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.

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

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The courts which have applied the strict liability standard have held that an insurer who fails to settle within policy limits does so at its own risk, and although its position may not have been entirely groundless, if the denial is ***later found to be wrongful***, it is liable for the full amount which will compensate the insured for all the detriment caused by the insurer's breach of the express and implied obligations of the contract. Id., citing, *Crisci v. Security Ins. Co*., 66 Cal2d 425, 58 Cal.Rptr. 13, 426 P.2d 173 (1967); *Rova Farms Resort, Inc. v. Investors Insurance Co.*, 65 N.J. 474, 323 A.2d 495 (1974). Many commentators have suggested that the relationship of the insurer and the insured when the insurer passes up an opportunity to settle within policy limits and a verdict above the policy limit results should give rise to strict liability on the insurer for the entire verdict. 22 AZSLJ 349.

The *Crisci* Court recognized that the insured's expectation of protection provides a basis for imposing strict liability in failure to settle cases because it will always be in the insured's best interest to settle within the policy limits when there is any danger, however slight, of a judgment above those limits. Crisci v. Security Insurance Company of New Haven, Conn. 426 P.2d 173, 66 Cal.2d 425, 58 Cal. Rptr. 13, (1967). And that there is more than a small amount of elementary justice in a rule that would require that, in this situation, where the insurer's and insured's interests necessarily conflict, the insurer, which may reap the benefits of its determination not to settle, should also suffer the detriments of its decision. *Id*.

This standard makes sense, as Chief Justice Neely concurred with the *Shamblin* Court:

> Can you honestly imagine a situation where an insurance company fails to settle within the policy limits, the policyholder gets stuck with an excess judgment, and this court *does not* require the insurance company to indemnify the policy holder? That will happen the same day the sun rises in the West! As far as I am concerned, even if the insurance company is run by angels, archangels, cherubim and seraphim, and the entire heavenly host sing of due diligence and reasonable care, I will *never*, under any circumstances, vote that a policyholder instead of an insurer pays the excess judgment when it was possible to settle a case within the coverage limits.

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> When I buy insurance, I buy protection from untoward events. I do not object to an insurance company's vigorous defense of a claim, including going to jury trial and exhausting every appeal. Furthermore, as a policyholder, I will diligently assist my insurer to vindicate its rights and protect its reserves. However, I draw the line when the insurer decides that in the process of protecting its reserves, it will play "you bet *my* house." The insurance company can bet as much of its own money as it wants, and it can bet its own money at any odds that it wants, but it cannot bet one single penny of my money even when the odds are ten million to one in its favor!

Id. at 780.

The California Court has implemented a reasonableness or negligence aspect to its standard when it expanded on this rule, giving the following analysis:

> The only permissible consideration in evaluating the reasonableness of the settlement offer becomes whether, in light of the victim's injuries and the probable liability of the insured, the ultimate judgment is likely to exceed the amount of the settlement offer. Such factors as the limits imposed by the policy, a desire to reduce the amount of future settlements, or a belief that the policy does not provide coverage, should **not** affect a decision as to whether the settlement offer is a reasonable one.(Emphasis added.)

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Johansen v. California State Automobile Association Inter-Insurance Bureau, 15 Cal.3d 9, 123 Cal.Rptr. 288, 538 P.2d 744, (1975). Moreover, in deciding whether or not to compromise the claim, the insurer must conduct itself as though it alone were liable for the entire amount of the judgment. *Id.*, *citing Crisci*.

Other states make no distinction on what standard to apply when dealing with a first-party claim as opposed to a third-party claim. Arizona has found no legal distinction between the duty or standard of good faith owed by an insurance company when dealing with the different types of claims. Instances of first and third-party failures merely involve different breaches of the same overall duty of good faith. Trus Joist Corp. v. Safeco Ins. Co. of America, 735 P.2d 125 (1986). They have also made clear that the tort of failure to act in good faith does not rise to the level of a traditional tort in the sense that the insurer must know with substantial certainty that its actions

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will bring particular harm to the insured. *Id., citing* Restatement (Second) of Torts Section 8A, comment B (1956).

Most states apply this sort of standard when evaluating first-party rights against insurance companies. Utah has implemented a reasonableness standard wherein it determined that actions against insurance carriers for failure to resolve a claim in a commercially reasonable manner center on the question of whether the insurance carrier acted reasonably. Campbell v. State Farm, 840 P.2d 130 (Utah App. 1992). In Campbell, State Farm paid the entire verdict against the insured above the policy limits. State Farm was still liable for millions of dollars for the delay in paying the verdict above the policy. Under Oregon law, a liability insurer must exercise good faith and due care in the settlement and defense of claims on behalf of its insured. Baton v. Transamerica Insurance Company, 584 F.2d 907 (1978), *citing, Radcliffe v. Franklin National Insurance Co.,* 208 Or. 1, 298 P.2d 1002 (1956).

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In Nevada, the question of which standard to apply when a verdict is more than the policy was answered in *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009). The court held that an insurance company breaches the covenant of good faith and fair dealing if it fails to inform the insured of opportunities to settle and that the duty to defend includes the duty to inform the insured of settlement opportunities and to treat the insured's interest equal to the insurer's interest. Nevada has long recognized that there is a special relationship between the insurer and the insured. *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998), *citing, Ainsworth v. Combined Ins. Co.* 104 Nev. 587, 763 P.2d 673 (1988).

Nevada has also established similar standards that apply in other types of failure to act in good faith situations. In *Pemberton v. Farmers Insurance Exchange*, 109 Nev. 789, 858 P.2d 380 (1993), the Nevada Supreme Court established standards to apply when an action is brought related to the lack or good faith in the denial of first-party benefits under uninsured or

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underinsured coverage. There, the court noted that numerous appellate court decisions affirm that an insurer's failure to deal fairly and in good faith with an insured's UM claim is actionable. *Id.* at 794 (citations omitted) The *Pemberton* Court ultimately held that an insured may institute an action for breach of the duty of good faith and fair dealing against his or her own insurer once the insured has established "legal entitlement" and conduct not based on reason and logic by the insurer concerning its obligations to the insureds. *Id.* at 797.

