IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LEWIS
Petitioner and Real Party in Interest

vs.

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

Respondent,

And
UNITED AUTOMOBILE INSURANCE COMPANY, and CHEYANNE NALDER

Respondents.

Supreme Court No.
78243

District Court Case No. 07A549111
Consolidated with 18-A-772220
DEPT. NO: XX

APPENDIX TO PETITION FOR WRIT OF MANDAMUS VOLUME II

THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar 2326
CHRISTENSEN LAW OFFICES
1000 S. Valley View Blvd.
Las Vegas, NV 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com
Attorney for Third Party Plaintiff Gary Lewis

Exhibit #	Document Title	Bates No.
9	Amended Judgment 07A549111	077-081
10	Judgment 18-A-772220	082-088
11	Judgment KS021378	089-100
12	Mandlebaum v. Gregovich	101-105
13	Order Granting Randall Tindall's Motion to Withdraw	106-111
14	Complaint UAIC vs. Christensen, Arntz & Lewis	112-122
15	Motion to Dismiss Pursuant to NRS 41.660 (sans exhibits)	123-150
16	Order Granting Intervention	151-153

EXHIBIT 9

NOE
David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS Defendant.	Case No. 07A549111 Dept. No. XXIX

NOTICE OF ENTRY OF AMENDED JUDGMENT

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

Dated this 17 day of May, 2018.

STEPHENS & BYWATER

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

CASE NO: 07A549111
~~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:

...

...

...

...

IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the sum of $3,500,000.00, which consists of $65,555.37 in medical expenses, and ~~$3,434,4444.63~~ $3,434,444.63 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007, until paid in full.

DATED this 26 day of March, 2018.

District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
3636 North Rancho Dr
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT 10

NOE

David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendants. _____ UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor. _____ GARY LEWIS, Third Party Plaintiff, vs. UNITED AUTOMOBILE INSURANCE COMPANY, RANDALL TINDALL, ESQ., and RESNICK & LOUIS, P.C. And DOES I through V, Third Party Defendants.	CASE NO.: 07A549111 DEPT NO.: XX Consolidated with Case No. A-18-772220-C

NOTICE OF ENTRY OF JUDGMENT

Date: n/a
Time: n/a

NOTICE IS HEREBY GIVEN that on the 22nd day of January, 2019, the Clerk of the Court entered a Judgment in Case No. A-18-772220-C, in favor of Cheyenne Nalder and against Gary Lewis, based upon an Offer to Accept Judgment from Cheyenne Nalder to Gary Lewis,

which Offer to Accept Judgment was accepted by Gary Lewis, in the above entitled matter, a copy of which Judgment is attached to this Notice.

Dated this 28th day of January, 2019.

STEPHENS & BYWATER, P.C.

S/ David A. Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of January, 2019, I served the following document: **NOTICE OF ENTRY OF JUDGMENT**

■ VlA ELECTRONIC FILING; (N.E.F.R. 9(b))

THOMAS F. CHRISTENSEN, ESQ.

MATTHEW DOUGLAS, ESQ.

E. BREEN, ARNTZ, ESQ.

DAN WAITE, ESQ.

☐ VIA ELECTRONIC SERVICE (N.E.F.R. 9) ·

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

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

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

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

EXHIBIT 1

EXHIBIT 1

JUDG
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
T: (702) 384-8000
breen@breen.com

EXHIBIT 11

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 By _____ Deputy C. Moreno
DEFENDANT/RESPONDENT: Gary Lewis	CASE NUMBER KS021378
JUDGMENT BASED ON SISTER-STATE JUDGMENT **(Code Civ. Proc., § 1710.25)**	

BY FAX

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

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: _____ C. 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 _____, 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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.	FOR COURT USE ONLY
Mark J. Linderman (State Ba. No. 144685) mlinderma Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.co 311 California Street San Francisco, California 94104	415-956-282. 415-956-2828	
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	RECEIVED JUL 17 2018 EAST DISTRICT	FILED Superior Court of California County of Los Angeles JUL 24 2018 Sherri R. Carter, Executive Officer/Clerk By _____ Deputy G. Moreno
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis		CASE NUMBER: KS021378

NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT

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 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☑ CCP 416.90 (individual)
☐ other:	

[SEAL]

(Proof of service on reverse)

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 416.60 (minor) ☐ other:
      ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
      ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
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.

Date: 07/27/18

▶ _____
(SIGNATURE)

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

Date:

▶ _____
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.	FOR COURT USE ONLY
Mark J. Linderman (State Bar No. 144685) mlinderman Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.com 311 California Street San Francisco, California 94104	415-956-28.. 415-956-2828	
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	RECEIVED JUL 17 2018 EAST DISTRICT	FILED Superior Court of California County of Los Angeles JUL 17 2018 Sherri R. Carter, Executive Officer/Clerk By _____ Deputy C. Moreno
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis		
APPLICATION FOR ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT ☐ AND ISSUANCE OF WRIT OF EXECUTION OR OTHER ENFORCEMENT ☐ AND ORDER FOR ISSUANCE OF WRIT OR OTHER ENFORCEMENT		CASE NUMBER: KS021378

Amended

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)

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

9

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. GARY LEWIS, and DOES I through V, inclusive ROES I through V Defendants.	CASE NO: A549111 DEPT. NO: VI

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 25 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

RECEIVED
AUG 26 2008
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 ~~March~~ 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

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

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER, as Guardian ad Litem for CHEYENNE NALDER, a minor. Plaintiffs, vs. GARY LEWIS, and DOES I through V, inclusive Defendants.	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:

. . .

. . .

. . .

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

DATED THIS 2 day of June, 2008.

DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

BY: _____
DAVID SAMPSON
Nevada Bar # 6811
1000 S. Valley View
Las Vegas, Nevada 89107
Attorney for Plaintiff

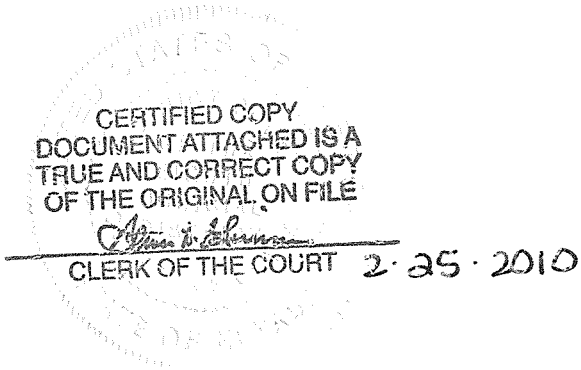
CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE
CLERK OF THE COURT
2·25·2010

EXHIBIT 12

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.

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

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

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.

EXHIBIT 13

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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.: 07A549111
DEPT. NO.: XX

Consolidated with
CASE NO.: A-18-772220-C
DEPT. NO.: XX.

NOTICE OF ENTRY OF ORDER GRANTING RANDALL TINDALL'S AND RESNICK & LOUIS P.C.'S MOTION TO WITHDRAW AS COUNSEL

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the attached **ORDER GRANTING RANDALL TINDALL'S AND RESNICK & LOUIS P.C.'S MOTION TO WITHDRAW AS**

COUNSEL was entered by the Court on the 5th day of February 20192019.

DATED this 5th day of February 20192019.

ATKIN WINNER & SHERROD

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A NEVADA LAW FIRM

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

CERTIFICATE OF SERVICE

I certify that on this 5th day of February, the foregoing **NOTICE OF ENTRY OF ORDER GRANTING RANDALL TINDALL'S AND RESNICK & LOUIS P.C.'S MOTION TO WITHDRAW AS COUNSEL** was served on the following by **[XX] BY WIZNET: I caused such document(s) to be electronically served through Odyssey CM/ECF for the above-entitled case to all the parties on the Service List maintained on Odyssey's website for this case on the date specified.**

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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.: 07A549111
DEPT. NO.: XX

Consolidated with
CASE NO.: A-18-772220-C
DEPT. NO.: XX.

