE NO. A-18-772220-C
vs.)	DEPT NO. XXIX
)	
Gary Lewis,)	
Defendant.)	
)	
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.)	

THIRD PARTY COMPLAINT

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

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

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

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

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

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

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

28 6. This incident occurred on private property.

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

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

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

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

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

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

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

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

14 15. UAIC never filed a declaratory relief action.

15 16. UAIC rejected Nalder's offer.

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

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

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

23 20. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a
24 default judgment against Lewis for \$3,500,000.00.
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1 21. Notice of entry of judgment was filed on August 26, 2008.

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

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

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

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

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

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

24 28. The district court also determined UAIC breached its duty to defend Lewis, but
25 did not award damages because Lewis did not incur any fees or costs in defense of the Nevada
26 state court action.
27
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1 29. Based on these conclusions, the district court ordered UAIC to pay the policy
2 limit of \$15,000.00.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 67. David Stephens thereafter filed oppositions and hand-delivered courtesy copies to
22 the court. UAIC filed replies. The matter was fully briefed before the in chambers "hearing,"
23 but the court granted the motions citing in the minuted order that "no opposition was filed."
24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 99. That UAIC, and each of them, failed to promptly provide to Gary Lewis a
16 reasonable explanation of the basis in the Policy, with respect to the facts of the Nalder claim
17 and the applicable law, for the delay in the claim or for an offer to settle or compromise the
18 claim.
19

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

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

24 102. That Gary Lewis has suffered anxiety, worry, mental and emotional distress as a
25 result of the conduct of UAIC, and each of the Defendants.
26
27
28

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

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

- 5
- 6 a. Unreasonable conduct in investigating the loss;
 - 7 b. Unreasonable failure to affirm or deny coverage for the loss;
 - 8 c. Unreasonable delay in making payment on the loss;
 - 9 d. Failure to make a prompt, fair and equitable settlement for the loss;
 - 10 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
11 making payment on the loss;
 - 12 f. Failing to defend Gary Lewis;
 - 13 g. Fraudulent and frivolous litigation tactics;
 - 14 h. Filing false and fraudulent pleadings;
 - 15 i. Conspiring with others to file false and fraudulent pleadings;
 - 16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27 102. As a further proximate result of the aforementioned breach of the covenant of
28 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional

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

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

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

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

- 13
14 a. Unreasonable conduct in investigating the loss;
15 b. Unreasonable failure to affirm or deny coverage for the loss;
16 c. Unreasonable delay in making payment on the loss;
17 d. Failure to make a prompt, fair and equitable settlement for the loss;
18 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
19 making payment on the loss;
20 f. Failing to defend Gary Lewis;
21 g. Fraudulent and frivolous litigation tactics;
22 h. Filing false and fraudulent pleadings;
23 i. Conspiring with others to file false and fraudulent pleadings;
24

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

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

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

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

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

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

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

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

- 1 g. Fraudulent and frivolous litigation tactics;
- 2 h. Filing false and fraudulent pleadings;
- 3 i. Conspiring with others to file false and fraudulent pleadings;
- 4

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

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

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

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

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

21 117. As a proximate result of the aforementioned intentional infliction of emotional
22 distress, Gary Lewis has suffered severe and extreme anxiety, worry, mental and emotional
23 distress, and other incidental damages and out of pocket expenses, all to his general damage in
24 excess of \$10,0000.
25
26
27
28

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

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

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

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

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

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

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

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

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

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

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

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courtnotices@injuryhelpnow.com
Attorney for Cross-Claimant
Third-party Plaintiff

CERTIFICATE OF SERVICE

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


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

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An employee of CHRISTENSEN LAW OFFICES

44

44

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breen@breen.com
Attorney for Defendant

CLERK OF THE COURT
Albert P. Linn

CLARK COUNTY, NEVADA

DEPT NO. XXIX

///

1 1. Defendant admits the allegations contained in Paragraphs 1, 2, 4, 5, 6, 10, 11 and
2
3 15.

4 2. Answering paragraph 14, Defendant admits that UAIC paid \$15,000 on the
5 judgment after being ordered to do so by the Federal District Court, following years of litigation
6 and an appeal to the Ninth Circuit Court of Appeals. Defendant denies all other allegations in
7 this paragraph.

8 3. Responding to paragraphs 3, 7, 8, 9, 12, 13, 16, 17 and 18, Defendant denies the
9 allegations contained in those paragraphs.

10 **First Affirmative Defense: Failure to State a Claim**

11 Plaintiff's Complaint on file herein fails to state a claim against this Defendant upon
12 which relief can be granted.

13 WHEREFORE, Gary Lewis prays judgment as follows:

- 14 1. That Plaintiff take nothing by way of this action;
15
16 2. For an award of costs and attorneys fees for having to defend this action; and
17
18 3. For such other and further relief as this Court deems just and proper.