Perhaps most instructional in Nevada, however, on the standard to be applied when dealing with negative effects resulting from an insurer's failure to settle a claim is *Landow v. Medical Ins. Exchange*, 892 F.Supp. 239 (D.Nev. 1995). The Court's ruling is enlightening because although it does not involve a verdict above the policy limit, it does involve a first-party insured bringing a claim for stress and damage to his reputation related to ongoing litigation that could have exposed him to a verdict but was concluded prior to a verdict. The underlying plaintiffs in *Landow* sought damages above Landow's policy limit after previously offering to settle for that limit. Landow requested that his insurance company pay the limit and accept the plaintiff's offer to end the case, but the insurance company refused and forced litigation. The *Landow* Court, following the rationale of California courts in above limit verdict situations accepted that, "the litmus test ... is whether the insurer, in determining whether to settle a claim, gave as much consideration to the welfare of its insured as it gave to its own interests," citing, *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal.3d. 809, 818, 169 Cal.Rptr. 691, 620 P.2d 141 (1979). Ultimately, the Landow Court decided that the insurer has a duty to consider injury to the insured, such as emotional distress and injury to business goodwill that proximately flow from its failure to settle. *Id*. at 241.

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III. LEWIS' COUNTERMOTION FOR SUMMARY JUDGMENT

Pursuant to N.R.C.P. 56, Gary Lewis moves this Honorable Court for summary judgment as to liability and the minimum damages, for a finding that UAIC has breached its duty of good faith

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and fair dealing and is liable for the damages which were proximately caused by UAIC's breach, on the basis that the pleadings and documents on file show there is no genuine issue as to any material of fact and that Gary Lewis is entitled to judgment as a matter of law on this issue.

A. Standard for Granting Summary Judgment

Summary judgment is appropriate when a review of the record in the light most favorable to the nonmoving party reveals no genuine issues of material fact and judgment is warranted as a matter of law. *Butler v. Bogdanovich,* 101 Nev. 449, 451 (1985). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions and affidavits on file, show there exists no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Bird v. Casa Royale*, 97 Nev. 67, 624 P.2d 17 (1981); *Montgomery v. Ponderosa Construction, Inc.*, 101 Nev. 416, 705 P.2d 652 (1985). Additionally, "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). As such, "The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Id,* citing *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992). Finally, N.R.C.P. Rule 56(c) states Summary Judgment "may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

The evidence, even viewed in the light most favorable to UAIC, indicates GARY LEWIS is entitled to judgment as a matter of law on the issue of liability.

B. UAIC IS LIABLE FOR ANY JUDGMENT ENTERED AGAINST LEWIS IN THIS ACTION.

No reasonable interpretation of the facts could be construed by a finder of fact as placing liability anywhere but on UAIC for any judgment against Lewis in this case. In order to gain

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intervention UAIC admitted: "As long as UAIC is obligated to … pay any judgment against LEWIS, UAIC's interests are clearly at stake in this action." Based on this admission alone, Lewis is entitled to judgment against UAIC. It must pay any judgment Nalder obtains against Lewis.

C. UAIC BREACHED THE COVENANT OF GOOD FAITH AND FAIR DEALING.

After the Ninth Circuit Court ruled against it finding UAIC had breached its duty to defend, UAIC paid its policy limit to relieve UAIC of the judgment entered against it, but UAIC did not attempt to relieve Gary Lewis of the judgment in case no. 07A549111. UAIC, which only recently hired Randall Tindall to "defend" Gary Lewis, did nothing to defend Gary Lewis in 2007, 2008, 2009, 2010, 2011, 2012 and 2013. UAIC also did not defend Gary Lewis or immediately attempt to set aside the judgment against him when the federal court found that UAIC had breached its duty to defend Gary Lewis in 2013. Then, UAIC did nothing to defend Lewis in 2013, 2014, 2015, 2016 and 2017. In 2018, UAIC claims to be defending Lewis. It is not. UAIC is putting its own interests above those of Mr. Lewis and causing harm in this litigation. As a result of both that initial failure and the continuing failures, Mr. Lewis will have a large judgment against him. UAIC waived its right to direct the defense and its right to intervene when it refused to defend Lewis and failed to indemnify him. The court in *Hinton v. Beck*, 176 Cal. App. 4th 1378 (Cal. Ct. App. 2009) has held: "Grange [the insurance company], having denied coverage and having refused to defend the action on behalf of its insured, did not have a direct and immediate interest to warrant intervention in the litigation."

Randall Tindall, Esq. now claims to be representing Gary Lewis based on a right that arises from that same policy of insurance. The same policy that UAIC breached in 2007. UAIC has already exhausted its policy limits because it paid the full policy amount (after the adverse finding from the Court). Although UAIC admits in this action that it will be liable for any

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judgment entered against Mr. Lewis, it has not paid anything over the $15,000 policy limit it was ordered to pay by the Federal District Court. It has not pursued negotiations to relieve Lewis of the judgment. It has not investigated ways to relieve Lewis of the judgment. These actions are a breach of the duty of good faith and fair dealing. See *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009)

Mr. Tindall admits he has **NEVER** talked to Mr. Lewis, nor anyone on his behalf prior to filing pleadings on behalf of Mr. Lewis. He attaches to his Opposition, a copy of a page from the breached insurance policy, but he fails to explain to the Court that UAIC has already breached it. UAIC and Tindall fail to inform the Court that Mr. Lewis requested that if UAIC hired anyone to defend Lewis in this action that UAIC "must include notice to those attorneys that they must first get Mr. Lewis' consent before taking any action … on his behalf." By disregarding this reasonable request UAIC has breached the duty of good faith and fair dealing. See *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998) (USAA disregarded reasonable request by the insured and harrassed the insured) UAIC and Randall Tindall have no right to interpose a defense at all in the instant case, much less a frivolous defense that is not in the best interest of Mr. Lewis and is against his wishes. This is UAIC conspiring with Tindall to advance UAIC's interests, at the expense of Lewis. Putting its interests ahead of the insured's interests is a breach of the covenant of good faith and fair dealing. See *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009)

UAIC has not yet paid any amount of the judgment, with the exception of the $15,000 it was ordered to pay after Mr. Lewis brought an action against it. UAIC's intervention in this case is improper and Mr. Tindall's involvement, under the guise of a long-since breached insurance contract, is also improper. On the other hand, if Mr. Tindall and UAIC are allowed to reopen the ministerial amendment that has been entered in case no. 07A549111, these cases would go

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forward and will probably result in an **increased judgment against Mr. Lewis** because of the conspiracy and actions taken by Mr. Tindall and UAIC.

UAIC argued that the issue is before the Nevada Supreme Court. This is also a falsehood. The issue before the Nevada Supreme Court is UAIC's responsibility for the judgment, not Gary Lewis'. UAIC and its co-conspirator in this action, Mr. Tindall, have made false claims to gain intervention and then filed fraudulent and frivolous pleadings that increase the cost of litigation. In fact, these are only a ruse designed to have the Court distracted from the very simple issue in the case at bar: whether the 2008 judgment is valid.