ORDER GRANTING RANDALL TINDALL'S AND RESNICK & LOUIS P.C.'S MOTION TO WITHDRAW AS COUNSEL

Date of Hearing: January 9, 2019
Time of Hearing: 8:30a.m.

Randall Tindall, Esq., and Resnick & Louis P.C.'s Motion to Withdraw as Counsel On Order Shortening Time (the "Motion") was heard on January 9, 2019, the Court having

considered the Motion, having received no opposition to the Motion, and good cause appearing,

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that:

1. Randall Tindall and Resnick & Louis, P.C.'s Motion to Withdraw as Counsel on Order Shortening Time is GRANTED.
2. Randall Tindal and Resnick & Louis, P.C. are permitted to withdraw a counsel for Gary Lewis.
3. Gary Lewis shall be served with pleadings, papers and notices in this action at his following last known address:

Gary Lewis
c/o E. Breen Arntz, Esq.
5545 Mountain Vista, Suite E
Las Vegas, NV 89120

IT IS SO ORDERED.

DATED this 1 day of ~~January~~ FEBRUARY, 2019.

DISTRICT JUDGE
ERIC JOHNSON

Submitted by:

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EXHIBIT 14

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED AUTOMOBILE INSURANCE COMPANY, Plaintiff, vs. THOMAS CHRISTENSEN, an individual; E. BREEN ARNTZ,, an individual; GARY LEWIS; an individual; Defendants.	CASE NO.: 2:18-cv-2269

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff alleges:

JURISDICTION AND VENUE

1. The claims asserted in this Complaint arise under the Federal Declaratory Act, 28 U.S.C. § 2201. The Court has jurisdiction over the subject matter of such claims pursuant to 28 U.S.C. §§ 1331 and 1337(a).

2. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 as the parties are diverse, and the amount in controversy exceeds $75,000.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a), (b), and (c) and 15 U.S.C. § 22, because (i) a substantial part of the events or omissions giving rise to the claim

occurred in this district, (ii) Defendants are deemed to be residents of and/or are found in this district, (iii) Defendants transact business in this district, and/or (iv) at least one defendant may be found in this district.

PARTIES

4. Plaintiff, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter "UAIC") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Miami Gardens, Florida. At all relevant times, UAIC was licensed to write insurance policies in the State of Nevada.

5. Plaintiff is informed and believes and thereon alleges that defendants CHRISTENSEN and ARNTZ are licensed attorneys, purporting to represent defendant LEWIS, and are both residents of the County of Clark, State of Nevada; Upon information and belief, defendant LEWIS is a resident of the State of California.

6. The true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants DOES I-V are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as DOES has an interest in some manner related to the events and happenings herein alleged, and the Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of DOES I-V when the same have been ascertained, and to join such Defendants in this action.

FACTUAL ALLEGATIONS

7. Defendant GARY LEWIS was formerly insured under a UAIC liability insurance policy, which policy had expired due to non-payment of premiums prior to a 2007 motor vehicle accident.

8. At all times relevant, UAIC sold and adjusted month-to-month insurance policies, thirty-day policies of insurance paid by a month-to-month premium, typically for consumers considered too high-risk to qualify for more traditional insurance policies. Such policies would renew for an additional thirty days by timely payment of a premium, and would expire at the end

of the month-long policy period if a renewal payment was not made or received.

9. At some time prior to July 8, 2007, defendant Gary Lewis purchased a single-month liability insurance policy. Defendant Lewis failed to pay for a policy renewal, and the policy expired prior to July 8, 2007.

10. After expiration of the policy, Gary Lewis was involved in a motor vehicle accident on July 8, 2007 with Cheyenne Nalder, then a minor of Gary Lewis' acquaintance.

11. Gary Lewis was thereafter advised that he had no policy in effect at the time of the motor vehicle accident, as he had failed to pay for renewal of the policy.

12. On information and belief, Gary Lewis then cooperated with Cheyenne Nalder and her attorneys, who took a $3.5 million default judgment against Lewis in Clark County, Nevada District Court Case No. 07A54911.

13. On March 22, 2009, Attorney Thomas Christensen, on behalf of Nalder, brought a suit of 'insurance bad faith' against Plaintiff which was removed to Federal District Court for the District of Nevada under case no. 2:09-cv-1348. In that lawsuit, it was alleged that Gary Lewis had, in fact, paid his premiums but that UAIC had lost the payment or had failed to credit Lewis for the payment. In discovery in that lawsuit, it was learned that Lewis had not, in fact, paid his premiums and knew that he had not.

14. Thereafter, Christensen changed his theory, and alleged that the renewal language in the UAIC policy was 'ambiguous' and he had been confused by it, which was why he hadn't paid the premium.

15. In discovery in that lawsuit, it was also learned that defendant Gary Lewis had communicated extensively with Thomas Christensen's office, while Christensen was securing a judgment against Lewis on behalf of Nalder. Attorney Christensen objected to questions about those conversations, claiming 'attorney client privilege,' thereby demonstrating that Christensen had actually represented both plaintiff and defendant in the same lawsuit.

16. In discovery in that lawsuit, it was learned that the 'assignment' on which Nalder brought her suit against UAIC did not exist at the time Christensen brought the lawsuit, but was

only executed long after the lawsuit was filed, and only produced in response to a motion to compel before the magistrate.

17. Plaintiff UAIC filed a motion in that Federal action to amend the pleadings, to assert claims of champerty or barratry, as the judgment appeared to have been collusive, with one law firm attempting to represent both sides in one dispute, and manufacturing evidence for use in the 'bad faith' case. That motion to amend was never heard, as the Federal court granted summary judgment in favor of Plaintiff herein, finding no coverage for the loss and no 'bad faith.'

18. Christensen appealed this ruling to the Ninth Circuit Court of Appeals. A three judge panel agreed that the renewal language was amgiguous and remanded. On remand, the Federal District Judge specifically found no evidence of 'bad faith,' but found an "implied policy" of insurance as between Lewis and UAIC covering the loss, found that UAIC had breached the duty to defend, and ordered UAIC to pay its $15,000 limits, in addition to Christensen's taxable costs and attorney's fees, which UAIC promptly paid.

19. Christensen appealed this ruling to the Ninth Circuit as well. He asked the Ninth Circuit that, even in the absence of 'bad faith,' that UAIC was responsible for the entire $3.5 million judgment as a consequential damage of the breach of the implied contract he alleged. This has been certified to the Nevada Supreme Court by the Ninth Circuit.

20. In 2014, the initial judgment against Gary Lewis expired, as Christensen never renewed it.

21. On observing that the judgment had expired, UAIC filed a motion to dismiss the appeal in the Ninth Circuit, since the Federal Judge had expressly and specifically found no 'bad faith,' and the only consequential damage Gary Lewis could claim was the judgment against him, which had now expired.

22. This motion to dismiss the appeal was likewise certified to the Nevada Supreme Court.

23. Christensen and his co-counsel requested multiple extensions of time to file his

brief in the Nevada Supreme Court on the question of the expired judgment. On each such request, Christensen and his co-counsel asserted that the extension was not sought for any improper purpose, or for the purpose of delay.

24. While requesting these extensions of time, Christensen referred Nalder to Attorney David Stephens, who attempted to renew or amend the expired 2008 judgment four years after it had expired. Christesen also caused to be filed a second action to collect on that judgment, and to demand more damages from Gary Lewis.

