IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

JOHN S. WALKER, and RALPH ORTEGA,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT and BARRY L. BRESLOW, as District Judge,

Respondents.

SHEILA MICHAELS, and KATHERYN FRITTER, real parties in interest.

_____/

DISTRICT COURT NOS.:

CV18-01798 and CV18-02032

ORTEGA APPENDIX VOLUME 1

William R. Kendall, Esq.

State Bar No. 3453

137 Mt. Rose Street

Reno, NV 89509

(775) 324-6464

Attorney for Petitioners

ORTEGA APPENDIX VOLUME I INDEX

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CODE #: $1425
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137 Mt. Rose Street
Reno, NV 89509
(775) 324-6464
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

RALPH ORTEGA,

Plaintiff,

vs.

KATHERYN JEAN FRITTER; DOES I-V; inclusive,

Defendants.

CASE NO.:

DEPT. NO.

/

COMPLAINT

Plaintiff, RALPH ORTEGA, by and through his counsel, WILLIAM R. KENDALL, ESQ. and JORDAN P. SCHNITZER, ESQ., for claims against Defendants, and each of them, avers and alleges as follows:

1. At all times material hereto, Plaintiff was a resident of Washoe County, State of Nevada.

2. At all times material hereto, upon information and belief, Defendant, KATHERYN JEAN FRITTER, was a resident of Washoe County, Nevada, and was operating a motor vehicle upon the streets of Washoe County, Nevada.

3. The incident made the basis of this action occurred in Washoe County, Nevada.

4. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants named herein as DOES I-V, were unknown to Plaintiff, who therefore, sues these Defendants by said fictitious names. Plaintiff is informed and believes and therein

alleges that each of the Defendants designated as DOES is responsible in some manner for the events and happenings referred to in this Complaint and caused damages proximately to Plaintiff as alleged. Plaintiff will seek leave of Court to amend the Complaint to insert the true names and capacities of DOES I-V, inclusive, when the same have been ascertained.

5. At all times relevant herein, each of the Defendants named as DOES I-V, were agents of the other remaining Defendants and were acting with actual and/or apparent authority in the conduct alleged.

6. The actions of the Defendants and their and employees, whether or not within the scope of their agency, were ratified by the other remaining individual, corporate or partnership Defendants.

FIRST CAUSE OF ACTION

7. On or about November 6, 2017, Plaintiff was southbound on Plumas Street in Reno, NV, was operating his vehicle in a careful and prudent manner, and was stopped in traffic.

8. At said time and place, Defendant KATHERYN JEAN FRITTER was also southbound on Plumas Street, was behind Plaintiff, and had a duty to operate her vehicle in a careful and prudent manner.

9. Defendant KATHERYN JEAN FRITTER breached said duty to Plaintiff by causing her vehicle to collide with the rear end of Plaintiff's vehicle.

10. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiff suffered severe and disabling physical and mental injuries and damages, all in excess of $ 15,000.00.

11. As a further direct and proximate result of Defendants' negligence, Plaintiff has incurred medical expenses in an amount unknown at this time, but in excess of $ 15,000.00.

12. As a further direct and proximate result of Defendants' conduct, Plaintiff has incurred legal costs and attorney's fees for which he should be compensated by Defendants.

SECOND CAUSE OF ACTION

(Negligence Per Se — Nevada Revised Statute §484B)

13. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 12 above and incorporates herein by reference as though fully set forth herein.

14. Defendants; conduct, as set forth above, violated various Nevada Revised Statutes, titled Rules of the Road and set forth in §484B.

15. Plaintiff belongs to the class of persons that the statutes were intended to protect.

16. Defendants' violations were the legal cause of Plaintiff's damages.

17. Prior to the injuries complained herein, Plaintiff was an able-bodied person who was physically capable of engaging in all activities for which he was otherwise suited.

18. As a direct and proximate result of Defendants' violation of NRS §484B, including but not limited to 484B.127, Plaintiff has suffered a loss of enjoyment of life, having been prevented from attending his usual activities.

19. As a direct and proximate result of Defendants' violation of NRS §484B, Plaintiff sustained injuries to his body which caused general damage in the form of physical and mental pain and suffering.

20. As a direct and proximate result of Defendants' violation of NRS §484B, Plaintiff was required to incur medical and related expenses.

21. Plaintiff's damages are a direct and proximate result of Defendant's violation of NRS §484B are in excess of $15,000.00.

22. Plaintiff's injuries, as set forth above, are the type of injury NRS §484B was intended to protect: injuries resulting from automobile accidents.

23. It has become necessary for Plaintiff to engage the services of an attorney to commence this action, and therefore, Plaintiff is entitled to reasonable attorneys' fees, costs, interest and damage in this action pursuant to Nevada law.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For general damages in a sum in excess of $15,000.00;

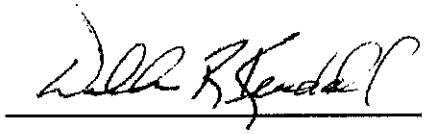
2. For special damages in a sum in excess of $15,000.00;

3. For costs of suit and a reasonable attorney's fee;

4. For such other and further relief as the Court may deem just and proper.

DATED this 8th day of October, 2018.

WILLIAM R. KENDALL, ESQ.



137 Mt. Rose Street
Reno, NV 89509
(775) 324-6464
Attorney for Plaintiff

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in case number: _____

[X] Document does not contain the social security number of any person

-OR-

[ ] Document contains the social security number of a person as required by:

[ ] A specific state or federal law, to wit:

(State specific state or federal law) _____

-or-

[ ] For the administration of a public program

-or-

[ ] For an application for a federal or state grant

-or-

[ ] Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: **10/8/2018**

(Signature)

WILLIAM R. KENDALL, ESQ.

(Print Name)

Plaintiff
(Attorney for)

Affirmation
Revised December 15, 2006

FILED
Electronically
CV18-02032
2018-11-13 02:04:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6974154 : pmsewell

ANS

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KATHERYN JEAN FRITTER

DISTRICT COURT

WASHOE COUNTY, NEVADA

RALPH ORTEGA, Plaintiff, vs. KATHERYN JEAN FRITTER; DOES I-V; inclusive, Defendants.	Case No.: CV18-02032 DEPT. NO. 4

DEFENDANT, KATHERYN JEAN FRITTER'S ANSWER TO PLAINTIFF'S COMPLAINT

COME NOW, Defendant, KATHERYN JEAN FRITTER, by and through her attorney of record, ADAM P. MCMILLEN, ESQ., of **THE LAW OFFICES OF KARL H. SMITH - RENO**, and answers Plaintiff's Complaint, as follows:

1. Answering Paragraphs 1, 4, 5, 6, 7, 8 of Plaintiff's Complaint, Answering Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

2. Answering Paragraphs 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 of Plaintiff's Complaint, Answering Defendant denies the allegations contained therein.

3. Answering Paragraphs 2, 3 of Plaintiff's Complaint, Answering Defendant admits the allegations contained therein.

4. Answering Paragraphs 13 of Plaintiff's Complaint, Answering Defendant repeats, realleges and incorporate(s) herein by reference as though fully set forth, all answers to Paragraphs 1 through 23 above.

As to those matters, if any, not herein answered, Answering Defendant(s) expressly deny/denies any and all allegations relating thereto.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that the damages, if any, suffered by Plaintiff were caused in whole or in part or were contributed to by reason of the negligence of Plaintiff.

THIRD AFFIRMATIVE DEFENSE

Defendant alleges that the negligence of the Plaintiff exceeds that of Defendant, if any, and that the Plaintiff is thereby barred from any recovery.

FOURTH AFFIRMATIVE DEFENSE

Defendant alleges that the injuries, if any, suffered by the Plaintiff as set forth in the Plaintiff's Complaint were caused in whole or in part by the negligence of a third party over which Defendant had no control.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused in whole or in part by preexisting physical, mental and/or emotional conditions and are not the responsibility of Defendant.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to Rule 11 of NRCP as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of Plaintiff's Complaint, and therefore, Defendant reserves the right to amend her Answer to allege additional affirmative defenses, delete or change the same as subsequent investigation warrants.

EIGHTH AFFIRMATIVE DEFENSE

Defendant incorporates by reference each and every affirmative defense set forth in NRCP 8(c) as if fully set forth herein.

WHEREFORE, Answering Defendant prays for relief as follows:

1. That Plaintiff take nothing by way of his Complaint on file herein;
2. That Answering Defendant be dismissed with costs incurred and reasonable attorney fees; and,
3. For such other and further relief as the Court deems just and proper in the premises.

Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm this document does not contain the social security number of any person.

DATED: November 9, 2018

THE LAW OFFICES OF KARL H. SMITH - RENO

BY: _____

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
KATHERYN JEAN FRITTER

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 13th day of November, 2018, I served a true and correct copy of the above and foregoing **DEFENDANT KATHERYN JEAN FRITTER'S ANSWER TO PLAINTIFF'S COMPLAINT** on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

William Kendall, Esquire.
William R. Kendall, Esq.
137 Mount Rose St
Reno, NV 89509
Attorney for Plaintiff, Ralph Ortega
Fax: (775) 324-3735

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of
The Law Offices of Karl H. Smith - Reno

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
RANALLI & ZANIEL, LLP
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Telephone: (775) 786-4441
Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

RALPH ORTEGA, Plaintiff, vs. KATHERYN JEAN FRITTER; DOES 1-V, Inclusive, Defendants.	)	Case No.: ARB18-02032 Dept: ARB

ARBITRATION DECISION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

An arbitration hearing went forward on June 17, 2019. Present were Plaintiff Ralph Ortega, represented by William R. Kendall, Esq. and on behalf of Defendant Katheryn Jean Fritter was Adam P. McMillen, Esq. After submission of the evidence, Mr. Ortega testified, closing arguments were provided and the case was submitted.

Mr. Ortega is a younger man who was struck from behind while traveling on Plumas on the way to work. He was driving a larger Ram pick up truck and had stopped behind a vehicle that had stopped for a pedestrian. He was then struck by a Ford passenger vehicle. Photos of the vehicles were submitted. There was not much damage to the Plaintiff's vehicle, although it was enough force to bend a trailer hitch and damage the bumper which were both pushed down.

A more significant factor of measurement of impact was the Defendant's vehicle. The Defendant's Ford had significant front-end damage which would indicate a moderate impact. There were no injuries at the scene and Mr. Ortega indicated that he was not hurt to the responding police officer and the Defendant.

Mr. Ortega continued on to work. He was a mechanic at Sierra Car Care Center at that time. He worked for about 30 minutes and then went home due to pain symptoms that began. He attempted to locate a medical provider and was eventually referred to a chiropractor. Mr. Ortega described his job duties during the course of treatment which were fairly physical and labor intensive. He testified that he had to ask for assistance form other mechanics when performing certain functions. That said, he continued to work throughout the course of his treatment and missed an alleged 64 hours of work which were 2 hours per day for medical appointments. There was a wage loss verification submitted but it was difficult to read. Nevertheless, Mr. Ortega testified as to the wage loss. Although there was an issue with the Plaintiff's general health being an issue in an appointment in that he missed work to a cold and the accident, there was nothing to show that he would have missed those two (2) hours only for his cold symptoms. Thus, the Plaintiff is awarded $1,600.00 in wage loss.

Mr. Ortega treated with a chiropractor and after his symptoms were not improving as expected, he was referred to Dr. Berry. Dr. Berry recommended a course of physical therapy and provided an in home tens unit. After a brief course of therapy, Plaintiff testified that his symptoms improved. Although Mr. Ortega complains of some slight residual complaints, he was doing well after being released from treatment.

Objectively, in reviewing the medical records, there were positive findings to indicate that a soft tissue injury occurred.

The appropriate treatment for these soft tissue injuries are chiropractic treatment and physical therapy. Defendant argues that not all the medical treatment was reasonable or necessary. This contradicts the records themselves in which both medical providers state that the injuries and treatment are directly and causally related to the motor vehicle accident. The treatment incurred was conservative and appears appropriate for the soft tissue injury sustained. While Plaintiff was in treatment, there were complaints of increased pain while lifting heavy objects. This does not negate the fact that Mr. Ortega has pain, he was simply attempting to work as his job of a mechanic during this time. Further, although there was some evidence of prior scrapes and general soreness, there was no evidence of any specific complaints or more importantly treatment to the Plaintiff's back and neck. Based upon the evidence, Plaintiff is awarded medical specials of $13,348.00.

The last component of the case is general damages. This is often the most difficult. In conjunction with the medical records and Plaintiff's testimony, he clearly had discomfort in his neck and lower back. He testified as to the problems with standing and sitting while in treatment, to slowing down with his playtime involving his daughter and his not riding a motorcycle during the time of his treatment. Although there was testimony of ongoing occasional symptoms, the records show that he was doing well at the conclusion of his treatment and he never followed up. Thus, general damages are calculated for the timeframe of the accident, until his last date of treatment in April, 2017. A reasonable amount for general damages in this case is $5,500.

As such, Plaintiff is awarded as follows:

Past Medical Specials:	$13,348.00
Wage Loss:	$1,600.00
General Damages:	$5,500.00
TOTAL:	$20,448.00

Based upon the evidence presented at the arbitration hearing concerning the claim for relief of negligence, the arbitrator finds in favor of the Plaintiff Ralph Ortega and awards damages in the amount of $20,448.00.

Any post hearing motions are to be submitted timely.

Affirmation
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19th day of June 2019.

RANALLI ZANIEL FOWLER & MORAN

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Arbitrator

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I certify that I am an employee of Ranalli & Zaniel, LLP and that on the 19th day of June 2019, I certify that service of the foregoing ARBITRATION DECISION was made to all parties to this action by:

_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada;

_____ personal delivery, received by _____;

_____ facsimile;

__X__ Eflex; addressed as follows:

William R. Kendall Esq.

Adam P. McMillen Esq.

/s/ Kelli Zaniel
EMPLOYEE OF *Ranalli Zaniel Fowler & Moran*

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF S. DENISE MCCURRY - RENO
200 S. Virginia Street
8th Floor
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
KATHERYN JEAN FRITTER

DISTRICT COURT

WASHOE COUNTY, NEVADA

RALPH ORTEGA, Plaintiff, vs. KATHERYN JEAN FRITTER; DOES I-V; inclusive, Defendants.	Case No.: CV18-02032 DEPT. NO. 4

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on June 20, 2019, an Arbitration Award was filed in this action. Defendant, Katheryn Jean Fritter herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

///

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: July 5, 2019

THE LAW OFFICES OF S. DENISE MCCURRY - RENO

BY: /s/ Adam McMillen
ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
KATHERYN JEAN FRITTER

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the 5th day of July, 2019, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

_____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

__X__ *Via Electronic Filing* [N.E.F.R. 9(b)]

_____ *Via Electronic Service* [N.E.F.R. 9]

_____ *Via Facsimile* [E.D.C.R. 7.26(a)]

William R. Kendall, Esq.
137 Mount Rose St
Reno, NV 89509
Attorney for Plaintiff, Ralph Ortega

/s/ Adam McMillen

An Employee of The Law Offices of
S. Denise McCurry - Reno

William R. Kendall, Esq.
State Bar No. 3453
137 Mt. Rose Street
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(775) 324-6464
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

RALPH ORTEGA,

Plaintiff,

vs.

KATHERYN JEAN FRITTER;
DOES I-V; inclusive,

Defendants.
_____/

CASE NO.: CV18-02032

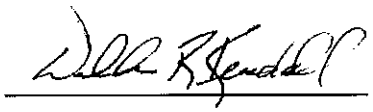
DEPT. NO.: 4

MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY

Plaintiff, RALPH ORTEGA, hereby files his Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery, and submits the following Points and Authorities, exhibits and argument in support thereof.

Dated this 15th day of July, 2019.

WILLIAM R. KENDALL, ESQ.



137 Mt. Rose Street
Reno, NV 89509
(775) 324-6464
Attorney for Plaintiff

POINTS AND AUTHORITIES

1. BACKGROUND FACTS OF CASE

This case stems from a rear-end collision between Plaintiff and Defendant which occurred on 11/6/2017. On 6/17/2019, the case was arbitrated before court-appointed arbitrator, David M. Zaniel, Esq.

Liability was admitted by the Defendant at the arbitration hearing. Plaintiff incurred medical expenses of $ 13,348.00, which were not contested by the Defendant. Plaintiff suffered a wage loss of $ 1,600.00 which was verified by his employer and was not refuted by Defendant at the arbitration.

On 6/19/2019, Mr. Zaniel filed the Arbitration Award, finding in favor of Plaintiff and awarding total damages of $ 20,448.00, broken down as: $ 13,448.00 in medical expenses, $ 1,600.00 in wage loss, and $ 5,500.00 in general damages. On 7/5/2019, Defendant, through Farmers' attorney Adam P. McMillen, filed a Request for Trial De Novo.

2. FACTS RELATING TO FARMERS' CONDUCT DESIGNED TO OBSTRUCT, DELAY OR OTHERWISE ADVERSELY AFFECT THE ARBITRATION PROCEEDINGS.

Adam P. McMillen is an employee-attorney of Farmers Insurance Exchange, who insured and represented Defendant, Michaels, in this case. See 11/7/2018 letter from McMillen, attached hereto as Exhibit 1.

A "person search" on the official Second Judicial District Court website (www.washoecourts.com) searching the name "Adam McMillen" produced a list of **all** cases in which Adam P. McMillen has been counsel of record. See 21 page printout of cases attached hereto as Exhibit 2.

The Court may take judicial notice of this official record, pursuant to NRS 47.130, which states that "a judicially noticed fact must be (a) generally known within the territorial jurisdiction of the trial court, or (b) capable of accurate and ready determination by resort to sources whose

accuracy cannot reasonably be questioned." The list of cases contained on the Washoe Courts official website satisfies both (a) and (b).

After obtaining the listing of all of attorney McMillen's cases, a simple review of each case on the Washoe County District Court Eflex system revealed in which cases McMillen represented a Farmers insured, the outcome of each case, and the frequency of filing of requests for trials de novo. The Court can also take judicial notice of the information contained upon the Washoe County District Court Eflex system pertaining to all of McMillen's cases.

Starting with McMillen's first arbitration case for Farmers, resulting in an arbitration award for the plaintiff, through the most recent case to result in an arbitration award for the plaintiff, the instant case, McMillen/Farmers filed a request for trial de novo in the following cases. These are **all** of the cases in which McMillen/Farmers represented a defendant, suffered an arbitration award for the plaintiff, and then filed a request for trial de novo.

Case name and number	**Outcome**	**De Novo**
Castro-Avalos v. Porsow; ARB16-02521	award for plaintiff	by McMillen
Eckert v. Mickelson; ARB17-00623	award for plaintiff	by McMillen
Valdez v. Michel; ARB17-00534	award for plaintiff	by McMillen
Dalmacio v. Palomar; ARB17-01356	award for plaintiff	by McMillen
Elk v. Murphy; ARB17-01614	award for plaintiff	by McMillen
Hakansson v. Sloan; ARB17-01939	award for plaintiff	by McMillen
Hagen v. Green; ARB18-00457	award for plaintiff	by McMillen
Codman v. Gregory; ARB18-00744	award for plaintiff	by McMillen
Wright v. Pritchard; ARB18-01416	award for plaintiff	by McMillen
Walker v. Michaels; ARB18-01798	award for plaintiff	by McMillen
Ortega v. Fritter; ARB18-02032	award for plaintiff	by McMillen

The above 11 cases constitute **all** of the cases arbitrated by McMillen/Farmers to-date which resulted in an award for the plaintiff, followed by a trial de novo request. McMillen/Farmers filed a request for trial de novo in **all but one of them, an astounding 91.66 %.** The only case discovered to-date where Farmers suffered a plaintiff arbitration award and did not de novo is McDonald v. Rothgeb, ARB18-01749.[1] Attached hereto as Exhibits 3-13 are true and correct copies of the arbitration award, request for trial de novo, and, in some cases, the short trial verdict.

3. ARGUMENT

The pattern and practice of Farmers, as shown by these irrefutable statistics, is to file a request for trial de novo in **nearly every** case that goes against them. The "strategy" of filing trial de novo requests without regard to the facts and circumstances of each individual case is a tactic that is designed to increase the time and expense of litigation for claimants and uses the arbitration process as a device to obstruct and delay payment. This conduct is designed to frustrate the purposes of the arbitration program, which are to "...provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." NAR 2(A).

Shortly after the Mandatory Arbitration Program was implemented, the Senate Committee on Judiciary met on 3/11/1999, to consider changes to the rules to attempt to ensure "good faith participation." See Minutes of the Senate Committee on Judiciary, Seventieth Session, March 11, 1999, attached hereto as Exhibit 14. Mark W. Gibbons, District Court Judge at that time, noted that minimal participation in arbitration, followed by request for trial de novo had "created an additional obstacle to speedy trials and increased the expenses to various parties." They specifically discussed abuse of the program by routine requests for trial de novo. Then District Court Judge Michael A. Cherry, noted that "some of the insurance adjusters have said if they owed money, they will have to go to trial to get the verdict."

[1] In McDonald, the arbitration award was only $ 8,490.00. It appears that the case was settled.

Attorney Steve Burris commented: "...under the current system where either side can file for a new trial without penalty, certain insurance companies figured out that through a 'war of attrition' they could use their superior resources to 'beat down' plaintiffs." Attorney George Bochanis commented: "...trials de novo are being filed indiscriminately and that some insurance companies use the trial de novo process as a form of economic extortion against victims on automobile accident cases."

NAR 22 provides:

> If, during the proceedings in the trial de novo, the district court determines that a party or attorney engaged in conduct designed to obstruct, delay or otherwise adversely affect the arbitration proceedings, it may impose, in its discretion, any sanction authorized by NRCP 11 or NRCP 37.

In *Gittings v. Hartz,* 116 Nev. 386, 394 (2000), the Nevada Supreme Court held:

> ...competent statistical information that demonstrates that an insurance company has routinely filed trial de novo requests without regard to the facts and circumstances of each individual case may be used to support a claim of bad faith.

The Court went on to rule that a showing of correlation "between requests for trial de novo and verdicts for or against the party who filed the request would "support a conclusion that the insurer automatically requests a trial de novo regardless of the arbitration process." *Id.* As to whether an evidentiary hearing was required, the Court held:

> We recognize that the bare statistics create the impression that certain carriers are abusing the arbitration process, and we would have no problem with supporting the denial of a jury trial if a hearing produced competent evidence to substantiate such a conclusion. We are not, however, suggesting that an extensive evidentiary hearing would be necessary in each case. It is conceivable that a detailed statistical analysis, properly authenticated, could be used in more than one proceeding or that testimony taken in one hearing might be admissible in other hearings involving the same carrier under the doctrine of collateral estoppel.

Id.