19 DATED THIS 22 day of October, 2018.

20
21 
22 E. Breen Arntz, Esq.
23 Nevada Bar No. 3853
24 5545 Mountain Vista Ste. E
25 Las Vegas, Nevada 89120
26 T: (702) 384-8000
27 F: (702) 446-8164
28 **breen@breen.com**
 Attorney for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), NEFCR 9, and Administrative Order 14-2, I certify that I am an employee of E. BREEN ARNTZ, ESQ. and that on this 24th day of Oct., 2018, I served a copy of the foregoing Defendant's Answer as follows:

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

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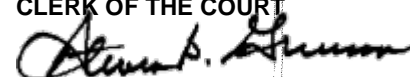

An employee of E. BREEN ARNTZ, ESQ.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Cheyenne Nalder)
Plaintiff,)

vs.)

Gary Lewis,)
Defendant.)

United Automobile Insurance Company,)
Intervenor,)

Gary Lewis,)
Cross-Claimant,)

vs.)

United Automobile Insurance Company)
DOES I through V,)
Cross-Defendants)

CASE NO. A-18-772220-C
DEPT NO. I

Date of Hearing: 12/12/18
Time of Hearing: 9:00am

**CROSS-CLAIMANT'S OPPOSITION TO UAIC'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT & OPPOSITION TO MOTION FOR COURT TO DENY
STIPULATION TO ENTER JUDGMENT BETWEEN PLAINTIFF AND LEWIS
AND/OR IN THE ALTERNATIVE TO STAY SAME PENDING HEARING ON MOTION
TO DISMISS**

Comes now, GARY LEWIS, Cross-Claimant/Third-Party Claimant, by and through his
attorney, CHRISTENSEN LAW OFFICES, L.L.C., and hereby opposes the Intervenor's Motion
to Dismiss Plaintiff's Complaint & Motion for Court to Deny Stipulation to Enter Judgment

1 Between Plaintiff and Lewis and/or, In the Alternative to Stay the Same Pending Hearing on
2 Motion to Dismiss.
3

4 This Opposition is made and based on the pleadings and papers herein, the following
5 points and authorities, the complete record on file in this case as well as any oral argument at the
6 time of the hearing of these motions.

7
8 
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17 Third-Party Plaintiff

18 **POINTS & AUTHORITIES**

19 **I. Introduction**

20 Gary Lewis, Defendant/Cross-Claimant/Third-Party Plaintiff opposes UAIC's Instant
21 Motions because the "defense" that UAIC sets forth -- that the judgment is not valid -- is
22 frivolous. UAIC's defense ignores Nalder's well settled common law right to bring an action on
23 the judgment. UAIC's motion was previously filed by Randall Tindall, Esq., purportedly on
24 behalf of Gary Lewis. UAIC seeks to protect UAIC with this frivolous defense even if the
25 outcome is to further harm Gary Lewis. With the motions filed by UAIC, UAIC puts their
26 interests above that of the policyholder Lewis. Gary Lewis and UAIC are adversaries in another
27 proceeding and UAIC cannot feign that their interests are the same or equal when that litigation
28 has been pending for several years. Pretending the judgment in the 2007 case is no longer valid
does not equate with UAIC having never failed to defend Gary Lewis.

1 UAIC's Motions are based on its mistaken assumption (and hope) that the original
2 judgment in the 2007 case is no longer valid. From the face of the complaint on file in the instant
3 case, three actions are alternatively pled by David Stephens attorney for Plaintiff Nalder. First,
4 Nalder has pled an action on the judgment to obtain a new judgment, not an amended judgment
5 as misstated by UAIC. This is an action specifically authorized by NRS 11.190(a)(1) and is
6 supported by the common law of Nevada. "A judgment creditor may enforce his judgment by the
7 process of the court in which he obtained it, *or he may elect to use the judgment as an original*
8 *cause of action and bring suit thereon and prosecute such suit to final judgment.*"
9 *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (Nev 1897) (emphasis added).
10

11 The other two actions pled by Nalder are in the alternative only. Nalder asks the court, *if* it
12 finds the action on the judgment is no longer available in Nevada, *overruling Mandlebaum*,
13 Nalder requests declaratory relief as to when a renewal under NRS 17.214 must be filed in the
14 instant circumstance. Finally, *if* the answer to the declaratory relief action is that the time for
15 filing under NRS 17.214 has gone by, and the Judgment is no longer valid, then, as a last
16 alternative, Nalder brings her personal injury action within two years of her majority. If the two
17 actions above do not provide relief for Nalder, then this third action is not the subject of claim
18 preclusion because the parties are different, the causes of action are different and the judgment
19 would have been found by the court to be invalid.
20

21 Regarding the first cause of action on the judgment to obtain a new judgment, UAIC
22 claims that the tolling statutes NRS 11.200, NRS 11.250 and NRS 11.300 do not apply to the
23 statute of limitations for judgments, even though they are contained in the same chapter at NRS
24 11.190(a)(1). UAIC provides no legal authority for this unreasonable position. These tolling
25 statutes extend the time for filing an action on the judgment pursuant to the common law method,
26 or via renewal under NRS 17.214.
27
28