25. Christensen also hired defendant E. Breen Arntz to represent UAIC's putative insured, Gary Lewis, to appear in the action.

26. On learning of this, and mindful of the Federal Court's contested ruling that a contract had been implied in law based on the allegedly ambiguous renewal language, UAIC retained counsel Stephen Rogers to file the appropriate paperwork to dismiss the expired judgment against Gary Lewis.

27. On information and belief, Attorney Christensen ordered Rogers not to file any paperwork which would dismiss the large judgment against Rogers' client, and refused to allow Rogers to speak with his own client. In so doing, Christensen identified himself as counsel for both the judgment creditor (Nalder) as well as the judgment debtor (Lewis).

28. UAIC then hired Attorney Randall Tindall to file the necessary paperwork to dismiss the expired judgment against Lewis. Tindall did so, filing the appropriate motions immediately before the deadline for doing so.

29. In response to this, Attorney Christensen identified himself as counsel for Gary Lewis, and demanded that Tindall withdraw from representing Lewis, and (for reasons which have not been explicitly explained) insists that Lewis wants the large judgment against him to stand.

30. Attorney Christensen has now filed a new third party complaint on Gary Lewis' behalf, suing UAIC and Randall Tindall, which third party complaint also includes allegations against the sitting Nevada District Court judge, the State Bar of Nevada.

31. In the new 2018 collection action on the expired judgment, Christensen has represented that he is counsel for Gary Lewis, the judgment debtor in the 2007 action in which Christensen represents Nalder, the judgment creditor.

32. Christensen has demanded that UAIC pay the legal fees of E. Breen Arntz, hired by Christensen to defend Lewis in the collection action, based on a 'conflict of interest.'

FIRST CAUSE OF ACTION
(For Declaratory Relief Against All Defendants regarding payment of legal fees where no actual conflict exists)

21. Plaintiff UAIC repeats and re-alleges each and every allegation contained in the above paragraphs as set forth fully herein.

22. An actual controversey has arisen and now exists between UAIC and the defendants, concerning the respective rights and duties under the Policy and related to said Policy.

23. UAIC desires a judicial determination of its rights and duties, and a declaration as to its liability under the insurance contract. Specifically, UAIC seeks a declaration that its obligation to defend Gary Lewis, based upon the contract implied in law, does not extend to payment of legal fees incurred by defendant Christensen or Arntz.

24. UAIC further desires a judicial determination that UAIC has no obligation to pay either Arntz or Christensen, or any other 'independent counsel' in the absence of an actual conflict of interest.

25. UAIC further desires a judicial determination that the only purported 'conflict of interest' is entirely of Christensen's own invention, and triggers no further obligation under the policy;

26. UAIC further desires a judicial determination that UAIC has no duty, in law or otherwise, to allow the expired judgment against its putative policyholder to stand, at the

insistence of Attorney Christensen or attorneys hired by him;

SECOND CAUSE OF ACTION
(For Declaratory Relief Against Defendant Lewis regarding non-cooperation under the policy of insurance)

27. Plaintiff UAIC repeats and re-alleges each and every allegation contained in the above paragraphs as set forth fully herein.

28. An actual controversey has arisen and now exists between UAIC and the defendants, concerning the respective rights and duties under the Policy and related to said Policy.

29. UAIC's policy with Lewis contains the following provision:

PART VII WHAT TO DO IN CASE OF AN AUTO ACCIDENT OR LOSS

***

OTHER DUTIES

A person claiming coverage under this policy must also:

(1) Cooperate with us and assist us in any matter concerning a claim or suit, including presence at a trial.
(2) Send us promptly any legal papers received relating to any claim or suit.

30. That since the Federal Court in the preceding litigation found an implied policy and, a duty to defend, in 2013, Nalder has attempted to amend her 2008 judgment in the original action, Clark County Nevada case No. 07A549111 in 2018 and, thereafter, filed a new action on same amended judgment in Clark County Nevada case no. A-18-772220-C (hereinafter referred to as "the lawsuits").

31. That UAIC has requested Lewis' assistance in defending the lawsuits and, retained defense counsel for Lewis to defend the lawsuits on his behalf.

32. That Lewis has refused to cooperate in the defense of the lawsuits and each of the Defendants have refused to allow UAIC to talk to Lewis and have maintained that retained

defense counsel may not file anything on behalf of Lewis.

33. That due to Lewis refusal to cooperate in the defense of the lawsuits, Lewis has breached the aforenoted cooperation provisions in the implied policy of insurance as between Lewis and UAIC.

34. That based upon this breach of the implied policy of insurance by Lewis, Plaintiff has and owes no duty to indemnify Defendant Lewis for or in connection with any claim which has been made or may be made arising out of the subject accident in the lawsuits for any amount above the mandatory minimum limits of liability insurance in the State of Nevada pursuant to N.R.S. 485.3091.

THIRD CAUSE OF ACTION
(For damages including attorneys fees against Defendants Christensen and Arntz for common law barratry)

35. Plaintiff UAIC repeats and re-alleges each and every allegation contained in the above paragraphs as set forth fully herein.

36. That, as set forth herein, Defendant Christensen represents both the judgment-creditor (Nalder) and the judgment-debtor (Lewis) in actions related to the 2007 accident between Lewis and Nalder and the original judgment arising from same accident.

37. That Defendant Christensen has had Lewis retain Defendant Arntz to advance Nalder and Christensen's interests in the lawsuits.

38. That Defendant Christensen has had Lewis and Arntz prevent retained defense counsel for Lewis, by UAIC, from talking to Lewis and has maiuntained they cannot mount a defense.

39. That Christensen and Arntz's actions are collusive and fradulent and intended only to benefit Christensen and Nalder.

40. That Christensen and Arntz, by the above-described actions, have comitted

common law barratry in that they have fomented legal disputes as between UAIC and its insured and counsel retained to defend its insured for their sole benefit.

41. UAIC seeks legal fees incurred for the improper litigation fomented by Defendants in the lawsuits.

PRAYER

WHEREFORE, Plaintiff UAIC prays that judgment be entered against Defendants as follows:

1. For a Declaratory Judgment against defendants, finding that UAIC's obligation to Gary Lewis, to the extent such exists in the expired policy implied by law, imposes no additional duties to pay 'independent counsel' hired by counsel for the judgment creditor;

3. For a Declaratory Judgment against Defendants that UAIC's actions, in hiring counsel to file paperwork to dismiss the expired judgment against Gary Lewis, do not constitute bad faith;

4. For a Declaratory Judgment against the defendants that UIAC's actions, in moving to intervene in the related State Court actions, due to Christensen's refusing to allow counsel to speak with Gary Lewis, do not constitute actionable 'bad faith;'

5. That due to Lewis non-cooperation in defense of the lawsuits, UAIC's obligation to Gary Lewis, policy implied by law, is abrogated such that UAIC owes no duty to indemnify Defendant Lewis for or in connection with any claim which has been made or may be made arising out of the July 8, 2007 loss or from the lawsuits, Clark County Nevada case No. 07A549111 and Clark County Nevada case no. A-18-772220-C, for any amount above the mandatory minimum limits of liability insurance in the State of Nevada pursuant to N.R.S. 485.3091, said amount being $15,000.00;

6. That Defendants Christensen and Artnz have committed common law barratry for fomenting improper litigation for their sole benefit and, thus, UAIC is entitled to attorney's fees for the costs of the defense of the lawsuits and, the additional litigation fomented;

7. For costs of suit and attorney's fees; and

8. For such other and further relief as the Court deems just and proper.

DATED this 27th day of November, 2018.