It is clear that the Nevada Supreme Court supports the district court conducting an inquiry into the conduct of insurance companies that appear to be abusing the arbitration program by routinely requesting trial de novo without regard to the facts and circumstances of each individual case, and use the de novo process as a way to obstruct and delay payment.

The statistics cited herein show beyond a doubt that McMillen/Farmers has automatically filed a request for trial de novo in **nearly every** case resulting in an arbitration award for the Plaintiff. Plaintiff submits that the official Washoe Courts website case lists and the official Washoe County District Court Eflex system data irrefutably prove that McMillen/Farmers has routinely filed trial de novo requests in adverse arbitration cases without regard to the facts and circumstances of each individual case. Plaintiff submits that this evidence is "competent statistical information" (*Gittings,* at 394) upon which this Court can conclude that McMillen/Farmers have not been participating in the arbitration process in good faith. As a consequence, the request for trial de novo in this case should be stricken.

Should this Court find that additional information is needed, Plaintiff requests an evidentiary hearing and the opportunity to perform narrowly tailored discovery into Farmers' practices associated with requests for trial de novo.

Plaintiff also requests that this Court preclude the Defendant from conducting any discovery which it could have performed during the arbitration process, but failed to perform.

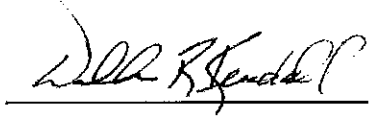
4. CONCLUSION

Based upon the foregoing proof that McMillen and Farmers file a request for trial de novo in 91.66 % of cases where the arbitration award is for the Plaintiff, Plaintiff's Motion to Strike Trial De Novo should be granted and sanctions imposed, or in the alternative, Plaintiff should be provided the opportunity to conduct narrowly tailored discovery into Farmer's practices and should be provided the opportunity to conduct an evidentiary hearing in order to provide the Court with competent evidence that Farmers has been abusing the arbitration process. Defendant should

be precluded from conducting discovery which could have been performed during the arbitration process.

Dated this 15th day of July, 2019.

WILLIAM R. KENDALL, ESQ.



137 Mt. Rose Street
Reno, NV 89509
(775) 324-6464
Attorney for Plaintiff

Certificate of Service

RE: CV18-002032

Judge: HONORABLE CONNIE STEINHEIMER

Court: Second Judicial District Court - State of Nevada

Case Title:

This certificate was automatically generated by the courts auto-notification system.

Date Generated: 07-15-2019.

I hereby certify that on 07-15-2019, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Adam McMillen, Esq.

The following people need to be notified:

None.

Dated this 15th day of July, 2019.

William R. Kendall

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

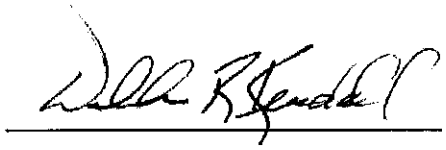
AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document

filed in case number: **CV18-002032**

☒ Document does not contain the social security number of any person

Date: **7/15/2019**



LIST OF EXHIBITS

1. Exhibit 1 (11/7/2018 McMillen letter).....p. 11
2. Exhibit 2 (Washoe Courts website case printout).....p. 13
3. Exhibit 3 (Castro-Avalos pleadings).....p. 45
4. Exhibit 4 (Eckert pleadings).....p. 61
5. Exhibit 5 (Valdez pleadings).....p. 70
6. Exhibit 6 (Dalmacio pleadings).....p. 80
7. Exhibit 7 (Elk pleadings).....p. 102
8. Exhibit 8 (Hakansson pleadings).....p. 110
9. Exhibit 9 (Hagan pleadings).....p. 117
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11. Exhibit 11 (Wright pleadings).....p. 136
12. Exhibit 12 (Walker pleadings).....p. 147
13. Exhibit 13 (Ortega pleadings).....p. 154
13. Exhibit 14 (Minutes of the Senate Committee on Judiciary).....p. 166
14. Exhibit 15 (Declaration of William R. Kendall).....p. 181

Exhibit 1

Exhibit 1

Karl H. Smith
Stacey A. Upson
Carolyn M. Broussard
Michael E. Rowe
Ellen G. Stoebling

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KARL H. SMITH
*Not a Partnership**
Employees of Farmers Insurance Exchange,
a Member of the Farmers Insurance Group of Companies

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www.farmersclaimslitigation.com

Please reference our File # in your correspondence
Documents can be sent to legaldocs@farmers.com

David T. Spurlock, Jr.
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Adam P. McMillen
Sarah A. Smith
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TELEPHONE (775) 329-2116

November 7, 2018

William R. Kendall, Esq.
137 Mount Rose St
Reno, NV 89509

Re: Ortega v. Fritter
Case No.: CV18-02032
Date of Loss: November 6, 2017
Our File No.: 18-520699

Dear Mr. Kendall:

This case has been referred to our office for handling the defense of Katheryn Jean Fritter. Once the Defendant has been served, please forward your proof of service in order that we may timely file an answer or other pleading. Please do not take any action against the Defendant(s) without providing at least three days written notice of your intent to do so.

We look forward to working with you toward the resolution of this matter.

Sincerely,

Adam P. McMillen
Direct Line: (775) 329-2221
Cell: (775) 742-9350
Email: adam.mcmillen@farmersinsurance.com

APM/mjc

Exhibit 2

Exhibit 2

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McMillen, Esq.	Adam	10678	ARB19-00716 (/Query/CaseInformation/ARB19-00716)	MARIA ESPANA ETAL VS KEIRA ULIBARI (ARB)
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McMillen, Esq.	Adam	10678	ARB19-00151 (/Query/CaseInformation/ARB19-00151)	MARK W. FOREE VS RONALD R. SHORT (ARB)
McMillen, Esq.	Adam	10678	ARB19-00616 (/Query/CaseInformation/ARB19-00616)	PATRICIA FRIEDMAN VS MARY LINDE (ARB)
McMillen, Esq.	Adam	10678	ARB19-00336 (/Query/CaseInformation/ARB19-00336)	MICHAEL K. SMITH ESQ DAVID L. WEHR (ARB)
McMillen, Esq.	Adam	10678	ARB19-00400 (/Query/CaseInformation/ARB19-00400)	MEKENNA BURGARD VS CLAUDIA ROBERTS ET AL (ARB)

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV19-00885 (/Query/CaseInformation/CV19-00885)	DANIEL VILLALOBOS-RUIZ VS LILIAN M. SUMMER (ARB)
McMillen, Esq.	Adam	10678	CV19-00886 (/Query/CaseInformation/CV19-00886)	E. MORA-GUERRERO ETAL V. GUTIERREZ-DE ANDA (ARB)
McMillen, Esq.	Adam	10678	ARB19-00416 (/Query/CaseInformation/ARB19-00416)	D. ITURRIAGA ET AL VS PAMELA DUPRE (ARB)
McMillen, Esq.	Adam	10678	ARB19-00099 (/Query/CaseInformation/ARB19-00099)	MAYRA VERDUZCO-SILVA VS JULIE NICOLE ETAL (ARB)
McMillen, Esq.	Adam	10678	CV19-00706 (/Query/CaseInformation/CV19-00706)	HAYLEY J. SMITH VS NICHOLAS M. DIXON ETAL (D8)
McMillen, Esq.	Adam	10678	CV19-00716 (/Query/CaseInformation/CV19-00716)	MARIA ESPANA ETAL VS KEIRA ULIBARI (D9)
McMillen, Esq.	Adam	10678	CV19-00705 (/Query/CaseInformation/CV19-00705)	SKYLER M. STROM VS NICHOLAS M. DIXON ETAL (D10)
McMillen, Esq.	Adam	10678	ARB19-00088 (/Query/CaseInformation/ARB19-00088)	JACOB BARNES VS GEORGE W. HOWARD (ARB)
McMillen, Esq.	Adam	10678	CV19-00616 (/Query/CaseInformation/CV19-00616)	PATRICIA FRIEDMAN VS MARY LINDE (ARB)
McMillen, Esq.	Adam	10678	ARB19-00067 (/Query/CaseInformation/ARB19-00067)	PAOLA VAZQUEZ VS NESTOR HERNANDEZ ET AL (ARB)
McMillen, Esq.	Adam	10678	CV19-00507 (/Query/CaseInformation/CV19-00507)	FARMERS INS. EXC. VS ROBERT WIRTH ETAL (D4)
McMillen, Esq.	Adam	10678	ARB18-01691 (/Query/CaseInformation/ARB18-01691)	BARBARA A. GARDNER VS MARK A. MILLER (ARB)
McMillen, Esq.	Adam	10678	CV19-00416 (/Query/CaseInformation/CV19-00416)	D. ITURRIAGA ET AL VS PAMELA DUPRE (ARB)
McMillen, Esq.	Adam	10678	CV19-00400 (/Query/CaseInformation/CV19-00400)	MEKENNA BURGARD VS CLAUDIA ROBERTS ET AL (D10)
McMillen, Esq.	Adam	10678	CV19-00351 (/Query/CaseInformation/CV19-00351)	AMIE VICKROY VS. SONILA ZUI (D6)
McMillen, Esq.	Adam	10678	CV19-00347 (/Query/CaseInformation/CV19-00347)	KATHRYN HOVORE VS MASON STONE (ARB)

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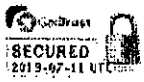

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McMillen, Esq.	Adam	10678	CV19-00254 (/Query/CaseInformation/CV19-00254)	EVAN GRIGGS VS AVELINA & JORGE AGUILAR (D1)
McMillen, Esq.	Adam	10678	CV19-00229 (/Query/CaseInformation/CV19-00229)	F. CRUZ-FALCON VS WESTERN MILL FAB ET AL (D6)
McMillen, Esq.	Adam	10678	ARB18-01673 (/Query/CaseInformation/ARB18-01673)	ARMANDO NAVA; ET AL VS. RHONDA LOWE (ARB)
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McMillen, Esq.	Adam	10678	CV19-00099 (/Query/CaseInformation/CV19-00099)	MAYRA VERDUZCO-SILVA VS JULIE NICOLE ETAL (ARB)
McMillen, Esq.	Adam	10678	CV19-00088 (/Query/CaseInformation/CV19-00088)	JACOB BARNES VS GEORGE W. HOWARD (ARB)
McMillen, Esq.	Adam	10678	CV19-00067 (/Query/CaseInformation/CV19-00067)	PAOLA VAZQUEZ VS NESTOR HERNANDEZ ET AL (ARB)

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McMillen, Esq.	Adam	10678	CV18-02504 (/Query/CaseInformation/CV18-02504)	CRISTINA R. CARTY VS D & K EARL (D10)
McMillen, Esq.	Adam	10678	ARB18-02032 (/Query/CaseInformation/ARB18-02032)	RALPH ORTEGA VS KATHERYN JEAN FITTER (ARB)
McMillen, Esq.	Adam	10678	ARB18-01633 (/Query/CaseInformation/ARB18-01633)	CHARLES V. SMITH VS ROY D. GRAFFAM (ARB)
McMillen, Esq.	Adam	10678	CV18-02391 (/Query/CaseInformation/CV18-02391)	CAROLYN SMITH VS BRUCE BALDWINSON, ET AL (DDD)
McMillen, Esq.	Adam	10678	CV18-02383 (/Query/CaseInformation/CV18-02383)	MAJESTIC RANCH ESTATES II VS. HARRY FRY (D1)
McMillen, Esq.	Adam	10678	ARB18-01419 (/Query/CaseInformation/ARB18-01419)	TONYA RUSSELL VS. NANCY LUND; ET AL (ARB)
McMillen, Esq.	Adam	10678	CV18-02316 (/Query/CaseInformation/CV18-02316)	TAYLOR NESTER VS SAYURI N. ACOSTA ETAL (D10)
McMillen, Esq.	Adam	10678	ARB18-00982 (/Query/CaseInformation/ARB18-00982)	DANA SALERNO VS RODGENE MOORE ETAL (ARB)
McMillen, Esq.	Adam	10678	ARB18-01749 (/Query/CaseInformation/ARB18-01749)	JUSTIN MCDONALD VS DARRELL L. ROTHGEB (ARB)
McMillen, Esq.	Adam	10678	CV18-02137 (/Query/CaseInformation/CV18-02137)	SARAH BOYLE V. FRANCISCA MANZANO-ALFARO (ARB)
McMillen, Esq.	Adam	10678	ARB18-00974 (/Query/CaseInformation/ARB18-00974)	GREGORY LORENZO VS MARIA PEREZ-VICEN (ARB)
McMillen, Esq.	Adam	10678	ARB18-01798 (/Query/CaseInformation/ARB18-01798)	JOHN S. WALKER VS SHEILA MICHAELS (ARB)
McMillen, Esq.	Adam	10678	CV18-02032 (/Query/CaseInformation/CV18-02032)	RALPH ORTEGA VS KATHERYN JEAN FITTER (D4)
McMillen, Esq.	Adam	10678	ARB18-01318 (/Query/CaseInformation/ARB18-01318)	DANIEL GUGICH VS. NOREEN KELLY (ARB)
McMillen, Esq.	Adam	10678	ARB18-01441 (/Query/CaseInformation/ARB18-01441)	KRISTOPHER CARROLL VS KRISTINAL WILLIAMS (ARB)
McMillen, Esq.	Adam	10678	CV18-01901 (/Query/CaseInformation/CV18-01901)	BRANDY CLAIBORNE VS URIEL A. CISNEROS (D6)

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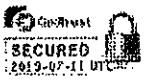

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McMillen, Esq.	Adam	10678	CV18-01865 (/Query/CaseInformation/CV18-01865)	EDURNE CORDERO VS LASHAWN L. PLANETA (D10)
McMillen, Esq.	Adam	10678	ARB18-01416 (/Query/CaseInformation/ARB18-01416)	EDITH WRIGHT VS KERRY PRITCHARD (ARB)
McMillen, Esq.	Adam	10678	ARB18-01147 (/Query/CaseInformation/ARB18-01147)	ADRIANNA HERNANDEZ VS. NICOLE CASCI (ARB)
McMillen, Esq.	Adam	10678	CV18-01798 (/Query/CaseInformation/CV18-01798)	JOHN S. WALKER VS SHEILA MICHAELS (STP)
McMillen, Esq.	Adam	10678	CV18-01749 (/Query/CaseInformation/CV18-01749)	JUSTIN MCDONALD VS DARRELL L. ROTHGEB (ARB)
McMillen, Esq.	Adam	10678	CV18-01697 (/Query/CaseInformation/CV18-01697)	LORENZO RINTACUTAN VS. BRIAN PALOMAR-LINAREZ (D6)
McMillen, Esq.	Adam	10678	CV18-01691 (/Query/CaseInformation/CV18-01691)	BARBARA A. GARDNER VS MARK A. MILLER (ARB)
McMillen, Esq.	Adam	10678	CV18-01673 (/Query/CaseInformation/CV18-01673)	ARMANDO NAVA; ET AL VS. RHONDA LOWE (ARB)

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McMillen, Esq.	Adam	10678	CV18-01633 (/Query/CaseInformation/CV18-01633)	CHARLES V. SMITH VS ROY D. GRAFFAM (ARB)
McMillen, Esq.	Adam	10678	CV18-01619 (/Query/CaseInformation/CV18-01619)	DONNA LACROIX VS KELLY SANDERS (ARB)
McMillen, Esq.	Adam	10678	CV18-01629 (/Query/CaseInformation/CV18-01629)	JULIUS MILITANTE VS. STEVE VANDERMAY; ET AL (D10)
McMillen, Esq.	Adam	10678	CV18-01532 (/Query/CaseInformation/CV18-01532)	*consolidated into CV17-01666
McMillen, Esq.	Adam	10678	CV18-01441 (/Query/CaseInformation/CV18-01441)	KRISTOPHER CARROLL VS KRISTINAL WILLIAMS (ARB)
McMillen, Esq.	Adam	10678	CV18-01428 (/Query/CaseInformation/CV18-01428)	MINOR COMP: COLE MEACHAM (DDD)
McMillen, Esq.	Adam	10678	CV18-01416 (/Query/CaseInformation/CV18-01416)	EDITH WRIGHT VS KERRY PRITCHARD (STP)
McMillen, Esq.	Adam	10678	CV18-01419 (/Query/CaseInformation/CV18-01419)	TONYA RUSSELL VS. NANCY LUND; ET AL (ARB)
McMillen, Esq.	Adam	10678	CV18-01382 (/Query/CaseInformation/CV18-01382)	AMBER HILL VS NICHOLAS & JAVIER ARGUELLO (D9)
McMillen, Esq.	Adam	10678	CV18-01318 (/Query/CaseInformation/CV18-01318)	DANIEL GUGICH VS. NOREEN KELLY (ARB)
McMillen, Esq.	Adam	10678	CV18-01147 (/Query/CaseInformation/CV18-01147)	ADRIANNA HERNANDEZ VS. NICOLE CASCI (D8)
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McMillen, Esq.	Adam	10678	ARB18-00530 (/Query/CaseInformation/ARB18-00530)	MELISSA SILVA VS DAULTON D. D'CONNELL (ARB)
McMillen, Esq.	Adam	10678	CV18-01000 (/Query/CaseInformation/CV18-01000)	MARVIN TANNER VS. EDGE AT RENO CONDO O.A. (D1)
McMillen, Esq.	Adam	10678	CV18-00982 (/Query/CaseInformation/CV18-00982)	DANA SALERNO VS RODGENE MOORE ETAL (D7)

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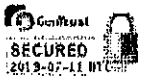

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McMillen, Esq.	Adam	10678	CV18-00949 (/Query/CaseInformation/CV18-00949)	TARYN YORK VS MARGARET CRADDOCK (D15)
McMillen, Esq.	Adam	10678	ARB18-00244 (/Query/CaseInformation/ARB18-00244)	RYAN STRICKLAND VS. LEVI SMITH (ARB)
McMillen, Esq.	Adam	10678	ARB18-00163 (/Query/CaseInformation/ARB18-00163)	WILLIAM JOHNSON VS VALLEY TECH INVEST ET AL (ARB)
McMillen, Esq.	Adam	10678	ARB18-00439 (/Query/CaseInformation/ARB18-00439)	RONALD FREETO VS LISA E. ROGERS (ARB)
McMillen, Esq.	Adam	10678	ARB18-00204 (/Query/CaseInformation/ARB18-00204)	SARAH FRANKLIN VS DAVID TOPETE (ARB)
McMillen, Esq.	Adam	10678	CV18-00744 (/Query/CaseInformation/CV18-00744)	TYLER CODMAN VS PATRICIA GREGORY (STP)
McMillen, Esq.	Adam	10678	CV18-00713 (/Query/CaseInformation/CV18-00713)	MARIA REYES; ET AL VS. JOSEPH SCHLER (D1)
McMillen, Esq.	Adam	10678	CV18-00662 (/Query/CaseInformation/CV18-00662)	DAVID M. SIBAJA VS JULIE CHING (STP)

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV18-00620 (/Query/CaseInformation/CV18-00620)	MELISSA HOTARY ETAL VS TAMARA EVANS ETAL (D7)
McMillen, Esq.	Adam	10678	ARB17-00764 (/Query/CaseInformation/ARB17-00764)	REGINA Y. LANE VS LINDA T. SCHOFIELD (ARB)
McMillen, Esq.	Adam	10678	CV18-00565 (/Query/CaseInformation/CV18-00565)	VIRGINIA M. HIGGINS VS DIANA H. WINGO (D7)
McMillen, Esq.	Adam	10678	CV18-00530 (/Query/CaseInformation/CV18-00530)	MELISSA SILVA VS DAULTON D. O'CONNELL (D8)
McMillen, Esq.	Adam	10678	CV18-00504 (/Query/CaseInformation/CV18-00504)	MINORS COMP: KATE SIERRA BALZER (D9)
McMillen, Esq.	Adam	10678	CV18-00491 (/Query/CaseInformation/CV18-00491)	KAYLA METZGER VS CYNTHIA F. ROBERTS (D1)
McMillen, Esq.	Adam	10678	CV18-00457 (/Query/CaseInformation/CV18-00457)	VERTIS AMIEL HAGAN VS ALEXANDER G. GREEN (STP)
McMillen, Esq.	Adam	10678	CV18-00439 (/Query/CaseInformation/CV18-00439)	RONALD FREETO VS LISA E. ROGERS (D15)
McMillen, Esq.	Adam	10678	ARB17-01568 (/Query/CaseInformation/ARB17-01568)	DULCE MARTINEZ-SILVA VS MONICA VAZQUEZ-MACIAS(ARB)
McMillen, Esq.	Adam	10678	ARB18-00031 (/Query/CaseInformation/ARB18-00031)	MARIA DEL CARMEN GUERRA VS ALFRED F. ANHEIER (D8)
McMillen, Esq.	Adam	10678	ARB18-00005 (/Query/CaseInformation/ARB18-00005)	NYCTE CORDERO VS LASHAWNA L. PLANETA (ARB)
McMillen, Esq.	Adam	10678	ARB17-01629 (/Query/CaseInformation/ARB17-01629)	DENNIS BLAIR VS LACIE ROSE & DEBRA JOHNS (ARB)
McMillen, Esq.	Adam	10678	ARB17-02237 (/Query/CaseInformation/ARB17-02237)	MARY A. LAZZARI VS WILLIAM C. HAW (ARB)
McMillen, Esq.	Adam	10678	CV18-00244 (/Query/CaseInformation/CV18-00244)	RYAN STRICKLAND VS. LEVI SMITH (D10)
McMillen, Esq.	Adam	10678	CV18-00204 (/Query/CaseInformation/CV18-00204)	SARAH FRANKLIN VS DAVID TOPETE (ARB)
McMillen, Esq.	Adam	10678	CV18-00187 (/Query/CaseInformation/CV18-00187)	MARIA NAJAR VS MELANIE OLIVAS-ANTILLON ETAL (ARB)

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McMillen, Esq.	Adam	10678	CV18-00163 (/Query/CaseInformation/CV18-00163)	WILLIAM JOHNSON VS VALLEY TECH INVEST ET AL (D7)
McMillen, Esq.	Adam	10678	ARB17-01641 (/Query/CaseInformation/ARB17-01641)	PAUL S. MARTIN ETAL VS ZACHARY J. MUNSON (ARB)
McMillen, Esq.	Adam	10678	ARB17-01839 (/Query/CaseInformation/ARB17-01839)	GRADY PIERCE VS. FARMERS INSURANCE EXCHANGE (ARB)
McMillen, Esq.	Adam	10678	CV18-00031 (/Query/CaseInformation/CV18-00031)	MARIA DEL CARMEN GUERRA VS ALFRED F. ANHEIER (D1)
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McMillen, Esq.	Adam	10678	CV17-02380 (/Query/CaseInformation/CV17-02380)	MICHELLE SPIROPOULOS VS KENDRA MCDOWELL ET AL (D9)
McMillen, Esq.	Adam	10678	CV17-02351 (/Query/CaseInformation/CV17-02351)	RAUL REYES VS. RONALD ANDERSON ETAL
McMillen, Esq.	Adam	10678	CV17-02288 (/Query/CaseInformation/CV17-02288)	PAMELA MATHEWS VS HELEN LEWIS (D9)
McMillen, Esq.	Adam	10678	CV17-02247 (/Query/CaseInformation/CV17-02247)	JACKIE MEISTER VS. DIANE MACDONALD; ET AL (D15)