It is clear under *Mandelbaum* that the judgment is valid. (See Exhibit 1.) No contrary case law exists. The "defense" by UAIC and/or its co-conspirator, Mr. Tindall, is frivolous and the risk is all Mr. Lewis'. He will end up with an even larger judgment and has already incurred attorney fees that, so far, UAIC refuses to pay. Failure to pay for Cumis counsel is a breach of the duty of good faith and fair dealing. See *State Farm Mut. Auto. Ins. Co. v. Hansen*, 357 P.3d 338 (Nev. 2015) "Nevada law requires an insurer to provide independent counsel for its insured when a conflict of interest arises between the insurer and the insured." Lewis brought this action against UAIC so that whatever the outcome of Nalder's 2018 action against Lewis, responsibility will be shifted from Mr. Lewis to UAIC. Mr. Lewis complaint against UAIC seeks indemnity from UAIC for any judgment entered in the Nalder action. In order to gain intervention in this action, UAIC admitted: "As long as UAIC is obligated to … pay any judgment against LEWIS, UAIC's interests are clearly at stake in this action." Lewis is entitled to judgment against UAIC that they must pay any judgment Nalder obtains against Lewis.

Additionally, UAIC states "Mr. Tom Christensen, Counsel for Plaintiff, who claimed to represent Mr. Lewis (through assignment) and refused retained counsel from speaking with Mr. Lewis." Again, this is not factual. Mr. Lewis has requested that contact and communication be

made through his attorney, Thomas Christensen, who is representing him against UAIC. This is because Mr. Lewis understands that Mr. Tindall has a conflict because he represents both Mr. Lewis and UAIC and their interests are not aligned. Mr. Lewis has now sued Mr. Tindall once and UAIC twice. Mr. Lewis has not waived that conflict. The disregarding of the requests by the insured for communication through his attorney is yet another new breach of the covenant of good faith and fair dealing. See *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998) (USAA disregarded reasonable request by the insured and harrassed the insured)

Mr. Lewis does not want frivolous pleadings filed on his behalf. (See Exhibit 3, Affidavit of Gary Lewis). Mr. Christensen made this clear in the letter of August 13, 2018, which was attached to the motion but misquoted by UAIC. The letter actually welcomes UAIC to provide a basis for the proposed defense. It states, "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." UAIC has not provided any Nevada law in response to this request. Nor is there any such case law in their exhaustive and voluminous briefs. That is because the only on point case law in Nevada, for over 100 years running, is *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897). It clearly supports the validity of a judgment when tolling statutes apply:

> The averments of the complaint and the undisputed facts are that, at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. **Notwithstanding nearly fifteen years had elapsed since the entry of the judgment**, yet, for the purposes of action, the judgment was not barred — for that purpose **the judgment was valid.** *Id., Mandlebaum at 851(emphasis added).*

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Further the Nevada Supreme Court has held that the tolling statute applies if the defendant is not subject to service of process in the State of Nevada. See *Bank of Nevada v. Friedman*, 82 Nev. 417, 420 P.2d 1 (Nev. 1966). Also the Nevada Supreme Court in *Los Angeles Airways v. Est. of Hughes*, 99 Nev. 166, 168 (Nev. 1983)

> We recognize that in recent years, the continued viability of the tolling statute has been called into question in light of the enactment of statutes making it possible to obtain jurisdiction over defendants residing outside this state. Indeed, in granting summary judgment the district court expressed the view that the enactment of NRS 14.065, the so-called "long-arm" statute, rendered the tolling statute virtually inapplicable. Nevertheless, we note that in the number of years since the enactment of NRS 14.065 and similar provisions, the legislature has not repealed the tolling provision, and we are reluctant to do so by judicial declaration. *See* Duke University v. Chestnut, 221 S.E.2d 895 (N.C.Ct.App. 1976). *Los Angeles Airways v. Est. of Hughes*, 99 Nev. 166, 168 (Nev. 1983)

Rather than comply with these reasonable requests, UAIC conspired with Tindall to file a fraudulent pleading, putting its interest above the policyholder, Mr. Lewis. In these pleadings UAIC argues that renewal is the only method. Now, UAIC admits in its pleading filed with the Nevada Supreme Court that a "second method is via bringing of an independent action on the original judgment…" (See Exhibit 2, UAIC's appellate brief, at page 11.) Filing frivolous pleadings alleging just the opposite and against the wishes of the insured is improper. This is a new breach of the covenant of good faith and fair dealing.

UAIC refuses to provide Cumis counsel for Mr. Lewis and makes false allegations against Mr. Lewis' counsel. E. Breen Arntz was retained by Lewis when Mr. Rogers was hired by UAIC. Mr. Lewis asked that UAIC pay Mr. Arntz pursuant to CUMIS. Mr. Tindall was retained after Mr. Rogers and Mr. Arntz. Prior to UAIC hiring Tindall, Mr. Lewis asked UAIC that if other counsel was retained, that they contact him through his attorney in his claim against UAIC, Mr. Christensen. David Stephens is the only counsel who has represented Cheyenne Nalder in this case. He was retained after Cheyenne Nalder reached majority. Mr. Christensen represents

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neither Gary Lewis as a defendant nor Cheyenne Nalder as the plaintiff in the instant case. Failure to retain or listen to Cumis counsel is a new breach of the duty of good faith and fair dealing. See *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998).

D. ANY JUDGMENT ENTERED AGAINST LEWIS IS THE MINIMUM DAMAGES.

Damages for an insurer's breach of the covenant of good faith and fair dealing are dictated by case law. In such cases, by refusing to defend, or effect a settlement, the amount of the judgment is the prescribed measure of harm in the subsequent case against the insurer. *See Besel v. Viking Ins. Co. of Wisconsin*, 146 Wn.2d 730, 735, 49 P.3d 887, 890 (2002) (holding that courts have "long recognized if an insurer acts in bad faith… an insured can recover from the insurer the amount of a judgment rendered against the insured"); *Bird v. Best Plumbing Group, LLC,* 175 Wn.2d 756, 770, 287 P.3d 551 (2012) (holding that the amount of the judgment "is added to any other damages found by the jury"); *Miller v. Kenny,* 180 Wn. App. 772, 782, 801, 325 P.3d 278 (2014) (holding that the amount of the "judgment sets a floor, not a ceiling, on the damages a jury may award." Thus where a plaintiff prevails on his claim for breach of the covenant of good faith and fair dealing the "value of the judgment" is the least amount that should be awarded, and the only remaining question related to damages on Plaintiff's claims is for the "jury to make a factual determination of [the] insured's bad faith damages *other than* and *in addition to*" the underlying judgment. *Miller,* 180 Wn. App. at 801 (emphasis in original) This is the law in Nevada. *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009) (underlying judgment against insured $703,619.88,verdict against insurer $1,079,784.88)

CONCLUSION

UAIC's motion to dismiss should be denied. Partial summary judgment should issue in favor of Lewis and against UAIC for breach of the covenant of good faith and fair dealing, and fraud, with a finding that the minimum damages are the amount of any judgment entered in this

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case against Lewis together with attorney fees and costs. The only issues left for trial would be additional compensatory damages and punitive damages.