1 Nevada has two methods for dealing with the expiration of the statute of limitations. Both
2 methods are dependent on the expiration of the statute of limitations and the associated tolling
3 statutes. The statute of limitations in this matter is tolled well past the time Nalder amended the
4 judgment and filed an action on the judgment.
5

6 UAIC argues the amended judgment is void. The judgment in the prior case never
7 expired. And, the judgment does not have to be revived. Nalder can bring an action on a
8 judgment, which is what she has done pursuant to *Mandlebaum v. Gregovich*, Id., and NRS
9 11.190. UAIC has inserted itself into these actions, trying to assert the simple but flawed
10 concept that unless a renewal pursuant to NRS 17.214 is brought within 6 years, a judgment is no
11 longer valid. UAIC's motivation for bringing this argument is not made in good faith. UAIC
12 makes this argument only in the hope to avoid payment of damages arising from its claims
13 handling failures that are currently pending before the 9th Circuit.
14

15 Gary Lewis and Cheyenne Nalder are still involved in ongoing claims handling litigation
16 against Lewis's insurance company, UAIC, because of its failure to defend Lewis in the original
17 case.¹ UAIC's Motion accuses Mr. Christensen of fraud and collusion, claiming he is in a
18 position of conflict. Mr. Christensen represents Mr. Lewis and Ms. Nalder against UAIC in the
19 appeal of the claims handling case before the 9th circuit. Mr. Arntz was retained by Mr. Lewis to
20 represent Mr. Lewis as defendant in this action. Mr. Stephens represents Ms. Nalder in this case.
21 Now Mr. Christensen represents Mr. Lewis against UAIC and Tindall in this case.
22

23 UAIC hired Mr. Tindall to represent Mr. Lewis. Mr. Tindall, however, has filed pleadings
24 directly against the wishes of his "client" and without consulting with his client which benefit
25 UAIC and harm Mr. Lewis. UAIC seeks an evidentiary hearing on the "fraud" perpetrated by
26 Mr. Christensen. Mr. Christensen welcomes the Court's inquiry regarding his representation of
27

28 ¹ The case remains on Appeal before the Ninth Circuit and UAIC is going to great lengths, filing motion after motion, in the lower courts in a subversive attempt to relieve itself of any culpability should its appeal be lost.

1 Mr. Lewis in this action. Mr. Christensen likewise requests the Court to inquire as to the ethical
2 basis of Mr. Tindall's representation as well as the representation of UAIC's counsel and the
3 shared information it has received from Mr. Tindall and other hired counsel, whom have failed to
4 give Mr. Lewis's interest's careful thought and consideration of the consequences of their actions.
5 UAIC asks what harm could come to Lewis as a result of the filing of a frivolous defense on his
6 behalf. First, the frivolous motions by UAIC are increasing the cost of litigation for Mr. Lewis.
7 Second, the frivolous motions are increasing the cost of litigation for Nalder who will
8 undoubtedly request reimbursement of those fees and costs ultimately from Mr. Lewis. Third Mr.
9 Lewis might be held responsible for the frivolous defenses put forth on his behalf.
10
11

12 II. Factual & Procedural Background

13 The underlying matter arises from an auto accident that occurred on July 8, 2007, wherein
14 Gary Lewis ran over Cheyenne Nalder on private property. Cheyenne was born April 4, 1998
15 and was a nine-year-old girl at the time.² Lewis maintained an auto insurance policy with United
16 Auto Insurance Company ("UAIC"), which was renewable on a monthly basis. UAIC was
17 notified of the lawsuit, but declined to defend Lewis or file a declaratory relief action regarding
18 coverage. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a default
19 judgment against Lewis for \$3,500,000.00. Notice of entry of judgment was filed on August 26,
20 2008. (See case number 07A549111).
21

22 On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of contract,
23 breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of
24 NRS 686A.310. Lewis assigned to Nalder his right to "all funds necessary to satisfy the
25 Judgment" and retaining for himself any funds recovered above the judgment. Lewis left the
26
27
28

² UAIC's Motion incorrectly states Cheyenne was 11 at the time of the loss.

1 state of Nevada and relocated to California prior to 2010. Neither Lewis, nor anyone on his
2 behalf, has been subject to service of process in Nevada since 2010.

3
4 Once UAIC removed the case against it to federal district court, UAIC filed a motion for
5 summary judgment as to all of Lewis and Nalder's claims, alleging Lewis did not have insurance
6 coverage on the date of the subject collision because it had lapsed for non-payment. The federal
7 district court granted UAIC's summary judgment motion. Nalder and Lewis appealed this
8 decision to the Ninth Circuit. The Ninth Circuit reversed and remanded the matter because Lewis
9 and Nalder showed the renewal statement was ambiguous regarding the date when payment was
10 required to avoid a coverage lapse.

11
12 On remand, the District Court then concluded the renewal statement was ambiguous and
13 therefore, Lewis was covered on the date of the incident. The district court also determined UAIC
14 breached its duty to defend Lewis. The court did not award damages to Lewis and Nalder. Based
15 on these conclusions, the district court ordered UAIC to pay the policy limit of \$15,000.00.
16 UAIC then made three payments on the 2007 judgment. The dates of those payments were June
17 23, 2014; June 25, 2014; and March 5, 2015.