ATKIN WINNER & SHERROD

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED AUTOMOBILE INSURANCE COMPANY, Plaintiff, vs. THOMAS CHRISTENSEN, an individual; E. BREEN ARNTZ, an individual; GARY LEWIS, an individual, Defendants.	Case No.: 2:18-cv-02269-JAD-PAL **DEFENDANT THOMAS CHRISTENSEN'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660** **(Oral Argument Requested)**

THOMAS CHRISTENSEN ("Defendant" or "Christensen"), by and through his counsel of record, James E. Whitmire, Esq. of the law firm Santoro Whitmire, Ltd., hereby files Defendant Thomas Christensen's Motion to Dismiss Pursuant to NRS 41.660. This Motion is made and based on the Points and Authorities set forth below, together with the pleadings and papers on file herein, and any oral argument that may be permitted by the Court.

Dated this 22nd day of February, 2019.

SANTORO WHITMIRE

/s/ James E. Whitmire
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MEMORANDUM OF POINTS & AUTHORITIES

INTRODUCTION

This is a textbook Strategic Lawsuit Against Public Participation ("SLAPP") filed by a disgruntled insurer (Plaintiff UAIC) against its insured (Defendant Gary Lewis) and his two lawyers (Defendants Breen Arntz, Esq. and Thomas Christensen, Esq.).[1] In this case, UAIC has filed an improper Complaint, which asserts a medieval barratry claim against Defendant Christensen. UAIC, which has already been found to have breached its duty to defend by the Ninth Circuit Court of Appeals, is continuing its pattern of bad faith by lashing out at defendants and trying to punish them for advocating certain arguments in the United States' adversarial judicial system.[2] Simply put, UAIC, which has repeatedly lost certain arguments in this matter, is retaliating against its insured and seeking to impose personal liability on the insured's attorneys simply because they are advocating certain positions (as is their duty) on behalf of their client (UAIC's insured). Put another way, UAIC is attempting to chill and muzzle defendants in violation of the law.

UAIC's barratry claim is subject to immediate dismissal pursuant to Nevada's anti-SLAPP statute (NRS 41.660), which protects persons from civil liability arising out of good faith communication in furtherance of the right to petition a judicial body. Here, Christensen's Special Motion to Dismiss should be granted because Christensen satisfies the two-pronged test for dismissal. First, Christensen will make a threshold showing, by a preponderance of the

[1] A "SLAPP" lawsuit is "a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights." Dickens v. Provident Life and Acc. Ins. Co., 11 Cal. Rptr. 3d 877, 882 (2004).

[2] United Automobile Insurance Company ("Plaintiff" or "UAIC") chose not to defend Mr. Lewis in a catastrophic personal injury lawsuit. As a result, a substantial default judgment was entered against its insureds in a state court action. Since then, UAIC has been unsuccessful in its never-ending efforts, at whatever cost, to evade responsibility for the judgment.

evidence, that UAIC's claim is based on the defendant's free speech, petitioning or other protected activity. Second, UAIC cannot meet its burden to show a probability of prevailing on its claim. Not only does the First Amendment protect Christensen, so does the absolute litigation privilege given that Christensen and the co-defendants were at all times acting on behalf of their respective clients in furtherance of the litigation process. If allowed to proceed, the claims brought by UAIC would effectively chill Christensen and other attorneys from vigorously advocating for injured clients by forcing attorneys to defend themselves against claims for personal liability for purely strategic litigation decisions. Moreover, UAIC's claim is not even ripe for adjudication given ongoing proceedings involving this case.[3] Furthermore, UAIC cannot otherwise establish a barratry claim as the litigation brought about by Cheyanne Nalder brought by David A. Stephens, Esq. was a direct result of UAIC's arguments to the Ninth Circuit.

I.

STATEMENT OF FACTS[4]

The following facts are based, in part, on express statements contained in Nalder v. United Auto Ins. Co., 824 F.3d 854 (9th Cir. 2016). The Nalder case directly involves Defendants Gary Lewis and Christensen. As discussed herein, the Nalder case has a complex procedural history, and the case has two underlying final judgments and is still ongoing in

[3] UAIC has been litigating the issues raised in its Complaint for several years now, and there are ongoing proceedings involving this case that are pending before the Nevada State District Court, the Nevada Supreme Court and the Ninth Circuit Court of Appeals. If anyone is guilty of multiplying the proceedings, it is UAIC.

[4] Given that anti-SLAPP motions to dismiss are to be treated like summary judgment motions, Christensen sets forth his statement of facts in numerical format consistent with LR 56-1.

multiple different courts. Other statements of fact set forth herein are based on issues being litigated in other courts.[5]

The Underlying Collision

1. On July 8, 2007, Gary Lewis ("Lewis") ran over Cheyanne Nalder.[6]

2. At the time of the collision, Cheyanne (born April 4, 1998) was a nine-year-old girl.

3. This incident, which occurred on private property, caused catastrophic injuries.

Gary Lewis Was Insured by UAIC at the Time of the Collision

4. Lewis had taken out an automobile insurance policy with UAIC, which was renewable on a monthly basis.[7]

5. 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.[8]

6. Lewis paid to renew his policy on July 10, 2007, two days after the accident, but before the expiration of the policy.[9]

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[5] Consistent with this Court's Local Rules, Defendant is not attaching reams of documents filed in other courts and/or various court rulings. Defendant is attaching various docket sheets as exhibits to demonstrate to the Court various matters relevant to this Motion. To the extent the Court believes additional documents are necessary or helpful, Defendant will certainly provide whatever is deemed necessary to the Court. Leave to supplement is also sought if the Court believes a particular matter needs to be further supported.

[6] Nalder v. United Auto Ins. Co., 824 F.3d at 855.

[7] Id.

[8] Id.

[9] Id.

UAIC Rejected a $15,000 Policy Limits Offer to Settle Without Informing Lewis, Denied the Claim, and Refused to Defend Lewis

7. James Nalder ("Nalder"), Cheyanne's father, made an offer to UAIC to settle her claim for $15,000, the insurance policy limit.

8. 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, 2007.

9. UAIC never informed Lewis that Nalder was willing to settle.[10]

The First Lawsuit – State Court Litigation/Underlying Case and Resulting Default Judgment

10. After UAIC rejected Nalder's offer, Nalder sued Lewis in Nevada state court (Case No. A-07-549111). See, Docket Sheet attached hereto as Ex. A.

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

12. Lewis failed to appear and answer the complaint.

13. As a result, Nalder obtained a default judgment against Lewis for $3,500,000. Notice of entry of judgment was filed on August 26, 2008.

Voluntary Assignment By Lewis Instead of Judicial Execution and Assignment

14. After the default judgment was entered, Lewis moved to California. Then Lewis and Nalder entered into a settlement agreement regarding collection of the default judgment from UAIC.

15. As part of the settlement, Lewis assigned to Nalder his rights to collect from UAIC all funds necessary to satisfy the Judgment plus interest.

[10] Id. at 856.

The Second Lawsuit --
Federal Court Coverage Action, Whereby the Ninth Circuit
Court of Appeals Ultimately Found that UAIC Breached Its Duty to Defend

16. After the default judgment was entered, Nalder and Lewis then filed suit against UAIC in state court (State Court Case No. A-09-590967-C).[11] See, Docket Sheet attached hereto as Ex. B.

17. The case was then removed by UAIC to Federal Court. (Case No. 2:09-cv-01348-ECR-GWF). See, Docket Sheet attached hereto as Ex. C.

18. Nalder and Lewis alleged an action on the judgment, 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.

19. UAIC moved for summary judgment on the basis that Lewis had no insurance coverage on the date of the accident. Nalder and Lewis opposed the motion arguing 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.[12]

20. The district court found that the contract could not be reasonably interpreted in favor of Nalder and Lewis' argument and granted summary judgment in favor of UAIC.[13]

21. An appeal thereafter occurred to the Ninth Circuit Court of Appeals (Case No. 11-15010) (Federal Court Appeal No. 1). See, Docket Sheet attached hereto as Ex. D.