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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 27th day of Nov., 2018, I served a copy of the foregoing **OPPOSITION TO MOTION TO DISMISS AND COUNTERMOTION FOR SUMMARY 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

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

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EXHIBIT 1

No. 1514.
Supreme Court of Nevada

Mandlebaum v. Gregovich

50 P. 849 (Nev. 1897)

Decided October 1st, 1897

The facts sufficiently appear in the opinion.

By the Court, MASSEY, J.:

The respondents instituted this suit against the appellant upon a judgment obtained in the Second Judicial District of the State of Nevada, on the fifth day of June, 1882, for the sum of $70462, with costs and interest. From a judgment in favor of the respondents, and an order denying appellant's motion for a new trial, this appeal has been taken.

It appears that the respondent, Mandlebaum, commenced an action against the appellant in said court on the 21st day of August, 1881; that on the 5th day of June, 1882, judgment was entered against the appellant upon an agreed statement of facts; that at the time said judgment was entered the appellant was absent from the State of Nevada, and so continued until about the 16th day of March, 1897; that after the rendition of said judgment, and some time in 1882, Mandlebaum duly sold and assigned to Coffin, one of the respondents in this action, one-half interest in said judgment; that this action was commenced within a few days after the return of the appellant to the state, and that no part of said judgment has been paid.

Upon these undisputed facts the appellant asks this court to reverse the judgment of the district court, and assigns as *158 reasons therefor: *First,* a misjoinder of parties plaintiff, and, *second,* that it is not shown by the complaint or record that a necessity exists for the bringing of the action.

Considering the questions in the order stated, we must hold that Coffin, the respondent, was a proper party plaintiff to the action. Our civil practice act provides that every action shall be prosecuted in the name of the real party in interest, and that all persons having an interest in the subject matter of the action, and in obtaining the relief demanded may be joined as plaintiffs, except when otherwise provided. (Gen. Stats, secs. 3026, 3034.)

The exceptions to the statutory rule above cited arise in actions by executors, administrators, trustees, married women, etc., and in such exceptions are specified in the other sections of the same act. The averment of the complaint and the undisputed fact are that the respondent, Coffin, held and owned by assignment a one-half interest in the judgment, the subject matter of the action. In the language of the statute he "had an interest in the subject of the action and in obtaining the relief demanded," and was therefore properly joined as a party plaintiff. (*McBeth* v. *VanSickle,* 6 Nev. 134; *Ricord* v. *C. P. R. R. Co.,* 15 Nev. 167.)

The determination of the second contention of appellant necessarily involves the consideration of our statutory provisions relating to the limitation of actions and to the right of a judgment creditor to the enforcement or execution of the judgment. The appellant argues that "If the respondents have the right to bring this action, they must first show as a condition precedent for bringing the same, a necessity for so doing. They must show that they cannot by the issuance of an execution recover the amount of the judgment.

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They must show that they have exhausted their remedy, for, if the appellant had or has property within the State of Nevada out of which the judgment could be realized, it was the duty of respondents to have subjected that property to the payment of the debt."

Under the provisions of section 3644 of the General Statutes, the right of action upon a judgment of any court of the United States, or of any state or territory within the United States, is barred unless commenced within six years *159 after the right of action accrued. Section 3651 of the same act creates an exception to the above rule by providing that when a cause of action shall accrue against one out of the state, such action may be commenced within the time limited by the act after his return to the state.

The averments of the complaint and the undisputed facts are that, at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. Notwithstanding nearly fifteen years had elapsed since the entry of the judgment, yet, for the purposes of action, the judgment was not barred — for that purpose the judgment was valid. Such being the fact, is it necessary, as appellant contends, that the complaint and record must show that a good cause exists therefor — that the right of action upon judgments exists in those cases only where a necessity is shown therefor?

Counsel have cited in support of this contention the case of *Solen* v. *V. T. R. R. Co.,* reported in 15 Nev. 312, but we do not consider that case as decisive of this point. That was an action upon a judgment which did not call for any interest. The judgment creditor had paid to the clerk of the district court the amount of the judgment and costs, without interest, in discharge thereof, and claimed there was no balance due thereon. The court was divided in its opinion in determining the case. The opinion was by Justice Hawley and held that under the rule announced in *Hastings* v. *Johnson,* 1 Nev. 617, that when the judgment of the court was silent as regards the collection of interest, the party is not entitled to interest. Under this rule the judgment of the lower court was affirmed. Justice Leonard, in a concurring opinion, stated that while he regarded the rule in *Hastings* v. *Johnson* as wrong, it must be regarded as settled law, and therefore gave his assent to the affirmance of the judgment. He then proceeds to discuss at great length the rule for which counsel contend in the case at bar, that the right of action upon judgments exists in those cases only where a necessity is shown therefor, and he concludes that all actions "upon judgments, except for good cause, are vexatious, oppressive *160 and useless." Chief Justice Beatty, in the dissenting opinion, argues that the rule announced in *Hastings* v. *Johnson, supra,* and reannounced by Justice Hawley in the opinion affirming the judgment of *Solen* v. *V. T. R. R. Co, supra,* to the effect that where a judgment is silent as regards interest, the judgment creditor is not entitled to any interest, was wrong, and dissents from the conclusions of Justice Leonard to the effect that the right of action upon judgments exists in those cases only where a necessity is shown therefor. Hence, the only question decided by the court in the case of *Solen* v. *V. T. R. R. Co.* was the one relating to the right to interest upon judgments which were silent as to that matter. The question argued by counsel in the case at bar remains open and unsettled so far as the decisions of this court are concerned. Under the provisions of our statute in force at the time of the entry of the judgment against appellant in 1882, it was the right of the respondent Mandlebaum at any time within five years after the entry thereof to have a writ of execution for the enforcement of the same. (Gen. Stats, sec. 3233.)

This section was subsequently amended by extending the time in which the writ might be issued to six years. (Stats. 1889, p. 26.)