18
19 Both Nalder and Lewis appealed to the Ninth Circuit. The first certified question to the
20 Nevada Supreme Court is whether an insurer that breaches its duty to defend is liable for all
21 foreseeable consequential damages to the breach.

22
23 After the first certified question was fully briefed and pending before the Nevada Supreme
24 Court, UAIC had the idea that it should file documents and argue that the underlying judgment
25 was expired because it could only be renewed pursuant to NRS 17.214 and the time under that
26 statute had passed. Even though UAIC knew, at this point, that it owed a duty to defend Gary
27 Lewis, it did not undertake to investigate the factual basis or the legal grounds for this idea, nor
28 did UAIC discuss this idea with Gary Lewis. UAIC did not seek declaratory relief on Lewis'

1 behalf regarding the statute of limitations on the judgment. Instead, UAIC filed a motion to
2 dismiss Lewis and Nalder's appeal with the Ninth Circuit for lack of standing. This was not
3 something brought up in the trial court. It was something UAIC concocted only for its own
4 benefit. This was brought for the first time in the appellate court. UAIC is now asking this Court
5 to endorse its new idea, so that it can then present this Court's decision to the 9th Circuit in an
6 improper attempt to avoid payment of damages for its failure to defend.
7

8 **III. Argument**

9 **A. Validity of the underlying judgment.**

10 UAIC's arguments are all based on the frivolous claim without any supporting authority or
11 argument that the underlying judgment is invalid. In *Mandlebaum v. Gregovich*, 24 Nev. 154,
12 161, 50 P. 849, 851 (1897) the Nevada Supreme Court held: (on facts exactly like those in this
13 case except the judgment was entered 15 years not ten years prior to the action on the judgment)
14

15 The averments of the complaint and the undisputed facts are that, at the
16 time of the rendition and entry of the judgment in 1882, the appellant was out of
17 the state, and continuously remained absent therefrom until March, 1897,
18 thereby preserving the judgment and all rights of action of the judgment creditor
19 under the same. Notwithstanding nearly fifteen years had elapsed since the entry
20 of the judgment, yet, for the purposes of action, the judgment was not barred —
21 for that purpose the judgment was valid.

22 Unless this court is going to ignore this clear Nevada precedent, directly on point all of
23 UAIC's arguments fail and their motion must be denied in its entirety.
24

25 **1. An Action on a Judgment is a Cause of Action (mischaracterized by UAIC as "A 26 Second Amended Judgment")**

27 NRS 17.214 was enacted to give an optional, not "mandatory," statutory procedure in
28 addition to the rights created at common law for an action on the judgment. UAIC claims the
plain, permissive language of NRS 17.214: "A judgment creditor...**may** renew a judgment,"

(emphasis added) mandates use of NRS 17.214 as the only way to obtain a new judgment. This is contrary to the clear wording of the statute and the case law in Nevada. See *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897).

In the absence of direct legislation restricting or limiting the common law rule of the right of action upon judgments, there are found within our statutes provisions from which the court is authorized in holding, as a matter of inference, that no change in that rule was intended, otherwise some legislative restriction or limitation of the right under the common law rule would have been included in the statute other than the one barring the action if not commenced within six years after the right accrued. In other words, the legislature gave to the judgment creditor the right of action at any time within six years after such right accrued without other limitations. Furthermore, the statutory law preserved that right as against the judgment debtor who might be out of the state, by allowing such action to be commenced within the time limited after his return to the state, which might be, as in this case, long after the right of execution had been barred.

We must therefore hold, **that under the common law rule, which prevails in this state, that the right of action upon an unsatisfied judgment is a matter of course...***Mandlebaum* at 161-162(emphasis added).

This has been the law in Nevada for over a hundred years. It has not been modified by the legislature. UAIC cites no authority for this mandated use of NRS 17.214. The legislative history demonstrates that NRS 17.214 was adopted to give an easier way for creditors to renew judgments. This was to give an option for renewal of judgments that was easier and more certain, not make it a trap for the unwary and cut of rights of injured parties. Where as here, the timing of the expiration is in doubt, the best way to obtain a new judgment is the common law method, which is only supplemented by the statutory method, not replaced.

An action on a judgment is distinguishable from the treatment of an application to renew the prior judgment. *Pratali v. Gates*, 4 Cal. App. 4th 632, 637, 5 Cal. Rptr. 2d 733, 736 (Cal. Ct. App. 1992). This distinction is inherently recognized in the Nevada Revised Statutes' treatment of both courses of action. "A judgment creditor may enforce his judgment by the process of the

1 court in which he obtained it, *or he may elect to use the judgment as an original cause of action*
2 *and bring suit thereon and prosecute such suit to final judgment.*” *Mandlebaum v. Gregovich*,
3 24 Nev. 154, 161, 50 P. 849, 851 (1897) (emphasis added).
4

