

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually,  
Appellants,

vs.

BABYLYN TATE, individually,  
Respondent.

No. 79424

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Oct 07 2019 01:31 p.m.  
Elizabeth A. Brown  
Clerk of the Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XVIII  
County Clark Judge Mary Kay Holthus  
District Ct. Case No. A-16-736457-C

**2. Attorney filing this docketing statement:**

Attorney Dennis M. Prince and Kevin T. Strong Telephone (702) 534-7600  
Firm Prince Law Group  
Address 8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

Client(s) Desire Evans-Waiiau and Guadalupe Parra-Mendez

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Joel D. Henriod Telephone (702) 949-8200  
Firm Lewis Roca Rothgerber Christie LLP  
Address 3993 Howard Hughes Parkway  
Suite 600  
Las Vegas, Nevada 89169

Client(s) Babylyn Tate

Attorney Thomas E. Winner Telephone (702) 243-7000  
Firm Winner & Sherrod  
Address 1117 South Rancho Drive  
Las Vegas, Nevada 89102

Client(s) Babylyn Tate

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial             | <input type="checkbox"/> Dismissal:                                     |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                       | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                       | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief      | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction             | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief     | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination         | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is a personal injury action that arises from a motor vehicle collision that occurred on October 30, 2015. Appellant Desire Evans-Waiiau ("Evans-Waiiau") drove westbound on Flamingo Road towards The Linq in a 1998 Honda Accord. Appellant Guadalupe Parra-Mendez ("Parra-Mendez") sat in the right front passenger's seat of the Honda. Respondent Babylyn Tate ("Tate") also drove westbound on Flamingo Road directly behind Evans-Waiiau and Parra-Mendez in a 2014 Acura RDX. Evans-Waiiau's vehicle was stopped for a red light behind one car at the intersection of Flamingo Road and Linq Lane. Tate's vehicle was stopped behind Evans-Waiiau and Parra-Mendez. Evans-Waiiau's right signal was activated indicating her intent to turn right onto Linq Lane. After the vehicle in front of Evans-Waiiau turned right, she moved her vehicle forward to turn right. As Evans-Waiiau was about to turn right, multiple pedestrians entered the crosswalk, which forced her to stop her vehicle. Tate then hit the back of Evans-Waiiau's vehicle. Evans-Waiiau and Parra-Mendez suffered injuries as a result of the collision. (See attached page)

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Did the district court err by allowing counsel for Respondent to repeatedly assert arguments regarding Respondent's "ability to pay?"
2. Did the district court err by allowing counsel for Respondent to imply or suggest that Appellant Desire Evans-Waiiau requested a traffic accident report for a fraudulent purpose?
3. Did the district court err by precluding Appellant Desire Evans-Waiiau from presenting evidence of her future surgical recommendation?
4. Did the district court err by allowing the jury to hear the audio portion of video footage taken by Appellant Desire Evans-Waiiau's fiancée that depicts the damage to their vehicle?

(See attached page)

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Although NRAP 17(b)(5) presumptively assigns appeals from a judgment, exclusive of interest, attorney fees, and costs, of \$250,000.00 or less in a tort case, Appellants believe the Nevada Supreme Court should retain this case because their claimed damages exceed \$2,000,000.00.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 13

Was it a bench or jury trial? Jury trial

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Jul 15, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** Jul 15, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Aug 14, 2019

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) states that an appeal may be taken from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. On July 15, 2019, the judgment upon the jury verdict was entered as a final judgment.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Desire Evans-Waiau and Guadalupe Parra-Mendez - Plaintiffs/Appellants

Babylyn Tate - Defendant/Respondent

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiffs/Appellants' claims: Negligence and negligence per se

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The judgment is independently subject to appellate review pursuant to NRAP 3A(b)(1)

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

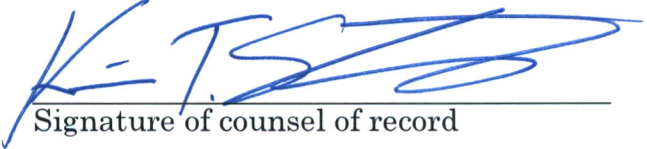
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

D. Evans-Waiau and G. Parra-Mendez  
Name of appellant

October 7, 2019  
Date

Clark County, Nevada  
State and county where signed

Kevin T. Strong  
Name of counsel of record

  
Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 7th day of October, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Joel D. Henriod  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway  
Suite 600  
Las Vegas, Nevada 89169

Thomas E. Winner  
WINNER & SHERROD  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Attorneys for Respondent

Dated this 7th day of October, 2019

  
Signature

#### **8. Nature of the action. (Cont'd.)**

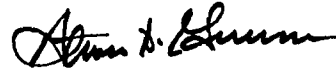
On April 22 and 24, 2019, the district court entered orders regarding the parties' respective motions in limine addressing a variety of evidentiary matters. On April 22, 2019, a jury trial commenced for five (5) days and resulted in a mistrial. On May 14, 2019, a second jury trial began and lasted for thirteen (13) days. During both the first jury trial and second jury trial, the district court issued various evidentiary rulings and rulings on multiple trial briefs each filed by the parties, respectively. On June 3, 2019, the jury rendered its verdict in favor of Respondent Tate and against Appellants Evans-Waiiau and Parra-Mendez. On July 15, 2019, the Judgment upon Jury Verdict was filed, the Notice of Entry of which was filed and served on the same day.

#### **9. Issues on appeal. (Cont'd.)**

5. Did the district court err by allowing the testimony and opinions of Respondent's retained medical expert, Joseph J. Schifini, M.D., regarding whether Appellant Desire Evans-Waiiau suffered injuries as a result of the underlying collision?

6. Did the district court err by allowing counsel for Respondent to use the existence of treatment on medical liens to assert "medical buildup" arguments to the jury?

7. Did the district court err by providing a jury instruction regarding the law that drivers shall not drive a vehicle that is not equipped with brake lamps, reflectors or other warnings and signaling devices?



CLERK OF THE COURT

**COMP**

Paul D. Powell, Esq.  
Nevada Bar No. 7488  
The Powell Law Firm  
6785 W. Russell Road, Suite 210  
Las Vegas, Nevada 89118  
paul@tplf.com  
Phone: (702) 728-5500  
Facsimile: (702) 728-5501

Attorney for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ, individually;  
JORGE PARRA-MEZA, as guardian for MAYRA  
PARRA, a minor; JORGE PARRA-MEZA, as  
guardian for AALIYAH PARRA, a minor; and  
JORGE PARRA-MEZA, as guardian for SIENNA  
PARRA, a minor,

Plaintiffs,

vs.