This statutory rule simply extends the time given under the common law, which limited the right to a year

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and a day after the entry of the judgment, and we are unable to find any other statutory provision in any manner limiting or restricting this right. Neither have we been able to find any statutory provision in any manner restricting or limiting the right of action upon judgments as given by the common law. In the absence of statutory restrictions of the common law right of action upon judgments, then the common law rule must prevail, and the question be determined by such rule only. The inquiry then is, what right of action upon judgments is given by the common law? We must adopt the view expressed by Chief Justice Beatty in *Solen* v. *V. T. R. R. Co.* and hold that an action on a judgment would lie as a matter of course at common law; that while there may be some conflict in the decisions of this country upon this point, the decided weight of authority is in support of the rule. As early as 1858, the Supreme Court of *161 California, in the case of *Ames* v. *Hoy,* so held, and answering the same line of argument used by counsel for appellant in the case at bar, say: "The chief argument is that there is no necessity for a right of action on a judgment, inasmuch as execution can be issued to enforce the judgment already obtained, and no better or higher right or advantage is given to the subsequent judgment. But this is not true in fact, as in many cases it may be of advantage to obtain another judgment in order to save or prolong the lien; and in this case, the advantage of having record evidence of the judgment is sufficiently perceptible. The argument that the defendant may be vexed by repeated judgments on the same cause of action, is answered by the suggestion that an effectual remedy to the party against this annoyance is the payment of the debt." (*Ames* v. *Hoy,* 12 Cal. 11.)

Considering the provisions of our statutes under which a judgment is made a lien upon the real property of the judgment debtor for a term of two years after the judgment has been docketed, we can well say that it may be an advantage to obtain another judgment in order to save or prolong such lien. The Supreme Court of Indiana, in later cases than the one cited in the opinion of Chief Justice Beatty, say that the law is well settled that 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. (*Hansford et al.* v. *Van Auken, Administrator,* 79 Ind. 160; *Palmer* v. *Glover,* 73 Ind. 529.)

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.

*162 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, and that it is not necessary to aver in the complaint, or show by the record, that other good cause exists therefor.

We are also of the opinion that the contention of the respondents that the complaint and record show that a good cause does exist for the bringing of the action, from the facts that the complaint and record disclose, that at the time the action was commenced the statutory right of execution had been barred by more than nine years time, while the statute of limitations had only been running two days. The respondents held a

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judgment, which is the highest evidence of indebtedness, without any right to enforce the same, and that right could be obtained by an action prosecuted to final judgment.

The judgment will therefore be affirmed.

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EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA
CASE NO. 70504

JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF CHEYANNE NALDER; AND GARY LEWIS, INDIVIDUALLY,
Appellants,

v.

UNITED AUTOMOBILE INSURANCE COMPANY,
Respondent.

RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF TO SECOND CERTIFIED QUESTION

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Ninth Circuit Case No. 13-17441
U.S.D.C. No. 2:09-cv-01348-RCJ-GWF

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ARGUMENT

I. Appellants Can No Longer Continue to Seek Consequential Damages in the Amount of the Default Judgment Obtained Against Mr. Lewis for UAIC's Breach of the Duty to Defend Because the Default Judgment Expired Due to Appellants' Failure to Renew the Judgment Pursuant to the Terms of NRS 17.214, and Appellants Have Not Otherwise Brought an Action on the Default Judgment.

Nevada's statute of limitations, NRS 11.190(1)(a), provides that "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" must be commenced within six years. Accordingly, there exist only two methods by which the self-executing expiration of a judgment six years following its issuance may be prevented. One method is renewal of the original judgment by the judgment creditor pursuant to the terms of NRS 17.214. The second method is via the bringing of an independent action on the original judgment, which allows a judgment creditor the opportunity, "when the limitations period has almost run on the judgment, to obtain a new judgment that will start the limitations period anew." *Salinas v. Ramsey*, 234 So. 3d 569, 571 (Fla. 2018).

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Outside of renewing the original judgment or obtaining a wholly new judgment restarting the limitations period, however, a judgment in Nevada automatically expires by operation of law six years following its issuance pursuant to the terms of NRS 11.190. *Cf.* NRS 21.010 ("[T]he party in whose favor judgment is given may, at any time before the judgment expires, obtain the issuance of a writ

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EXHIBIT 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF Los Angeles)

AFFIDAVIT OF GARY LEWIS

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Comes now Cross-claimant/Third-party Plaintiff, GARY LEWIS, first being duly sworn deposes and says:

1. I, Gary Lewis was, at all times relevant to the injury to Cheyenne Nalder, a resident of the County of Clark, State of Nevada. I then moved my residence to California in December of 2008 and have had no presence for purposes of service of process in Nevada since that date.

2. I retained attorney, Thomas Christensen, Esq. to file a Cross-Claim/Third party complaint against United Automobile Insurance Co., Randall Tindall, Esq., and Resnick & Louis, P.C., for acts and omissions committed by them and each of them, as a result of the finding of coverage on October 30, 2013.

3. United Automobile Insurance Company, hereinafter referred to as "UAIC", was my insurance company.

4. Randall Tindall, hereinafter referred to as "Tindall," is an attorney licensed and practicing in the State of Nevada.

5. Resnick & Louis, P.C. was and is a law firm, which employed Tindall and which was and is doing business in the State of Nevada.

6. I requested that UAIC or any attorneys they hired to defend me in these two state court actions communicate through my current attorney in my claim against UAIC in Federal Court, Mr. Thomas Christensen.

7. I ran over Cheyenne Nalder (born April 4, 1998), a nine-year-old girl at the time, on July 8, 2007.

8. This incident occurred on private property.

9. I maintained an auto insurance policy with United Auto Insurance Company ("UAIC"), which was renewable on a monthly basis.

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10. Before the subject incident, I received a statement from UAIC instructing me that my renewal payment was due by June 30, 2007.

11. The renewal statement also instructed me that I remit payment prior to the expiration of my policy "[t]o avoid lapse in coverage."

12. The statement provided June 30, 2007 as the effective date of the policy.

13. The statement also provided July 31, 2007 as the expiration date of the policy.

14. On July 10, 2007, I paid UAIC to renew my auto policy. My policy limit at this time was $15,000.00.

15. I wanted UAIC to pay these limits to offset the damage I did and to protect me from greater damages.

16. Following the incident, Cheyenne's father, James Nalder, extended an offer to UAIC to settle Cheyenne's injury claim for my policy limit of $15,000.00.

17. UAIC never informed me that Nalder offered to settle Cheyenne's claim.

18. UAIC never filed a declaratory relief action.

19. UAIC rejected Nalder's offer.

20. UAIC rejected the offer without doing a proper investigation and claimed that I was not covered under my insurance policy and that I did not renew my policy by June 30, 2007.