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McMillen, Esq.	Adam	10678	ARB17-01939 (/Query/CaseInformation/ARB17-01939)	JENNIFER HAKANSSON VS. CARTON SLOAN (ARB)
McMillen, Esq.	Adam	10678	CV17-02237 (/Query/CaseInformation/CV17-02237)	MARY A. LAZZARI VS WILLIAM C. HAW (D10)
McMillen, Esq.	Adam	10678	CV17-02215 (/Query/CaseInformation/CV17-02215)	DAVID CAREY VS. SPENCER BRAZELL; ET AL (D4)
McMillen, Esq.	Adam	10678	CV17-02197 (/Query/CaseInformation/CV17-02197)	GERALD LEFFLER VS. ANNE KOCHER; ET AL (D6)
McMillen, Esq.	Adam	10678	ARB17-01349 (/Query/CaseInformation/ARB17-01349)	ALLSTATE INS VS MASTER SERVICE PLUMBING (ARB)
McMillen, Esq.	Adam	10678	ARB17-01505 (/Query/CaseInformation/ARB17-01505)	JACQUELINE SUTHERLAND VS ANTHONY GOICOECHEA (ARB)
McMillen, Esq.	Adam	10678	ARB17-01666 (/Query/CaseInformation/ARB17-01666)	ORQUIDEA CEDILLO VS NATHANIEL MCVAY (ARB)
McMillen, Esq.	Adam	10678	ARB17-01614 (/Query/CaseInformation/ARB17-01614)	ANTHONY ELK VS. MICHAEL MURPHY (ARB15)
McMillen, Esq.	Adam	10678	CV17-01939 (/Query/CaseInformation/CV17-01939)	JENNIFER HAKANSSON VS. CARLTON SLOAN (5TP)
McMillen, Esq.	Adam	10678	CV17-01839 (/Query/CaseInformation/CV17-01839)	GRADY PIERCE VS. FARMERS INSURANCE EXCHANGE (D8)
McMillen, Esq.	Adam	10678	ARB17-01448 (/Query/CaseInformation/ARB17-01448)	EMILY SHERWIN, ET AL VS ALISHA ALLEN ET AL (ARB)
McMillen, Esq.	Adam	10678	CV17-01761 (/Query/CaseInformation/CV17-01761)	AIMEE NEUBERT VS MARJORIE TURNER (D15)
McMillen, Esq.	Adam	10678	CV17-01721 (/Query/CaseInformation/CV17-01721)	AARON LEE FOLSOM VS NORTHWEST PARTNERS DBA (D15)
McMillen, Esq.	Adam	10678	CV17-01723 (/Query/CaseInformation/CV17-01723)	SANTINO P. QUEVEDO VS ERIK CAREY (D1)
McMillen, Esq.	Adam	10678	ARB17-01356 (/Query/CaseInformation/ARB17-01356)	PAZ DALMACIO VS BRIAN PALOMAR-LINAREZ (ARB)
McMillen, Esq.	Adam	10678	CV17-01666 (/Query/CaseInformation/CV17-01666)	CONS: ORQUIDEA CEDILLO VS NATHANIEL MCVAY (D9)

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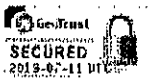

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McMillen, Esq.	Adam	10678	CV17-01633 (/Query/CaseInformation/CV17-01633)	NILA R. GERLETT VS RACHEL L. GUSTIN (D10)
McMillen, Esq.	Adam	10678	CV17-01629 (/Query/CaseInformation/CV17-01629)	DENNIS BLAIR VS LACIE ROSE & DEBRA JOHNS (D15)
McMillen, Esq.	Adam	10678	CV17-01614 (/Query/CaseInformation/CV17-01614)	ANTHONY ELK VS. MICHAEL MURPHY (STP)
McMillen, Esq.	Adam	10678	CV17-01568 (/Query/CaseInformation/CV17-01568)	DULCE MARTINEZ-SILVA VS MONICA VAZQUEZ-MACIAS (D4)
McMillen, Esq.	Adam	10678	ARB17-01260 (/Query/CaseInformation/ARB17-01260)	GUADALUPE J. LIZAOLA VS KELLY MALINAS ET AL (ARB)
McMillen, Esq.	Adam	10678	CV17-01517 (/Query/CaseInformation/CV17-01517)	CESAR NAZAIRE VS VINCENT KELLISON (ARB)
McMillen, Esq.	Adam	10678	CV17-01505 (/Query/CaseInformation/CV17-01505)	JACQUELINE SUTHERLAND VS ANTHONY GDICDECHEA (ARB)
McMillen, Esq.	Adam	10678	CV17-01468 (/Query/CaseInformation/CV17-01468)	*consolidated into CV17-01260

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV17-01448 (/Query/CaseInformation/CV17-01448)	EMILY SHERWIN, ET AL VS ALISHA ALLEN ET AL (4)
McMillen, Esq.	Adam	10678	ARB17-01094 (/Query/CaseInformation/ARB17-01094)	MARIE SYROVY VS RICHARD FLOCCHINI (ARB)
McMillen, Esq.	Adam	10678	CV17-01399 (/Query/CaseInformation/CV17-01399)	NADINE SKEES VS MELANIE BINZEL (D3)
McMillen, Esq.	Adam	10678	CV17-01380 (/Query/CaseInformation/CV17-01380)	KIM JACKSON VS LUCAS FOODS DBA SUBWAY ETAL (ARB)
McMillen, Esq.	Adam	10678	CV17-01356 (/Query/CaseInformation/CV17-01356)	PAZ DALMACIO VS BRIAN PALOMAR-LINAREZ (ARB)
McMillen, Esq.	Adam	10678	CV17-01349 (/Query/CaseInformation/CV17-01349)	ALLSTATE INS VS MASTER SERVICE PLUMBING (ARB)
McMillen, Esq.	Adam	10678	CV17-01260 (/Query/CaseInformation/CV17-01260)	CONS:GUADALUPE LIZAOLA VS KELLY MALINAS ETAL (ARB)
McMillen, Esq.	Adam	10678	CV17-01094 (/Query/CaseInformation/CV17-01094)	MARIE SYROVY VS RICHARD FLOCCHINI (D15)
McMillen, Esq.	Adam	10678	ARB16-02062 (/Query/CaseInformation/ARB16-02062)	ALICE DELANDE VS. ANNE MARIE KOCHER, ET AL (ARB)
McMillen, Esq.	Adam	10678	ARB17-00534 (/Query/CaseInformation/ARB17-00534)	MARIBEL VALDEZ VS. MELISSA MICHEL; ET AL (ARB)
McMillen, Esq.	Adam	10678	ARB17-00623 (/Query/CaseInformation/ARB17-00623)	PETE ECKERT VS. JANICE MICKELSON; ET AL (ARB)
McMillen, Esq.	Adam	10678	CV17-00879 (/Query/CaseInformation/CV17-00879)	WYATT CANO VS JIMMY L. PINSON (D9)
McMillen, Esq.	Adam	10678	CV17-00764 (/Query/CaseInformation/CV17-00764)	REGINA Y. LANE VS LINDA T. SCHOFIELD (ARB)
McMillen, Esq.	Adam	10678	CV17-00623 (/Query/CaseInformation/CV17-00623)	PETE ECKERT VS. JANICE MICKELSON; ET AL (STP)
McMillen, Esq.	Adam	10678	CV17-00588 (/Query/CaseInformation/CV17-00588)	NATIONWIDE MUTUAL VS. SHANELL SANDY; ET AL (D7)
McMillen, Esq.	Adam	10678	CV17-00534 (/Query/CaseInformation/CV17-00534)	MARIBEL VALDEZ VS. MELISSA MICHEL; ET AL (STP)

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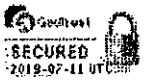

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McMillen, Esq.	Adam	10678	CV17-00192 (/Query/CaseInformation/CV17-00192)	JANET BROOKS VS JET SERVICES, INC. (D1)
McMillen, Esq.	Adam	10678	CV17-00108 (/Query/CaseInformation/CV17-00108)	MARIA EISEMANN VS MID-CENTURY INSURANCE CO (D1)
McMillen, Esq.	Adam	10678	ARB16-02166 (/Query/CaseInformation/ARB16-02166)	TRACY PISCORAN VS ROBERT MCGEORGE, ET AL (ARB)
McMillen, Esq.	Adam	10678	CV16-02521 (/Query/CaseInformation/CV16-02521)	MODESTO CASTRO-AVALOS VS CHASE PORSOW (STP)
McMillen, Esq.	Adam	10678	CV16-02166 (/Query/CaseInformation/CV16-02166)	TRACY PISCORAN VS ROBERT MCGEORGE, ET AL (D9)
McMillen, Esq.	Adam	10678	CV16-02080 (/Query/CaseInformation/CV16-02080)	JENNY REED VS FARMERS INSURANCE EXHANGE (D6)
McMillen, Esq.	Adam	10678	CV16-02062 (/Query/CaseInformation/CV16-02062)	ALICE DELANDE VS. ANNE MARIE KOCHER, ET AL (STP)
McMillen, Esq.	Adam	10678	CV16-01903 (/Query/CaseInformation/CV16-01903)	ROBERT DENNIS VS ANDREA FIGUEROA ET AL (D1)
McMillen, Esq.	Adam	10678	CV16-01806 (/Query/CaseInformation/CV16-01806)	U.S. SEAL INTL VS SURFACE SQUAD,LLC ET AL (D10)

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV16-01472 (/Query/CaseInformation/CV16-01472)	EXCEDIS CORP VS EDWARD BOLLMANN, JAMES KERR (D10)
McMillen, Esq.	Adam	10678	CV16-00915 (/Query/CaseInformation/CV16-00915)	DONALD PHILLIPS VS JEROLD CHILDERS (STP)
McMillen, Esq.	Adam	10678	CV14-01057 (/Query/CaseInformation/CV14-01057)	EXCEDIS CORPORATION VS EDWARD BOLLMANN (D3)
McMillen, Esq.	Adam	10678	CV14-00653 (/Query/CaseInformation/CV14-00653)	GLEN JONES ETAL VS REGENT CARE OPERATIONS DBA
McMillen, Esq.	Adam	10678	CV13-01440 (/Query/CaseInformation/CV13-01440)	RILEY KAUFMAN ETAL VS. REGENT CARE ETAL (D
McMillen, Esq.	Adam	10678	PR13-00306 (/Query/CaseInformation/PR13-00306)	ESTATE; MATTIE CLAIRENE RILEY BINGHAM KAUFMAN (PR)
McMillen, Esq.	Adam	10678	CV13-01234 (/Query/CaseInformation/CV13-01234)	MANUFACTURING RESOURCE VS FRENCH GOURMET (D4)
McMillen, Esq.	Adam	10678	ARB12-01400 (/Query/CaseInformation/ARB12-01400)	AMANDA MUNDT VS. V & J CASTODIO (ARB)
McMillen, Esq.	Adam	10678	CV12-01751 (/Query/CaseInformation/CV12-01751)	ROBERT LUCIANO VS. DIGNITY HEALTH ETAL.(D10)
McMillen, Esq.	Adam	10678	CV12-01400 (/Query/CaseInformation/CV12-01400)	AMANDA MUNDT VS. V & J CASTODIO (ARB)
McMillen, Esq.	Adam	10678	CV12-00786 (/Query/CaseInformation/CV12-00786)	TARA LEWIS VS. ROBERT HOOFT (D10)
McMillen, Esq.	Adam	10678	CV11-03683 (/Query/CaseInformation/CV11-03683)	ROGER M. LINO ETAL..... VS. LAKEMONT COPPER (D15)
McMillen, Esq.	Adam	10678	CV11-03473 (/Query/CaseInformation/CV11-03473)	LINDA DOWNS VS. RIVER CITY GROUP, LLC ETAL..(D15)
McMillen, Esq.	Adam	10678	CV11-02675 (/Query/CaseInformation/CV11-02675)	change of venue 11-30-11
McMillen, Esq.	Adam	10678	CV11-02272 (/Query/CaseInformation/CV11-02272)	MINER VILLAGE HOME VS. MINER VILLAGE INVESTOR (D1)
McMillen, Esq.	Adam	10678	CV11-02059 (/Query/CaseInformation/CV11-02059)	FIDELITY AND DEPOSIT COMPANY VS. WAYNE ZIEGLER (D6

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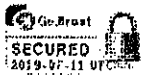

Exhibit 3

Exhibit 3

A560
HERB SANTOS, JR., Esq.
Bar #4376
The Law Firm of Herb Santos, Jr.
225 South Arlington Avenue, Suite C
Reno, Nevada 89501
(775) 323-5200

Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MODESTO CASTRO-AVALOS, an individual

Plaintiff,

vs.

CHASE PORSOW, an individual; and DOES I-10, respectfully,

Defendants.

Case No. ARB16-02521

Department No. ARB

THE LAW FIRM OF HERB SANTOS, JR.
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ARBITRATOR'S DECISION

The arbitration hearing was held on December 15, 2017. In attendance was the Plaintiff, MODESTO CASTRO-AVALOS, (hereinafter referred to as "Plaintiff"), and his attorney, SEAN ROSE, Esq. of the ROSE LAW FIRM, and the Defendant, CHASE PORSOW, (hereinafter referred to as "Defendant") and his counsel, ADAM McMILLEN, ESQ., of the LAW OFFICES OF KARL H. SMITH. The Plaintiff's wife, Allison Castro-Avalos testified at the hearing.

The hearing was not reported.

I. BACKGROUND FACTS.

A. Accident Summary.

Plaintiff claims personal injuries stemming from an automobile accident which occurred on June 4, 2015.

The parties submitted the following exhibits relevant to the claim which were admitted:

Exhibit 1	Modesto Castro deposition transcript
Exhibit 2	Modesto Castro statement from the Accident Report
Exhibit 3	Google Map aerial of the accident location
Exhibit 4	Chase Porsow statement from Accident Report
Exhibit 5	Chase Porsow deposition transcript
Exhibit 6	Debra Hendrickson statement from the Accident Report
Exhibit 7	Photographs of vehicles in accident
Exhibit 8	Exhibit 2 to Porsow deposition - Porsow Case Status Report from Reno Municipal Court
Exhibit 9	Castro Case Status Report from Reno Municipal Court
Exhibit 10	Repair Estimate for Castro vehicle
Exhibit 11	Enlarged photos of damage to Castro vehicle
Exhibit 12	Repair estimate for Porsow vehicle
Exhibit 13	Photographs of damage to Porsow vehicle
Exhibit 14	Repair estimate for Hendrickson's vehicle
Exhibit 15	Castro Renown Emergency room records
Exhibit 16	Castro other medical records
Exhibit 17	Dr. Burke Expert Report
Exhibit 18	Castro medical bills and specials
Exhibit 19	Castro Fight Record
Exhibit 20	Accident Report

II. STIPULATED FACTS

None.

III. FINDINGS OF FACT

The parties were involved in an automobile accident on June 4, 2015. The Plaintiff was driving his 2000 Ford Expedition at the time of the accident. He was wearing a seatbelt. The Defendant was driving his 2003 Chevy K2500 behind the Plaintiff. Both vehicles were traveling southbound on Keystone Avenue. The Plaintiff intended to meet his wife at the Raley's parking

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lot located on Keystone Avenue and the Defendant was traveling to meet his father for dinner.

Keystone Avenue is a single lane road which becomes two lanes just south of Sunnyside Way.

When the parties passed Sunnyside Way, both vehicles stayed in the left hand lane. At the south crosswalk on the intersection of University Terrace and Keystone Avenue, the Plaintiff slowed to make a right hand turn into the Raley's parking lot. The maneuver would have caused him to cross the southbound right hand lane of Keystone Avenue in order to gain access to the Raley's parking lot. Waiting to turn left from the Raley's parking lot entrance onto Keystone was Debra Hendrickson who was stopped and waiting for the traffic to clear.

The Plaintiff maintains that he turned on his blinker and slowly made the transition from the left hand lane to the right hand lane so that he could enter the Raley's parking lot. Plaintiff alleges that as he started into the Raley's parking lot entrance, the Defendant struck his vehicle from behind, forcing him into the Hendrickson vehicle. The Defendant contends that the Plaintiff slowed abruptly and tried to turn from the left hand lane to the right hand lane towards the Raley's parking lot entrance and the Defendant did not have enough time to anticipate the Plaintiff's turn and rear ended his vehicle. An independent witness, Abel Sanchez, wrote in his police report statement that the Defendant was in the right hand lane and the Plaintiff changed lanes from the left hand lane to the right hand lane in front of the Defendant with insufficient time for the Defendant to stop. This would appear to be the likely explanation as to what happened except that the Defendant was very clear that he was in the left hand lane, not the right hand lane. The Defendant testified to this at the arbitration, in his deposition and in his written statement at the time of the accident. For these reasons, I find that both vehicles were in the left hand lane, that the Plaintiff made an abrupt maneuver from the left hand lane towards the Raley's parking lot, that the Defendant was following to closely and was unable to stop before striking the rear of the Plaintiff's vehicle. As examined below, both parties share fault for causing the June 4, 2015 accident.

PLAINTIFF'S TREATMENT

Plaintiff was checked by REMSA personnel but declined going to the emergency room.

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The Plaintiff did, however, go to the emergency room later that night. The Plaintiff was examined and treated at Renown Emergency Room. He was diagnosed with suffering from a sprain of the thoracic and lumbar region of his spine. ***Exhibit 15, page Castro-Avalos 36.*** The Plaintiff denied any head trauma. He had normal range of motion of the neck and no tenderness. The records do state that he complained of neck pain, however there was no diagnosis for a neck sprain. The records do state that there were signs of cervical spine fracture which is not consistent with the rest of the medical records. He had no chest tenderness. He had no seatbelt mark. He did have lumbar tenderness and muscle spasms in the thoracic spine and paraspinous muscles. The CT scan was normal. The Plaintiff was discharged with prescriptions for medication, a work note and follow up instructions [schedule an appointment with his physician as soon as possible within three days].

The Plaintiff testified that he understood that he would feel better with time so he did not return for follow up until June 17, 2015 when he again presented to the Renown Emergency Room. At this visit he was complaining of severe headaches, dizziness and photosensitivity. According to the medical records, the Plaintiff complained of neck pain but no low back pain nor lower extremity radicular complaints. A CT scan of the cervical spine was ordered which was essentially normal and a CT scan of the head was also normal. The Plaintiff was discharged with instructions to follow up with the HAWC Clinic.

The Plaintiff followed up with Dr. Fischer who, according to the testimony of him and his wife, he had seen in the past. No prior records were submitted by either party. The Plaintiff saw Dr. Fischer on July 23, 2015, November 17, 2015 and March 3, 2016. Although the notes on July 23, 2015 state that the Plaintiff was rear ended, the next visit on November 17, 2015 has the NO circled for the question "Auto or Work Related". There was no other treatment by Dr. Fischer.

The Plaintiff then was seen by Dr. Swanson on May 11, 2016. The problems documented by Dr. Swanson are shoulder pain with an onset of June 13, 2012 and strain of back muscle with an onset of March 14, 2012. The Plaintiff reported that he attributes his headaches to a "motor vehicle accident which happened a couple of months ago." Dr. Swanson states that he saw nothing in his evaluation was alarming but ordered physical therapy for the neck and upper back at two (2) times per week for five (5) weeks.

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The Plaintiff did not go to physical therapy but instead went to see Dr. Forrest Burke. Dr. Burke notes that the Plaintiff told him that he did not have any prior problems with his neck, midback, low back, hand or have headaches in the past. Dr. Burke performed an examination and diagnosed the Plaintiff with the following accident related conditions: 1. Neck pain with radiation to the right hand including numbness concerning for cervical radiculopathy. 2. Myofascial pain and 3. Facet pain, especially for the neck. Dr. Burke recommended an MRI of the cervical spine and EMG testing. Dr. Burke also provided trigger point injections and a recommendation for a muscle stimulator unit.

The MRI was completed on May 31, 2016 and documented a disk bulge at C5-C6.

The EMG was done on June 2, 2016 and was normal. Dr. Burke provided additional trigger point injections and considered therapy.

The Plaintiff returned for treatment with Dr. Burke on June 9, 2016 with increased complaints of neck and shoulder pain. Dr. Burke recommended cervical facet injections. The injections were completed on June 20, 2016.

The Plaintiff returned on July 8, 2016 reporting 75% improvement, no headaches and increased ability to lift. Dr. Burke recommended therapy.

On July 15, 2016 the Plaintiff started physical therapy.

The Plaintiff returned to Dr. Burke's office on August 3, 2016 reporting 80% improvement. It was expected that after the completion of the therapy, the Plaintiff would be discharged from care.

The Plaintiff completed his physical therapy and was discharged on August 15, 2016 when he reported that he was able to tolerate all work and daily activities with minimal to no discomfort. The Plaintiff only reported occasional tightness and pinching in his neck but that it was tolerable. The Plaintiff was released to a home exercise program.

The Plaintiff returned to Dr. Burke on September 2, 2016 with 90% improvement. The Plaintiff was discharged by Dr. Burke at this visit.

It is clear from the medical reporting that the Plaintiff's work duties aggravated his neck and back complaints.

The Plaintiff claims $32,235.50 in medical expenses which he relates as caused by the subject accident. The Defendant contends that in addition to not believing he is responsible for any of the bills as the plaintiff caused the accident, the Plaintiff suffered no injury from the accident. The Plaintiff offered the medical file review from Dr. Burke. **[Exhibit 17]** Dr. Burke diagnosed the Plaintiff with a cervical and lumbar strain/sprain. Dr. Burke does not include the C5-C6 disk as being caused by the accident. Dr. Burke notes that the Plaintiff responded well to the trigger point injections. Dr. Burke, however, states that there were no prior problems which is partly inconsistent with the testimony of the Plaintiff and his wife and the notes of Dr. Swanson. Dr. Burke confirmed that he did not opine that the Plaintiff would need further treatment and in fact, has not sought treatment since he was discharged in September, 2016.