BABYLYN TATE, individually, DOES I-X, and  
ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO. A- 16 - 736457 - C  
DEPT. NO. XVI I

**COMPLAINT**

Plaintiffs DESIRE EVANS-WAIAU, GUADALUPE PARRA-MENDEZ and JORGE PARRA-MEZA, as guardian of minor children MAYRA PARRA, AALIYAH PARRA and SIENNA PARRA, by and through their attorney of record, PAUL D. POWELL, ESQ., of THE POWELL LAW FIRM, complain against Defendant as follows:

**GENERAL ALLEGATIONS**

1. Plaintiffs DESIRE EVANS-WAIAU, GUADALUPE PARRA-MENDEZ and JORGE PARRA-MEZA, as guardian of minor children MAYRA PARRA,

1 AALIYAH PARRA and SIENNA PARRA, ("Plaintiffs") are, and at all times  
2 mentioned herein, were, residents of the County of Clark, State of Nevada.

3 2. Defendant BABYLYN TATE, m (hereinafter "Defendant") is, and at all times  
4 mentioned herein, was, a resident of the County of Clark, State of Nevada.

5 3. The true names and capacities of the Defendants designated herein as Doe or Roe  
6 Corporations are presently unknown to Plaintiffs at this time, who therefore sues said  
7 Defendants by such fictitious names. When the true names and capacities of these  
8 Defendants are ascertained, Plaintiff will amend this Complaint accordingly.

9 4. At all times mentioned herein, Defendants were agents, servants, employees or joint  
10 venturers of every other Defendant herein, and at all times mentioned herein were  
11 acting within the scope and course of said agency, employment, or joint venture,  
12 with knowledge and permission and consent of all other named Defendants.

13 5. Plaintiff DESIRE EVANS-WAIAU is, and at all times mentioned herein, was, the  
14 owner and operator of 1999 Honda Accord.

15 6. Plaintiffs GUADALUPE PARRA-MENDEZ, MAYRA PARRA, AALIYAH  
16 PARRA and SIENNA PARRA were passengers in the vehicle operated by DESIRE  
17 EVANS-WAIAU.

18 7. On October 30, 2015 in Clark County, Defendant negligently caused a crash with  
19 Plaintiffs.

20 8. As a direct and proximate result of the negligence of Defendant, Plaintiffs sustained  
21 injuries to Plaintiffs' shoulders, back, bodily limbs, organs and systems, all or some  
22 of which conditions may be permanent and disabling, and all to Plaintiffs' damage in  
23 a sum in excess of \$10,000.00.

- 1 9. As a direct and proximate result of the negligence of Defendant, Plaintiffs received  
2 medical and other treatment for the aforementioned injuries, and that said services,  
3 care and treatment are continuing and shall continue in the future, all to the damage  
4 of Plaintiffs.  
5  
6 10. As a direct and proximate result of the negligence of Defendants, Plaintiffs have  
7 been required to, and have limited occupational recreational activities, which have  
8 caused and shall continue to cause Plaintiffs loss of earning capacity, lost wages,  
9 physical impairment, mental anguish, and loss of enjoyment of life, in a presently  
10 unascertainable amount.  
11  
12 11. As a direct and proximate result of the negligence of Defendant, Plaintiffs' vehicle  
13 was damaged and Plaintiffs lost the use of that vehicle.  
14  
15 12. As a direct and proximate result of the aforementioned negligence of all Defendants,  
16 Plaintiffs have been required to engage the services of an attorney, incurring  
17 attorney's fees and costs to bring this action.

18 **FIRST CAUSE OF ACTION**

- 19 13. Plaintiffs incorporate paragraphs 1 through 12 of the Complaint as though said  
20 paragraphs were fully set forth herein.  
21  
22 14. Defendant owed Plaintiffs a duty of care to operate the Vehicle in a reasonable and  
23 safe manner. Defendant breached that duty of care by striking Plaintiffs' vehicle on  
24 the roadway. As a direct and proximate result of the negligence of Defendant,  
25 Plaintiffs have been damaged in an amount in excess of \$10,000.00.  
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**SECOND CAUSE OF ACTION**

15. Plaintiffs incorporate paragraphs 1 through 14 of the Complaint has though said paragraphs were fully set forth herein.

16. The acts of Defendant as described herein violated the traffic laws of the State of Nevada and Clark County, constituting negligence per se, and Plaintiffs have been damaged as a direct and proximate result thereof in an amount in excess of \$10,000.00.

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

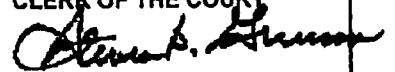
1. For general damages sustained by Plaintiffs in an amount in excess of \$10,000.00;
2. For special damages sustained by Plaintiffs in an amount in excess of \$10,000.00;
3. For property damages sustained by Plaintiffs;
4. For reasonable attorney's fees and costs;
5. For interest at the statutory rate;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

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

THE POWELL LAW FIRM

Paul D. Powell, Esq.  
Nevada Bar No. 7488  
6785 W. Russell Road, Suite 210  
Las Vegas, NV 89118





1 **NEO**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No. 5092  
4 **JACK F. DEGREE, ESQ.**  
5 Nevada Bar No. 11102  
6 **EGLET PRINCE**  
7 400 S. 7th Street, 4th Floor  
8 Las Vegas, Nevada 89101  
9 E-Mail: [eservice@egletlaw.com](mailto:eservice@egletlaw.com)  
10 T: 702.450.5400  
11 F: 702.450.5451

12 -and-  
13 **PAUL D. POWELL, ESQ.**  
14 Nevada Bar No. 7488  
15 **THE POWELL LAW FIRM**  
16 6785 W. Russell Road, Suite 210  
17 Las Vegas, NV 89118  
18 E-Mail: [paul@tplf.com](mailto:paul@tplf.com)  
19 T: 702.28.5500  
20 F: 702.728.5501  
21 *Attorneys for Plaintiffs Desire Evans-Waiiau*  
22 *and Guadalupe Parra-Mendez*

23 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 **DESIRE EVANS-WAIAU, individually,**  
26 **GUADALUPE PARRA-MENDEZ,**  
27 **individually; JORGE PARRA-MEZA as**  
28 **guardian for MAYRA PARRA, a minor;**  
**JORGE PARRA-MEZA, as guardian for**  
**AALIYAH PARRA, a minor; and JORGE**  
**PARRA-MEZA, as guardian for SIENNA**  
**PARRA, a minor,**

**Plaintiffs,**

**vs.**

**BABYLON TATE, individually, DOES I-X,**  
**and ROE CORPORATIONS I-X, inclusive,**

**Defendants.**

**CASE NO.: A-16-737457-C**

**DEPT. NO.: XVII**

**NOTICE OF ENTRY OF ORDER  
REGARDING PLAINTIFFS' MOTIONS  
IN LIMINE**

...

...

...

1 PLEASE TAKE NOTICE that an Order Regarding Plaintiffs' Motions In Limine was  
2 entered on April 22, 2019, a copy of which is attached hereto as Exhibit "1."