21. After UAIC rejected Nalder's offer, James Nalder, on behalf of Cheyenne, filed a lawsuit against me in the Nevada state court.

22. UAIC was notified of the lawsuit but declined to defend me or file a declaratory relief action regarding coverage.

23. I thought UAIC would defend me but they failed to appear and answer the complaint. As a result, Nalder obtained a default judgment against me for $3,500,000.00.

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24. Notice of entry of judgment was filed on August 26, 2008.

25. On May 22, 2009, Nalder and I filed suit against UAIC alleging breach of contract, an action on the judgment, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of NRS 686A.310.

26. I assigned to Nalder my right to "all funds necessary to satisfy the Judgment." I retained the rest of my claims against UAIC. I left the state of Nevada and located in California in December of 2008. Neither I nor anyone on my behalf has been subject to service of process in Nevada since January 7, 2009.

27. Once UAIC removed the underlying case to federal district court, UAIC filed a motion for summary judgment as to all of my and Nalder's claims, alleging I did not have insurance coverage on the date of the subject collision.

28. The federal district court erroneously granted UAIC's summary judgment motion because it determined the insurance contract was not ambiguous as to when I had to make payment to avoid a coverage lapse.

29. Nalder and I appealed to the Ninth Circuit. The Ninth Circuit reversed and remanded the matter because I and Nalder had facts to show the renewal statement was ambiguous regarding the date when payment was required to avoid a coverage lapse.

30. On remand, the district court entered judgment in favor of Nalder and me and against UAIC on October 30, 2013. The Court concluded the renewal statement was ambiguous and therefore, I was covered on the date of the incident because the court construed this ambiguity against UAIC.

31. The district court also determined UAIC breached its duty to defend me, but erroneously did not award damages because I did not incur any fees or costs in defense of the Nevada state court action.

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32. The district court also granted summary judgment in favor of UAIC on my bad faith allegations even though there were questions of fact regarding the reasonableness of UAIC's actions and their failure to defend me or communicate offers of settlement to me were sufficient to sustain a bad faith claim under Miller v. Allstate. Nalder and I appealed this erroneous decision.

33. At this time I had already suffered damages as a result of the judgment entered against me.

34. I continued to suffer damages as a result of the entry of this judgment that UAIC has refused to remedy.

35. The district court ordered UAIC to pay the policy limit of $15,000.00.

36. UAIC made three payments on the judgment: on June 23, 2014; on June 25, 2014; and on March 5, 2015, but made no effort to defend me or relieve me of the judgment against me.

37. UAIC knew that a primary liability insurer's duty to its insured continues from the filing of the claim until the duty to defend has been discharged.

38. UAIC has admitted that their duty to defend has still not been discharged.

39. UAIC did an unreasonable investigation, did not defend me, did not attempt to resolve or relieve me from the judgment against me, did not respond to reasonable opportunities to settle and did not communicate opportunities to settle to me.

40. Our second appeal to the Ninth Circuit, ultimately led to certification of the first question to the Nevada Supreme Court, namely, whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages to the breach.

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41. After the first certified question was fully briefed and pending before the Nevada Supreme Court, UAIC embarked on a new strategy putting their interests ahead of mine in order to defeat Nalder's and my claims against UAIC.

42. UAIC mischaracterized the law and brought new facts into the appeal process that had not been part of the underlying case. UAIC brought the false, frivolous and groundless claim that neither Nalder nor I had standing to maintain a lawsuit against UAIC without filing a renewal of the judgment pursuant to NRS 17.214.

43. Even though UAIC knew at this point that it owed a duty to defend me, UAIC did not undertake to investigate the factual basis or the legal grounds or to discuss this with me, nor did it seek declaratory relief on my behalf regarding the statute of limitations on the judgment.

44. This failure to investigate the factual basis for the validity of the judgment against me caused me additional damages.

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45. UAIC, instead, tried to protect themselves and harm me by filing a motion to dismiss my and Nalder's appeal with the Ninth Circuit for lack of standing.

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46. This was not something brought up in the trial court, but only in the appellate court for the first time. My understanding is that the Ninth Circuit is not a trial court that takes evidence.

47. This action could leave me with a valid judgment against me and no cause of action against UAIC.

48. UAIC ignored all of the tolling statutes and presented new evidence into the appeal process, arguing Nalder's underlying $3,500,000.00 judgment against me is not enforceable because the six-year statute of limitation to institute an action upon the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired.

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49. As a result, UAIC contends Nalder can no longer recover damages above the $15,000.00 policy limit for breach of the contractual duty to defend. UAIC admits the Nalder judgment was valid at the time the Federal District Court made its erroneous decision regarding damages.

50. The Ninth Circuit concluded the parties failed to identify Nevada law that conclusively answers whether a plaintiff can recover consequential damages based on a judgment that is over six years old and possibly expired. I must wonder whether the Ninth Circuit judges read the *Mandlebaum v. Gregovich*, 24 Nev. 154, 50 P. 849, (1897) case.

51. The Ninth Circuit was also unable to determine whether the possible expiration of the judgment reduces the consequential damages to zero or if the damages should be calculated from the date when the suit against UAIC was initiated, or when the judgment was entered by the trial court.

52. Both the suit against UAIC and the judgment against UAIC entered by the trial court were done well within even the non-tolled statute of limitations.

53. Even though Nalder believed the law is clear that UAIC is bound by the judgment, regardless of its continued validity against me, and took action in Nevada and California to insure and demonstrate the continued validity of the underlying judgment against me. Before the actions of UAIC questioning the validity of the judgment, as part of my assignment of a portion of my claim against UAIC Nalder's only efforts to collect the judgment had been directed at UAIC and not me. Thus UAIC's improper investigation and refusal to withdraw a fraudulent affidavit caused me and continue to cause me injury and damage.

54. These Nevada and California state court actions are further harming me and Nalder but were undertaken to demonstrate that UAIC has again tried to escape responsibility

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by making misrepresentations to the Federal and State Courts and putting their interests ahead of mine.

55. Cheyenne Nalder reached the age of majority on April 4, 2016.

56. Nalder hired David Stephens to obtain a new judgment. First David Stephens obtained an amended judgment in Cheyenne's name as a result of her reaching the age of majority.