IV. APPLICABLE LAW.

In a case of negligence, the law in Nevada is clear and well settled. To prevail on a negligence theory, the plaintiff generally must show that: (1) the defendant had a duty to exercise due care towards the plaintiff; (2) the defendant breached the duty; (3) the breach was an actual cause of the plaintiff's injury; (4) the breach was the proximate cause of the injury; and (5) the plaintiff suffered damage. ***Perez v. Las Vegas Medical Center,*** 107 Nev. 1, 4, 805 P.2d 589, 591 (1991).

In addition, the following rules of law are applicable to the present matter:

A negligent defendant is responsible for all foreseeable consequences proximately caused by his negligent act. ***Taylor v. Silva***, 96 Nev. 738, 741, 615 P.2d 970, 971 (1980).

Substantial evidence is "that which 'a reasonable mind might accept as adequate to support a conclusion.'" ***Prahbu v. Levine***, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (quoting ***State, Emp. Security v. Hilton Hotels***, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

The party seeking damages has the burden of providing an evidentiary basis upon which the fact finder may properly determine the amount of damages. ***Mort Wallin v. Commercial Cabinet***, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989).

Damages need not be proven with mathematical exactitude; the mere fact that some uncertainty exists as to the actual amount of damages sustained will not preclude recovery. ***Frantz***

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v. Johnson, 177 Nev. Adv. Opinion 53 (2000).

A party cannot recover damages for loss that he could have avoided by reasonable efforts. *Conner v. Southern Nevada Paving, Inc.*, 103 Nev. 353, 355, 741 P.2d 800, 801 (1987).

A person who has been damaged by the wrongful act of another is bound to exercise reasonable care and diligence to avoid loss and to minimize the damages, and he may not recover for losses which could have been prevented by reasonable efforts on his part or by expenditures that he might reasonably have made. ***Silver State Disposal v. Shelley***, 105 Nev. 309, 774 P.2d 1044 (1989).

In any action to recover damages for death or injury to persons or for injury to property in which comparative negligence is asserted as a defense, the comparative negligence of the plaintiff or the plaintiff's decedent does not bar a recovery if that negligence was not greater than the negligence or gross negligence of the parties to the action against whom recovery is sought. **NRS 41.141.**

V. CONCLUSIONS OF LAW.

A. Liability.

In Nevada, a driver has a duty to decrease speed given the current road conditions. NRS 484B.603 The rule states that

> "The fact that the speed of a vehicle is lower than the prescribed limits does not relieve a driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding highway, or when special hazards exist or may exist with respect to pedestrians or other traffic, or by reason of weather or other highway conditions, and speed must be decreased as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering a highway in compliance with legal requirements and the duty of all persons to use due care." **NRS 484B.603(1).**

Simply put, a driver has to make sure that they drive at such a speed that they do not collide with objects in front of them. The Defendant breached his duty to drive his vehicle at such speed as to being able to avoid colliding with a vehicle in front of him. However, the Plaintiff must share in the cause of this accident.

NRS 484B.413 covers the rules of the road for turning on a street. The rule states that

"1. A driver shall not turn a vehicle from a direct course upon a highway unless and

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until such movement can be made with reasonable safety, and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement and after giving an appropriate signal if any other vehicle may be affected by such movement.

2. A signal of intention to turn right or left, or otherwise turn a vehicle from a direct course, shall be given continuously during not less than the last 100 feet traveled in a business or residential district and not less than the last 300 feet traveled in any other area prior to changing the course of a vehicle. This rule shall be observed, regardless of the weather.

3. A driver shall not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear." **NRS 484B.413.**

The Plaintiff testified that he put his blinker on at the crosswalk. It appears from Exhibit 3 that the entrance into the Raley's parking lot is less than 100 feet from the crosswalk where the Plaintiff testified he put on his blinker to turn from the left lane to the right lane. It is clear that it is a short distance.

I find that the Plaintiff started his attempt to turn into the Raley's parking lot in violation of NRS 484B.413. The Defendant was driving to close and at a speed which prevented him from colliding with the Plaintiff's vehicle, a violation of NRS 616B.603. It appears that both parties were in violation of Nevada rules of the road. Based upon the testimony that was offered, I find that the Defendant was 50% at fault and the Plaintiff was 50% at fault.

B. Damages Caused by the Subject Accident.

It is clear that the Plaintiff suffered an injury in the subject accident. The ER doctor confirmed a diagnosis which is documented in the medical records. The Defendant's reliance that there was no injury was based essentially upon the testimony of the Plaintiff when he explained his understanding from the doctor that there was nothing wrong with him. However, further examination of the Plaintiff's testimony was that he was told he would get better in a few months over time. The Defendant's position that there was no injury is not supported by the reliable probative evidence. However, the scope of the Plaintiff's injuries is more complicated.

The Plaintiff's chief complaints at his second visit to the ER were his neck and vision. There is insufficient medical evidence to support a finding that the Plaintiff suffered an injury which would have caused vision issues.

Plaintiff has met his burden of providing an evidentiary basis upon which this Arbitrator

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can properly determine the amount of damages.

Having reviewed the records, having heard the testimony of the Plaintiff, and having weighed all of the evidence, I find that the Plaintiff is entitled to recover damages as a result of the subject accident. I find that Defendant is responsible for the damages caused by the subject accident and is required under Nevada law to provide the Plaintiff with fair and reasonable compensation for his damages. I have calculated Plaintiff's pain and suffering as follows:

MONTH	DESCRIPTION OF PAIN/TREATMENT/INJURIES	AMOUNT AWARDED
June	medical records confirming a soft tissue injury to the thoracic and lumbar spine by the ER doctors.	$2,000.00
July	chiropractor visit; worked full duty	$1,000.00
August	no treatment; worked full duty	$250.00
September	no treatment; worked full duty	$250.00
October	no treatment; worked full duty	$250.00
November	chiropractor visit; worked full duty	$1,000.00
December	no treatment; worked full duty	$250.00
January	no treatment; worked full duty	$250.00
February	no treatment; worked full duty	$250.00
March	chiropractor visit; worked full duty	$1,000.00
April	no treatment; worked full duty	$250.00
May	Dr. Swanson visit; complains of headaches Plaintiff states caused from accident a couple of months ago (Plaintiff confirmed at hearing there was no accident other than the subject accident); shoulder pain with an onset of June 13, 2012 and strain of back muscle with an onset of March 14, 2012. Dr. Burke visit; trigger point injections; complaints of pain	$1,500.00
June	Dr. Burke visit; trigger point injections; complaints of pain	$1,500.00
July	treatment with Dr. Burke, reports 75% improvement; still has complaints of pain	$1,000.00
August	treatment with Dr. Burke, reports 80% improvement; physical therapy; still has minor complaints of pain	$ 750.00
September	Discharged from Dr. Burke; September 2, 2016 with 90% improvement	$250.00

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TOTAL		**$11,750.00**

I find that for those months the Plaintiff did not seek treatment, a minimal amount for pain and suffering is appropriate. This is based upon the Plaintiff's testimony and his wife's testimony regarding the effect the injuries had on his daily activities. It is felt that if he was able to work and did not seek medical treatment, the pain was minimal. As to when the Plaintiff sought treatment, I find that he probably was experiencing sufficient pain that warranted seeking medical treatment.

As to the medical bills, based upon Dr. Burke's report (**Exhibit 17**) which was not contradicted by any other medical report or medical opinion, I find that the entire amount of $32,235.50 must be awarded.

VI. ARBITRATOR'S FINDINGS.

Having considered all of the evidence and the testimony offered at the arbitration hearing, I find that the Plaintiff suffered damages as a direct result of the negligence of the Defendant. In determining the extent of damages caused by the collision, I have taken into consideration the nature of the accident and the evidence which was submitted at the time of the hearing. I have also considered the sufficiency of the evidence and the credibility of the Plaintiff and his wife.

This Arbitrator finds that the injuries affected Plaintiff for approximately sixteen (16) months. For this period, I find that eleven thousand seven hundred and fifty dollars ($11,750.00) is fair. In addition, the Plaintiff incurred $32,235.00 in medical bills. Thus, the total amount I find for Plaintiff is $43,985.00. I further find that the percentage of fault attributed to the Plaintiff, which was a proximate cause of the Plaintiff's injuries is 50% and the percentage of fault attributed to the Defendant, which was a proximate cause of the Plaintiff's injuries, is 50%.

Based upon these findings concerning the negligence cause of action alleged by the Plaintiff in his Complaint, and with the proper adjustment for the Plaintiff's contributory negligence of 50%, the Arbitrator finds in favor of the Plaintiff and awards damages in the amount of $21,992.50.

An award of attorney's fees and/or costs may be awarded upon proof and if allowed by law. As to interest, Plaintiffs' counsel shall make the appropriate calculations for submission along with any motion for attorney's fees and costs if allowed by law.

THE LAW FIRM OF HERB SANTOS, JR.
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The undersigned, pursuant to NRS 239B.030, certifies that this document does not contain the social security number of any person.

DATED this 26 day of December, 2017.

THE LAW FIRM OF HERB SANTOS, JR.
225 South Arlington Avenue, Suite C
Reno, Nevada 89501

By _____
HERB SANTOS, JR., ESQ.
Attorney for Plaintiff

THE LAW FIRM OF HERB SANTOS, JR.
225 South Arlington Avenue, Reno, Nevada, 89501
Tel: (775) 323-5200 Fax: (775) 323-5211

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of THE LAW FIRM OF HERB SANTOS, JR. and that on this date, I electronically filed the foregoing document using the ECF system which will send a notice of electronic filing to the following:

Adam McMillen, Esq.
Law Offices of Karl H. Smith
50 West Liberty Street, Suite 303
Reno, NV 89501

Sean Rose, Esq.
Rose Law Office
150 W. Huffaker Lane, Suite 101
Reno, NV 89511

DATED this 26 day of December, 2017.

Jimayne Lee, Assistant to
Herb Santos, Jr., Esq.

THE LAW FIRM OF HERB SANTOS, JR.
225 South Arlington Avenue, Reno, Nevada, 89501
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ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
LAW OFFICES OF KARL H. SMITH - RENO
Mail to:
P.O. Box 258829
Oklahoma City, OK 73125-8829
Physical Address:
50 W. Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
CHASE PORSOW

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

MODESTO CASTRO-AVALOS, an individual, Plaintiff, vs. CHASE PORSOW, an individual; and DOES 1-10, respectively, Defendants.	Case No.: CV16-02521 ARB16-02521 DEPT. NO. 9

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on December 26, 2017, an Arbitration Award was filed in this action. Defendant, Chase Porsow herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: January 5, 2018

LAW OFFICES OF KARL H. SMITH - RENO

BY: /s/ Adam P. McMillen
ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
CHASE PORSOW

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of LAW OFFICES OF KARL H. SMITH - RENO and that on the 5th day of January, 2018, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X___ *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Sean P. Rose
Rose Law Office
150 W. Huffaker Lane
Suite 101
Reno, NV 89511
Attorney for Plaintiff, Modesto Castro-Avalos
Phone: (775) 824-8200
Fax: (775) 657-8517

/s/ Adam P. McMillen

ADAM P. MCMILLEN, An Employee of the
Law Offices of Karl H. Smith - Reno

Exhibit 4

Exhibit 4

A201
ALICE KUNG HERBOLSHEIMER, ESQ.
Nevada Bar No. 6389
GEORGESON ANGARAN, CHTD.
5450 Longley Lane
Reno, Nevada 89511
775.827.6440
775.827.9256 – Fax
alice@renotahoelaw.com

Court-Appointed Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PETE W. ECKERT

Plaintiff,

vs.

JANICE K. MICKELSON, JOHN MICKELSON and DOES 1 to 10, inclusive

Defendants.

Case No.: ARB17-00623

Dept. No.: ARB

ARBITRATION AWARD

Pursuant to Appointment of Arbitrator by the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, this matter came on for hearing before the arbitrator, Alice Kung Herbolsheimer, on Monday, October 2, 2017. This arbitrator having considered the written and oral statements of counsel for both parties, and testimony and exhibits presented at the arbitration hearing, finds in favor of plaintiff, Pete W. Eckert, and against defendants, Janice K. Mickelson and John Mickelson, who are jointly and severally liable to the plaintiff, and awards damages to plaintiff in the total amount of $32,606.00.

If any party deems itself entitled to an award of costs and/or attorney's fees, such request shall be made in accordance with the Nevada Rules of Civil Procedure and the Nevada Arbitration Rules.

///

GEORGESON ANGARAN

AFFIRMATION

The undersigned does hereby affirm that, pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

DATED this 19th day of October, 2017.

Alice Kung Herbolsheimer, Arbitrator

GEORGESON ANGARAN

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GEORGESON ANGARAN, and that on this date I am serving the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

XXXXX By Electronic notification

I hereby certify that on October 19, 2017, I electronically filed the foregoing with the Clerk of the Court by using the ECF system, which served the following parties electronically:

John F. Kirsch, Esq.
432 Court Street
Reno, Nevada 89501

Karl H. Smith, Esq.
THE LAW OFFICES OF KARL H. SMITH
50 W. Liberty Street, Suite 303
Reno, Nevada 89501

DATED this 19th day of October, 2017.

TAMMY MARTINELLI

GEORGESON ANGARAN

KARL H. SMITH, ESQ.
State Bar No. 06504
ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
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Attorneys for Defendants,
JANICE K. MICKELSON AND JOHN MICKELSON

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PETE W. ECKERT,

Plaintiff,

vs.

JANICE K. MICKELSON, JOHN MICKELSON, and DOES 1 TO 10, Inclusive,

Defendants.

Case No.: CV17-00623

DEPT. NO. 8

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on October 20, 2017, an Arbitration Award was filed in this action. Defendants, Janice K. Mickelson and John Mickelson herein request a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

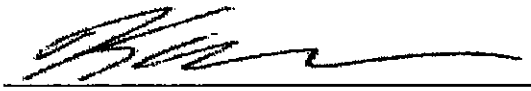
///

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: November 1, 2017

LAW OFFICES OF KARL H. SMITH - RENO

BY: 

KARL H. SMITH, ESQ.
Attorney for Defendants,
JANICE K. MICKELSON AND JOHN MICKELSON

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of LAW OFFICES OF KARL H. SMITH - RENO and that on the 1st day of November, 2017, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

__X__ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

_____ *Via Electronic Filing* [N.E.F.R. 9(b)]

_____ *Via Electronic Service* [N.E.F.R. 9]

_____ *Via Facsimile* [E.D.C.R. 7.26(a)]

John Kirsch
Attorney At Law
432 Court Street
Reno, NV 89501
Attorney for Plaintiff, Pete Eckert
Fax: (775) 786-5573

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of the
Law Offices of Karl H. Smith – Reno

Code: STP
SHERRY B. BOWERS, ESQ. (NV #3038)
63 Keystone Ave., Ste. 107
Reno, NV 89503
Telephone: 775/323-1469

Presiding Judge,
Short Trial Program

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ooOoo

PETE W. ECKERT,

Plaintiff,

vs.

JANICE K. MICKELSON, JOHN MICKELSON, et al.,

Defendants.

CASE NO.: CV17-00623

DEPT. NO.: STP

Sherry B. Bowers, Attorney at Law
63 Keystone Ave., Ste. 107 Reno, Nevada 89503
(775) 323-1469 attorney.sherry.bowers@gmail.com
Licensed in Nevada (#3038) and California (#99275)

JUDGMENT ON SHORT TRIAL JURY VERDICT AND ORDER GRANTING ATTORNEYS' FEES, COSTS AND PREJUDGMENT INTEREST (SHORT TRIAL PROGRAM)

At the short trial on March 19, 2018, the jury awarded the Plaintiff $16,606.00 for medical expenses, and $16,606.00 for general damages (pain and suffering), for total damages in the amount of $33,212.00. Sherry B. Bowers, Short Trial Judge, presided. Plaintiff filed a motion for attorneys' fees, costs, and a request for prejudgment interest. Defendants has no objection to plaintiff's request for costs, but opposed the motion for attorney's fees. By separate order, the short trial judge has awarded Plaintiff attorney's fees in the amount of $6,000.00, costs in the amount of $1,161.30, and prejudgment interest and continuing interest, as allowed by law.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff, PETE W. ECKERT, and against Defendants, JANICE K. MICKELSON, JOHN MICKELSON, in the total amount of $40,373.30, in

addition to pre-judgment interest from March 29, 2017, and continuing interest accruing thereon until the judgment is satisfied, as provided by law.

DATED this 23 day of April, 2018

By: Connie J. Steinheimer
DISTRICT JUDGE

Sherry B. Bowers, Attorney at Law
63 Keystone Ave., Ste. 107 Reno, Nevada 89503
(775) 323-1463 attorney.sherry.bowers@gmail.com
Licensed in Nevada (#3038) and California (#99276)

Exhibit 5

Exhibit 5

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
RANALLI, ZANIEL, FOWLER & MORAN LLP
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Telephone: (775) 786-4441
Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUTY OF WASHOE

MARIBEL RODRIGUEZ VALDEZ, Plaintiff, vs. MAYA MICHEL REAGAN, LAURA JEAN MICHEL, and DOES 1-V, inclusive. Defendants.	Case No. ARB17-00534 Dept. No. ARB

ARBITRATION DECISION

TO: PETER TOMAINO, ESQ., Attorney for Plaintiff; and

TO: ADAM P. MCMILLEN, ESQ., Attorney for Defendant.

On April 30, 2018, the Arbitration Hearing went forward as Ordered. Present at the Hearing were Plaintiff represented by Peter Tomaino, Esq. and Defendant Maya Reagan, represented by Adam McMillen, Esq. The hearing went forward on Plaintiff's claims of negligence. Liability was stipulated for purpose of the arbitration hearing. Exhibits were admitted, testimony from the Plaintiff and Defendant was taken and closing remarks were made. Having considered the evidence in the case, the Arbitrator finds as follows:

Initially, both sides did an excellent job in focusing on the issues of the case and presenting their case in a clear and concise manner. Both the Plaintiff and the Defendant were

provided with excellent representation. Second, while discussed herein the findings, it should be noted that both parties were credible witnesses and presented in a professional manner.

The crux of the case is whether the impact was significant enough to warrant the type and duration of treatment received by Plaintiff Maribel Rodriguez Valdez.

The accident occurred on Sun Valley near the intersection of Gepford Parkway[1]. The speed limit is 35 miles per hour. Defendant testified that she was traveling approximately 25 miles per hour at the time of impact. Plaintiff testified that she was at a complete stop and was surprised by the impact. The arbitrator agrees that the police report is hearsay for purposes of the argument that this was a "moderate impact" as indicated in the report. Defendant describes the impact as "less than a bumper car" and Plaintiff describes it as "forceful." The actual impact, in my opinion, was greater than that of a bumper car ride. The visible damage to Plaintiff's vehicle is not major by any extent. However, the property damage report does indicate damage to the rear bumper and rear body. Parts were replaced as opposed to repaired. Further, the damage to the front of the Defendant's vehicle, I would say is greater than minimum damage. There is a gap between the body and the hood. I believe that the impact, although not major, was enough to cause injury. The question turns to what treatment was required as a result of said accident.

Plaintiff Maribel Rodriguez Valdez is currently 46 years old, employed by running her own company and maintaining a household of herself, her husband, her three (3) adult children

[1] Plaintiff's Answers to Interrogatories were used to impeach Plaintiff that she was involved in another accident on Pyramid Highway in which she did in fact answer and verify those answers to her interrogatories. Plaintiff denied being in another accident. Defendant was afforded the opportunity to investigate this (although as the interrogatories were signed well before the hearing, the arbitrator would assume that if there was a second accident, the defense would have investigated same and brought evidence to the hearing. This would appear to be error on behalf of Plaintiff's counsel and this was not used in the decision. In other words, Plaintiff's failure to correct those prior to the hearing, in my opinion, does not affect her credibility.

and her twelve year old. She testified that she was never involved in a prior accident, never had any neck or back pain, only went to a doctor for annual check ups, did occasional Zumba and was "healthy" prior to the accident.

At the accident scene, Plaintiff testified that her neck and lower back were in pain. She was transported to Renown Hospital where she underwent treatment. Per her testimony, she was released and waited a few days, in which her condition became more painful, to seek additional treatment. She presented for chiropractic treatment. The records indicate a fairly high subjective pain level for her mid and lower back, and a moderate subjective pain level for her neck. That said, there were positive orthopedic findings that are consistent with her subjective findings. Plaintiff was diagnosed with soft tissue sprain/strain injuries. She was placed on a treatment program in which she treated three times per week at the beginning. After a period of time in which there was not significant improvement, the chiropractor referred Plaintiff to Dr. Miles. On the initial visit, Dr. Miles did document muscle spasms which are an objective finding. He recommended trigger point injections which were refused. Plaintiff testified that she was "scared" to get any injections. She ultimately returned and had the injections which improved her conditions. It would appear that Plaintiff's subjective pain was significant enough in her own mind to overcome her fear of injections. Plaintiff continued to treat and was released from care by early December, 2016. Plaintiff testified that she occasionally has pain even to this day, although there is no objective evidence of same as she has not returned to care.

Defendant has no expert to refute the Plaintiff's medical treatment. While an expert is certainly not required, in the review of the medical records, and the Plaintiff's testimony, the

arbitrator finds that the medical treatment in this case is reasonable and necessary. As such, Plaintiff is awarded medical specials of $11,806.00.

The more difficult aspect of the case is general damages. In my opinion, the significant facts of her age, pain levels, employ, running her household and the additional issue added to her life of seeking treatment and being in pain all go into the assessment of general damages. Based upon Plaintiff's testimony, the pain from the accident caused issues at home while Ms. Rodriguez-Valdez did her best to maintain the household including cooking and shopping. Plaintiff also continued to work during these times in which driving was painful. She ultimately was able to resume her Zumba classes. Another significant aspect is the duration of treatment. While Plaintiff testified that she has occasional pain[2], the timeframe in which Plaintiff had to endure a more significant pain, deal with treatment, undergo injection therapy to reach the point of relief was just about four (4) months. This was not a lengthy time period. Based upon the totality of the evidence, $8,000.00 is appropriate for general damages.

As such, the arbitrator finds for Ms. Rodriguez-Valdez and awards her medical expenses and $8,000.00 for general damages for a total of $19.806.00.

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[2] Plaintiff reported 90% improvement at the last visit with Dr. Miles on December 8, 2016. However, all test findings were normal other than mild neck pain at the end of a range of motion exam. In my opinion, this would not correlate to her ongoing subjective reporting of pain, at least due to this accident. Based upon the final, objective findings on the last date, general damages are considered through that date.

Affirmation
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 3rd day of May 2018.

RANALLI, ZANIEL, FOWLER & MORAN

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Arbitrator

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I certify that I am an employee of Ranalli & Zaniel, LLP and that on the 4th day of May 2018, I certify that service of the foregoing *ARBITRATION DECISION* was made to all parties to this action by:

__X__ Eflex;

PETER TOMAINO, ESQ.