3 DATED this 22nd day of April, 2019.

4 EGLET PRINCE

5  
6 /s/ Jack F. DeGree  
7 DENNIS M. PRINCE, ESQ.  
8 Nevada Bar No. 5092  
9 JAMES A. TRUMMELL, ESQ.  
10 Nevada Bar No. 14127  
11 400 S. 7th Street, 4th Floor  
12 Las Vegas, Nevada 89101  
13 *Attorneys for Plaintiffs Desire Evans-Walau*  
14 *and Guadalupe Parra-Mendez*  
15  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the EGLET PRINCE and that on April 22, 2019, I did cause a true and correct copy of **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules entered on the Court's docket in the above-referenced matter.

Thomas E. Winner, Esq.  
Caitlin J. Lorelli, Esq.  
ATKIN WINNER & SHERROD  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant Babylyn Tate*

  
An Employee of EGLET PRINCE

# **EXHIBIT 1**

# **EXHIBIT 1**

*Steven D. Grierson*

1    ORDER

2                                EIGHTH JUDICIAL DISTRICT COURT

3                                CLARK COUNTY, NEVADA

4           EVANS-WAIAU ET AL.

5                                vs.

6           Case No.

A-16-736457-C

7           BABLYN TATE

8           Dept. No.

XVIII

9  
10                                **ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE**

11                                Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ's  
12           Motions in Limine were brought for hearing in front of Department 17 of the Eighth Judicial  
13           District Court, before The Honorable Senior Judge Nancy Becker, on the 3rd day of October,  
14           2018; and before The Honorable Judge Michael P. Villani, in chambers, on the 1st day of  
15           November, 2018; and for hearing on the 5th day of December 2018; and in chambers, on the  
16           18th day of January, 2019, with Dennis M. Prince, Esq., James A. Trummell, Esq., and  
17           Kevin T. Strong, Esq. of EGLET PRINCE, appearing on behalf of Plaintiffs DESIRE  
18           EVANS-WAIAU and GUADALUPE PARRA-MENDEZ; and Thomas E. Winner, Esq. of  
19           ATKIN WINNER & SHERROD, appearing on behalf of Defendant BABYLYN TATE.  
20           The Court having reviewed the pleadings and papers on file herein, having heard oral  
21           argument, and being duly advised in the premises, hereby orders:  
22  
23  
24

25                                **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
26           Motion in Limine No. 1: Exclude Hypothetical Medical Conditions that are Not Based in  
27           Evidence is **GRANTED**. All hypothetical questions must be based upon the evidence  
28

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

1 adduced at trial. All experts are limited to the opinions articulated within their respective  
2 reports and deposition testimony.

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
4 Motion in Limine No. 2: Exclude Reference to Any Absence of Medical Records Before the  
5 Subject Collision is **GRANTED, IN PART** and **DENIED, IN PART**. Defendant, her  
6 counsel, and her witnesses are precluded from offering any statement, argument or reference  
7 that suggests other medical records of Plaintiffs exist and that they were not provided with  
8 those medical records. Defendant's retained medical experts may testify that their medical  
9 causation opinions and opinions regarding Plaintiffs' need for future medical treatment  
10 remain unchanged even in the absence of prior medical records.

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
12 Motion in Limine No. 3: Exclude Reference to Plaintiffs Being Malingerers, Magnifying  
13 Symptoms, or Manifesting Secondary Gain Motives Because There is No Competent  
14 Evidence to Support Such Reference is **GRANTED, IN PART** and **DENIED, IN PART**.  
15 Defendant's retained medical experts are precluded from offering any testimony, opinions or  
16 references that Plaintiffs are malingerers, symptom magnifiers, or manifest secondary gain  
17 motives because those opinions are not contained within their reports, not because they lack  
18 the qualifications as a psychiatrist or psychologist to offer the opinions. Defendant's  
19 retained medical experts are allowed to rely on the medical records and the timing of  
20 Plaintiffs' respective pain complaints to support their medical causation opinions so long as  
21 those opinions are contained within their respective reports or deposition testimony.

22 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'

1 Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis,  
2 Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report is  
3 **GRANTED**. Plaintiffs' treating physicians are allowed to testify as to causation, diagnosis,  
4 prognosis, future treatment, and extent of disability pursuant to *FCHI, LLC v. Rodriguez*,  
5 130 Nev. \_\_\_, 335 P.3d 183 (Nev. Oct. 2, 2014) and because they were properly disclosed  
6 pursuant to NRCP 16.1(a)(2)(B).  
7

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
9 Motion in Limine No. 5: Exclude Reference to Defense Medical Experts as "Independent"  
10 Because They are Not is **DENIED**.  
11

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
13 Motion in Limine No. 6: Exclude Argument that this Case is "Attorney Driven" or a  
14 "Medical Buildup" Case Because There is No Such Evidence to Support Such Argument is  
15 **DENIED**. Defendant, her counsel, and her witnesses cannot offer any statement, argument  
16 or reference that Plaintiffs' injury claims or damages are "attorney-driven" or that this is a  
17 "medical buildup case," without a supporting factual basis. However, Plaintiffs' counsel  
18 must make an objection to any statement, argument or reference that Plaintiffs' injury claims  
19 or damages are "attorney driven" or that this is a "medical buildup" case so that the Court  
20 can determine whether the statement, argument or reference is fact-based or an attempt to  
21 inflame the passions of the jury.  
22  
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24

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
26 Motion in Limine No. 7: Exclude Evidence of When the Parties Contacted and Retained  
27 Counsel is **GRANTED, IN PART** and **DENIED, IN PART**. Defendant, her counsel, and  
28

1 her witnesses are permitted to offer any statement, argument or reference about when  
2 Plaintiffs contacted and retained counsel only in relation to any referrals from Plaintiffs'  
3 counsel to their respective medical providers. Defendant, her counsel, and her witnesses are  
4 precluded from offering any statement, argument or reference about when Plaintiffs  
5 contacted and retained counsel for any other purpose, including, but not limited to, how  
6 often Plaintiffs went to see their counsel.  
7

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
9 Motion in Limine No. 8: Exclude Reference to Attorney Advertising (Except for Limited  
10 References During Voir Dire) is **GRANTED**. The parties, their respective counsel, and their  
11 respective witnesses shall be precluded from offering any references to attorney advertising  
12 during the trial. The parties and their counsel shall be permitted to explore the topic of  
13 attorney advertising with prospective jurors during voir dire only.  
14  
15

16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
17 Motion in Limine No. 9: Exclude Closing Argument that Plaintiffs are Requesting More  
18 Money than They Expect to Receive is **GRANTED**. Defendant and her counsel shall be  
19 precluded from making any closing argument or statement that Plaintiffs, during closing  
20 argument, requested more money in damages than they expect to receive from the jury.  
21 Defendant and her counsel are only permitted to make fact-based arguments against any  
22 requested damages award Plaintiffs' counsel makes in his closing argument.  
23  
24

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
26 Motion in Limine No. 10: Allow Voir Dire Questioning About Employment with or  
27 Financial Interest in any Insurance Company is **GRANTED**. All parties and their respective  
28



1 counsel shall be permitted to ask good-faith questions to prospective jurors during voir dire  
2 about their employment in the insurance claims industry and if they have any financial  
3 interest, other than as a general mutual stockholder, in an insurance company pursuant to  
4 *Silver State Disposal Co. v. Shelley*, 105 Nev. 309 (1989).