57. This was done appropriately by demonstrating to the court that the judgment was still within the applicable statute of limitations. I have read the *Mandlebaum v. Gregovich*, 24 Nev. 154, 50 P. 849, (1897) case. It is exactly my situation and it provides: "The averments of the complaint and the undisputed facts are that, at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. Notwithstanding nearly fifteen years had elapsed since the entry of the judgment, yet, for the purposes of action, the judgment was not barred — for that purpose **the judgment was valid.**" *Id., Mandlebaum at 851.*

58. A separate action was then filed with three distinct causes of action pled in the alternative. The first, an action on the amended judgment to obtain a new judgment and have the total principal and post judgment interest reduced to judgment so that interest would now run on the new, larger principal amount. The second alternative action was one for declaratory relief as to when a renewal must be filed base on when the statute of limitations, which is subject to tolling provisions, is running on the judgment. The third cause of action was, should the court determine that the judgment is invalid, Cheyenne brought the injury claim within the applicable statute of limitations for injury claims - 2 years after her majority.

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59. Nalder also retained California counsel, who filed a judgment in California, which has a ten year statute of limitations regarding actions on a judgment. Nalder maintains that all of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the judgment; but out of an abundance of caution and to maintain the judgment against me, she brought them to demonstrate the actual way this issue should have been litigated in the State Court of Nevada, not at the tail end of an appeal by a fraudulent affidavit of counsel for UAIC.

60. UAIC did not discuss with me any proposed defense, nor did it coordinate it with my counsel Thomas Christensen, Esq.

61. UAIC hired attorney Stephen Rogers, Esq. to represent me, misinforming him of the factual and legal basis of the representation. This resulted in a number of improper contacts with me. These contacts were made in spite of my requests to discuss any matters related to my claims against UAIC with my attorney handling my action against UAIC Thomas Christensen.

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62. Thomas Christensen explained the nature of the conflict and my concern regarding a frivolous defense put forth on my behalf. I fear that if the state court judge is fooled into an improper ruling that then has to be appealed in order to get the correct law applied damage could occur to me during the pendency of the appeal.

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63. Regardless of potential greater damage should the trial court be fooled these actions by UAIC and Tindall are causing immediate damages of continued litigation, litigation costs and fees and damage to my contractual relationship with Cheyenne Nalder.

64. UAIC's strategy of trickery, delay and misrepresentation was designed to benefit UAIC but harm me.

65. In order to evaluate the benefits and burdens to me and the likelihood of success of the course of action proposed by UAIC and the defense attorneys hired by UAIC, I asked through my attorney Thomas Christensen that UAIC and their attorneys communicate to

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Thomas Christensen regarding the proposed course of action and what research supported it. It was requested that this communication go through Thomas Christensen's office because that was my desire, in order to receive counsel prior to embarking on a course of action.

66. My attorney Thomas Christensen informed Stephen Rogers, Esq. that when I felt the proposed course by UAIC was not just a frivolous delay and was based on sound legal research and not just the opinion of UAIC's counsel, that it could be pursued.

67. Stephen Rogers, Esq. never provided any Nevada law or assurances that UAIC will be responsible if their proposed defense fails or documents or communications regarding my representation.

68. Instead, UAIC obtained my confidential client communications and then misstated the content of these communications to the Court. That is why I sought Cumis counsel. The conflict of having UAIC as a co-client with any attorney representing me is a conflict I am unwilling to waive. This was for UAIC's benefit and again harmed me.

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69. UAIC, without notice to me or any attorney representing me, then filed two motions to intervene, which were both defective in service on the face of the pleadings.

70. In the motions to intervene, UAIC claimed that they had standing because they would be bound by and have to pay any judgment entered against me.

71. In the motions to intervene, UAIC fraudulently claimed that I refused representation by Stephen Rogers.

72. I was concerned about Steve Rogers representing me but taking direction from UAIC who is a defendant in my lawsuit in federal court against them. I therefore hired additional CUMIS counsel E. Breen Arntz. I requested Steve Rogers have UAIC pay Mr. Arntz because of the conflict in Rogers representing both me and UAIC.

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73. I am informed that David Stephens, Esq., counsel for Nalder in her 2018 action, through diligence, discovered the filings on the court website. He contacted Matthew Douglas, Esq., described the lack of service, and asked for additional time to file an opposition.

74. These actions by UAIC and counsel on its behalf are harmful to me and benefit UAIC and not me.

75. I am informed that David Stephens thereafter filed oppositions and hand-delivered courtesy copies to the court. UAIC filed replies. The matter was fully briefed before the in chambers "hearing," but the court granted the motions citing in the minuted order that "no opposition was filed."

76. I do not understand why the court granted UAIC's Motion to Intervene after judgment since it is contrary to NRS 12.130, which states: Intervention: Right to intervention; procedure, determination and costs; exception. 1. Except as otherwise provided in subsection 2: (a) **Before the trial** …

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77. These actions by State Actor David Jones ignore my rights to due process and the law and constitution of the United States and Nevada. The court does the bidding of UAIC and clothes defense counsel in the color of state law in violation of 42 USCA section 1983.

78. David Stephens representing Nalder and E. Breen Arntz representing me worked out a settlement of the action and signed a stipulation. This stipulation was filed and submitted to the court with a judgment prior to the "hearing" on UAIC's improperly served and groundless motions to intervene.

79. I was completely aware of the settlement entered into by E. Breen Arntz. I authorized that action because the defense put forward by UAIC is frivolous. I do not want to incur greater fees and expenses in a battle that I will most likely loose. I also don't want to create the situation where Nalder will have even greater damages against me than the judgment.

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From all the information I have gathered from UAIC the judgment against me is valid. I don't want a frivolous defense that will ultimately fail. I don't want to take that risk.

80. Instead of signing the judgment and ending the litigation as I had requested, the court asked for a wet signed stipulation as a method of delaying signing the stipulated judgment.

81. This request was complied with prior to the September 19, 2018 "hearing" on the Motion to Intervene. The judge, without reason, failed to sign the judgment resolving the case.

82. Instead, the judge granted the Motion to Intervene, fraudulently claiming, in a minute order dated September 26, 2018, that no opposition had been filed.

83. Randall Tindall, Esq. fraudulently filed unauthorized pleadings on my behalf on September 26, 2018 and on September 27, 2018.

84. UAIC hired Tindall to further its strategy to defeat Nalder and my claims. Tindall agreed to the representation despite his knowledge and understanding that this strategy amounted to fraud and required him to act against the best interests of his "client" me.

85. Tindall mischaracterized the law and filed documents designed to mislead the Court and benefit UAIC, to the detriment of me.

86. These three filings by Randall Tindall, Esq. are almost identical to the filings proposed by UAIC in their motion to intervene.

87. I was not consulted and I did not consent to the representation.

88. I did not authorize the filings by Randall Tindall, Esq.

89. I and my attorneys, Thomas Christensen, Esq. and E. Breen Arntz, Esq., have requested that Tindall withdraw the pleadings filed fraudulently by Tindall.