ADAM P. MCMILLEN, ESQ.

EMPLOYEE OF *Ranalli, Zaniel, Fowler & Moran*

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF KARL H. SMITH - RENO
50 W. Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendants,
MAYA MICHEL REAGAN AND LAURA JEAN MICHEL

DISTRICT COURT

WASHOE COUNTY, NEVADA

MARIBEL RODRIQUEZ VALDEZ,

Plaintiff,

vs.

REAGAN MAYA MICHEL, LAURA JEAN MICHEL and DOES I-V, Inclusive,

Defendants.

Case No.: CV17-00534

DEPT. NO. 10

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on May 4, 2018, an Arbitration Award was filed in this action. Defendants, Reagan Maya Michel and Laura Jean Michel herein request a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

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AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: May 14, 2018

THE LAW OFFICES OF KARL H. SMITH - RENO

BY: _____

ADAM P. MCMILLEN, ESQ.
Attorney for Defendants,
MAYA MICHEL REAGAN AND LAURA JEAN MICHEL

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 14th day of May, 2018, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

X *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Peter A. Tomaino
201 West Moana Lane
Reno, NV 89509
Attorney for Plaintiff, Maribel Rodriguez Valdez
Phone: (775) 324-1744
Fax: (775) 324-1782

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of
The Law Offices of Karl H. Smith - Reno

Exhibit 6

Exhibit 6

A560
HERB SANTOS, JR., Esq.
Bar #4376
The Law Firm of Herb Santos, Jr.
225 South Arlington Avenue, Suite C
Reno, Nevada 89501
(775) 323-5200

Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PAZ DALMACIO,

Plaintiff,

vs.

BRIAN PALOMAR-LINAREZ, and DOES I-X, inclusive,

Defendants.

Case No. ARB17-01356

Department No. ARB

THE LAW FIRM OF HERB SANTOS, JR.
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ARBITRATOR'S DECISION

The arbitration hearing was held on January 22, 2018. In attendance was the Plaintiff, PAZ DALMACIO, (hereinafter referred to as "Plaintiff"), and her attorney, ROBERT JENSEN, Esq. of the law firm of GALLOWAY & JENSEN, and the Defendant, BRIAN PALOMAR-LINAREZ, (hereinafter referred to as "Defendant") and his counsel, ADAM P. MCMILLEN, Esq. of the law firm of LAW OFFICES OF KARL H. SMITH - RENO. Witness, Lorenzo Rintacutan, was in attendance and testified during the arbitration hearing.

The arbitration hearing was not reported.

I. BACKGROUND FACTS.

A. Accident Summary.

Plaintiff claims personal injuries stemming from an automobile accident which occurred on January 1, 2017.

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The parties submitted the following exhibits relevant to the claim which were admitted:

Exhibit 1	Accident Report Statements of Defendant and Lorenzo B. Rintacutan
Exhibit 2	Case Summary from Reno Municipal Court
Exhibit 3	Photographs taken by Plaintiff
Exhibit 4	Photographs taken by the Nevada Highway Patrol
Exhibit 5	Google Earth Photograph of Accident Scene
Exhibit 6	Estimate of Mr. Rintacutan's Vehicle
Exhibit 7	Plaintiff's Wage Loss Information
Exhibit 8	Medical Records of Paul Ludlow, MD
Exhibit 9	Medical Records of Renown Urgent Care
Exhibit 10	Medical Records from Complete Family Care
Exhibit 11	Medical Records from North Hills Chiropractic
Exhibit 12	Medical Records from Orthopedic Specialists
Exhibit 13	Medical Records from Reno Diagnostic Centers
Exhibit 14	Summary of Plaintiff's Medical Charges
Exhibit 15	Declaration of David Berg, DC
Exhibit 16	Plaintiff's Complaint
Exhibit 17	Defendant's Answer to Complaint
Exhibit 18	Recorded Statement of Defendant

II. STIPULATED FACTS

None.

III. FINDINGS OF FACT

On January 1, 2017 at approximately 11:00 pm, an auto accident occurred between a car driven by Lorenzo Rintacutan and Brian Palomar-Linarez (hereinafter referred to as "Defendant"). Mr. Rintacutan had a passenger in his car, Paz Dalmacio (hereinafter referred to as Plaintiff.) It was snowing and the travel lanes where the accident occurred were slippery and covered in snow.

The Defendant was driving northbound on US395 in the number 2 (slow) lane at approximately 40 miles per hour. The Defendant saw that the traffic in front of him was stopping.

The Defendant began slowing his vehicle. As his vehicle slowed, he started to slide towards the cement wall on the right hand side of the road. As he tried to correct, he lost control and slid back towards the center guard rail. He spun into the number 1 (fast) lane and came to a stop facing east towards the cement wall. His vehicle came to rest in the number 1 (fast) lane. It is uncertain whether part of his vehicle was in the number 2 (slow) lane as there was snow covering the ground. The Defendant noted that there were two (2) vehicles south of him in the northbound lane which appeared to be stopped. The Defendant testified that after looking both directions to make sure it was safe, he began to turn his vehicle northbound. It was clear from his testimony that in order to turn his vehicle northbound, he entered the number 2 (slow) lane to make the turn. As he did this, his vehicle was t-boned by Mr. Rintacutan's vehicle.

The Plaintiff contends that the Defendant cut in front of Mr. Rintacutan's vehicle and that Mr. Rintacutan did not have time to slow, swerve or stop his vehicle before striking the Defendant's vehicle. The Defendant contends that Mr. Lorenzo Rintacutan did not stop and yield to him and hit his vehicle.

The police investigated the accident and took photos of the vehicles. REMSA came and evaluated the Plaintiff. The Plaintiff refused to be transported to the hospital for further evaluation.

On January 3, 2017, Plaintiff presented to Dr. Paul Ludlow, MD. Plaintiff complained of pain around the left ear, headache and neck pain. Dr. Ludlow had performed an ear surgery for the Plaintiff in December of 2016 and was currently following up on her care for that condition. It is uncertain whether the off work note from Dr. Ludlow was for the prior ear surgery that he was treating her for or for the subject car accident. The examination by Dr. Ludlow appears to have primarily centered around the ear. He only notes some muscle tenderness in the head and face.

On the same day, the Plaintiff saw Dr. David Lemak at Renown North Hills Urgent Care. The Plaintiff complained of headache, neck and back pain. Dr. Lemak diagnosed a cervical strain, a concussion without loss of conscious, a low back strain and acute neck pain. Dr. Lemak noted that the Plaintiff had also seen her ENT doctor and that "things were okay." The x-ray taken of the cervical spine was normal. No other diagnstic tests were completed.

The Plaintiff was seen by Dr. Newton Yco at Complete family Care on January 9, 2017.

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The Plaintiff complained of neck pain, low back pain and headaches. The Plaintiff advised that her neck pain and low back pain was a 8/10. There was no indication of radiating symptoms. It was noted that the Plaintiff would follow up with a chiropractor. Dr. Yco prescribed medications.

On January 10, 2017, the Plaintiff saw Dr. David Berg, DC. at North Hills Chiropractic. On the intake form, the Plaintiff checked back pain, back stiffness, dizziness, headaches, neck pain, neck stiff and sleep difficulty as her symptoms. The Plaintiff did not mark arm/shoulder pain. Dr. Berg noted decreased range of motion in the cervical, thoracic and lumbar spine and the hip. Dr. Berg scheduled the Plaintiff for treatment as follows: three (3) treatments per week for two (2) weeks.

The Plaintiff received chiropractic treatment on the following dates: January 11, 13, 16, 17, 18, 24, 25, 26, 31, February 1, 3, 6, 8, 10, 13, 16, 20, 22, 24, 27, March 1, 2, 6, 8, 9, 13, 14, 15, 17, 22, 24, 29, 30, April 3, 5, 7, 11, 21, 26, 28, May 3, 9, 12, 19, 26, 30, and June 13. During the course of the treatment, Dr. Berg also ordered massage therapy. On February 6, 2017, Dr. Berg noted that the Plaintiff was off-work until February 13, 2017. On February 13, 2017, the medical notes do not document that Dr. Berg took the Plaintiff off work. However, they do show that he reduced her treatment schedule to two (2) times per week. On March 15, 2017, Dr. Berg reduced the treatment to one (1) time per week for the next two (2) weeks, however on March 22, 2017, he increased it back to two (2) times per week. On April 21, 2017, Dr. Berg reduced the treatment to one (1) time per week for the next two (2) weeks. On May 12, 2017, Dr. Berg notes that he released the Plaintiff back to full duty in two (2) weeks although the records are void of any work restrictions from February 13, 2017 through May 12, 2017. The Plaintiff did submit off work notes from Dr. Berg for the following periods:

Date of Work Slip	Period of Disability
January 17, 2017	January 17, 2017 through January 30, 2017
January 25, 2017	January 25, 2017 through February 6, 2017
January 31, 2017	January 31, 2017 through February 13, 2017
February 10, 2017	February 10, 2017 through TBD
April 5, 2017	April 5, 2017 through until further notice

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May 3, 2017	Return to work on May 8, 2017
May 3, 2017	Light duty for two weeks
May 19, 2017	May 22, 2017 through June 5, 2017: light duty
May 30, 2017	Return to work full duty on June 5, 2017: no restrictions

Dr. Berg also provided a Declaration which states that he took the Plaintiff off work from January 9, 2017 through May 3, 2017 with light duty through June 5, 2017.

On February 7, 2017, the Plaintiff had an MRI of her cervical spine, thoracic spine and her left shoulder. The cervical MRI showed degenerative changes and a disk protrusion at C4-C5 with annular tearing. The thoracic MRI was normal except for degenerative changes. The left shoulder MRI showed possible adhesive capsulitis, calcific tendinitis of the infraspinatus and mild to moderate rotator cuff tendinopathy without full-thickness or retracted tear. The Arbitrator notes that it is puzzling that the Plaintiff experienced pain in the left shoulder when she was seated in the passenger seat in the front of the vehicle. One would expect the right shoulder as being the shoulder which would have been injured.

The Plaintiff was seen by Dr. Yco on February 9, 2017. The Plaintiff advised that she had received moxibustion treatment, however no records for that treatment were submitted. The Plaintiff also advised that she was seeing the chiropractor for her neck and low back and that she was receiving treatment for her left shoulder. Dr. Yco was advised that there were pending MRIs for the cervical/thoracic and left shoulder. Dr. Yco prescribed medications.

On February 23, 2017, the Plaintiff was seen by Dr. Robert Berry at Orthopedic Rehabilitation Specialists. Dr. Berry noted that she was working full time with no work restrictions. The Plaintiff testified that the records are incorrect as she was not working from the date of the accident through June, 2017. Dr. Berry reviewed the MRI imaging of the neck and shoulder. Dr. Berry opined that the C4-C5 disk protrusion was caused by the January 1, 2017 automobile accident. Dr. Berry also related left rotator cuff tendinitis and a thoracic sprain/strain as related. The Plaintiff advised that the shoulder was her main complaint. Dr. Berry injected the shoulder. Interestingly, Dr. Berry states that the Plaintiff should continue the chiropractic treatment with Dr. Berg which he described as being "very helpful for her." The records also state

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that the Plaintiff told Dr. Berry that the chiropractic treatment was not helping her. Dr. Berry advised that he wanted to see her again in three (3) to four (4) weeks for followup.

The Plaintiff returned to see Dr. Berry on March 27, 2017. The Plaintiff complained primarily of neck pain. Dr. Berry advised that he wanted her to add physical therapy to her treatment program of chiropractic treatment and massage therapy. No records of physical therapy were submitted, however, Dr. Berry notes on April 17, 2017 that the physical therapy was helping her. Dr. Berry advised that he wanted to see her again in three (3) to four (4) weeks for followup.

The Plaintiff was seen by Dr. Yco on March 31, 2017. The Plaintiff advised that she saw Dr. Berry who gave her trigger point injections. The lower back pain had improved to a 5/10. The neck pain was at 7-8/10. Dr. Yco prescribed medications.

The Plaintiff returned to see Dr. Berry on May 15, 2017. The Plaintiff was complained of persistent neck and shoulder pain. Dr. Berry gave her a series of trigger point injections in the shoulder and neck area. Dr. Berry advised that he wanted to see her again in three (3) to four (4) weeks for followup.

The Plaintiff was seen by Dr. Yco on May 26, 2017. The Plaintiff advised that she saw Dr. Berry who gave a shot which improved her symptoms. The lower back pain was resolved. The neck pain was 50% improved. Dr. Yco prescribed medications and stated that it was okay to work in two (2) weeks time.

On May 30, 2017, Dr. Berg notes that the Plaintiff could return to full duty next week. On June 13, 2017 Dr. Berg noted that the Plaintiff was released from active care and had reached MMI status. Dr. Berg noted normal range of motion and the Plaintiff's pain complaints were minimal. According to Dr. Berg, the Plaintiff reported no residual symptoms.

The Plaintiff returned to see Dr. Berry on June 5, 2017. Dr. Berry gave her a series of trigger point injections in the shoulder area. Dr. Berry advised that he wanted to see her again in three (3) to four (4) weeks for followup. The Plaintiff did not return to see Dr. Berry.

The Plaintiff was seen by Dr. Yco on August 4, 2017. The Plaintiff advised that Dr. Berry released her on May 22, 2017 and that she was now on regular duty. Dr. Yco prescribed medications and advised her to return in three (3) months or sooner. The Plaintiff has not returned

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for care with any health care provider although she testified that she continues to have pain in her neck and left shoulder.

The Plaintiff submitted a summary of medical bills which document a total amount charged of $19,208.00. In addition, the Plaintiff submitted lost earnings verification for a total amount of lost wages of $11,122.50. The Defendant did not dispute the basis of these numbers. The defense was that there was no liability.

IV. APPLICABLE LAW.

In a case of negligence, the law in Nevada is clear and well settled. To prevail on a negligence theory, the plaintiff generally must show that: (1) the defendant had a duty to exercise due care towards the plaintiff; (2) the defendant breached the duty; (3) the breach was an actual cause of the plaintiff's injury; (4) the breach was the proximate cause of the injury; and (5) the plaintiff suffered damage. ***Perez v. Las Vegas Medical Center,*** 107 Nev. 1, 4, 805 P.2d 589, 591 (1991).

In addition, the following rules of law are applicable to the present matter:

A negligent defendant is responsible for all foreseeable consequences proximately caused by his negligent act. ***Taylor v. Silva***, 96 Nev. 738, 741, 615 P.2d 970, 971 (1980).

Substantial evidence is "'that which 'a reasonable mind might accept as adequate to support a conclusion.'" ***Prahbu v. Levine***, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (quoting ***State, Emp. Security v. Hilton Hotels***, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

The party seeking damages has the burden of providing an evidentiary basis upon which the fact finder may properly determine the amount of damages. ***Mort Wallin v. Commercial Cabinet***, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989).

Damages need not be proven with mathematical exactitude; the mere fact that some uncertainty exists as to the actual amount of damages sustained will not preclude recovery. ***Frantz v. Johnson,*** 177 Nev. Adv. Opinion 53 (2000).

A party cannot recover damages for loss that he could have avoided by reasonable efforts. ***Conner v. Southern Nevada Paving, Inc.***, 103 Nev. 353, 355, 741 P.2d 800, 801 (1987).

A person who has been damaged by the wrongful act of another is bound to exercise

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reasonable care and diligence to avoid loss and to minimize the damages, and he may not recover for losses which could have been prevented by reasonable efforts on his part or by expenditures that he might reasonably have made. ***Silver State Disposal v. Shelley***, 105 Nev. 309, 774 P.2d 1044 (1989).

V. CONCLUSIONS OF LAW.

1. Liability.

The Plaintiff contends that the Defendant pulled into the number 2 slow lane when it was not safe to do so. The Defendant contends that he cannot be found liable for the damages suffered by the Plaintiff as it was Mr. Rintacutan who caused the accident because he ran into the Defendant. There are two traffic rules which are applicable in this case. The first is NRS 484B.603. The rules states

> 1. The fact that the speed of a vehicle is lower than the prescribed limits does not relieve a driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding highway, or when special hazards exist or may exist with respect to pedestrians or other traffic, or by reason of weather or other highway conditions, and speed must be decreased as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering a highway in compliance with legal requirements and the duty of all persons to use due care.
> 2. Any person who fails to use due care as required by subsection 1 may be subject to any additional penalty set forth in NRS 484B.130 or 484B.135.

The second is NRS 484B.223 and states in part

> 1. If a highway has two or more clearly marked lanes for traffic traveling in one direction, vehicles must:
> (a) Be driven as nearly as practicable entirely within a single lane; and
> (b) Not be moved from that lane until the driver has given the appropriate turn signal and ascertained that such movement can be made with safety.

When the Defendant began to move his vehicle into the slow lane, he had a duty to determine that such movement of his vehicle could be made safely and would no impede oncoming traffic. Clearly it was not safe to enter the slow lane as when he started to pull into the slow lane, the collision occurred. It is clear that he had just started the maneuver based upon the location of the damage to his vehicle. If however, Mr. Rintacutan had hit the Defendant's vehicle while it was stopped and the Defendant had not began attempting to enter into the slow lane, there would be no claim against the Defendant as Mr. Rintacutan would have violated NRS 484B.603. The collision

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occurred because the Defendant pulled in front of Mr. Rintacutan when it was not safe to do so. The Defendant confirmed that he was not stopped but rather was in the process of attempting to turn his vehicle into the northbound slow lane. For this reason, the Defendant was a cause of the collision. Since the Defendant did not join Mr. Rintacutan into the action, the Defendant is faced with 100% responsibility for the accident and the Plaintiff's resulting damages.

2. Damages.

Plaintiff has met her burden of providing an evidentiary basis upon which this Arbitrator can properly determine the amount of damages.

The Plaintiff has submitted the Declaration of Dr. David Berg which establishes that the treatment he provided was directly related to the subject collision. In addition, the medical records of Dr. Berry confirm that his treatment and diagnoses were directly related to the subject collision. Absent any medical opinion to the contrary, the preponderance of the medical evidence supports a finding that the conditions for which the Plaintiff treated were directly related to the subject accident.

As to the wage loss claim, the Plaintiff has submitted medical documentation that Dr. Berg kept her off work and or gave physical restrictions from January 9, 2017 through June 5, 2017. The Defendant did not provide any evidence to contradict the claim. The Plaintiff has met her burden of proof to establish a wage loss.

As to past pain and suffering, I have gone over the medical records thoroughly. The records contain many inconsistencies regarding the Plaintiff's subjective complaints. This makes it very difficult to determine the extent to which the injuries caused her pain and interfered with her daily activities. The period of time that the records support that there was some associated pain is from January 1, 2017 through June 5, 2017, a little over five (5) months. The value is discounted given the many inconsistencies documented in the records. For example, the Plaintiff told Dr. Berry on February 23, 2017 that her pain in the neck was an 8/10 in the morning, 7/10 in the afternoon and 8/10 at night. On February 20, 2017 when she saw Dr. Berg, her neck pain was a 2/10. On February 22, 2017 the neck was listed as a 7/10 but was improved. With her low back she was a 10/10 from January 10 through February 1. On February 3 her pain dropped to a 2 and

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stayed that way until February 16 when it spiked to a 6. What was confusing was that almost all complaints substantially dropped on February 3 when her new complaint of shoulder pain, which was a 10, was first noted. There is no question that the Plaintiff did experience some pain as a result of the accident and should be fairly compensated. I find that $2,000.00 for January and $500.00 for each month thereafter (five months at $2,000.00) fairly compensates her for her pain related to the accident.

As to future pain and suffering, the Plaintiff testified that she continues to experience pain every day and plans to return to the doctor to seek physical therapy. The records however are clear that when she was released by Dr. Berg she had no residual symptoms and had normal range of motion to all injured body parts. It is now over eight months since she was discharged and she has not sought any further treatment. The Plaintiff has not met her burden to establish that she has, or will continue to experience, any symptoms related to the subject accident.

Having reviewed the records, having heard the testimony of the Plaintiff, and having weighed all of the evidence, I find that the Plaintiff is entitled to recover damages as a result of the subject accident. I find that Defendant is responsible for the damages caused by the subject accident and is required under Nevada law to provide the Plaintiff with fair and reasonable compensation for her damages.

VI. ARBITRATOR'S FINDINGS.

Having considered all of the evidence and the testimony offered at the arbitration hearing, I find that the Plaintiff suffered damages as a direct result of the negligence of the Defendant. In determining the extent of damages caused by the collision, I have taken into consideration the nature of the accident and the evidence which was submitted at the time of the hearing. I have also considered the sufficiency of the evidence and the credibility of the parties.

This Arbitrator finds that the injuries affected Plaintiff for approximately five (5) months. For this period, I find that the Plaintiff is entitled to recover $4,000.00 for pain and suffering. In addition, the Plaintiff is entitled to recover her medical bills of $19,208.00 and her loss of earnings of $11,122.50. Thus, the total amount I find for the Plaintiff is $34,330.50.

Based upon these findings concerning the negligence cause of action alleged by the

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Plaintiff in his Complaint, the Arbitrator finds in favor of the Plaintiff and awards damages in the amount of $34,330.50.

An award of attorney's fees and/or costs may be awarded upon proof and if allowed by law. As to interest, Plaintiff's counsel shall make the appropriate calculations for submission along with any motion for attorney's fees and costs if allowed by law.

The undersigned, pursuant to NRS 239B.030, certifies that this document does not contain the social security number of any person.

DATED this 29 day of January, 2018.

THE LAW FIRM OF HERB SANTOS, JR.
225 South Arlington Avenue, Suite C
Reno, Nevada 89501

By _____
HERB SANTOS, JR., ESQ.
Arbitrator

THE LAW FIRM OF HERB SANTOS, JR.
225 South Arlington Avenue, Reno, Nevada, 89501
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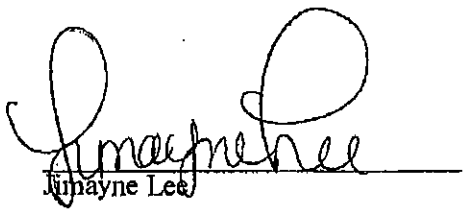
CERTIFICATE OF MAILING

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of the LAW FIRM OF HERB SANTOS, JR. and that on this date, I electronically filed the foregoing document using the ECF System and that on this date I served a true and correct copy of the foregoing document via U.S. Mail to the following:

Robert Jensen, Esq.
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509

Adam McMillen, Esq.
Law Offices of Karl Smith - Reno
50 West Liberty Street, Suite 303
Reno, Nevada 89501

Dated this 09 day of January, 2018.