5  
6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
7 Motion in Limine No. 11: Exclude Reference to Plaintiffs' Counsel Working with Plaintiffs'  
8 Treating Physicians on Unrelated Cases is **GRANTED, IN PART** and **DENIED, IN**  
9 **PART**. Defendant and her counsel are permitted to ask questions of Plaintiffs' medical  
10 providers regarding the existence of any past working relationship with Plaintiffs' counsel  
11 involving medical liens only. Defendant and her counsel are precluded from offering any  
12 statement, argument or reference about Plaintiffs' medical providers involvement or  
13 treatment of other past clients of Plaintiffs' counsel for any other purpose.  
14

15  
16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
17 Motion in Limine No. 12: To Limit Defendants' Retained Experts' Testimony to the  
18 Opinions and Bases Set Forth in Their Expert Reports is **GRANTED, IN PART** and  
19 **DENIED, IN PART**. The parties' retained experts' testimony at trial is solely limited to the  
20 opinions and bases set forth in their reports and deposition testimony, and reasonable  
21 inferences therefrom. The parties' retained experts may change the opinions outlined in their  
22 reports or deposition testimony only if new information, theories, arguments, or conclusions  
23 are presented during the trial that were not known or considered at the time the experts  
24 drafted any of their initial reports or supplemental reports thereto.  
25

26  
27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
28

1 Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff  
2 Desire Evans-Waiiau's Neck Pain was Symptomatic During the Immediate Years Prior to  
3 and Immediately Before the Subject Collision is **GRANTED**.

4 Plaintiff Desire Evans-Waiiau ("Evans-Waiiau") was involved in a prior motor vehicle  
5 accident in 2010. The evidence produced shows that Evans-Waiiau received two months of  
6 chiropractic treatment following the 2010 accident. The evidence shows that Evans-Waiiau  
7 underwent one medical examination with a physician who diagnosed her with a possible  
8 cervical radiculopathy following the 2010 accident. There is no evidence that Evans-Waiiau  
9 underwent any further treatment for neck pain between July 13, 2010 and October 30, 2015,  
10 the date of the subject motor vehicle collision that gives rise to this action.

11 "In order for evidence of a prior injury or pre-existing condition to be admissible, a  
12 defendant must present by competent evidence a causal connection between the prior injury  
13 and the injury at issue." *FGA, Inc. v. Giglio*, 128 Nev. 271, 283 (2012). Once the plaintiff  
14 has met her burden of proof as to medical causation, the defendant can traverse the plaintiff's  
15 case in three ways. The defendant can: "(1) cross-examine the plaintiff's expert, (2)  
16 contradict the expert's testimony with his own expert, and/or (3) propose an independent  
17 alternative causation theory." *Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 530  
18 (2011). If an expert proposes an independent alternative causation theory, then the expert  
19 must state that opinion to a reasonable degree of medical probability. *Id.*

20 NRCP 16.1(a)(2)(B) requires retained experts to provide a complete statement of their  
21 opinions and the bases supporting those opinions in their expert reports. Defendant retained  
22 two medical experts in this case: Jeffrey Wang, M.D., and Joseph Schifini, M.D. Dr. Wang  
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1 and Dr. Schifini do not offer an independent alternative causation theory for Evans-Waiiau's  
2 present injuries to a reasonable degree of medical probability in their respective reports.  
3 Therefore, Defendant has not established a causal connection between Evans-Waiiau's prior  
4 cervical spine injury or prior 2010 motor vehicle accident and her current injuries and pain  
5 complaints allegedly caused by the subject motor vehicle collision.  
6

7 Alternatively, if expert testimony is offered to contradict the party opponent's medical  
8 causation theory, the expert's testimony must be competent and supported by relevant  
9 evidence or research. *FGA, Inc.*, 128 Nev. at 284. The defense expert must also include the  
10 plaintiff's causation theory in his analysis if his testimony is used to contradict the plaintiff's  
11 medical causation theory. *Id.* Otherwise, the testimony would be "incompetent not only  
12 because it lacks the degree of probability necessary for admissibility but also because it does  
13 nothing to controvert the evidence of [the plaintiff]." *Id.* Although both Dr. Wang and Dr.  
14 Schifini reviewed Evans-Waiiau's medical records, including those records for treatment  
15 following the 2010 motor vehicle accident, it does not appear that either of them considered  
16 Plaintiff's theory of medical casuation in their reports. Rather, Defendant's experts opine  
17 that Plaintiff did not suffer an acute, traumatic injury to her cervical disc.  
18  
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20

21 Defendant's retained medical experts fail to establish that Evans-Waiiau's 2010 motor  
22 vehicle accident and the resulting cervical spine injury are medically relevant to her current  
23 injuries and pain complaints required by *FGA, Inc.* and *Williams*. Defendant also possesses  
24 no evidence that Evans-Waiiau's cervical spine was symptomatic between July 13, 2010 and  
25 October 30, 2015. Therefore, Defendant is precluded from arguing that Evans-Waiiau was  
26 symptomatic in the immediate years prior to the subject collision, unless disclosed witnesses  
27  
28

1 have testified to the contrary.

2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
3 Motion in Limine No. 14: To Preclude Defendant from Characterizing Plaintiff Desire  
4 Evans-Waiiau's Neck Pain Following the Subsequent July 10, 2016 Motor Vehicle Accident  
5 as Anything Other than a Temporary Exacerbation is **GRANTED**. Defendant's retained  
6 medical experts are allowed to testify that Plaintiff Desire Evans-Waiiau ("Evans-Waiiau")  
7 experienced an increase in symptoms after the subsequent July 10, 2016 motor vehicle  
8 accident so long as that opinion is articulated in their respective reports. Defendant and her  
9 counsel are allowed to argue that neither the subject October 30, 2015 motor vehicle  
10 collision, nor the subsequent July 10, 2016 motor vehicle accident caused any need for  
11 Evans-Waiiau's cervical spine surgery.  
12

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
14 Motion in Limine No. 15: To Exclude Irrelevant and/or Unduly Prejudicial Information is  
15 **GRANTED**.  
16

17 (1) Defendant, her counsel, and her witnesses are precluded from offering any  
18 statement, argument or reference that Plaintiff Guadalupe Parra-Mendez ("Parra-Mendez")  
19 was terminated from her employment at The Cromwell Hotel and Casino. The documentary  
20 evidence produced establishes that Parra-Mendez was not terminated from The Cromwell,  
21 but instead resigned.  
22

23 (2) Defendant, her counsel, and her witnesses are precluded from offering any  
24 statement, argument or reference that Plaintiff Desire Evans-Waiiau ("Evans-Waiiau") was  
25 terminated from her employment with Bed Bath & Beyond and Spacecraft Components  
26  
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28

1 Corp. and the reasons for those terminations. This information is irrelevant because  
2 Defendant's experts fail to address these terminations in relation to Evans-Waiiau's earning  
3 capacity.