22. On December 17, 2012, the Ninth Circuit reversed the District Court holding "that summary judgment 'with respect to whether there was coverage' was improper because the

[11] Id.

[12] Id.

[13] Id. at 856.

'[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)."

23. On remand, on October 30, 2013, the district court (Hon. Robert C. Jones) 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.[14] 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.[15] The court ordered UAIC "to pay Cheyanne Nalder the policy limits on Gary Lewis' implied insurance policy at the time of the accident."[16]

24. 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 Lewis or relieve him of the judgment against him.

25. Both Nalder and Lewis appealed from Judge Jones' October 30, 2013 judgment (Case No. 13-17441) (Federal Court Appeal No. 2). See, Docket Sheet attached hereto as Ex. E.

26. Two issues have since been certified by the Ninth Circuit Court of Appeals to the Nevada Supreme Court (from Federal Court Appeal No. 2).

The First Certified Question in Appeal No. 2,
Which Has Been Answered in Favor of Gary Lewis and Against UAIC

27. The first certified question to the Nevada Supreme Court in Appeal No. 2 pertains

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[14] Id. The basis for reasonableness was the Court's prior erroneous summary judgment ruling.

[15] Id.

[16] Id. at 856.

to whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages to the breach. In Nalder v. UAIC, 824 F.3d 854 (9th Cir. 2016), the following question was certified to the Nevada Supreme Court:

> 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?

Id. at 855.[17]

28. The first certified question was answered by the Nevada Supreme Court on December 13, 2018, wherein the Nevada Supreme Court held:

> In answering the certified question, we conclude that an insured may recover any damages consequential to the insurer's beach of its duty to defend. As a result, an insurer's liability for the breach of the duty to defend is not capped at the policy limits, even in the absence of bad faith.

Century Sur. Co. v. Andrew, 134 Nev. Adv. Rep. 100, 432 P.3d 180 (Nev. 2018).[18]

29. Accordingly, Judge Jones' October 30, 2013 decision limiting Gary Lewis' damages is erroneous such that Lewis has once again prevailed against UAIC.

The Second Certified Question in Appeal No. 2, Which Has Not Yet Been Answered

30. After the first certified question was fully briefed and pending before the Nevada Supreme Court, UAIC embarked on a new strategy putting its interests ahead of Lewis' interests.

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[17] The first certified question arose in light of conflicting opinions within the Nevada District Court. Unlike Judge Jones' decision to cap damages in the underlying Nalder case, the Hon. Andrew P. Gordon issued a directly opposite decision in Andrew v. Century Sur. Co., 134 F. Supp. 3d 1249 (D. Nev. 2015) whereby Judge Gordon ruled "[t]here is no special rule for insurers that caps their liability at policy limits for a breach of the duty to defend." Id.

[18] As noted above, the certified question was the same in both the Nalder and Andrew cases.

31. UAIC, mischaracterized Nevada law and brought in new facts and issues into the appeal process that were not addressed in the underlying case and were not part of the trial court record. UAIC claims that neither Nalder nor Lewis have standing to maintain a lawsuit against UAIC. UAIC argues that a renewal of judgment pursuant to NRS 17.214 was not timely filed such that claims are time barred pursuant to NRS 11.190(1)(a).[19]

32. As a result, UAIC contends unless Nalder takes some action in the underlying case to preserve the judgment against Lewis, Nalder can no longer recover damages above the $15,000.00 policy limit for breach of the contractual duty to defend.

33. In its Motion to Dismiss before the Ninth Circuit, UAIC ignored Nevada tolling statutes and inappropriately presented new evidence into the appeal process.[20]

34. The Ninth Circuit has 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 the statute of limitations has possibly expired. The Ninth Circuit was also unable to determine whether the possible expiration of the statute of limitations on 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.

[19] Even though UAIC knew at this point that it owed a duty to defend Gary Lewis, UAIC did not undertake to investigate the factual basis or the legal grounds or to discuss this with Gary Lewis, nor did it seek declaratory relief on Lewis' behalf regarding the statute of limitations on the judgment. All of these actions would have been attempts to protect Gary Lewis. UAIC, instead, tried to protect itself and harm Lewis by filing a motion to dismiss Lewis' and Nalder's appeal with the Ninth Circuit for lack of standing.

[20] UAIC has ignored, among other things, applicable Nevada case law that holds that a six-year statute of limitation for enforcing a judgment is tolled so long as the judgment debtor has not resided in the State of Nevada. Mandlebaum v. Gregovich, 24 Nev. 154, 50 P. 849 (1897).

35. The Ninth Circuit Court of Appeals has accordingly certified a second question to the Nevada Supreme Court, to wit:

> 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?

Nalder v. United Auto. Ins. Co., 878 F.3d 754, 755-56 (9th Cir. 2017).

36. The Nevada Supreme Court has not, to date, answered the second certified question.

Nalder, Through David Stephens, Esq. , Recently Filed A Separate State Court Action to Preserve Her Judgment Against Lewis Pursuant to the Mandlebaum Decision

37. Even though Nalder believed the law is clear that UAIC is bound by the judgment, regardless of its continued validity against Lewis, Nalder took action in Nevada and California to assure and demonstrate the continued validity of the underlying judgment against Lewis as UAIC argued to the Ninth Circuit she should do. See, Docket Sheets attached hereto as Ex. F (A-18-772220-C) and Ex. G (California Case No. KS021378).

38. The Nevada and California state court actions are further harming Lewis and Nalder, but were undertaken to demonstrate that UAIC has again tried to evade responsibility by making misrepresentations to the Federal and State Courts and putting its interests ahead of its insured's interests.

39. Nalder hired David Stephens, Esq. to obtain a new judgment. First, David Stephens, Esq. obtained an amended judgment in Cheyanne's name as a result of her reaching the age of majority and because the statute of limitations was tolled because of Lewis' absence from Nevada by NRS 11.300. See, Ex. F attached hereto.

40. A separate action was then filed with three distinct causes of action pled in the alternative. The first and main claim, an action on the amended judgment pursuant to Mandlebaum 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, Cheyanne brought the injury claim within the applicable statute of limitations for injury claims - 2 years after her majority. Id..

41. Nalder also retained California counsel, who filed a judgment in California, which has a ten year statute of limitations regarding actions on a judgment. See, Ex. G attached hereto.

42. Nalder maintains that all of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the judgment. However, because UAIC contends it is necessary, and out of an abundance of caution and to maintain the judgment against Lewis, she brought them to demonstrate the actual way this issue should have been litigated in the State Court of Nevada, not for the first time in an appellate court at the tail end of an appeal.

Lewis Welcomes a Defense Provided by UAIC, but Requests All Communication through Christensen Because of the Obvious Conflict With UAIC

43. After Stephens notified UAIC of the new action on a judgment, UAIC appointed counsel – Stephen Rogers -- to represent Lewis. Lewis welcomed an ethical representation by Rogers and asked that Rogers communicate through Christensen who represents Lewis against UAIC. Christensen requested that Rogers explain the basis for the proposed defense with case law and likelihood of success in overcoming the clear precedent in Mandlebaum that the

judgment was valid because of Lewis' absence from the state of Nevada for eight years where the Mandlebaum judgment was still valid after a fifteen year absence from the state. See, Ex. F.