5 NRS 11.190(a)(1) also provides the option that either an action upon the judgement *or* a
6 renewal of the judgment be commenced. The limitation period for judgments runs from the time
7 the judgment becomes final. Statutes of limitations are intended to ensure pursuit of the action
8 with reasonable diligence, to preserve evidence and avoid surprise, and to avoid the injustice of
9 long-dormant claims. *Petersen v. Bruen*, 106 Nev. 271, 273-74, 792 P.2d 18, 19-20 (1990). NRS
10 17.214 provides the procedural steps necessary to renew a judgment before the expiration of the
11 statute of limitations set forth in NRS 11.190(1)(a). NRS 17.214 provides that a judgment
12 creditor may renew a judgment that has not been paid by filing an affidavit with the clerk of the
13 court where the judgment is entered, “...within 90 days before the date the judgment expires by
14 limitation.” NRS 11.190(a)(1), NRS 11.200, NRS 11.250, NRS 11.300 must be read together
15 with NRS 17.214 because they relate to the same subject matter and are not in conflict with one
16 another. *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 100, 363 P.3d 1168, 1172
17 (2015). When these five statutes are read together, then, they establish that a party must **either**
18 file an action on the judgment or renew the judgment under NRS 17.214 before the statute of
19 limitations runs as modified by all applicable tolling statutes. The Nevada Supreme Court
20 expressly adopted this result in *Levin v. Frey*, 123 Nev. 399, 403, 168 P.2d. 712, 715 (2007): “An
21 action on a judgment *or* its renewal must be commenced within six years under NRS
22 11.190(1)(a); thus a judgment expires by limitation in six years.”
23
24
25

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1 **2. Declaratory Relief as to when a renewal must be filed is appropriate if the Court is**
2 **overruling *Mandelbaum* and deny Plaintiff Nalder's Primary Cause of an "Action on a**
3 **Judgment"**

4 Nalder asks the court, *if* it finds the action on the judgment is no longer available in
5 Nevada, *overruling Mandelbaum*, Nalder requests declaratory relief as to when a renewal under
6 NRS 17.214 must be filed in the instant circumstance. This is to obtain guidance from the court
7 so that the renewal under NRS 17.214 can be timely filed. This is a real controversy because
8 UAIC contends the time has passed and Nalder contends the time has yet to arrive. The parties
9 need the court to interpret the various tolling statutes and make a ruling.
10

11 **3. Claim preclusion**

12 Finally, *if* the answer to the declaratory relief action is that the time for filing under NRS
13 17.214 has gone by, and the Judgment is no longer valid, then, as a final alternative, Nalder
14 brings her personal injury actions within two years of her majority. If the two actions above do
15 not provide relief for Nalder, then this third action is not the subject of claim preclusion because
16 the parties are different, the causes of action are different and the judgment would have been
17 found by the court to be invalid.
18

19 **B. There is no such things as "Denial of a Stipulation" and the only fraud being**
20 **perpetrated herein is by UAIC, which has intervened where it has no interest to protect and**
21 **where it has directed counsel to place its interests above the interests of its "insured" under**
22 **the guise of "protection" and file frivolous pleadings.**

23 UAIC asks the Court to hold an evidentiary hearing on the issue of whether or not Plaintiff
24 has attempted a fraud upon the Court. UAIC misleads the Court by thereafter stating that Mr.
25 Christensen represents the Plaintiff. Mr. Christensen does not, however, represent Cheyenne
26 Nalder in this action. She is represented by David Stephens, Esq. Mr. Christensen also does not
27 represent Gary Lewis in this action as a Defendant. Mr. Christensen represents Mr. Lewis as the
28

1 Cross-Claimant/Third-Party Defendant in this action, against UAIC. These claims are congruent
2 with Mr. Lewis's claims against UAIC in the action that is pending in the Ninth Circuit.
3

4 It is unknown why this Court failed to sign the Order sought by the submission of the
5 Stipulation signed by Mr. Arntz and Mr. Stephens, on behalf of Gary Lewis and CheyAnne
6 Nalder. It would appear the parties agreed that any defense to the action on a judgment would be
7 futile. UAIC gained intervention by way of an Opposed Motion that was improperly noticed on
8 its face and nevertheless granted without reasons given. The intervention decision was made and
9 orders allowing intervention were signed all while the stipulated judgment sat on the Judges desk
10 with wet signatures on the stipulation but unsigned by the Judge.
11

12 Additionally, UAIC misleads the Court herein by claiming that Mr. Christensen told UAIC
13 not to defend the case. Mr. Christensen communicated with counsel hired by UAIC and sought to
14 understand the basis for arguing the judgment is invalid. Mr. Christensen asked for legal
15 authority for making a non-frivolous claim that the judgment is expired and how that would
16 support Mr. Lewis's interests. UAIC, nor counsel hired to defend Mr. Lewis in this case, could
17 provide supportive law or reasoning. Instead, they hired another attorney, Randall Tindall, Esq.
18 to file documents on behalf of Mr. Lewis and claim Mr. Christensen was preventing UAIC from
19 exercising its "contractual and legal duty" to defend Mr. Lewis and liken it to forgery of
20 settlement documents that subverts the integrity of the Court.
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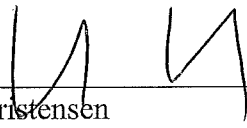
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Conclusion

For the reasons set forth above, Gary Lewis respectfully requests that this Court deny UAIC's Motion to Dismiss Plaintiff's Complaint & Motion for Court to Deny Stipulation to Enter Judgment Between Plaintiff and Lewis and/or In the Alternative to Stay Same Pending Hearing on Motion to Dismiss.