Jimayne Lee

THE LAW FIRM OF HERB SANTOS, JR.
225 South Arlington Avenue, Reno, Nevada, 89501
Tel: (775) 323-5200 Fax: (775) 323-5211

ADAM P. MCMILLEN, ESQ.
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50 West Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
BRIAN PALOMAR-LINAREZ

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PAZ DALMACIO, Plaintiff, vs. BRIAN PALOMAR-LINAREZ, And DOES I-X, Defendants.	Case No.: CV17-01356 DEPT. NO. 8

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on January 29, 2018, an Arbitration Award was filed in this action. Defendant, Brian Palomar-Linarez, herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

\\\

\\\

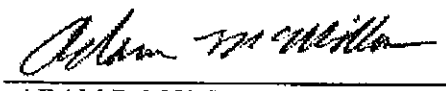
\\\

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: February 26, 2018

LAW OFFICES OF KARL H. SMITH - RENO

BY: 

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
BRIAN PALOMAR-LINAREZ

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of LAW OFFICES OF KARL H. SMITH - RENO and that on the 26th day of February, 2018, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

X___ *Via Electronic Filing* [N.E.F.R. 9(b)]

_____ *Via Electronic Service* [N.E.F.R. 9]

_____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Robert R. Jensen
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
Attorney for Plaintiff, Paz Dalmacio
Phone: (775) 333-7555
Fax: (775) 323-4993

X___ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

Herb Santos, Jr.
The Law Firm of Herb Santos, Jr.
225 S. Arlington Ave., Suite C
Reno, NV 89501
Attorney for, Arbitrator
Phone: (775) 323-5200
Fax: (775) 323-5211

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of Law Offices H. Smith - Reno

FILED
Electronically
CV17-01356
2018-06-11 05:02:14 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6723558

2840

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PAZ DALMACIO,

Plaintiff,

vs.

BRIAN PALOMAR-LINAREZ,

Defendant.

Case No. CV17-01356

Department No.: STP

ORDER GRANTING MOTION FOR REHEARING, STRIKING REQUEST FOR TRIAL DE NOVO, AND RETURN MATTER TO ARBITRATION JUDGE

On May 15, 2018, the Court entered an *Order Denying Motions* wherein the Court denied Plaintiff PAZ DALMACIO's Motion to Strike Request for Trial De Novo and Defendant BRIAN PALOMAR-LINAREZ's Motion for Leave to File Third-Party Complaint. On May 17, 2018, PAZ DALMACIO filed a *Notice of Entry of Order.* Additionally, PAZ DALMACIO filed a *Plaintiff's Motion for Rehearing of Plaintiff's Motion to Strike Request for Trial De Novo* on May 17, 2018. On May 22, 2018, PAZ DALMACIO filed an *Ex Parte Motion for Order Shortening Time to Decide Plaintiff's Motion for Rehearing of Plaintiff's Motion to Strike Request for Trial De Novo.* On May 23, 2018, the Court entered an *Order Shortening Time* concerning Plaintiff's Motion for Rehearing of Plaintiff's Motion to Strike Request for Trial De Novo. On May 31, 2018, BRIAN PALOMAR-LINAREZ filed his *Opposition to Motion for Rehearing.* On June 1, 2018, PAZ DALMACIO filed his *Reply to Opposition to Plaintiff's Motion for Rehearing of Plaintiff's Motion to Strike Request for Trial De Novo,* and submitted the matter for the Court's consideration.

DCR 13(7) provides that "[n]o motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefore, after notice of such motion to the adverse parties." WDCR 12(8) requires that the rehearing of motions to be done in conformity with DCR 13(7). WDCR 12(8) further provides in relevant part that "[a] party seeking reconsideration of a ruling of the court... must file a motion for such relief within 10 days after service of written notice of entry of the order or judgment, unless the time is shortened or enlarged by order." The Nevada Supreme Court has held that "[a] district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry and Title Contractors Ass'n of Southern Nevada v. Jolley, Urga, & Wirth, Ltd., 113 Nev. 737, 741 (1997).

Nevada Arbitration Rule 18 states:

> (A) Within 30 days after the arbitration award is served upon the parties, any party may file with the clerk of the court and serve on the other parties and the commissioner a written request for trial de novo of the action. Any party requesting a trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (C) of this rule.
>
> (B) The 30-day filing requirement is jurisdictional; an untimely request for trial de novo shall not be considered by the district court.
>
> (C) Any party who has failed to pay the arbitrator's bill in accordance with this rule shall be deemed to have waived the right to a trial de novo; if a timely objection to the arbitrator's bill has been filed with the commissioner pursuant to Nevada Arbitration Rules 23 and/or 24, a party shall have 10 days from the date of service of the commissioner's decision in which to pay any remaining balance owing on said bill. No such objection shall toll the 30-day filing requirement of subsection (B) of this rule.
>
> (D) Any party to the action is entitled to the benefit of a timely filed request for trial de novo. Subject to Rule 22, the case shall proceed in the district court as to all parties in the action unless otherwise stipulated by all appearing parties in the arbitration. In judicial districts that are required to provide a short trial program under the Nevada Short Trial Rules, the trial de novo shall proceed in accordance with the Nevada Short Trial Rules, unless a party timely filed a demand for removal from the short trial program as provided in N.S.T.R. 5.
>
> (E) After the filing and service of the written request for trial de novo, the case shall be set for trial upon compliance with applicable court rules. In judicial

districts that are required to provide a short trial program under the Nevada Short Trial Rules, the case shall be set for trial as provided in those rules, unless a party timely filed a demand for removal from the short trial program as provided in N.S.T.R. 5.

(F) If the district court strikes, denies, or dismisses a request for trial de novo for any reason, the court shall explain its reasons in writing and shall enter a final judgment in accordance with the arbitration award. A judgment entered pursuant to this rule shall have the same force and effect as a final judgment of the court in a civil action, and may be appealed in the same manner. Review on appeal, however, is limited to the order striking, denying, or dismissing the trial de novo request and/or a written interlocutory order disposing of a portion of the action.

(G) A motion to strike a request for trial de novo may not be filed more than 30 days after service of the request for trial de novo. (emphasis added).

Plaintiff PAZ DALMACIO asserts that the Court inaccurately calculated the time for Plaintiff to file her Motion to Strike Request for Trial De Novo, thus, it should be reconsidered. PAZ DALMACIO asserts that the first day of the calculated 30 day time period within which PAC DALMACIO had to file his motion to strike started on February 27, 2018. As such, the thirtieth (30th) day fell on March 28, 2018, and adding three (3) days for service pursuant to Administrative Order 2013-03, the deadline would have been Saturday, March 31, 2018. Because the last day fell on a Saturday, the last day is extended to the next business day, Monday, April 2, 2018. NRCP 6(a). PAZ DALMACIO filed his motion to strike on April 2, 2018; therefore, his motion was timely. BRIAN PALOMAR –LINAREZ argues that even if the motion to strike was timely, PAZ DALMACIO is ignoring the other bases for denying the motion - payment of the arbitrator's fees and Nevada's policy of resolving cases on their merits. In reply, PAZ DALMACIO argues that Defendant acknowledges he did not timely pay the arbitrator's fees and costs under NAR 18(A). As such, he has waived his right to file a request for trial de novo because the time limit for payment of fees and costs is mandatory. NAR 18(c). Additionally, PAZ DALMACIO argues that the public policy consideration has no application in the instant case because it was heard on its merits in arbitration.

Even though the Court did not specifically grant PAZ DALMACIO leave to file the motion for rehearing, the Court finds that the motion for rehearing was filed within the appropriate time period under WDCR 12(8) and it should be considered on its merits. After

examining the instant pleadings and the underlying pleadings associated with the May 15, 2018 Order, the Court finds that PAZ DALMACIO has presented evidence that the Court's prior determination concerning the calculation of time for the deadline to file the motion to strike request for trial de novo order was erroneous. Therefore, the motion for reconsideration is granted. See Masonry and Title Contractors Ass'n of Southern Nevada, 113 Nev. at 741.

The Court will next address PAZ DALMACIO's motion to strike BRIAN PALOMAR-LINAREZ's Request for Trial De Novo based upon his failure to pay the Arbitrator's fees within the thirty (30) days pursuant to NAR 18(A). As noted above, BRIAN PALOMAR-LINAREZ admits that he did not timely pay the arbitrator's fees within the 30 day timeframe. NAR 18(C) states that "[a]ny party who has failed to pay the arbitrator's bill in accordance with this rule shall be deemed to have waived the right to a trial de novo." When a statute's language is plain and unambiguous, and the statute's meaning clear and unmistakable, the courts are not permitted to look beyond the statute for a different or expansive meaning or construction." DeStefano v. Berkus, 121 Nev. 627, 629 (2005); see also 3A Sutherland Statutory Construction §67.15, 7th ed. 2010)("[i]n one form or another almost every rule of construction for statutes finds application in the interpretation of the rules of practice." The word "shall" is mandatory and does not denote judicial discretion." Johanson v. Eighth Judicial Dist. Court, 124 Nev. 245, 249-50 (2008). Given that BRIAN PALOMAR-LINAREZ concedes that he did not pay the arbitrator within thirty days-despite certification to the district court that they would timely pay the arbitrator – he waived the right to a trial de novo. Additionally, the Nevada Supreme Court has found that a party's right of access to the courts will be upheld unless the burden imposes "onerous conditions, restrictions, or regulations which would make the right practically unavailable." Zamora v. Price, 125 Nev. 388, 393 (2009). Timely payment requirements rarely are an onerous burden. See, Firelock Inc. v. Dist. Court, 776 P.2d 1090 (1096 (Colo. 1989); See, also, 47 Am.Jur.2d Jury § 62 (2006)("Generally, state statutes and court rules requiring the payment of fees, deposits, or security by the party requesting a jury trial in a civil case do not unconstitutionally interfere with ...[the] right to a jury trial."). Finally, the Nevada Supreme Court Court has found that a "statute meets rational basis review so long as it is reasonably

related to a legitimate government interest." Rico v. Rodriguez, 121 Nev. 695, 702 (2005). NAR 18's timely payment requirement is reasonably related to the purpose of Nevada's Annexed Arbitration Program, namely, "provid[ing] a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." Casino Props., Inc. v. Andrews, 112 Nev. 132, 135 (1996). As such, the Court finds that it must strike BRIAN PALOMAR-LINAREZ's Request for Trial De Novo for his failure to timely pay the arbitrator's fees.

Based on the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that PAZ DALMACIO's motion for rehearing is GRANTED.

IT IS HEREBY FURTHER ORDERED that PAZ DALMACIO's Motion to Strike Request for Trial De Novo is GRANTED; therefore, the Clerk of the Court shall strike Defendant BRIAN PALOMAR-LINAREZ's Request for Trial De Novo filed on February 26, 2018 for failure to pay arbitrator's fees timely pursuant to NAR 18(A).

IT IS HEREBY FURTHER ORDERED that this matter is referred back to the Arbitration Judge for all further proceedings.

DATED this 11 day of June, 2018.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV17-01356

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 11 day of June, 2018, I filed the **ORDER GRANTING MOTION FOR REHEARING, STRIKING REQUEST FOR TRIAL DE NOVO, AND RETURN MATTER TO ARBITRATION JUDGE** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

_____**Personal delivery to the following: [NONE]**

__X__**Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

ADAM MCMILLEN, ESQ. for BRIAN PALOMAR-LINAREZ
ELIZABETH BEYER, ESQ. – APPOINTED SHORT TRIAL JUDGE
ROBERT JENSEN, ESQ. for PAZ M. DALMACIO

_____**Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

_____**Placed a true copy in a sealed envelope for service via:**

_____ Reno/Carson Messenger Service – **[NONE]**

_____ Federal Express or other overnight delivery service **[NONE]**

DATED this 11 day of June, 2018.

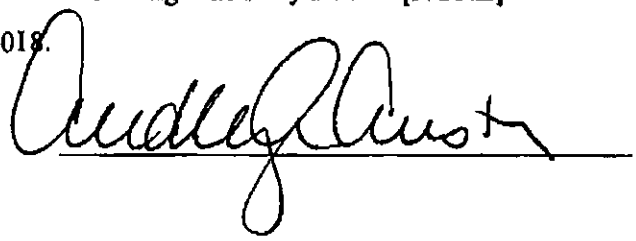


Exhibit 7

Exhibit 7

A201
Michael E. Sullivan, Esq. (SBN 5142)
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ANTHONY ELK,

Plaintiff,

v.

MICHAEL BERGIN MURPHY, an individual, and DOES I-X, inclusive,

Defendants.

Case No.: ARB17-01614

Dept. No.: ARB15

ARBITRATOR'S DECISION

I. INTRODUCTION

The arbitration hearing in this matter was held on the 9th day of April, 2018 at the law offices of Robison, Sharp, Sullivan & Brust in Reno, Nevada. Attorney Graham Galloway, Esq. appeared on behalf of the Plaintiff, Anthony Elk. Defendant Michael Bergin Murphy was present with his attorney Adam P. McMillen, Esq. It should first be noted that both attorneys made excellent presentations and provided the Arbitrator with excellent briefs. This is commendable and made my job much easier.

II. FINDINGS OF FACT

After testimony and witnesses, the Arbitrator finds that liability rests exclusively with Defendant Michael Murphy. Mr. Murphy admitted that he did not look right before entering the crosswalk and conceded that this is where the accident occurred.

The fact that Plaintiff was cited for having a bicycle on the crosswalk is not

relevant to this Arbitrator's determination of liability, although I can understand why Defendant argued it. Plaintiff shall be entitled to recover all of his medical bills in the amount of $13,698.80. These bills appear to be fair, reasonable and directly related to the accident. Plaintiff shall also recover $150.00 for the destruction of his bicycle and finally Plaintiff shall be awarded $3,000 for modest pain and suffering that he incurred to his leg and should injuries that appeared to be fully recovered two to four months after the accident. Plaintiff was not clear or articulate on his pain and suffering claim.

Accordingly, the total award shall be $16,848.80.

II. CONCLUSION

After carefully considering the evidence, the Arbitrator finds in favor of the Plaintiff on his First Claim for Relief for negligence and awards damages in the amount of $16,848.80.

If either party is intending to file and serve a motion for fees, costs or pre-judgment interest, that party must do so in compliance with the Arbitration Rules. The opposing party must immediately file their response and the Arbitrator shall make a decision on fees and costs if appropriate with a separate order. The Arbitrator will send a statement for his fees and costs within ten (10) days of any decision regarding fees and costs.

AFFIRMATION: The undersigned does hereby affirm that this document does not contain the Social Security Number of any person.

DATED this 10th day of April, 2018.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: _____
MICHAEL E. SULLIVAN, ESQ.
Court-appointed Arbitrator

Robison, Sharp, Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

NOTICE

Pursuant to N.A.R. 18(A), you are hereby notified you have thirty (30) days from the date you are served with this document within which to file a written Request for Trial de Novo with the Clerk of the Court and serve the ADR Commissioner and all other parties.

Pursuant to N.A.R. 18(D), the Trial de Novo shall proceed in accordance with the Nevada Short Trial Rules, unless a party timely files a Demand for Removal from the Short Trial Program as provided in N.S.T.R. 5.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document and/or attachments do not contain the social security number of any person.

DATED this 10th day of April, 2018.

ROBISON, SIMONS, SHARP & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

By: _____
MICHAEL E. SULLIVAN, ESQ.
Court-Appointed Arbitrator

Robison, Sharp, Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SIMONS, SHARP & BRUST, and that on this date I caused a true copy of **ARBITRATOR'S DECISION** to be served on all parties to this action by:

____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

____ personal delivery/hand delivery

__X__ emailing an attached Adobe Acrobat PDF version of the document to the email addresses below/facsimile (fax) and/or E-Filing pursuant to Section IV of the District of Nevada Electronic Filing Procedures:

Graham Galloway, Esq.
Attorney for Plaintiff

Karl Smith, Esq.
Attorney for Defendant

Adam P. McMillen, Esq.
Attorney for Defendant

____ Federal Express/UPS or other overnight delivery

____ Reno Carson Messenger Service

Dated this 10th day of April, 2018.

Employee of Robison, Sharp, Sullivan & Brust

J:\WPData\MES\Arbitrator\6103.001 Elk v. Murphy\P-Arbitrator Decision 4-9-18.docx

Robison, Belaustegui, Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
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50 West Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
MICHAEL BERGIN MURPHY

DISTRICT COURT

WASHOE COUNTY, NEVADA

ANTHONY ELK, an individual,, Plaintiff, vs. MICHAEL BERGIN MURPHY, an individual, and DOES I-X, inclusive,, Defendants.	Case No.: CV17-01614 DEPT. NO. 15

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on April 10, 2018, an Arbitration Award was filed in this action. Defendant, Michael Bergin Murphy herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

\\\

\\\

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: April 11, 2018

LAW OFFICES OF KARL H. SMITH - RENO

BY: _____

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
MICHAEL BERGIN MURPHY

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of LAW OFFICES OF KARL H. SMITH - RENO and that on the 11th day of April, 2018, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

X *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Graham Galloway, Esq.
Galloway & Jensen
222 California Avenue
Reno N, NV 89509
Attorney for Plaintiff, Anthony Elk
Phone: (775) 333-7555
Fax: (775) 323-4993

Michael E. Sullivan
Robison, Belaustegui, Sharp & Low
71 Washington St
Reno, NV 89503
ARBITRATOR
Fax: (775) 329-7169

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of the
Law Offices of Karl H. Smith - Reno

Exhibit 8

Exhibit 8

ARB 201
PAUL A. KAPITZ, ESQ.
Nevada State Bar No. 5386
137 Mt. Rose Street
Reno, Nevada 89509
(775) 329-1888

Arbitrator

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

JENNIFER HAKANSSON,

Plaintiff,

vs.

CASE NO. ARB17-01939

DEPT. NO. ARB

CARLTON GARFIELD SLOAN, DOES I-X, inclusive,

Defendants.

/

ARBITRATOR'S AWARD

Based upon the evidence presented at the arbitration hearing concerning the cause of action alleging negligence brought by Plaintiff, Jennifer Hakansson, as against Defendant, Carlton Garfield Sloan, the Arbitrator finds in favor of Plaintiff Jennifer Hakansson and awards Plaintiff Jennifer Hakansson, the total sum of Eleven Thousand Nine Hundred Forty-Two and 00/100 Dollars ($11,942.00).

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

DATED this 9th day of June, 2018.

By: _____
PAUL A. KAPITZ, ESQ.
137 Mt. Rose Street
Reno, NV 89509
Arbitrator

Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1888 FAX (775) 329-1876

Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1868 FAX (775) 329-1876

CERTIFICATE OF SERVICE

Case Number:	ARB17-01939
Judge:	HONORABLE BARRY L. BRESLOW
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	JENNIFER HAKANSSON VS. CARTON SLOAN (ARB)

This certificate was automatically generated by the courts auto-notification system.

Date Generated: 06-09-2018:09:59:23

I hereby certify that on 06-09-2018, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

ADAM MCMILLEN, ESQ. for CARLTON GARFIELD SLOAN
MATTHEW DION, ESQ. for JENNIFER HAKANSSON
PAUL KAPITZ, ESQ.

DATED this 9th day of June, 2018.

PAUL A. KAPITZ

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF KARL H. SMITH - RENO
Mail to:
P.O. Box 258829
Oklahoma City, OK 73125-8829
Physical Address:
50 West Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
CARLTON GARFIELD SLOAN

DISTRICT COURT

WASHOE COUNTY, NEVADA

JENNIFER HAKANSSON, Plaintiff, vs. CARLTON GARFIELD SLOAN, DOES I through X, inclusive, Defendants.	Case No.: CV17-01939 DEPT. NO. 1

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on June 9, 2018, an Arbitration Award was filed in this action. Defendant, Carlton Garfield Sloan herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: June 18, 2018

THE LAW OFFICES OF KARL H. SMITH - RENO

BY: _____

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
CARLTON GARFIELD SLOAN

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 18th day of June, 2018, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Matt L. Dion
Matt Dion & Associates
275 Hill Street, Suite 248
Reno, NV 89501
Attorney for Plaintiff, Jennifer Hakansson
Phone: (775) 737-4500
Fax:

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of The Law Of
Karl H. Smith - Reno

FILED
Electronically
CV17-01939
2018-12-11 08:09:09 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7017061

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JENNIFER HAKANSSON,
Plaintiff,

vs.

CARLTON GARFIELD SLOAN,
DOES I through X, inclusive,
Defendant.

Case No: CV17-01939
Dept. No: STP

VERDICT

We, the jury in the above entitled action, find for the Plaintiff, JENNIFER HAKANSSON, against the Defendant, CARLTON GARFIELD SLOAN, and assess the total amounts of the Plaintiff's damages as follows:

Medical Expenses: $ 4000

Pain and Suffering: $ 4,000

TOTAL $ 8,000.-

DATED this 10th day of December 2018.

FOREPERSON

Exhibit 9

Exhibit 9

FILED
Electronically
ARB18-00457
2018-11-16 04:31:21 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6981839

Code: A201
Brian M. Brown, Esq.
Nevada Bar No. 5233
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 S. McCarran, Suite B
Reno, Nevada 89509
Court-Appointed Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VERTIS AMIEL HAGAN, individually and as the natural parent and guardian of MICAH HAGAN,

Plaintiff,

vs.

ALEXANDER GARY GREEN, DOES I through X, inclusive,

Defendant.

Case No. ARB18-00457

Dept. No. ARB

ARBITRATION AWARD

The arbitration hearing in this matter was held on the 16th day of November, 2018. Based upon the evidence presented at the arbitration hearing concerning the cause of action for negligence, the arbitrator finds in favor of Plaintiff and awards damages in the amount of $11,233.00.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned hereby affirms that this document does not contain the Social Security number of any person.

DATED this 16th day of November, 2018.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: */s/ Brian Brown*
BRIAN M. BROWN, ESQ.
Court-Appointed Arbitrator

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk Balkenbush & Eisinger, and that on this date I electronically filed the foregoing ARBITRATION AWARD with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Matthew L. Dion, Esq.
Matt Dion & Associates, LLC
275 Hill Street, Suite 204
Reno, NV 89501
Attorney for Plaintiff

Adam P. McMillen, Esq.
The Law Offices of Karl H. Smith – Reno
50 West Liberty Street, Suite 303
Reno, NV 89501
Attorney for Defendant

DATED this 16th day of November, 2018.

/s/ Laura Bautista
An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF KARL H. SMITH - RENO
50 West Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
ALEXANDER GARY GREEN

DISTRICT COURT

WASHOE COUNTY, NEVADA

VERTIS AMIEL HAGAN individually and as the natural parent and guardian of MICAH HAGAN,

Plaintiff,

vs.

ALEXANDER GARY GREEN, DOES I through X, inclusive,

Defendants.