44. After Rogers declined to represent Lewis, UAIC appointed counsel -- Randall Tindal -- to represent Lewis without authority from Lewis. UAIC's appointment of Mr. Tindall was done without any discussion with Mr. Lewis or Mr. Lewis' independent counsel E. Breen Arntz or Lewis' counsel versus UAIC Thomas Christensen, Esq. Id.

Lewis Files a Second Action Against UAIC for Recent Acts of Fraud and Breach of the Covenant of Good Faith and Fair Dealing Occurring in 2018

45. UAIC has also failed to recognize and compensate co-defendant in this action, Breen Arntz, who is representing Lewis as the defendant in the ongoing state court action as independent Cumis/Hansen counsel.

46. UAIC had no right to control any defense given that UAIC breached its duties to Lewis long ago.

47. Lewis, in the most recent state court case filed an action against UAIC through Thomas Christensen for breach of the covenant of fair dealing and fraud in presenting a frivolous defense in his name without his authority.

48. UAIC's unilaterally imposed counsel, Mr. Tindall, has since withdrawn from representing Lewis because there is a conflict between Lewis and UAIC. See, Ex. F.

49. UAIC's strategy has, at all times, been to benefit UAIC at Lewis' expense.

50. The recent state court proceedings have involved Lewis' continued efforts to protect him and to preserve his claims against UAIC, which stem from its original wrongful refusal to defend.

UAIC Retaliatory SLAPP Suit

51. Rather than letting the ongoing litigation process unfold in the Ninth Circuit Court of Appeals and Nevada District Court, UAIC has lashed out against its insured Lewis, and his attorneys by filing the instant lawsuit.

52. The only claim for relief asserted against Christensen is the barratry claim, which is UAIC's third claim for relief. ECF No. 1.

II.

NEVADA'S ANTI-SLAPP STATUTE

In 1993, the Nevada legislature enacted statutory provisions to protect persons making good faith communications to judicial bodies from being subject to retaliatory litigation arising from those communications, commonly called the "anti-Strategic Lawsuits Against Public Participation" or "anti-SLAPP" statute. John v. Douglas County School Dist., 219 P.3d 1276 (Nev. 2009). In 1997, the Legislature explained that SLAPP lawsuits abuse the judicial process by chilling, intimidating, and punishing individuals for their involvement in public affairs. 1997 Nev. Stat., Ch. 387, Preamble, at 1364.

III.

SPECIAL ANTI-SLAPP MOTION TO DISMISS STANDARDS

To ensure that speech made in connection with a public issue is not chilled through abuse of the judicial process, Nevada's anti-SLAPP statute (NRS 41.660) authorizes a party to file a special motion to dismiss any cause of action that is "based upon a good faith communication in furtherance of the right to petition…" NRS 41.660(1)(a); Stubbs v. Strickland, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013).

A. Nevada Substantive Law Applies to This Action

When sitting in diversity, a federal district court must apply the substantive law of the forum state in which it resides. Erie R.R. v. Tompkins, 304 U.S. 64, 78 (1938). In the absence of controlling precedent from the Nevada Supreme Court, a federal district court must use its own best judgment to predict how the state's highest court would decide the relevant substantive issue. Allstate Ins. Co. v. Sanders, 495 F. Supp. 2d 1104, 1106 (D. Nev. 2007).

B. Anti-SLAPP Special Motion to Dismiss Standard

Nevada's "anti-SLAPP" statute governs how a court is to rule upon a Special Motion to Dismiss. Pursuant to Nev. Rev. Stat. § 41.660(3), the court shall:

> (a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;
>
> (b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim

Id.[21]

C. Federal Rules of Civil Procedure Plausibility Standard

The court may dismiss a plaintiff's complaint for failure to state a claim upon which relief can be granted. To survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) (citation omitted). Where the complaint does not permit the court to infer more than

[21] Discovery is to be stayed pending a ruling on the Special Motion to Dismiss. NRS 41.660(3)(e).

the mere possibility of misconduct, the complaint has "alleged — but not shown — that the pleader is entitled to relief." Id. at 679.

IV.

CHRISTENSEN'S SPECIAL MOTION TO DISMISS SHOULD BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

A. Persuasive Case Law From This Jurisdiction With Similar Facts Justifies Dismissal.

A recent, on-point case from within this jurisdiction supports dismissal of UAIC's Complaint. Century Sur. Co. v. Prince, 265 F. Supp. 3d 1182 (D. Nev. 2017). In Prince, an overzealous insurance company (which, similar to UAIC, refused to defend its insured) sued a local attorney, Dennis Prince, Esq. claiming that he and other attorneys engaged in an "alleged scheme to fraudulently procure a multi-million dollar judgment against Century as a result of a catastrophic vehicle accident."[22] Racketeering and civil conspiracy claims were pled against Prince and others. Century claimed, as in this case, that defendants engaged in a "bad faith insurance 'setup.'" Similar to this case, Century lashed out at various attorneys after it failed to defend its insured, which led to a multi-million judgment against its insured.[23]

Prince thereafter filed a "Special Motion to Dismiss" pursuant to NRS 41.660. Prince argued that Century's complaint is a strategic lawsuit against public participation ("SLAPP") complaint contending that the complaint was brought against the three attorney defendants personally for improper and retaliatory purposes. Prince also emphasized that the complaint directly targeted the defendants' First Amendment right to petition the court system by seeking

[22] Dennis Prince represented the insured in the Andrew case, which was discussed in the Statement of Facts above.

[23] As in this case, Century refused to defend its insured; a default judgment was entered against the insured and the insurance carrier thereafter sued attorneys personally.

to "effectively chill Prince and other attorneys from vigorously advocating for injured clients by forcing attorneys to defend themselves against claims for personal liability for purely strategic litigation decisions."

The Court agreed with Prince and dismissed the Complaint. The Hon. James Mahan engaged in a two-prong analysis in deciding the motion. First, the court determined if Century's complaint was based on defendants' good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Second, the court determined whether Century had shown a likelihood of prevailing on either of its claims.

Analyzing the first prong of the anti-SLAPP analysis, the court held that Prince had shown by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Prince, 265 F. Supp. 3d at 1189. In addition, the court held that Century had not sufficiently shown that 'the defendant[s] abused the privilege [to petition the court] by publishing the communication with malice in fact.' Circus Circus Hotels, Inc. v. Witherspoon, 99 Nev. 56, 657 P.2d 101, 105 (Nev. 1983)." Id.

Analyzing the second prong of the anti-SLAPP analysis, the court held that Century could not satisfy its burden to show, by a preponderance of the evidence, a likelihood of prevailing on its claims. Among other things, the court observed:

- That Century had notice of the complaint in the underlying action before a default judgment was taken;
- That Century admitted it "was aware of the underlying litigation" but chose not to appear in the litigation to defend its insured;
- That the tortfeasor and other insured of the tortfeasor had the right to enter into a good-faith settlement agreement;

- That negotiating a settlement agreement and covenant not to enforce and then "persuading" the tortfeasor to sign did not meet the statutory definition of insurance fraud under Nev. Rev. Stat. § 686A.2815;

- That the attorneys' actions can, at best, be "characterized as a single episode, with a single purpose," which is insufficient to sustain a RICO cause of action;

- That because all of the alleged instances of insurance fraud referenced in Century's complaint are in furtherance of a purported single bad-faith insurance "set up," Century had not adequately alleged multiple instances of insurance fraud;

- That Century had not sufficiently pleaded a pattern of illegal activity or conduct;

- That Prince's complaint did not satisfy the statutory definition of "offering false evidence" because Prince's complaint was not forged or fraudulently altered;

- That Century had not shown that Prince ever "knowingly and willfully" acted to defraud Century;

- That Prince's settlement agreement with Progressive in this case is not tortious, and therefore cannot be the basis for an "unlawful objective" to sustain Century's conspiracy claim.