4 (3) Defendant, her counsel, and her witnesses are precluded from offering any  
5 statement, argument or reference regarding Evans-Waiiau's claims and/or lawsuits arising  
6 from the prior May 10, 2010 and subsequent July 10, 2016 motor vehicle accidents,  
7 respectively. The Court Finds that the A-777152 Complaint to be unverified. The fact that  
8 Evans-Waiiau made claims or filed lawsuits is irrelevant to the issues of fact that remain in  
9 this action, because Defendant's experts do not affirmatively opine that the 2010 or 2016  
10 accidents caused or contributed to any injury of a disc in the Plaintiff's cervical spine.

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
12 Motion in Limine No. 16: To Limit Testimony and Opinions of Defendant's Retained  
13 Medical Expert, Joseph J. Schifini, M.D. is **GRANTED**. Dr. Schifini is precluded from  
14 offering any statement, opinion or reference regarding any alleged damage Plaintiffs' motor  
15 vehicle sustained prior to the subject October 30, 2015 motor vehicle collision. Dr. Schifini  
16 is allowed to rely on the photographs and property damage estimate of Plaintiffs' vehicle as  
17 a basis to support the opinions articulated in his reports.

18 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
19 Motion in Limine No. 17: To Exclude Reference to and Evidence of Medical Liens is  
20 **GRANTED, IN PART** and **DENIED, IN PART**. Defendant, her counsel, and her  
21 witnesses shall be precluded from offering any evidence, statement, argument or reference  
22 related to any payment of Plaintiffs' medical bills and other expenses from the following  
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1 collateral sources: (1) Health insurance, (2) Medicare, (3) Medicaid, (4) Obamacare/The  
2 Affordable Healthcare Act, (5) Social Security disability, and (6) Self-funded employment  
3 health insurance. Defendant, her counsel, and her witnesses shall be precluded from offering  
4 any evidence, statement, argument or reference regarding any of Plaintiffs' medical provider  
5 write-downs or discounted sales of liens to third-parties pursuant to *Khoury v. Seastrand*,  
6 132 Nev.\_\_\_\_, 377 P.3d 81 (2016). Evidence that Plaintiffs' medical treatment was provided  
7 on a lien basis is admissible.  
8

9 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
10 Motion in Limine No. 18: For Judicial Notice of Life Expectancy Table is **GRANTED, IN**  
11 **PART and DENIED, IN PART.** The Court shall take judicial notice of the admissibility of  
12 the life expectancy table itself as it relates to Plaintiffs' economic and non-economic  
13 damages. However, the Court shall not take judicial notice of Plaintiffs' respective life  
14 expectancy age as contained in the life expectancy table.  
15  
16

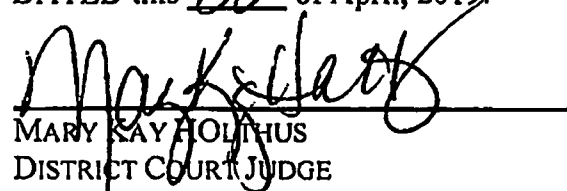
17 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court's  
18 decision on Plaintiff's Motion in Limine No. 19: To Exclude Sub Rosa Surveillance Video  
19 of Plaintiff Desire Evans-Waiiau and Any Testimony or Reference to the Same is deferred  
20 until the time of trial, to permit the Court to review the video and consider it in light of the  
21 other evidence presented.  
22

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Plaintiff's  
24 Motion in Limine No. 20: To Exclude the Testimony and Opinions of Defendant's Retained  
25 Expert, Kevin Kirkendall, CPA, is withdrawn. The parties have agreed in open court that Mr.  
26 Kirkendall shall not offer any testimony or opinions regarding the legal standard for  
27  
28

admissible expert testimony pursuant to *Hallmark v. Eldridge*, 124 Nev. 492 (2008).

**IT IS SO ORDERED**

DATED this 22<sup>nd</sup> of April, 2019.

  
\_\_\_\_\_  
MARY KAY HOLTHUS  
DISTRICT COURT JUDGE

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

*Steven D. Grierson*

1 NEOJ  
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13 Attorneys for Defendant  
14 Babylyn B. Tate

15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 DESIRE EVANS-WAIAU, individually;  
18 GUADALUPE PARRA-MENDEZ,  
19 individually; JORGE PARRA-MEZA, as  
20 guardian for MAYRA PARRA, a minor;  
21 JORGE PARRA-MEZA, as guardian for  
22 AALIYAH PARRA, a minor; and JORGE  
23 PARRA, a minor,

24 Plaintiffs

25 vs.

26 BABYLYN TATE, individually, DOES I-  
27 X, and ROE CORPORATIONS I-X,  
28 inclusive,

Defendants

CASE NO.: A-16-736457-C  
DEPT. NO.: 18

**NOTICE OF ENTRY OF ORDER  
REGARDING DEFENDANT TATE'S  
MOTIONS IN LIMINE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached Order Regarding Defendant

///

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///

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///

///



1 Tate's Motions in Limine was entered by the Court on the 24<sup>th</sup> day of April, 2019.

2 DATED this 25 day of April, 2019.

4 ATKIN WINNER & SHERROD

6 Caitlin Lorelli  
7 Thomas E. Winner  
8 Nevada Bar No. 5168  
9 Caitlin J. Lorelli  
10 Nevada Bar No. 14571  
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13 Attorneys for Babylyn B. Tate

CERTIFICATE OF SERVICE

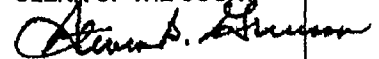
I certify that on this 24 day of April, 2019, the foregoing NOTICE OF ENTRY OF ORDER REGARDING DEFENDANT TATE'S MOTIONS IN LIMINE was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

Paul D. Powell  
Michael Kristof  
The Powell Law Firm  
6785 West Russell Road, Suite 210  
Las Vegas, NV 89118

And

Dennis Prince  
Jack Degree  
Eglet Prince  
400 South 7<sup>th</sup> Street, Suite 400  
Las Vegas, Nevada 89101  
Attorney for Plaintiffs

  
An employee of ATKIN WINNER & SHERROD



1 **ORDR**  
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13 *Attorneys for Babylyn B. Tate*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 DESIRE EVANS-WAIAU, individually;  
17 GUADALUPE PARRA-MENDEZ,  
18 individually; JORGE PARRA-MEZA, as  
19 guardian for MAYRA PARRA, a minor;  
20 JORGE PARRA-MEZA, as guardian for  
21 AALIYAH PARRA, a minor; and JORGE  
22 PARRA-MEZA, as guaridan for SIENNA  
23 PARRA, a minor,

24 Plaintiff(s)

25 vs.