DATED THIS 29 day of October, 2018.



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Third-Party Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES and that on this 28th day of October, 2018, I served a copy of the foregoing Defendant's **CROSS-CLAIMANT'S OPPOSITION TO UAIC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT & OPPOSITION TO MOTION FOR COURT TO DENY STIPULATION TO ENTER JUDGMENT BETWEEN PLAINTIFF AND LEWIS AND/OR IN THE ALTERNATIVE TO STAY SAME PENDING HEARING ON MOTION TO DISMISS** as follows:

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

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

Randall Tindall, Esq.
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David A. Stephens, Esq.
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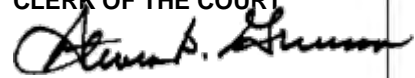
Matthew Douglas, Esq.
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An employee of CHRISTENSEN LAW OFFICES

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Attorneys for Intervenor/Third Party Defendant United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE 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.: A-18-772220-C
DEPT. NO.: 19

**UAIC'S MOTION TO DISMISS THIRD
PARTY PLAINTIFF LEWIS' THIRD
PARTY COMPLAINT**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Motion to Dismiss Third Party Plaintiff LEWIS' Third Party Complaint in its entirety. Third Party Plaintiff's extra-contractual claims have been previously litigated, and

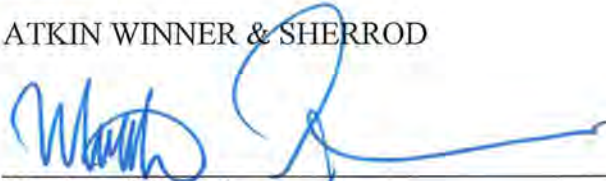
ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

judgment entered. Third Party Plaintiff's request to relitigate these claims is both improper and clear forum shopping which should be summarily dismissed by this Court.

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

DATED this 15th day of NOVEMBER, 2018.

ATKIN WINNER & SHERROD


Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor/Third Party Defendant
UAIC

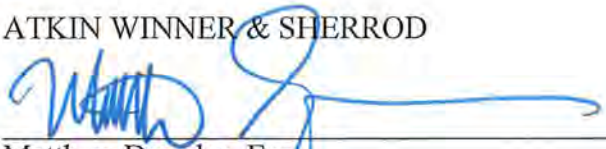
NOTICE OF MOTION

TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Dismiss Third Party Complaint, for hearing before the above-entitled Court Department 19 on the 15 day of January, 2019, at the hour of 9:00 A.m. in the forenoon of said date, or as soon thereafter as counsel can be heard.

DATED this 15 day of NOVEMBER, 2018.

ATKIN WINNER & SHERROD


Matthew Douglas, Esq.
Nevada Bar No. 11371
117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor/Third Party Defendant
UAIC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS

I.

INTRODUCTION

Gary Lewis ("Lewis") alleges in his Third Party Complaint that he has been injured and/or incurred damages due to United Automobile Insurance Company's ("UAIC") claims alleged improper claims handling ("statutory bad faith") and/or breaches of the implied covenant of good faith and fair dealing ("common law bad faith") related to an accident that occurred in 2007. In the accident in 2007 Lewis hit Cheyanne Nalder, a minor at the time, causing injury. Guardian ad litem, James Nalder, was appointed to pursue her claim. He did so, filing a complaint on her behalf and obtaining a Judgment for \$3.5 million in 2008. Nalder then filed suit against UAIC (as Lewis' insurer), eventually obtained an assignment from Lewis and ultimately received Lewis' \$15,000 auto policy limit on the Judgment. That action against UAIC by Nalder through assignment by Lewis included claims for both statutory and common law bad faith. The Federal District Court hearing the matter also found UAIC committed no actionable bad faith, either under the common law or, statute. However, that case remains on Appeal before the United States Court of Appeals for the Ninth Circuit and, the Nevada Supreme Court on two certified question of law wherein the potential for consequential damages from the 2008 default judgment as well as the viability of said expired judgment is before those courts.

Despite the fact that Lewis' claims for both statutory and common law bad faith against UAIC in relation to the 2007 accident have already been adjudicated and judgment entered, Lewis now re-asserts those claims in the instant Third Party Complaint. Those claims are subject to dismissal pursuant to the doctrine of claim preclusion.

///

///

II.