Case No.: CV18-00457

DEPT. NO. 9

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on November 16, 2018, an Arbitration Award was filed in this action. Defendant, Alexander Gary Green herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

\\\

\\\

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: November 28, 2018

THE LAW OFFICES OF KARL H. SMITH - RENO

BY: _____

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
ALEXANDER GARY GREEN

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 28th day of November, 2018, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Matthew Dion
Mathew Dion and Associates
275 Hill Street, Suite 248
Reno, NV 89501
Attorney for Plaintiff, Vertis Amiel Hagan
Phone: (775) 737-4500
Fax: (775) 737-4510

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of
The Law Offices of Karl H. Smith - Reno

CODE: STP
Graham Galloway
Nevada State Bar No. 221
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Short Trial Judge

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

VERTIS AMIEL HAGAN, individually and as the parent and legal guardian of MICAH HAGAN,

Plaintiff,

vs.

ALEXANDER GREEN, and DOES I-X, inclusive,

Defendants.

Case No.: CV18-00457

Dept. No.: STP

/

SHORT TRIAL PROGRAM-SCHEDULING ORDER

TO: ALL PARTIES OR THEIR RESPECTIVE COUNSEL OF RECORD

A. The above-entitled case is set to be tried as part of the Short Trial Program (STP) before Short Trial Judge Graham Galloway. Pursuant to Section IV, Rule 12 of the Nevada Short Trial Rules, good cause exists for the trial being scheduled beyond 120 days from the appointment of the Short Trial Judge of difficulties conferring all counsel on this matter and scheduling conflicts on the Short Trial Judge's calendar. Trial shall be held on **Monday, May 20, 2019 at 8:00 a.m.** Counsel are directed to be in court at 7:45 a.m. sharp on the day of trial. Jury selection will begin promptly at 8:00 a.m., courtroom assignment is Courtroom A, First Floor, Washoe County Courthouse.

B. Scheduling Order deadlines are as follows:

Joint Pretrial Memorandum:	May 9, 2019
Motions in Limine:	May 9, 2019
Evidentiary Objections to Proposed Exhibits:	May 9, 2019
Pretrial Conference:	May 10, 2019
One day jury trial with four (4) jurors set for:	May 20, 2019

At the parties request no discovery deadline has been set. If there are any disputes regarding discovery, the parties are instructed to contact the short trial judge.

C. Any special needs for witnesses and/or arrangements for any courtroom equipment for the parties are the responsibility of the requesting party and must be arranged in advance by the requesting party. The parties are to assume that the Short Trial Judge will not provide any equipment or coordinate the logistical arrangements.

D. Counsel are directed to personally serve the Short Trial Judge with the Joint Pretrial Memorandum, by **5:00 p.m. on May 9, 2019**, containing the information required by NSTR 9. All proposed jury instructions and verdict forms must be submitted with the Pretrial Memorandum. Evidentiary Booklets as Contemplated by NSTR 18 must also be submitted at this time. All documents must be tabbed and Bates-stamped, together with standard Plaintiff/Defendant Trial Exhibit Lists.

E. Counsel is directed to serve the Short Trial Judge with a copy of any motions in limine, oppositions to and objections to exhibits, trial testimony, jury instructions, and/or verdict forms by **5:00 p.m. on May 9, 2019.**

F. A Pretrial Conference is scheduled to be held **May 10, 2019 at 10:00 a.m. at Galloway & Jensen, 222 California Avenue, Reno, Nevada 89509**. Counsel should appear in person at this conference and have representatives available to engage in meaningful settlement discussions. During this conference, any motions or disputes may be ruled on, including motions to exclude evidence witnesses, jury instructions, verdict forms, or other pretrial evidentiary matters. Counsel may have the Pretrial Conference court reported (at counsel's expense) if so desired. If

GALLOWAY
& JENSEN
222 California Ave
Reno, NV 89509
(775) 333-7555

counsel elects to do so, the undersigned and opposing counsel shall be notified not later than twenty-four (24) hours in advance.

G. On the day of trial, counsel will coordinate between themselves production of the following:

1. Plaintiff's counsel shall bring/provide the **original and four (4) copies** of all Jury Instructions and Verdict Forms, (original copy of the verdict form and jury selection form must be two-hole punched and stamped "original"). Plaintiff is to provide **one dozen (12)** small bottles of water for juror use during the proceedings.

2. Defendant's counsel shall bring/provide **eight (8) evidence notebooks** (one for the plaintiff, one for the defendant, one for the short trial judge, and four for the jury) that conform to the pretrial conference conducted before trial; and **four (4) notepads and pencils** for the jurors.

H. The deadlines set forth in this order are firm and must be adhered to. Failure to comply with the deadlines and/or the Short Trial Rules that results in a continuance of the trial may result in the offending party being held responsible for all costs incurred by such continuance.

I. In the event a case settles before the scheduled short trial, the parties must, no less than two working days after a settlement is reached, submit to the Second Judicial District Court Judge (currently Department 4) either a written Stipulation and Order for Dismissal executed by the parties and/or their attorneys or a written statement signed by counsel confirming that the parties have reached a settlement.

J. Pursuant to Short Trial Rule 30, each party is required to deposit $875.00 as an advance of fees and costs. This deposit has been made by defense counsel only.

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GALLOWAY & JENSEN
222 California Ave
Reno, NV 89509
(775) 333-7555

AFFIRMATION Pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 5 day of February, 2019.

By: _____
PRESIDING SHORT TRIAL JUDGE
Graham Galloway
222 California Avenue
Reno, Nevada 89509

GALLOWAY
& JENSEN
222 California Ave
Reno, NV 89509
(775) 333-7555

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN, and on the 5th day of February, 2019, I e-filed the **SHORT TRIAL PROGRAM-SCHEDULING ORDER** and a copy will be electronically mailed by the Second Judicial District Court Electronic Filing System to the following:

Matthew Dion, Esq.
Matt Dion & Associates LLC
275 Hill Street #248
Reno, Nevada 89501
Attorneys for Plaintiff

Adam McMillen, Esq.
Law Offices of Karl H. Smith
50 West Liberty Street, Suite 303
Reno, Nevada 89501
Attorneys for Defendant

Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN, and that on the ____ day of February, 2019, I deposited for mailing in Reno, Nevada, a true and correct copy of the **SHORT TRIAL PROGRAM-SCHEDULING ORDER** addressed to:

[None]

Jennifer Sanchez

GALLOWAY & JENSEN
222 California Ave
Reno, NV 89509
(775) 333-7555

Exhibit 10

Exhibit 10

gr

Code No.
RICHARD G. HILL, ESQ.
State Bar No. 596
RICHARD G. HILL, LTD.
652 Forest Street
Reno, Nevada 89509
(775) 348-0888
rhill@richardhillaw.com
Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

TYLER DAVID CODMAN,

Plaintiff,

v.

TERESA LYNN GREGORY, and DOES 1 through 10,

Defendants.

Case No.: ARB18-00744

Dept. No.: ARB

ARBITRATOR'S DECISION

The above-captioned arbitration came on regularly for a hearing on March 6, 2019, before the undersigned appointed and acting Arbitrator. Both parties were present and represented by counsel.

On September 5, 2017, an automobile accident occurred. The defendant, driving southbound on Longley Lane in Reno, Nevada, struck the plaintiff's car when she (defendant) tried to turn left onto Barron Way. Plaintiff's truck was totaled. He declined medical attention at the scene.

Three days later, plaintiff began treatment with Kong Shang, a chiropractor. Plaintiff was treated over the ensuing months for the kind of whiplash-type (generally soft

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LAW OFFICE
RICHARD G. HILL
652 Forest Street
Reno, Nevada 89509
(775) 348-0888
Fax(775) 348-0858

tissue) injuries common in minor car accidents. While plaintiff continued his treatments until December 17, 2017, there was testimony by plaintiff that he broke a finger playing kickball on October 31, 2017.

Plaintiff claims to have lost his job as a result, not of his injuries, but because he lost his means of transportation. Plaintiff's testimony on why and when he lost the job he held on the date of the accident was inconsistent with his prior deposition testimony and the defense's data on when a rental vehicle was provided to him. He maintains he was terminated because he had no way to get to work to start his shift as a "picker" in a warehouse beginning somewhere between 2 to 4 a.m. Plaintiff was provided transportation within a week of the accident, but testified he was unable to find a job. Plaintiff testified he was not able to find new employment until mid-October, 2017, a date his counsel said was October 13, 2017. Plaintiff claims he was out of work for 27 days, and then, when he returned, he was making $1.00 per hour less than in his old job. Plaintiff testified to having sustained some brain injuries at age 8, and being told that he was "slow," which explains why he was not good with details. He is 24 years old and lives at home with his parents.

The Arbitrator is not moved by the confusion over plaintiff's termination. The only evidence was from plaintiff, and his story, while somewhat inconsistent, was plausible, and supported by some evidence. Fortunately for plaintiff, his injuries were minor and do not appear to have resulted in long-term pain.

Over plaintiff's objection, defendant opined that she and plaintiff were equally at fault in causing the accident. Defendant conceded she mis-judged plaintiff's speed at the time of the accident. However, she did not offer any opinion as to what plaintiff did to contribute to the accident, other than his being on the road. Any comparative negligence defense is not supported by substantial evidence.

Plaintiff's complaint sounded in negligence, and although plaintiff broke his claim into claims for relief, he brought but one claim: Negligence.

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LAW OFFICE
RICHARD G. HILL
852 Forest Street
Reno, Nevada 89509
(775) 348-0888
Fax(775) 348-0858

Based upon the evidence at the arbitration hearing concerning plaintiff's claim for relief on negligence against the defendant, the Arbitrator finds in favor of plaintiff, TYLER DAVID CODMAN, and awards damages in the amount of $19,999.00 against the defendant, TERESA LYNN GREGORY.

IT IS SO ORDERED.

AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 12th day of March, 2019.

RICHARD G. HILL, LTD.

RICHARD G. HILL, ESQ.
652 Forest Street
Reno, Nevada 89509
Arbitrator

LAW OFFICE
RICHARD G. HILL
652 Forest Street
Reno, Nevada 89509
(775) 348-0888
Fax(775) 348-0858

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RICHARD G. HILL, LTD., and that on the 11th day of March, 2019, I electronically filed the foregoing **Arbitrator's Order** with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Adam P. McMillen, Esq.
Law Offices of Karl H. Smith - Reno
50 West Liberty Street, Suite 303
Reno, Nevada 89501
adam.mcmillen@farmersinsurance.com

Charles C. Diaz, Esq.
Diaz & Galt, LLC
443 Marsh Avenue
Reno, Nevada 89509
cdiaz@diazgaltlaw.com

Jolinda Records

LAW OFFICE
RICHARD G. HILL
852 Forest Street
Reno, Nevada 89509
(775) 348-0888
Fax(775) 348-0858

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF S. DENISE MCCURRY - RENO
Mail to:
P.O. Box 258829
Oklahoma City, OK 73125-8829
Physical Address:
50 W. Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
TERESA LYNN GREGORY

DISTRICT COURT

WASHOE COUNTY, NEVADA

TYLER DAVID CODMAN, Plaintiff, vs. TERESA LYNN GREGORY, and DOES 1 through 10, Defendants.	Case No.: CV18-00744 DEPT. NO. 1

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on March 11, 2019, an Arbitration Award was filed in this action. Defendant, Teresa Lynn Gregory herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: March 11, 2019

THE LAW OFFICES OF S. DENISE MCCURRY - RENO

BY: _____

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
TERESA LYNN GREGORY

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the 12th day of March, 2019, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Charles C. Diaz
Diaz & Galt, LLC
443 Marsh Avenue
Reno, NV 89509

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of
The Law Offices of S. Denise McCurry - Reno

Exhibit 11

Exhibit 11

FILED
Electronically
ARB18-01416
2019-01-16 01:35:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7070930

A201
Brent H. Harsh, Esq.
COULTER HARSH LAW
403 Hill Street
Reno, Nevada 89501
(775) 324-3380
Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

EDITH VANESSA WRIGHT,

Plaintiffs,

vs.

KERRY MARIE PRITCHARD, and DOES I-V, inclusive,

Defendants.

CASE NO.: ARB18-01416

DEPT. NO.: ARB

ARBITRATION AWARD

An arbitration was held on January 16, 2019, and after considering the pleadings and paper on file, the testimony of the parties, I hereby find in favor of the Plaintiff, and award the Plaintiff EDITH VANESSA WRIGHT as follows:

Past Medical Specials:	$14,596.57
Future Medical Specials:	$0.00
Past Pain and Suffering:	$5,000.00
Future Pain and Suffering:	$0.00
Property Damage:	$4,945.00
Tow/1st Day Storage:	$331.40
Reasonable Storage (30 days at $50/day):	$1,500.00
TOTAL:	**$26,372.97**

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AFFIRMATION

Pursuant to NRS 239B.030, The undersigned does hereby affirm that the proceeding document does not contain the social security number of any person.

Dated this 16 day of Jan 2019.

Brent H. Harsh, Esq.
Nevada Bar No. 8814
403 Hill Street
Reno, Nevada 89501
(775) 324-3380
Arbitrator

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BRENT HARSH LAW, in Reno, Nevada, and that on this date I served the foregoing:

ARBITRATION AWARD

___ **Via first-class mail** by placing the document listed above in a stamped and sealed envelope in Reno, Nevada addressed as set forth below;

X **Via facsimile;**

X **Via E-flex;**

Peter A. Tomaino, Esq.
201 West Moana Lane
Reno, NV 89509
Tel: 775-324-1744
Fax: 775-324-7800
Attorney for Plaintiff

Adam P. McMillen, Esq.
50 W. Liberty, Suite 303
Reno, NV 89501
Tel: 775-329-2221
Fax: 775-329-2121
Attorney for Defendant

DATED: this 16 day of June 2019

An employee of
COULTER HARSH LAW

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF STACEY A. UPSON - RENO
50 West Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
KERRY MARIE PRITCHARD

DISTRICT COURT

WASHOE COUNTY, NEVADA

EDITH VANESSA WRIGHT, Plaintiffs, vs. KERRY MARIE PRITCHARD, and DOES I - V, Inclusive, Defendants.	Case No.: CV18-01416 DEPT. NO. 4

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on January 16, 2019, an Arbitration Award was filed in this action. Defendant, Kerry Marie Pritchard herein request a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

\\\

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: January 22, 2019

THE LAW OFFICES OF STACEY A. UPSON - RENO

BY: _____

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
KERRY MARIE PRITCHARD

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF STACEY A. UPSON - RENO and that on the 23rd day of January, 2019, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

X *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

Peter A. Tomaino
201 West Moana Lane
Reno, NV 89509
Attorney for Plaintiff, Edith Vanessa Wright
Phone: (775) 324-1744
Fax: (775) 324-1782

Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of The Law Of
Stacey A. Upson - Reno

FILED
Electronically
CV18-01416
2019-03-25 10:45:01 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7182461 : yviloria

Code No. STP

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

EDITH VANESSA WRIGHT

Plaintiff
vs

Case No. CV18-01416
Dept. No. STP

KERRY MARIE PRITCHARD,
DOES I-V, inclusive,

Defendant(s)
_____/

SHORT TRIAL PROGRAM-SCHEDULING ORDER

TO: Plaintiff Edith Wright and her attorneys at Peter A. Tomaino, Inc., and Defendant Kerry Pritchard and her attorneys at Law Offices of S. Denise McCurry.

By Order filed February 26, 2019 Lance R. Van Lydegraf was appointed as to serve as the short trial Judge for these proceedings. A mandatory discovery and settlement conference was held March 25, 2019, Plaintiff appeared through her attorney Wyatt G. Herbst, Esq., and Defendant appeared through the offices of her attorneys. A trial date, discovery dates, and a pre-trial conference date were set and the conference was concluded.

A. **PRIOR PROCEEDINGS in ARB 18-01416 and CV18-01416.**

1. A Complaint was filed July 11, 2018, served July 23, 2018 and the Answer was filed August 10, 2018. An Arbitration Award was filed in ARB18-01416 on January 16, 2019 finding in favor of Plaintiff and against Defendant, and Defendant filed a Request for Trial De Novo in CV18-01416 and deposited the juror fee on January 23, 2019.

B. The Trial date, Scheduling Order conference date, and other deadlines are set as follows:

1. A one day Jury Trial with **four (4) jurors** is set for: **Monday JUNE 24, 2019, to begin at 8:00 a.m.** Counsel may have the Trial court reported (at counsel's expense). If

counsel elects to do so, the undersigned and opposing counsel shall be notified not later than noon on the Friday before trial.

2. A Pre-Trial Conference and Settlement Conference set a minimum of ten days pre-trial is set for **Monday June 3, 2019 @ 10:00 a.m. at 526 Lander Street, Reno, Nevada, 89509.** Counsel, their clients and representatives authorized to engage in final settlement negotiations shall attend the conference; If not settled, the court shall hear and decide any disputes regarding pre-trial motions, objections, jury instructions, exhibits, and witnesses.

3. A **Joint Pre-Trial Memorandum** (See NTSR 9), proposed jury instructions, verdict forms, exhibits, pre-trial motions and objections, if any, will be provided to the presiding judge on the date and at the time of the pre-trial conference. Evidentiary Booklets as Contemplated by NSTR 18 may also be submitted at this time. All documents must be tabbed and Bates-stamped, together with standard Plaintiff/Defendant Trial Exhibit Lists. The Arbitrator Decision which may be admitted as an Exhibit shall conform to NRS 38.259 (1).

C. Any special needs for witnesses and/or arrangements for any courtroom equipment to be used by the parties are the responsibility of the requesting party and must be arranged in advance by the requesting party. The parties are to assume that the Pro Tempore Judge will not provide any equipment or coordinate the logistical arrangements.

D. Discovery, by deposition or otherwise, if any, must be completed 45 days prior to trial. Any written expert report as a party may elect to use at trial must be served no less than 30 days prior to the pre-trial conference, and any written rebuttal expert report must be served no less than 15 days prior to pre-trial conference.

E. Counsel are directed to serve the Pro Tempore Judge with a copy of any oppositions to and objections to the evidentiary exhibits, trial testimony, jury instructions, witnesses, and/or verdict forms at the pretrial conference.

F. At the **Pre-Trial Conference** (PTC) Counsel AND CLIENTS must appear in person and have representatives available to engage in meaningful settlement discussions. During this conference, any motions or disputes may be ruled on, including motions to exclude evidence, witnesses, jury instructions, verdict forms or other pretrial evidentiary matters. Counsel may have the Pre-Trial Conference court reported (at counsel's expense) if so desired. If counsel elects to do so, the undersigned and opposing counsel shall be notified not later than twenty-four (24) hours in advance.

G. On the day of trial counsel for Plaintiff will provide the following:

1. **Plaintiff** shall bring/provide the **original and four (4) copies** of all Jury Instructions and Verdict Forms, (The original copy of the Verdict Form and Jury Instructions must be two-hole punched and stamped "original").

2. **Plaintiff** shall bring/provide: (1) **seven (7) Evidence Notebooks** (one for plaintiff, one for the defendant, one for the short trial judge, and four (4) for the four person jury) that contain evidence that shall conform to the rulings at the pretrial conference conducted before trial

3. **Defendant** shall bring/provide **four (4) notepads and PENCILS** for the jurors; and (3) **one dozen** (12) small bottles of water for juror use during the proceedings.

H. The deadlines set forth in this order are firm and must be adhered to. Failure to comply with the deadlines and/or the Short Trial Rules that results in a continuance of the trial may result in the offending party being held responsible for all costs incurred by such continuance.

I. In the event a case settles before the scheduled short trial, the parties must, no less than two working days after a settlement is reached, submit to the presiding District Court Judge, currently Department 4, either a written Stipulation and Order of Dismissal with instructions for the return of juror fees executed by the parties and/or their attorneys or a written statement signed by counsel confirming that the parties have reached a settlement.

J. Pursuant to Short Trial Rule 30, Plaintiff and Defendant are each required to deposit $875.00 as an advance payment of trial judge fees and costs at the time of the **Scheduling Order conference**, and the deposit must be made no later than thirty days thereafter. Checks are to be made payable to Lance R. Van Lydegraf, Esq., IOLTA Trust Account.

DATED this 25th day of March, 2019

PRESIDING JUDGE PRO TEMPORE
LANCE R. VAN LYDEGRAF

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), and N.E.F.R 9(b)(d) I certify that I am an employee of or the lawyer in the law office of Lance R. Van Lydegraf, Esq., appointed as Short Trial Judge herein, and that on this date I served the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States mail, at Reno, Nevada, by certified mail return receipt requested, postage prepaid, following ordinary business practices.

_____ Personal delivery via RCMS

_____ Facsimile

_____ Federal Express or other overnight delivery

__xx__ Email MM /E-flex

Addressed as follows:

Kyle Stooki, Esq.
Peter A. Tomaino, Inc.
201 W. Moana Lane
Reno, Nevada 89509
Attorney for Plaintiff

775-324-1744
775-324-1782
diana@tomainolaw.com

peter@tomainolaw.com

Adam P. McMillen, Esq.,
Law Office S. Denise McCurry
50 W. Liberty St. Suite 303
Reno, Nevada 89501

775 329-2221
775 329-2121

Adam.mcmillen@farmersinsurance.com

Dated this 25 day of March, 2019

Lance R. Van Lydegraf

AFFIRMATION

Pursuant to NRS 239B.030 the undersigned does hereby affirm that the preceding document, does not contain the social security number of any person

Lance Van Lydegraf

FILED
Electronically
CV18-02032
2019-07-15 11:51:16 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7372616 : csulezic

Exhibit 12

Exhibit 12

FILED
Electronically
ARB18-01798
2019-03-18 02:35:22 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7171907

CODE: A201
Graham Galloway
Nevada State Bar No. 221
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Court Appointed Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN S. WALKER,

Plaintiff,

vs.

SHEILA MICHAELS,
DOES I - V, inclusive;

Defendants.
_____/

Case No.: ARB18-01798

Dept. No.: ARB

ARBITRATOR'S AWARD

Based upon the evidence and testimony presented at the arbitration hearing, the Arbitrator finds in favor of the Plaintiff, JOHN S. WALKER, and awards the Plaintiff his medical expenses of $9,109.00, his wage loss of $478.00 and general damages in the amount of $6,000.00. The Arbitrator further finds the Plaintiff was 20% comparatively at fault, and when this is applied to Plaintiff's damages, Plaintiff is awarded the sum of $12,469.60.

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AFFIRMATION Pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 18th day of March, 2019.