26 BABYLYN TATE, Individually; DOES I-  
27 X, and ROE CORPORATIONS I-X,  
28 inclusive,

Defendant(s)

CASE NO.: A-16-736457-C  
DEPT. NO.: IX

**ORDER REGARDING DEFENDANT  
TATE'S MOTIONS *IN LIMINE***

Defendant BABYLYN TATE's Motions *in Limine* were brought for hearing in front of Department 17 of the Eighth Judicial District Court, before the Honorable Senior Judge Nancy Becker, on the 3<sup>rd</sup> day of October 2018; and before the Honorable Judge Michael P. Villani, in chambers, on the 1<sup>st</sup> day November, 2018, and for hearing on the 5<sup>th</sup> day of December, 2018 and 18<sup>th</sup> day of January, 2019, before the Honorable Judge Michael P. Villani with Dennis M. Prince, Esq., James A. Trummell, Esq., and Kevin T. Strong, Esq. of EGLET PRINCE appearing on behalf of Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, and

Order Regarding Defendant Tate's Motions *in Limine*

1 Thomas E. Winner, Esq. of ATKIN WINNER & SHERROD appearing on behalf of Defendant  
2 BABYLYN TATE. The Court having reviewed the pleadings and papers on file herein, having  
3 heard oral argument, and being duly advised in the premises, hereby orders:

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Tate's  
5 Motion *in Limine* No. 1: Regarding Specific Statements and Claims of the Parties is  
6 GRANTED, IN PART and DENIED, IN PART. Part (B) – Defendant Tate's Observations and  
7 Triage at Accident Scene - Defendant Tate is permitted to testify about what she observed after  
8 the subject accident occurred, including the actions of the Plaintiffs post-accident. Meaning,  
9 Defendant Tate is permitted to opine she does not believe Plaintiffs sustained any injury based  
10 upon her observations. In rendering her observations post-accident, Defendant Tate is not  
11 permitted to testify she performed a triage or a medical procedure.<sup>1</sup> Part (C) – Injuries of Minor  
12 Children – Evidence of injury to minor children is permissible to establish severity of impact  
13 only. Evidence of lack of injury to Defendant Tate is permissible to establish severity of impact.  
14 Evidence of minor children's medical expenses is inadmissible; relevance outweighed by unfair  
15 prejudice.<sup>2</sup> Part (D) – Plaintiff Evans-Waiiau's Subsequent Injuries – The defense may argue that  
16 neither the subject accident nor the subsequent accident on July 10, 2016 is the cause of Plaintiff  
17 Evans-Waiiau's surgery. The defense is permitted to have experts testify there was an increase in  
18 symptoms as set forth by the reports.<sup>3</sup> However, Plaintiff Evans-Waiiau's 2018 Complaint,  
19 relative to the July 10, 2016 subsequent accident, wherein she alleges injuries to her shoulders  
20 and back, is not a verified complaint and the statements contained therein are deemed legal  
21 conclusions made by counsel rather than party admissions. The Court finds Plaintiff Evans-  
22 Waiiau's cervical recommendation was made prior to the 2016 accident and that Defendant  
23 Tate's experts do not opine the 2016 caused or contributed to the alleged injuries sustained in the  
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26 <sup>1</sup> See Minute Order 10/3/2018.

27 <sup>2</sup> See Minute Order 11/1/2018.

28 <sup>3</sup> See Minute Order 12/5/2018.

Order Regarding Defendant Tate's Motions *in Limine*

1 subject collision and on these bases and to that extent, Part 1D is denied.<sup>4</sup>

2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
3 Motion *in Limine* No. 2: To Prohibit the Use of Unfairly Prejudicial Trial Tactics is **GRANTED,**  
4 **IN PART** and **DENIED, IN PART.** Part (1) – Avoiding Responsibility – Counsel cannot argue  
5 this matter is in trial because Defendant Tate is trying to avoid her responsibility. Counsel may  
6 use the term “safety rule.” However, to the extent counsel is going to use this specific  
7 terminology, counsel must use them in the context of their fact-driven argument.<sup>5</sup> Part (2) –  
8 Negligence Posing a Risk to Persons Other Than Plaintiffs – Counsel may make the general  
9 argument that when a person violates the rules of the road, it endangers people on the roadway in  
10 general. However, counsel cannot argue or make argument that suggests other people were  
11 threatened or harmed by Defendant Tate's conduct absent facts to support this contention.<sup>6</sup> Part  
12 (3) – “Send a Message” via Verdict – The Court did not specifically rule on this issue. Rather,  
13 the Court made a general ruling with regard to Motion *in Limine* No. 2 as a whole wherein the  
14 Court Granted Defendant Tate's motion *in limine* to the extent that if counsel is going to use  
15 specific words, counsel has to use them in the context of their fact-driven argument.<sup>7</sup> Part (4) –  
16 Conscience of the Community – Counsel cannot argue that the jury is the conscience of the  
17 community.<sup>8</sup>

18 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
19 Motion *in Limine* No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs'  
20 Claims for Damages is **GRANTED, IN PART** and **DENIED, IN PART.** Part (1) – Evidence of  
21 Medical Liens – Evidence of treatment on a litigation lien is admissible.<sup>9</sup> Part (2) – Per Diem

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24 <sup>4</sup> See Minute Order on 1/18/2019.

25 <sup>5</sup> See Minute Order 10/3/2018.

26 <sup>6</sup> See Minute Order 10/3/2018.

27 <sup>7</sup> See Minute Order 10/3/2018.

28 <sup>8</sup> See Minute Order 10/3/2018.

<sup>9</sup> See Minute Order 11/1/2018.