- That Century had ample opportunity to engage in the litigation to protect its own interests and those of the insured, but it elected instead to rely on its belief that another insurer was litigating in its place;

- That Century had the opportunity to pay out on the insurance claim for its policy limit;

- That Century could have appeared in the litigation to dispute the existence of coverage, rather than unilaterally closing its file. As a result, Century had not shown that the aim of the negotiated settlement in the underlying case was to injure Century's interests.

Id. at *passim*.

A central theme of the court's decision was that Prince and others were merely advocating as part of the litigation process that exists in the United States. Moreover, the Court repeatedly noted that Century had both notice of the claims giving rise to the default judgment and an opportunity to contest the factual and legal allegations in the underlying state court

complaint. Instead of doing that, Century was the one that elected not to defend its insureds.

Furthermore, the court recognized that Judge Gordon, who presided over the underlying case, expressly ruled that "Century breached its duty to defend" in the underlying case. Id. at 1193. Similarly, the court noted that Judge Douglas Herndon, in the underlying state court action, commented on Century's failure to act as follows:

> I think Century stuck their head in the sand and said, hey. We determined we're not going to have coverage here because of what we believe the facts to be. So we're going to stand back and were not going to defend. We're not going to intervene. We're not going to seek any reservation of rights or any declaratory relief. We're just going to let the baby fall forward and hopefully we won't have any involvement. Then oops. It's going into default.

Id.

The court concluded, "[a]ccordingly, Prince did not and could not 'orchestrate' Century's failure to defend. Instead, Prince contacted Century regarding Pretner's claims, and Century made a unilateral decision to deny coverage, refuse to defend Vasquez or Blue Streak, and to not appear in the state court litigation." Id.

Ultimately, Judge Mahan granted Prince's Special Motion to Dismiss. For similar reasons, this Court should grant Christensen's Special Motion to Dismiss.

B. Christensen Satisfies The First Prong of The Anti-SLAPP Analysis Because UAIC's Barratry Claim Arises From Protected Activity

Similar to Prince, UAIC is complaining about Christensen's protected free speech or petitioning activity. More particularly, the basis for UAIC's sole barratry claim against Christensen is centered on Christensen's communications (e.g. "right to petition") in connection with the litigation process. Simply because Christensen is petitioning a court as a lawyer zealously advocating for his client, UAIC is suing Christensen and seeking to hold him personally liable. Putting aside that UAIC's claims are reckless and being pursued even though

UAIC has repeatedly failed to prevail in connection with the convoluted proceedings, UAIC cannot get around a threshold determination that Christensen's communications are protected by Nevada's Anti-SLAPP statute.

More particularly, NRS 41.637 defines a "good faith communication in furtherance of the right to petition" to include "[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law" or "[c]ommunication[s] made in direct connection with an issue of public interest in a place open to the public or in a public forum[.]" In effect, "petitioning activity" includes any statements, writings, or pleadings made in connection with civil litigation.

To be afforded protection, the defendant need only show that the plaintiff's cause of action arises out of protected activity. Feldman v. 1100 Park Lane Associates, 160 Cal. App. 4th 1467, 1478 (2008). Here, UAIC's barratry claim centers on Christensen's communications on behalf of his client. By definition, the barratry claim is intertwined with judicial proceedings, which are expressly covered by Nevada's anti-SLAPP statute. Thus, UAIC's claim arises from activity protected under the anti-SLAPP statute such that the first prong of the anti-SLAPP analysis has been satisfied.

C. UAIC Cannot Satisfy the Second Prong of the Anti-SLAPP Analysis Because It Cannot Show that it Has a Probability of Prevailing On its Claim.

There are multiple reasons why UAIC should not prevail on its barratry claim against Christensen. Any one of the following reasons justifies the dismissal of UAIC's case. Each different basis for dismissal is discussed below.

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1. UAIC's Claims are Not Even Ripe In Light of the Ongoing Proceedings.

UAIC's barratry claim is not ripe for adjudication. Here, UAIC's claims are at issue in ongoing litigation in the Nevada lower state court, the Nevada Supreme Court and Ninth Circuit Court of Appeals. UAIC is acting like it is entitled to prevail even though it has already lost various arguments before the Ninth Circuit Court of Appeals (i.e. finding that UAIC breached its duty to defend) and Nevada Supreme Court (i.e. finding that Lewis' damages are not capped). Put another way, having already lost twice on appeal, UAIC now wants this Court to jump the gun and begin litigating a barratry claim even though UAIC may lose again before the relevant courts.

Currently, ongoing questions exist as to Lewis' ability to pursue claims against UAIC, and there is nothing wrong with Christensen advocating on behalf of his client. Until the ongoing proceedings are decided, UAIC's barratry claim is premature, and is nothing more than an effort to chill Christensen's advocacy. On this basis alone, UAIC cannot make a prima facie showing of a probability of prevailing on its claims as required by NRS 41.660.

2. Even if the Barratry Claim Was Ripe, UAIC Cannot Prevail Because Christensen's Conduct, Statements and Court Filings Fall Within the Absolute Litigation Privilege.

In Feldman v. 1100 Park Lane Associates, 160 Cal. App. 4th 1467, 1485 (2008), the court recognized, "the litigation privilege is 'relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing."[24] The Nevada Supreme Court has recognized "the long-standing common law rule that communications uttered or published in the

[24] The Nevada Supreme Court has repeatedly recognized the similarities between California's and Nevada's anti-SLAPP statutes, and routinely look to California courts for guidance in the area. See, e.g., Coker v. Sassone, 135 Nev. Adv. Op. 2 (Jan. 3, 2019).

course of judicial proceedings are absolutely privileged." Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).

The policy behind the absolute privilege, as it applies to attorneys participating in judicial proceedings, is to grant them "as officers of the court the utmost freedom in their efforts to obtain justice for their clients." As its name indicates, the privilege is absolute. It "precludes liability even where the defamatory statements are published with knowledge of their falsity and personal ill will toward the plaintiff." Fink v. Oshins, 118 Nev. 428, 432, 49 P.3d 640, 643 (2002).[25]

The litigation privilege, the backbone to an effective and smoothly operating judicial system, is broadly recognized, liberally applied, and "based upon a public policy of security to attorneys as officers of the court the utmost freedom in their efforts to secure justice for their clients." Restatement (Second) of Torts § 586 cmt. a (1977).[26] As recognized in Alpert

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[25] This "litigation privilege" extends to attorneys during the representation of their clients based on policy considerations, including: (1) promoting candid, objective, and undistorted disclosure of evidence; (2) placing the burden of testing the evidence upon the litigants during trial; (3) avoiding the chilling effect resulting from the threat of subsequent litigation; (4) reinforcing the finality of judgments; (5) limiting collateral attacks upon judgments; (6) promoting zealous advocacy; (7) discouraging abusive litigation practices; and (8) encouraging settlement. Matsuura v. E.I. du Pont de Nemours & Co., 102 Haw. 149, 155, 73 P.3d 687, 693 (2003).

The Florida Supreme Court has held that the absolute privilege afforded defamatory statements also applies to other misconduct, "[A]bsolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior…." Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Insurance Company 639 So.2d 606, 608 (Fla. 1994) (emphasis added).

[26] The privilege, rooted in defamation, has been applied to protect attorneys in a broad range of other claims including, defense of claims for bad faith and breach of fiduciary duty, interference with business relationships, civil conspiracy and racketeering. See, e.g., Jackson v. BellSouth Telecomms, 372 F.3d 1250 (11th Cir. 2004) (tortious interference and conspiracy to defraud); Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP, 440 F. Supp. 2d

v. Crain, Caton & James, P.C., 178 S.W.3d 398, 405 (Tex. Ct. App. 2005), "if an attorney could be held liable to an opposing party for statements made or actions taken in the course of representing his client, he would be forced constantly to balance his own potential exposure against his client's best interest."