STATEMENT OF FACTS

Intervenor/Third Party Defendant will not re-state the entire history of this matter as it is adequately set forth in Order Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals for the Ninth Circuit, which was filed on January 11, 2018. *A copy of the Order certifying the second question of law is attached hereto as Exhibit 'A.'*

Rather, the salient points are that Plaintiff Cheyanne Nalder obtained the original judgment against Defendant/Third Party Plaintiff Gary Lewis on August 26, 2008 for personal injuries stemming from a July 7, 2007 accident between Nalder and Lewis. *A copy of the 2008 judgment against Lewis is attached hereto as Exhibit 'B.'* After obtaining the judgment, Counsel for Plaintiff¹ then filed an action against Mr. Lewis' insurer, UAIC, Intervenor/Third Party Defendant herein. *A copy of Lewis' original Complaint for "bad Faith" against UAIC is attached hereto as Exhibit 'C.'* That complaint was filed upon an assignment of Lewis' causes of action against UAIC for alleged "bad faith."² during the litigation obtained an assignment from Lewis. *See assignment from Lewis to Nalder, attached as Exhibit 'D.'* As can be plainly seen, the original Complaint by Lewis against UAIC specifically pleads improper investigation by UAIC in regard to the claim, improper denial of coverage, that UAIC's actions caused expense and aggravation to Lewis, that UAIC committed various breaches of the Nevada Unfair Claims Practices Act (N.R.S. 686A.310 *et seq.*), and that UAIC breached the implied covenant of good faith and fair dealing. *See Exhibit 'C.'*

In any event, the above-noted original complaint for "bad faith" against UAIC was removed to the U.S. Federal District Court for the District of Nevada and following lengthy and

¹ Thomas Christensen, Esq., who is also Counsel for Lewis and filed the instant Third Party Complaint..

comprehensive discovery, the District court granted complete summary judgment in favor of UAIC finding no policy of insurance in effect as between Lewis and UAIC³ and, accordingly, that there was no “bad faith.” *A copy of the District Court’s Order dated 12/20/10 is attached hereto as Exhibit ‘E.’* Lewis and Nalder appealed this judgment to the U.S. Court of Appeals for the Ninth Circuit wherein, following argument, the Ninth Circuit reversed finding a potential ambiguity in the language of Lewis’ renewal statement. *A copy of the Ninth Circuit’s 12/17/12 mandate is attached hereto as Exhibit ‘F.’* On remand, the parties again filed cross-motions for summary judgment and, The District court now found that Lewis has an implied policy of insurance on the date of the loss – due to the ambiguity in the renewal – but the Court found UAIC had committed no statutory or common law bad faith as their belief the policy had lapsed was a reasonable one. *A copy the U.S. District Court’s 10/30/13 judgment is attached hereto as Exhibit ‘G.’*

Lewis and Nalder now appealed again to the Ninth Circuit and that appeal remains pending. Specifically, following briefing and argument, the Ninth Circuit certified a *first* certified question to the Nevada Supreme Court asking, in short, whether Plaintiff and Lewis could recover their default judgment from UAIC as a ‘consequential damage’ *even in the absence of bad faith*. *A copy of the Ninth circuit’s first certified question of 6/1/16 is attached hereto as Exhibit ‘H.’* During the pendency of this issue it was observed that Plaintiff had failed to renew her 2008 judgment against Lewis pursuant to Nevada law. Specifically, under N.R.S. 11.190(1)(a) the limitation for action to execute on such a judgment would be six (6) years, unless renewed under N.R.S. 17.214. Upon realizing the judgment had never been timely renewed, UAIC filed a Motion to Dismiss the Appeal for Lack of Standing with the Ninth

(Cont.)

² The assignment, however, was only obtained after the suit was filed as can be seen by comparing the date of the assignment and, the date of the filing of the Complaint. *A copy of the assignment as between Lewis and Christensen is attached hereto as Exhibit ‘D.’*

Circuit on March 14, 2017. On December 27, 2017 the Ninth Circuit certified a second question to the Nevada Supreme Court – **specifically certifying the following question:**

“Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer’s liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?”

See Exh. ‘A.’

On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified question and ordered Appellants to file their Opening brief within 30 days, or by March 26, 2018. *A copy of the Order accepting the second certified question is attached hereto as Exhibit ‘I.’* In accepting the certified question, the Nevada Supreme Court rephrased the question as follows:

In an action against an insurer for breach of the duty to defend its insured, can the plaintiff continue to seek consequential damages in the amount of a default judgment obtained against the insured when the judgment against the insured was not renewed and the time for doing so expired while the action against the insurer was pending?

This issue remains pending and, is currently being briefed before the Nevada Supreme Court. Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained additional Counsel (Plaintiff’s Counsel herein, David Stephens, Esq.) who filed an *ex parte* Motion on March 22, 2018 seeking, innocently enough, to “amend” the 2008 expired judgment to be in the name of Cheyenne Nalder individually. *A copy of the Ex Parte Motion is attached hereto as Exhibit ‘J.’* Thereafter, the Court obviously not having been informed of the above-noted Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of entry on May 18, 2018. *A copy of the filed Amended Judgment is attached hereto as Exhibit ‘K.’*

____ (Cont.)

³ It is uncontroverted that Lewis failed to make a timely renewal premium and his policy with UAIC lapsed days before the July 8th, 2007 loss.