Order Regarding Defendant Tate's Motions *in Limine*

1 Calculations – Per diem arguments are permitted.<sup>10</sup> Part (3) – Untimely Disclosures of Medical  
2 Specials – Continued medical specials are not limited to May 4, 2018 unless there have been no  
3 disclosures thereafter. Absent proper disclosure(s) continued medical specials are not  
4 permitted.<sup>11</sup> Part (4) – Speculative Damages – Denied for vagueness.<sup>12</sup>

5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
6 Motion *in Limine* No. 4: To Prohibit Questions Regarding Verdict Amounts During *Voir Dire*,  
7 and to Impose Reasonable Limitations on the Scope and Duration of *Voir Dire* is **DENIED, IN**  
8 **PART and DEFERRED, IN PART** Part (1) – Potential Jurors Willingness to Award Certain  
9 Verdicts or Ranges – inquiring about potential verdict amounts from a potential juror is  
10 admissible but may not rise to the level of juror indoctrination. Mentioning range or specific  
11 verdict amount Plaintiffs are seeking is permissible from outset of *voir dire*. The parties are free  
12 to a juror's life experience to determine any bias.<sup>13</sup> Part (2) – Reasonable Limitations on Scope  
13 and Duration of Voir Dire – the Court will address the extent and length of *voir dire* during  
14 trial.<sup>14</sup>

15 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
16 Motion *in Limine* No. 5: Regarding Expert Testimony is **GRANTED, IN PART and DENIED,**  
17 **IN PART.** Part (1) – Non-Retained Experts Opinions Formed During Course and Scope of  
18 Treatment, as Documented in their Records – A treating physician may not review documents  
19 and act as a rebuttal witness. A treating physician cannot testify to things outside the scope of his  
20 or her treatment.<sup>15</sup> Part (2) – Cumulative Medical Testimony – Dr. Khavkin will not be excluded  
21 on the basis of cumulative medical testimony.<sup>16</sup> Part (3) – Expert Testimony Based on Reports

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23 <sup>10</sup> See Minute Order 10/3/2018.

24 <sup>11</sup> See Minute Order 10/3/2018.

25 <sup>12</sup> See Minute Order 10/3/2018.

26 <sup>13</sup> See Minute Order 11/1/2018.

27 <sup>14</sup> See Minute Order 11/1/2018.

28 <sup>15</sup> See Minute Order 10/3/2018.

<sup>16</sup> See Minute Order 10/3/2018.

1 and Learned in Trial – All experts are limited to their expert reports and deposition testimony.  
2 However, the expert is not only allowed to parrot their reports. Experts do have latitude in  
3 explaining the foundation of their opinions. Each party has the right to object, at the time of trial,  
4 if he or she believes the other is seeking to elicit information or opinions that are outside the  
5 mandates of NRC 16.1. Moreover, an expert may modify his or her opinion based on new  
6 information learned during the course of trial.<sup>17</sup> Part (4) – Experts and Relevant, Fact-Based  
7 Hypothetical Questions – all hypothetical questions must be based upon evidence adduced at  
8 trial. All experts are limited to their opinions contained within their reports and deposition  
9 testimony.<sup>18</sup>

10  
11 IT IS SO ORDERED.

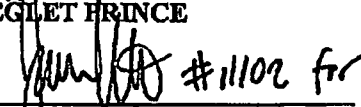
12 DATED this 25 day of April, 2019.

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DISTRICT COURT JUDGE

DATED this 20 day of April, 2019.

Approved as to Form and Content:

EGLET PRINCE

 #1102 for  
DENNIS M. PRINCE, ESQ.

Nevada Bar No. 5092

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

KEVIN T. STRONG, ESQ.

Nevada Bar No. 12107

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Attorneys for Plaintiffs

*Desire Evans-Walau and*

*Guadalupe Parra-Mendez*

DATED this 22 day of April, 2019.

Respectfully Submitted By:

ATKIN WINNER & SHERROD

  
THOMAS E. WINNER, ESQ.

Nevada Bar No. 5168

CAITLIN J. LORELLI, ESQ.

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Fax (702) 243-7059

Attorneys for Defendant

*Babylyn Tate*

<sup>17</sup> See Minute Order 11/1/2018.

<sup>18</sup> See Minute Order 11/1/2018, referencing ruling on Plaintiffs' Omnibus Motion *in Limine* No. 1.

*Steven D. Grierson*

EGLET  PRINCE

1 **NEO**  
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12 -and-  
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21 *Attorneys for Plaintiffs Desire Evans-Waiiau*  
22 *and Guadalupe Parra-Mendez*

23 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 **DESIRE EVANS-WAIAU, individually,**  
26 **GUADALUPE PARRA-MENDEZ,**  
27 **individually; JORGE PARRA-MEZA as**  
28 **guardian for MAYRA PARRA, a minor;**  
**JORGE PARRA-MEZA, as guardian for**  
**AALIYAH PARRA, a minor; and JORGE**  
**PARRA-MEZA, as guardian for SIENNA**  
**PARRA, a minor,**

**Plaintiffs,**

**vs.**

**BABYLYN TATE, individually, DOES I-X,**  
**and ROE CORPORATIONS I-X, inclusive,**

**Defendants.**

**CASE NO.: A-16-736457-C**

**DEPT. NO.: XVII**

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER REGARDING MOTIONS  
IN LIMINE**

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PLEASE TAKE NOTICE that a Stipulation And Order Regarding Motions In Limine  
was entered on April 24, 2019, a copy of which is attached hereto as Exhibit "1."

DATED this 26th day of April, 2019.

**24RINCE**

/s/ Jack F. DeGree  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
JAMES A. TRUMMELL, ESQ.  
Nevada Bar No. 14127  
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Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs Desire Evans-Waiiau  
and Guadalupe Parra-Mendez*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the EGLET PRINCE and that on April 26, 2019, I did cause a true and correct copy of **NOTICE OF ENTRY OF STIPULATION AND ORDER REGARDING MOTIONS IN LIMINE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules entered on the Court's docket in the above-referenced matter.

Thomas E. Winner, Esq.  
Caitlin J. Lorelli, Esq.  
ATKIN WINNER & SHERROD  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant Babylyn Tate*

  
An Employee of EGLET PRINCE

# **EXHIBIT 1**

# **EXHIBIT 1**

*Steven D. Grierson*

**EGLET PRINCE**

1 **SAO**  
2 **DENNIS M. PRINCE**  
3 Nevada Bar No. 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No. 6419  
6 **KEVIN T. STRONG, ESQ.**  
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14 *and*  
15 **PAUL D. POWELL, ESQ.**  
16 Nevada Bar No. 7488  
17 **THE POWELL LAW FIRM**  
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22 [paul@tplf.com](mailto:paul@tplf.com)  
23 Attorneys for Plaintiffs  
24 *Desire Evans-Waiiau and Guadalupe Parra-Mendez*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **DESIRE EVANS-WAIAU, individually,**  
17 **GUADALUPE PARRA-MENDEZ,**  
18 **individually; JORGE PARRA-MEZA as**  
19 **guardian for MAYRA PARRA, a minor; JORGE**  
20 **PARRA-MEZA, as guardian for AALIYAH**  
21 **PARRA, a minor; and JORGE PARRA-MEZA,**  
22 **as guardian for SIENNA PARRA, a minor,**

23 **Plaintiffs,**

24 **vs.**  
25 **BABYLYN TATE, individually, DOES I-X, and**  
26 **ROE CORPORATIONS I-X, inclusive,**

27 **Defendants.**  
28

**CASE NO. A-16-736457-C**  
**DEPT NO. XVIII**

**STIPULATION AND ORDER**  
**REGARDING MOTIONS IN LIMINE**

**STIPULATION AND ORDER REGARDING MOTIONS IN LIMINE**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, through their counsel of record, Dennis M. Prince, Esq., Tracy A. Eglet, Esq., and Kevin T. Strong, Esq. of EGLET PRINCE and Defendant BABYLYN TATE, through her counsel of record, Thomas E. Winner, Esq. and Andrew D. Smith, Esq. of ATKIN WINNER & SHERROD, that the following matters shall be excluded from being introduced into evidence or referenced at trial:

1. Statements, arguments, or references that Plaintiffs improperly used or abused prescription pain medications.
2. Statements, arguments, or references to the parties' specially retained, non-testifying consultants, if any.
3. Statements, arguments, or references suggesting that Plaintiffs' counsel or doctors were involved in any alleged federal grand jury investigation into doctors and lawyers in Las Vegas.
4. Statements, arguments, or references regarding the parties' offers of settlement or compromise.
5. Statements, arguments, or references regarding the taxation of a jury verdict.
6. Statements, arguments, or references regarding the parties filing pretrial motions.
7. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's subsequent September 3, 2016 motor vehicle accident.
8. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's prior CT scan of her brain on November 19, 2013.
9. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's prior medical treatment for an abscess in her right scapula that resulted from shingles on August 31, 2014.
10. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's pre-existing diabetes diagnosis and medical treatment related thereto.

...

1 11. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's prior  
2 gynecological treatment.

3 12. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's prior  
4 burn on her chest and medical treatment related thereto.

5 13. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's  
6 application for and denial of unemployment benefits stemming from her termination of  
7 employment with Spacecraft Component Parts.

8 14. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's April  
9 13, 2015 traffic citation.

10 15. The parties further stipulate and agree to follow the law including, but not limited to,  
11 the limitations on attorney conduct during trial, as set forth in *Lioce v. Cohen*, 124 Nev. 1 (2008).

12 16. The parties further stipulate and agree that their respective witnesses shall be precluded  
13 from offering any statement, argument, opinion, reference, or inference or any other commentary  
14 regarding any other witness's credibility and veracity.

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The parties hereby stipulate and agree that all counsel will inform their respective clients and witnesses regarding this Stipulation and Order, and on the Court's rulings on any motions in limine and instruct them to stay within the parameters of all court orders.


DATED this 10<sup>th</sup> day of April, 2019.

DATED this 19<sup>th</sup> day of April, 2019.

EGLET PRINCE

ATKIN WINNER & SHERROD

  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
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Desire Evans-Walau and  
Guadalupe Parra-Mendez

  
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Attorneys for Defendant  
Babylyn Tate

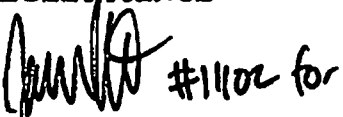
ORDER

IT IS SO ORDERED.

DATED this 23<sup>rd</sup> day of April, 2019.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:  
EGLET PRINCE

  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
KEVIN T. STRONG, ESQ.  
Nevada Bar No. 12107  
Attorneys for Plaintiffs  
Desire Evans-Walau and  
Guadalupe Parra-Mendez

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VER

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

JUN 03 2019 3:25PM

BY, Dara Yorke  
DARA YORKE, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

DESIRE EVANS-WAIAU, INDIVIDUALLY;  
GUADALUPE PARRA-MENDEZ,  
INDIVIDUALLY,

Plaintiffs,

vs.

BABYLYN TATE, INDIVIDUALLY,

Defendants.

Case No. A-16-736457-C

Dept. No. 18

GENERAL VERDICT FOR DEFENDANT

We, the jury, find for defendant Babylyn Tate and against plaintiffs  
Desire Evans-Waiau and Guadalupe Parra-Mendez.

Dylan Sweikert  
JURY FOREPERSON

6-3-19  
DATE

A-16-736457-C  
VER  
Verdict  
4839968







1 THOMAS E. WINNER  
Nevada Bar No. 5168  
2 CAITLIN J. LORELLI  
Nevada Bar No. 14571  
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6 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant Babylyn Tate*

7  
8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NV

10 DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
11 individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
12 JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
13 PARRA-MEZA, as guaridan for SIENNA  
PARRA, a minor,

14 Plaintiffs.

15 vs.

16 BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
17 inclusive,

18 Defendant.

CASE NO.: A-16-736457-C  
DEPT. NO.: IX

**NOTICE OF ENTRY OF JUDGMENT  
UPON JURY VERDICT**

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 YOU WILL PLEASE TAKE NOTICE that the attached Judgment Upon Jury Verdict  
21 was entered by the Court on the 15<sup>th</sup> day of July, 2019.

22 DATED this 15<sup>th</sup> day of July, 2019.

23 ATKIN WINNER & SHERROD

24  
25 /s/ Caitlin J. Lorelli

26 Thomas E. Winner  
Nevada Bar No. 5168  
Caitlin J. Lorelli  
27 Nevada Bar No. 14571  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
28 *Attorneys for Defendant Babylyn B. Tate*

CERTIFICATE OF SERVICE

I certify that on this 15<sup>th</sup> day of July, 2019, the foregoing **NOTICE OF ENTRY OF JUDGMENT UPON JURY VERDICT** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

Paul D. Powell  
The Powell Law Firm  
6785 West Russell Road, Suite 210  
Las Vegas, NV 89118  
*Attorneys for Plaintiffs*

Dennis M. Prince  
Eglet Prince  
400 S. 7<sup>th</sup> Street, 4<sup>th</sup> Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiffs*

/s/ Colette Thorne  
An employee of ATKIN WINNER & SHERROD

ORIGINAL

Electronically Filed  
7/15/2019 3:55 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

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Nevada Bar No. 14571  
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6 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant*  
7 *Babylyn Tate*

8 EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guaridan for SIENNA  
PARRA, a minor,

Plaintiff(s)

vs.

BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
inclusive,

Defendant(s)

CASE NO.: A-16-736457-C  
DEPT. NO.: XVIII

JUDGMENT UPON JURY VERDICT

20  
21 This action came on for trial before the Court and a jury, Honorable Mary Kay Holthus,  
22 Eighth Judicial District Court Judge, presiding, and the issues having been duly tried and the jury  
23 having duly rendered its verdict,

24 IT IS ORDERED ADJUDGED AND DECREED that the Plaintiffs take nothing, that the  
25 action be dismissed on the merits, and that the Defendant, Babylyn Tate, recover of the plaintiffs,  
26

27 ///

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input type="checkbox"/> Non-Jury Judgment Reached	<input checked="" type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

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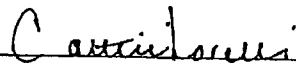
DESIRE EVANS-WAIAU AND GUADALUPE PARRA MENDEZ, her costs of action.

DATED this 11<sup>th</sup> day of July, 2019.

  
DISTRICT COURT JUDGE 

Submitted by:

Atkin Winner & Sherrod

  
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Caitlin J. Lorelli  
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*Attorneys for Defendant*  
*Babylyn Tate*