90. Tindall has refused to comply and continues to violate ethical rules regarding his claimed representation of me.

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91. I filed a bar complaint against Tindall, but State Actors Daniel Hooge and Phil Pattee dismissed the complaint claiming they do not enforce the ethical rules if there is litigation pending. This makes no sense to me. Why won't the bar protect the public from these unethical fraudulent practices by Tindall?

92. With this affidavit I am appealing the dismissal of my bar complaint against Randall Tindall.

93. With this affidavit I am requesting an investigation of Daniel Hooge and Phil Pattee regarding the dismissal of my bar complaint.

94. Following Mr. Tindall's involvement the court signed an order granting intervention while still failing to sign the judgment resolving the case.

95. I later discovered Judge Jones and Mr. Tindall had a business relationship while working together at another insurance company.

96. Although Judge Jones removed himself from these cases he did not rescind the orders he issued after Mr. Tindall's involvement in the case. These orders are tainted by Mr. Tindall's prior involvement.

97. UAIC and Tindall, and each of the state actors, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming me.

98. I sustained damage resulting from defendants' acts in incurring attorney fees, litigation costs, loss of claims, delay of claims, and as more fully set forth below.

99. UAIC and Tindall acting under color of state law deprived me of rights, privileges, and immunities secured by the Constitution or laws of the United States.

100. I have duly performed all the conditions, provisions and terms of the agreements or policies of insurance with UAIC relating to the claim against me, have furnished and delivered to UAIC full and complete particulars of said loss and have fully complied with all the

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provisions of said policies or agreements relating to the giving of notice as to said loss, and have duly given all other notices required to be given by me under the terms of such policies or agreements.

101. That I had to sue UAIC in order to get protection under the policy. That UAIC, and each of them, after being compelled to pay the policy limit and found to have failed to defend me, now fraudulently claim to be defending me when in fact UAIC is continuing to delay investigating and processing the claim; not responding promptly to requests for settlement; doing a one-sided investigation, and have compelled me to hire counsel to defend myself from Nalder, Tindall and UAIC. All of the above are unfair claims settlement practices as defined in N.R.S. 686A.310 and I have been damaged.

102. That UAIC failed to settle the claim when given the opportunity to do so and then compounded that error by making frivolous and fraudulent claims and represented to the court that it would be bound by any judgment and is therefore responsible for the full extent of any judgment against me in this action.

103. UAIC and Tindall's actions have interfered with the settlement agreement Breen Arntz had negotiated with David Stephens and have caused me to be further damaged.

104. The actions of UAIC and Tindall, and each of them, in this matter have been fraudulent, malicious, oppressive and in conscious disregard of my rights.

105. It seems to me that the above mentioned parties have communicated with each other and conspired together to harm me.

106. During the litigation and investigation of the claim, UAIC, and Tindall, threatened, intimidated and harassed me and my counsel.

107. The investigation conducted by UAIC, and Tindall, was done for the purpose of denying coverage and not to objectively investigate the facts.

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108. UAIC and Tindall, failed to adopt and implement reasonable standards for the prompt investigation and processing of claims.

109. UAIC and Tindall, failed to affirm or deny coverage of the claim within a reasonable time after proof of loss requirements were completed and submitted by me.

110. UAIC and Tindall, failed to effectuate a prompt, fair and equitable settlement of the claim after my liability became reasonably clear.

111. UAIC and Tindall, failed to promptly provide to me a reasonable explanation of the basis in the Policy, with respect to the facts of the Nalder claim and the applicable law, for the delay in the claim or for an offer to settle or compromise the claim.

112. Because of the improper conduct of UAIC and Randall Tindall, I was forced to hire an attorney.

113. I have suffered damages as a result of the delayed investigation, defense and payment on the claim.

114. I have suffered anxiety, worry, mental and emotional distress as a result of the conduct of UAIC and Tindall.

115. The conduct of UAIC and Tindall, was oppressive and malicious and done in conscious disregard of my rights.

116. UAIC and Tindall, breached the contract existing between me and UAIC, breached the covenant of good faith and fair dealing, acted unreasonably and with knowledge that there was no reasonable basis for their conduct, violated NRS 686A.310 and were negligent by their actions set forth above which include but are not limited to: Unreasonable conduct in investigating the loss; Unreasonable failure to affirm or deny coverage for the loss; Unreasonable delay in making payment on the loss; Failure to make a prompt, fair and equitable settlement for the loss; Unreasonably compelling me to retain an attorney before affording

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coverage or making payment on the loss; Failing to defend me; Fraudulent and frivolous litigation tactics; Filing false and fraudulent pleadings; Conspiring with others to file false and fraudulent pleadings;

117. As a proximate result of the aforementioned, I have suffered and will continue to suffer in the future damages as a result of the fraudulent litigation tactics and delayed payment on the judgment.

118. As a further proximate result of the aforementioned, I have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses.

119. As a further proximate result of the aforementioned, I was compelled to retain legal counsel to prosecute this claim, and UAIC and Tindall, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.

120. The conduct of UAIC and Tindall, was oppressive and malicious and done in conscious disregard of my rights.

121. The aforementioned actions of UAIC and Tindall, constitute extreme and outrageous conduct and were performed with the intent or reasonable knowledge or reckless disregard that such actions would cause severe emotional harm and distress to me.

122. As a proximate result of the aforementioned intentional infliction of emotional distress, I have suffered severe and extreme anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses.

123. As a further proximate result of the aforementioned intentional infliction of emotional distress, I was compelled to retain legal counsel to prosecute this claim, and UAIC and Tindall, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.

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124. Randall Tindall breached the duty of care by failing to communicate with me, failing to follow my reasonable requests for settlement, case strategy and communication.

125. That breach caused harm to me including but not limited to anxiety, emotional distress, delay, enhanced damages against me.

126. I was damaged by all of the above as a result of the breach by Randall Tindall.

127. I request that E. Breen Arntz and/or Randall Tindall withdraw the fraudulent, unauthorized, frivolous, improperly filed motions filed by Randall Tindall in both CASE NO. A-18-772220-C and CASE NO. 07A549111. I want the settlement worked out with my knowledge and consent signed by the court.

FURTHER AFFIANT SAYETH NAUGHT.

GARY LEWIS

SUBSCRIBED and SWORN to before me this 26th day of November, 2018.

Notary Public in and for said County and State.

SEAN H. HOUSTON
Notary Public – California
Los Angeles County
Commission # 2218583
My Comm. Expires Oct 16, 2021

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