1 Furthermore, Plaintiff then initiated a “new” action, under case no. A-18-772220-C⁴ in a
 2 thinly veiled attempt to have this Court rule on issues pending before the Nevada Supreme Court
 3 and “fix” their expired judgment. This intent appears clearly evidenced by paragraph five (5) of
 4 Plaintiff’s prayer for relief herein which states Plaintiff is seeking this Court to make “a
 5 declaration that the statute of limitations on the judgment on the judgment is still tolled as a
 6 result of Defendant’s continued absence from the state.” *A copy of Plaintiff’s Complaint for that*
 7 *action is attached hereto as Exhibit ‘L’*

9 Then, despite the apparent contradiction of counsel representing both the judgment-
 10 creditor and judgment-debtor in the same action, Mr. Christensen, on behalf of Lewis, has now
 11 filed the instant Third Party Complaint against UAIC seeking to, again, re-litigate issues of “bad
 12 faith” against UAIC despite the above-referenced appeals. *A copy of the Third Party Complaint,*
 13 *filed herein, by Lewis is attached hereto as Exhibit ‘M.’* As this Court can see, this Third Party
 14 Complaint again pleads the same causes of action as plead in Lewis’ initial complaint against
 15 UAIC, seeking both common law and/or statutory bad faith against UAIC, and attendant
 16 damages, for failures involved in the handling and litigation of the 2007 loss. See Exhibit ‘M.’

18 Given the above noted outrageous conduct by Mr. Christensen, UAIC has also filed a
 19 Motion for an evidentiary hearing for a fraud upon the court given what is clear forum shopping
 20 and an improper attempt to re-litigate issues between the same parties. As will be set forth in
 21 detail below, besides granting this Motion and dismissing this improper third party complaint,
 22 we see an attempt of fraud upon the court which should not be countenanced and an evidentiary
 23 hearing should be held on these issues.

25 ///

27 ///

⁴ Both Lewis and UAIC have pending Motions to dismiss this action before this court.

1 III.

2 MOTION TO DISMISS STANDARD

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

8
9 In evaluating a motion to dismiss, courts primarily focus on the allegations in the
10 complaint. *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev Adv. Op.
11 76,357 P 3d at 930 (2015) “the court is not limited to the four corners of the complaint.” Citing
12 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure: Civil § 1357, at 376 (3d
13 ed. 2004). The *Baxter* Court also held that courts “may also consider unattached evidence on
14 which the complaint necessarily relies if (1) the complaint refers to the document; (2) the
15 document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the
16 document.” *Id.*, citing *United States v. Corinthian Colleges* 655 F. 3d 984, 999 (9th Cir. 2011)
17 (internal quotation omitted). The *Baxter* Court continued “while presentation of matters outside
18 the pleadings will convert the motion to dismiss to a motion for summary judgment,
19 Fed.R.Civ.P. 12(d); NRCP 12 (b), such conversion is not triggered by a court’s consideration of
20 matters incorporated by reference or integral to the claim,” *Id.* Citing 5B Wright & Miller, *supra*,
21 §1357, at 376.

22
23
24 While Intervenor/Third Party Defendant’s Motion to Dismiss does rely on certain
25 documents which were not attached to the Complaint, those documents are either incorporated
26 by reference (the Judgment and Amended Judgment) or integral to the claim (the Complaint in
27 the 2007 cases). Therefore, this Court should consider this matter a motion to dismiss and not
28 convert it to a motion for summary judgment. As discussed below, the re is no doubt that there

are no facts pursuant to which Lewis is entitled to the relief his 2018 Complaint seeks.

IV.

ARGUMENT

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

The March 22, 2009 Complaint filed by Cheyenne's guardian ad litem, James Nalder, as assignee of Lewis, alleged both statutory and common law "bad faith" against UAIC stemming from the July 8, 2007 accident. See Complaint attached hereto as Exhibit "C." That matter has been thoroughly litigated (as can be seen above) and the Federal District Court has already found UAIC committed no actionable "bad faith." Moreover, and additionally, that case remains on appeal before both the U.S. Court of Appeals for the Ninth Circuit and, the Nevada Supreme Court. Because both the statutory and common law claims for bad faith against UAIC claims in the "new", 2018, Third-party Complaint filed by Lewis (*Exhibit 'M'*) have already been litigated, it should be dismissed as to UAIC.

Lewis' claims against should be dismissed as to UAIC pursuant to the doctrine of claim preclusion. In 2008, the Nevada Supreme Court set forth a three-part test to be applied to determine when claim preclusion applies. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008), holding modified by *Weddell v Sharp* 151 Nev. Adv. Op. 28, 3520 P.3d 80 (2015) (the modification is not applicable to this case); (2) the final judgment is valid; and (3) the new action is based on the same claims that were or could have been brought in the first action. Cheyenne's claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for dismissal under the doctrine of claim preclusion.

First, the parties are the same. The only difference between the 2009 suit and the 2018 suits is that Lewis has now sued UAIC directly rather than as the assignor. However, this is immaterial as Lewis is still the same "party" for purposes of this analysis, as an assignee