Here, UAIC's Complaint challenges Christensen in connection with his advocacy in legal proceedings. UAIC's claims are barred by the litigation privilege. That is true even if Christensen intentionally engaged in conduct or communications he knew to be false (which he firmly denies). Thus, UAIC cannot succeed on the merits on this independent basis, and the Complaint should be immediately dismissed.

3. UAIC Cannot Prevail On Its Claims Because Christensen's Conduct, Statements In Court Are Protected by the First Amendment

Courts have recognized that the First Amendment is a viable defense to alleged barratry claims. For example, in NAACP v. Button, 371 U.S. 415, 432–33 (1963), the United States Supreme Court recognized, "[h]owever valid may be Virginia's interest in regulating the traditionally illegal practices of barratry, maintenance and champerty, that interest does not justify the prohibition of the NAACP [First Amendment] activities disclosed by this record."). See also United States v. Smith, 928 F.2d 409, 1991 WL 33104, at *6 (9th Cir. 1991) (citing Button for the proposition that "enforcement of barratry statute may be invalid if it infringes on protected first amendment rights 'whether or not ... the petitioner has engaged in privileged

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1184 (D. Nev. 2006) (bad faith and breach of fiduciary duty); Boca Investors Group, Inc. v. Potash, 835 So.2d, 273 (Fla. Dist. Ct. App. 2002) (interference with business relationships); Kahala Royal Corp. v. Goodsill Anderson Quinn & Stifel, 151 P.3d 732 (Haw. 2007) (interference with prospective economic advantage); Debry v. Godbe, 992 P.2d 979 (Utah 1999) (judicial proceedings privilege extends not only to defamation, but to all claims arising from the same statements).

conduct.'"). In this case, First Amendment grounds also justify the dismissal of UAIC's barratry claim.

4. UAIC Cannot Otherwise Prevail On Its Barratry Claim.

UAIC's medieval (albeit novel) barratry claim is otherwise invalid. "Barratry" refers to a continuing practice of maintenance of champerty.[27] The doctrines of champerty and maintenance originated in medieval England.[28] Some states have outright abolished these ancient doctrines.[29] Christensen maintains, in good faith, that a barratry claim should no longer be recognized in Nevada. This is especially true in the context of attorneys given the permutations associated

[27] As recognized in In re Primus, 436 U.S. 412, 424 n.15 (1978), "barratry is a continuing practice of maintenance or champerty." Accord, Schwartz v. Eliades, 113 Nev. 586, 589–90, 939 P.2d 1034, 1036 (1997) ("A champertous agreement is one in which a person without interest in another's litigation undertakes to carry on the litigation at his own expense, in whole or in part, in consideration of receiving, in the event of success, a part of the proceeds of the litigation." (citation omitted)); Lum v. Stinnett, 87 Nev. 402, 408, 488 P.2d 347, 350 (1971) ("Maintenance exists when a person without interest in a suit officiously intermeddles therein by assisting either party with money or otherwise to prosecute or defend it." (quoting 14 C.J.S. Champerty and Maintenance s 1b).

[28] Osprey, Inc. v. Cabana Ltd. Partnership, 340 S.C. 367, 532 S.E.2d 269 (S.C. 2000). In medieval England, feudal lords and other privileged society members would often assist others, usually those of little means, by supporting the unprivileged's legal disputes against a third party, often the wealthy citizen's personal or political enemy. Id. at 374-75. In return for funding the lawsuit, the party to whom the claim actually belonged promised to give his or her benefactor a stake in the outcome of the lawsuit. Id. By such practices, the wealthier actually became wealthier. "Champerty was a 'means by which powerful men aggrandized their estates and the background was unquestionably that of private war.'" Id. at 375.

[29] In Saladini v. Righellis, 687 N.E.2d 1224, 1226 (Mass. 1997), the Massachusetts Supreme Court held that champerty and maintenance would no longer be recognized in the state. The court stated:

> We also no longer are persuaded that the champerty doctrine is needed to protect against the evils once feared: speculation in lawsuits, the bringing of frivolous lawsuits, or financial overreaching by a party of superior bargaining position. There are now other devices that more effectively accomplish these ends.

Id. at 1226.

with the litigation privilege, First Amendment issues and the anti-SLAPP statute.

Even if a barratry claim is still recognized in Nevada, UAIC's claim still fails because "[m]alicious intent [is] the essence of the common-law offenses of fomenting or stirring up litigation" (Button, 371 U.S. at 438). Here, UAIC's Complaint does not even allege malicious intent.

UAIC's Complaint also fails on plausibility grounds. In this case, it is simply implausible to suggest, much less conclude, that Christensen is being malicious. All Christensen is doing is trying to advocate in the context of our judicial system. At least twice now, Christensen's positions have been vindicated on appeal. Now, similar to Century Surety in the Andrew case, UAIC is taking desperate attempts to personally sue adverse attorneys after the insurance company set the chain of events into motion by refusing to defend its insureds.

Finally, if anyone is guilty of "stirring up quarrels," it is UAIC. It is UAIC which refused to defend its insured.[30] It is UAIC that rejected a $15,000 policy limits offer in a catastrophic injury case. It is UAIC which has repeatedly taken adverse actions to its insured. It is UAIC that has repeatedly looked out for its own interests. In reality, it is UAIC that is responsible for the evolution of proceedings. Accordingly, there is yet another independent basis for dismissal.

[30] Once faced with allegations triggering coverage, UAIC had four options: (1) defend the case and dispute liability; (2) proceed under a reservation of rights and defend the case; (3) proceed under a reservation of rights and file a declaratory relief action as to coverage; or (4) decline to defend its insureds. Despite having notice of these allegations against Lewis, UAIC chose the most aggressive option it could – the option not to defend at all. This choice has been described by courts as the "riskiest of all litigation strategies." Transportation Ins. Co. v. Piedmont Construction Group, LLC, 686 S.E.2d 824 (Ga. App. 2009).

CONCLUSION

For the reasons stated herein, Defendant Christensen respectfully requests this Court to enter an order pursuant to NRS 41.660 granting its Special Motion to Dismiss, and make an award of attorney's fees allowed by the statute.

Dated this 22nd day of February, 2019.

SANTORO WHITMIRE

/s/ James E. Whitmire
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 22nd day of February, 2019, a true and correct copy of the **DEFENDANT THOMAS CHRISTENSEN'S MOTION TO DISMISS PURSUANT TO NRS 41.660** was served electronically with the Clerk of the Court using the CM/ECF system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to the following:

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An employee of SANTORO WHITMIRE

EXHIBITS TO DEFENDANT THOMAS CHRISTENSEN'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660

Exhibit	Title	Bates No.
A	Docket Report for Case No. 07A549111	0001-0009
B	Docket Report for Case No. A-09-590967-C	0010-0011
C	Docket Report for Case No. 2:09-cv-01348-RJC-GWF	0012-0028
D	Docket Report for Case No. 11-15010	0029-0036
E	Docket Report for Case No. 13-17441	0037-0045
F	Docket Report for Case No. A-18-772220-C	0046-0050
G	Docket Report for Case No. KS021378	0051-0059

EXHIBIT 16

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

~~CHEYANNE~~ James NALDER, Plaintiff, vs. GARY LEWIS and DOES I through V, inclusive, Defendants.	CASE NO.: 07A549111 DEPT. NO.: 29

ORDER

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

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

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

DATED this 11 day of October 2018

DISTRICT COURT JUDGE

Submitted by:

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