GALLOWAY & JENSEN

By: _____
Graham Galloway
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Court Appointed Arbitrator

GALLOWAY & JENSEN
222 California Ave
Reno, NV 89509
(775) 333-7555

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN, and on the 18th day of March, 2019, I e-filed the **ARBITRATOR'S AWARD** and a copy will be electronically mailed by the Second Judicial District Court Electronic Filing System to the following:

William Kendall, Esq Law Offices of William R. Kendall 137 Mt. Rose Street Reno, NV 89509 *Attorney for Plaintiff*	Adam McMillen Law Offices of Karl H. Smith 50 W. Liberty Street, Suite 303 Reno, Nevada 89509 *Attorney for Defendant*

Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN, and that on the ____ day of March, 2019, I deposited for mailing in Reno, Nevada, a true and correct copy of the **ARBITRATOR'S AWARD** addressed to:

[None]

Yennifer Sanchez

GALLOWAY & JENSEN
222 California Ave
Reno, NV 89509
(775) 333-7555

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF S. DENISE MCCURRY - RENO
Mail to:
P.O. Box 258829
Oklahoma City, OK 73125-8829
Physical Address:
50 West Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
SHEILA MICHAELS

IN THE SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

JOHN S. WALKER, Plaintiffs, vs. SHEILA MICHAELS; DOES I-V, inclusive, Defendants.	Case No.: CV18-01798 DEPT. NO. 7

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on March 18, 2019, an Arbitration Award was filed in this action. Defendant, Sheila Michaels herein request a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

\\\

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: March 18, 2019

THE LAW OFFICES OF S. DENISE MCCURRY – RENO

BY: /s/ Adam McMillen
ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
SHEILA MICHAELS

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the 18th day of March, 2019, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

_X_ *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

William R. Kendall
Law Offices of William R. Kendall
137 Mt. Rose St.
Reno, NV 89509
Attorney for Plaintiff, John S. Walker
Phone: (775) 324-6464
Fax: (775) 324-3735

//s// Marsha J. Cinkel

MARSHA J. CINKEL, An Employee of
The Law Offices of S. Denise McCurry - Reno

Exhibit 13

Exhibit 13

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
RANALLI & ZANIEL, LLP
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Telephone: (775) 786-4441
Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

RALPH ORTEGA, Plaintiff, vs. KATHERYN JEAN FRITTER; DOES 1-V, Inclusive, Defendants.	Case No.: Dept:	ARB18-02032 ARB

ARBITRATION AWARD

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

An arbitration hearing went forward on June 17, 2019. Based upon the evidence presented at the arbitration hearing concerning the claim for relief of negligence, the arbitrator finds in favor of the Plaintiff Ralph Ortega and awards damages in the amount of $20,448.00.

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Affirmation
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19th day of June 2019.

RANALLI ZANIEL FOWLER & MORAN

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Arbitrator

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I certify that I am an employee of Ranalli & Zaniel, LLP and that on the 19th day of June 2019, I certify that service of the foregoing ARBITRATION AWARD was made to all parties to this action by:

_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada;

_____ personal delivery, received by _____;

_____ facsimile;

__X__ Eflex; addressed as follows:

William R. Kendall Esq.

Adam P. McMillen Esq.

/s/ Kelli Zaniel
EMPLOYEE OF *Ranalli Zaniel Fowler & Moran*

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
RANALLI & ZANIEL, LLP
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Telephone: (775) 786-4441
Arbitrator

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

RALPH ORTEGA,

Plaintiff,

vs.

KATHERYN JEAN FRITTER; DOES 1-V, Inclusive,

Defendants.

Case No.: ARB18-02032
Dept: ARB

ARBITRATION DECISION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

An arbitration hearing went forward on June 17, 2019. Present were Plaintiff Ralph Ortega, represented by William R. Kendall, Esq. and on behalf of Defendant Katheryn Jean Fritter was Adam P. McMillen, Esq. After submission of the evidence, Mr. Ortega testified, closing arguments were provided and the case was submitted.

Mr. Ortega is a younger man who was struck from behind while traveling on Plumas on the way to work. He was driving a larger Ram pick up truck and had stopped behind a vehicle that had stopped for a pedestrian. He was then struck by a Ford passenger vehicle. Photos of the vehicles were submitted. There was not much damage to the Plaintiff's vehicle, although it was enough force to bend a trailer hitch and damage the bumper which were both pushed down.

A more significant factor of measurement of impact was the Defendant's vehicle. The Defendant's Ford had significant front-end damage which would indicate a moderate impact. There were no injuries at the scene and Mr. Ortega indicated that he was not hurt to the responding police officer and the Defendant.

Mr. Ortega continued on to work. He was a mechanic at Sierra Car Care Center at that time. He worked for about 30 minutes and then went home due to pain symptoms that began. He attempted to locate a medical provider and was eventually referred to a chiropractor. Mr. Ortega described his job duties during the course of treatment which were fairly physical and labor intensive. He testified that he had to ask for assistance form other mechanics when performing certain functions. That said, he continued to work throughout the course of his treatment and missed an alleged 64 hours of work which were 2 hours per day for medical appointments. There was a wage loss verification submitted but it was difficult to read. Nevertheless, Mr. Ortega testified as to the wage loss. Although there was an issue with the Plaintiff's general health being an issue in an appointment in that he missed work to a cold and the accident, there was nothing to show that he would have missed those two (2) hours only for his cold symptoms. Thus, the Plaintiff is awarded $1,600.00 in wage loss.

Mr. Ortega treated with a chiropractor and after his symptoms were not improving as expected, he was referred to Dr. Berry. Dr. Berry recommended a course of physical therapy and provided an in home tens unit. After a brief course of therapy, Plaintiff testified that his symptoms improved. Although Mr. Ortega complains of some slight residual complaints, he was doing well after being released from treatment.

Objectively, in reviewing the medical records, there were positive findings to indicate that a soft tissue injury occurred.

The appropriate treatment for these soft tissue injuries are chiropractic treatment and physical therapy. Defendant argues that not all the medical treatment was reasonable or necessary. This contradicts the records themselves in which both medical providers state that the injuries and treatment are directly and causally related to the motor vehicle accident. The treatment incurred was conservative and appears appropriate for the soft tissue injury sustained. While Plaintiff was in treatment, there were complaints of increased pain while lifting heavy objects. This does not negate the fact that Mr. Ortega has pain, he was simply attempting to work as his job of a mechanic during this time. Further, although there was some evidence of prior scrapes and general soreness, there was no evidence of any specific complaints or more importantly treatment to the Plaintiff's back and neck. Based upon the evidence, Plaintiff is awarded medical specials of $13,348.00.

The last component of the case is general damages. This is often the most difficult. In conjunction with the medical records and Plaintiff's testimony, he clearly had discomfort in his neck and lower back. He testified as to the problems with standing and sitting while in treatment, to slowing down with his playtime involving his daughter and his not riding a motorcycle during the time of his treatment. Although there was testimony of ongoing occasional symptoms, the records show that he was doing well at the conclusion of his treatment and he never followed up. Thus, general damages are calculated for the timeframe of the accident, until his last date of treatment in April, 2017. A reasonable amount for general damages in this case is $5,500.

As such, Plaintiff is awarded as follows:

Past Medical Specials:	$13,348.00
Wage Loss:	$1,600.00
General Damages:	$5,500.00
TOTAL:	$20,448.00

Based upon the evidence presented at the arbitration hearing concerning the claim for relief of negligence, the arbitrator finds in favor of the Plaintiff Ralph Ortega and awards damages in the amount of $20,448.00.

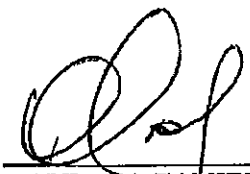
Any post hearing motions are to be submitted timely.

Affirmation
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19th day of June 2019.

RANALLI ZANIEL FOWLER & MORAN



DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Arbitrator

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I certify that I am an employee of Ranalli & Zaniel, LLP and that on the 19th day of June 2019, I certify that service of the foregoing ARBITRATION DECISION was made to all parties to this action by:

_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada;

_____ personal delivery, received by _____;

_____ facsimile;

__X__ Eflex; addressed as follows:

William R. Kendall Esq.

Adam P. McMillen Esq.

/s/ Kelli Zaniel
EMPLOYEE OF *Ranalli Zaniel Fowler & Moran*

ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
THE LAW OFFICES OF S. DENISE MCCURRY - RENO
200 S. Virginia Street
8th Floor
Reno, NV 89501
Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
KATHERYN JEAN FRITTER

DISTRICT COURT

WASHOE COUNTY, NEVADA

RALPH ORTEGA, Plaintiff, vs. KATHERYN JEAN FRITTER; DOES I-V; inclusive, Defendants.	Case No.: CV18-02032 DEPT. NO. 4

REQUEST FOR TRIAL DE NOVO

NOTICE IS HEREBY GIVEN that on June 20, 2019, an Arbitration Award was filed in this action. Defendant, Katheryn Jean Fritter herein requests a Trial De Novo of this action in the District Court.

The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as set forth in N.A.R. 20(B)(2)(a) or (b). Attorney's fees awarded pursuant to N.A.R. 20 must not exceed $3,000.00.

I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).

///

AFFIRMATION Pursuant to NRS 239B.030:

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED: July 5, 2019

THE LAW OFFICES OF S. DENISE MCCURRY - RENO

BY: /s/ Adam McMillen
ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
KATHERYN JEAN FRITTER

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the 5th day of July, 2019, I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the parties addressed as shown below:

_____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

_X_ *Via Electronic Filing* [N.E.F.R. 9(b)]

_____ *Via Electronic Service* [N.E.F.R. 9]

_____ *Via Facsimile* [E.D.C.R. 7.26(a)]

William R. Kendall, Esq.
137 Mount Rose St
Reno, NV 89509
Attorney for Plaintiff, Ralph Ortega

/s/ Adam McMillen

An Employee of The Law Offices of
S. Denise McCurry - Reno

Exhibit 14

Exhibit 14

MINUTES OF THE

SENATE Committee on Judiciary

Seventieth Session

March 11, 1999

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:45 a.m., on Thursday, March 11, 1999, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman

Senator Jon C. Porter, Vice Chairman

Senator Mike McGinness

Senator Maurice Washington

Senator Dina Titus

Senator Valerie Wiener

Senator Terry Care

STAFF MEMBERS PRESENT:

Brad Wilkinson, Committee Counsel

Allison Combs, Committee Policy Analyst

Maddie Fischer, Administrative Assistant

Jo Greenslate, Committee Secretary

OTHERS PRESENT:

Mark W. Gibbons, District Court Judge, Department 7, Eighth Judicial District

Gene T. Porter, District Court Judge, Department 1, Eighth Judicial District

Michael A. Cherry, District Court Judge, Department 17, Eighth Judicial District

Steve Burris, Nevada Trial Lawyers' Association

Rich Myers, Nevada Trial Lawyers' Association

George Bochanis, Concerned Citizen

Ivan R. Ashleman II, Lobbyist, Concerned Citizen

Bill Bradley, Lobbyist, Nevada Trial Lawyers' Association

Clark (Danny) Lee, Lobbyist, Nevada General Insurance Company

Wesley M. Ayres, Discovery Commissioner, and Arbitration Commissioner, Second Judicial District Court

Theresa Badoy, Government Relations Manager, Allstate Insurance Company

Robert B. Feldman, Lobbyist, Nevada General Insurance Company

Richard E. Shrader Jr., AAA Nevada Insurance Bureau, California State Automobile Association

Chairman James opened the hearing on Senate Bill (S.B.) 315.

SENATE BILL 315: Requires certain information concerning arbitration to be presented at trial de novo before jury. (BDR 3-1642)

Mark W. Gibbons, District Court Judge, Department 7, Eighth Judicial District, testified from Las Vegas. He stated there is a companion bill, S.B. 195, introduced by Senator Titus, that is similar to S.B. 315. He explained the reason for introduction of S.B. 315 is that when the Nevada Arbitration Rules were adopted in 1992, the intent of those rules as set forth in Rule 2A is to provide simplified procedures for obtaining a prompt and equitable resolution of certain civil matters. Continuing, Judge Gibbons said Nevada Arbitration Rule 18 provides that any party could request a trial de novo provided there is good-faith participation in the arbitration. He maintained that over the years many people have not taken the arbitration process seriously, and have the intent to participate minimally, knowing they can request a trial de novo and start over again at the time of trial. Therefore, according to Judge Gibbons, the Nevada Arbitration Rules have created an additional obstacle to speedy trials and increased the expenses to various parties. He suggested to ensure compliance with arbitration rules, particularly Rule 2A, Nevada needs to add stronger language to its statutes.

Judge Gibbons advised parties opposed to S.B. 315 are of the opinion the bill will cause arbitration proceedings to be drawn out and taken too seriously by the parties involved.

He said the point of the arbitration program is to take it seriously and resolve disputes as much as possible at arbitration. He mentioned this legislation is similar to *Nevada Revised Statutes* (NRS) 41A.069 in which the jury is given an instruction in medical or dental malpractice cases of the findings of the medical/dental screening panel, and the language parallels that particular statute. Judge Gibbons remarked it is his understanding the Nevada Supreme Court has ruled the Nevada medical malpractice statute is constitutional, which gives a precedent. He surmised the adoption of this legislation would significantly improve the arbitration program and make it more effective and compliant with the intent of Nevada Arbitration Rule 2A.

Senator Titus expressed her appreciation to Judge Gibbons for being at the meeting, and advised the companion bill is exactly the same as S.B. 315. She explained she submitted the bill quite a while ago, and it was introduced before Judge Gibbons requested S.B. 315. Senator Titus agreed with Judge Gibbons' comments regarding S.B. 315. Judge Gibbons remarked the courts were not aware of Senator Titus's bill, and that is why they drafted S.B. 315.

> **SENATE BILL 195:** Requires certain information concerning arbitration to be presented at trial de novo before jury. (BDR 3-529)

Senator Care inquired whether there is a provision in the arbitration rules to file an objection to a request for trial de novo. Judge Gibbons replied the procedure, under Rule 18, is that a request for trial de novo can be made. A party may then file a motion to strike the request for trial de novo and argue that there is not in good-faith participation in the arbitration proceedings. He advised the district court handles such matters on a regular basis. Senator Care mentioned a study conducted a year or two ago by the Arbitration Commissioner's office that named particular insurance companies and the percentage of times they sought a trial de novo, what happened at trial, and that sort of thing. He asked whether Judge Gibbons had any figures from that study or a similar study. Judge Gibbons replied the Discovery Commissioner in Clark County conducted a study naming particular insurance companies that were requesting excessive trials de novo. He commented he did not know the details, but people testifying from Las Vegas would probably have more information.

Gene T. Porter, District Court Judge, Department 1, Eighth Judicial District, testified from Las Vegas that he is in support of S.B. 195 and S.B. 315. He confirmed that the Discovery Commissioner, Tom Biggar, compiled arbitration statistics from May 17, 1995 through April 18, 1997. He distributed a copy of those statistics (Exhibit C). Judge Porter explained that at the bottom of the two-page compilation, the trial de novo rate is broken down by insurance carrier as follows: Allstate Insurance Company (Allstate), 52 percent; Automobile Association of America (AAA), 57 percent; Farmers Insurance Group, 45 percent; State Farm Insurance, 34 percent; and Nevada General Insurance Company (NGIC), 87 percent. Judge Porter gave a brief historical background, saying the first arbitration bill passed by the Legislature was in 1989. It bore Senator Raggio's name and created a threshold of $15,000. He continued, the 1993 Legislature raised the threshold from $15,000 to $25,000, and in 1995 it was raised to $40,000. He informed the committee the objective was to move personal

injury automobile cases from district court into an arbitration system where there could be limited discovery, and the parties could reach an agreement. Judge Porter remarked the theory worked well for a few years. Subsequently, the percentage of individuals requesting trials de novo has increased to the point that, from a judicial perspective, the arbitration system is not working. He said the judges discussed amongst themselves a mechanism to improve the system.

Judge Porter stated the Seventh Amendment of the U.S. Constitution guarantees an individual the right to a trial by jury. He said the judges were not advocating abolishing that or in any way restricting a party's right to a jury trial; they were merely looking for a mechanism to "put some teeth" into the arbitration system. Judge Porter mentioned Senator Care's earlier question regarding a motion to strike a request for trial de novo. He advised the leading case from the Nevada Supreme Court on that issue is the Chamberlain decision. That decision was several years old before the arbitration system reached its current volume level. Judge Porter explained the court said that as long as there was "meaningful participation," which is the supreme court's standard, judges are prohibited from striking a request for a trial de novo. Continuing, Judge Porter stated due to the age of that case and the turnover in the judiciary since that case was handed down, a number of judges have interpreted that provision in a different fashion. He asserted what is occurring in the Eighth Judicial District Court is the lack of a true standard between the civil division for what is and is not meaningful participation. Judges have tried to find a mechanism to discourage both plaintiffs and defendants from arbitrarily invoking the right to trial de novo in an effort to gain what they can through discovery just to go to district court where the case is tried all over again.

Judge Porter advised approximately 70 percent of the district court's dockets are based on trial de novo cases. He remarked he makes a point of talking to jurors after a trial to ask what they thought about the process, and in each and every case, the jurors have asked him why the case was not handled through arbitration. He maintained there have been situations in which they have spent 3 to 4 days in trial for a $1,500 case. Judge Porter said that both Judge Gibbons and he have presided over medical legal cases, and in 1995 Nevada enacted the Medical Screening Panel. The panel requires a claim to be submitted to an independent review group consisting of doctors, lawyers, and a few lay individuals to determine whether or not there is probable cause to believe the conduct of a medical provider fell below the ethical standard of care. Further, the panel issues a finding that it either did or did not, or that it could not reach an agreement one way or the other. That information is currently allowed by statute to be presented to the jury. Judge Porter advised he has not seen a medical malpractice case differ from the finding of the screening panel at the conclusion of the trial.

Senator Care inquired how long parties could expect to wait before going to trial once the request for trial de novo has been made. Judge Porter replied that in Department 1 an ordinary trial setting is early in year 2001. Senator Care asked how often in a request for trial de novo the award was higher than the figure in Rule 3 when the cap was $25,000. Judge Porter answered he did not have that information, but he could give Senator Care his observations from that time as a practicing attorney and as a

Judge. He remarked there are a number of factors at work, not the least of which is the change in the outlook of society as a whole toward lawyers, litigants, and so forth.

Michael A. Cherry, District Court Judge, Department 17, Eighth Judicial District, stated he was at the hearing to echo his colleagues' "call for help." He advised he is setting trials for the fall of year 2000, and requests for trials de novo would be late in year 2000 or early in year 2001. Judge Cherry said he is the case manager for the MGM Grand Hotel/Casino fire litigation and the Las Vegas Hilton fire litigation. He was of the opinion he could make an impact right away by bringing various insurance adjusters, defense attorneys, and plaintiffs' attorneys into his chambers right after the de novo was filed to see if he could resolve the case. He commented that he was unsuccessful, because some of the insurance adjusters have said if they owe money, they will have to go to trial to get the verdict. Additionally, some of the verdicts on the de novo cases have been meager lately. In Judge Cherry's opinion, the verdicts would be more favorable for the plaintiffs if the jury was instructed there had been a previous arbitration, and the outcome of the arbitration.

Steve Burris, Nevada Trial Lawyers' Association, remarked his law firm has had a lot of experience with the kind of cases that end up in the arbitration system. He stated the arbitration system was adopted to give common citizens good access to a justice system where they could get a quick result without having to spend an undue amount of money. Mr. Burris stated it worked for awhile, but under the current system where either side can file for a new trial without penalty, certain insurance companies figured out that through a "war of attrition" they could use their superior resources to "beat down" plaintiffs. As an example, Mr. Burris mentioned a client who was hit by a drunk driver, suffered a fractured bone in his neck, and was out of work for many weeks. The drunk driver ran away from the scene of the accident. Mr. Burris said his client went up against the insurance company with an 87 percent de novo rate, and the arbitrator awarded his client the policy limits of the drunk driver, who filed a request for trial de novo. He said after waiting many months, the drunk driver's insurance company agreed to the original arbitration decision. Mr. Burris asserted there are many cases in which the defendant's attorney will wait months hoping the plaintiff will be willing to take a smaller award. In his opinion, S.B. 315 will make the playing field more level for the common person. Mr. Burris suggested the committee consider striking the language in section 1, subsection 2, paragraph (b), starting on line 22 with "However . . . " to the end of the paragraph and replacing it with language that has been approved by the Nevada Supreme Court in the case of *Barrett* v. *Baird*, 111 Nev. 1496, 908 P.2d 705 (1995).

Chairman James asked if Mr. Burris was submitting an amendment or if he just wanted to strike the language mentioned above. Brad Wilkinson, Committee Counsel, Legal Division, Legislative Counsel Bureau, noted the language referenced by Mr. Burris was added due to the decision of the Ninth Circuit in *Wray* v. *Gregory*, 61 F.3d 1414 (9th Cir. 1995) where it was suggested language should be added regarding not giving undue weight to a panel's findings.

Senator Care inquired what the lowest award has been to any of Mr. Burris's clients that was de novoed by the opposing party. Mr. Burris replied that in his opinion, if a case is worth less than $7,500, it should be filed in justice court, which would take it out of the arbitration system. He added occasionally he gets a case that in his opinion is worth more than $7,500, but in the arbitrator's opinion, it is not. He told of having cases ranging from $3,500 to $7,000 that were de novoed. Mr. Burris remarked there are a couple of insurance companies that basically de novo everything for no apparent reason, including the smallest of cases.

Rich Myers, Nevada Trial Lawyers' Association, testified from Las Vegas that he has been practicing law for nearly 30 years on both the plaintiffs' and defense sides in personal injury and wrongful death cases. He offered his overall perspective that from a socioeconomic viewpoint, the passing of time and the expenditure of money always benefits the insurance company representing the defendant and always works to the disadvantage of the injured person. Mr. Myers stated those in the plaintiffs' personal injury field saw a change in corporate policy in some of the insurance companies that were mentioned by Judge Porter as having high de novo rates. He asserted that change came about a decade ago. It was led by AAA, and he is certain they made a conscious, deliberate decision at a board meeting in San Francisco that AAA was no longer going to pay the kind of money they had been paying for personal injury cases. Further, AAA was going to take advantage of the socioeconomic factor that he mentioned, hold out on a broad, system-wide basis, and keep the money out of the hands of deserving plaintiffs. He stated AAA led that change of policy and Allstate, as well as several other carriers, joined in the policy change. He maintained most carriers are now following that practice, including NGIC, which is statistically the worst offender.

Mr. Myers mentioned the statistics referred to by Judge Porter and Judge Cherry, and pointed out that currently, a trial de novo by the defense insurance company will not go to trial for 18 months to 2 years. Many plaintiffs drop out of the system over that period of time and take less than the arbitration award because of financial difficulties caused by the accident. He said this system is futile for the arbitrators. Mr. Myers reported he was an arbitrator when the system first came into being, but after being told by an insurance company representative that they routinely filed requests for trials de novo, he requested his name be removed from the list. In Mr. Myers' opinion, if S.B. 315 or S.B. 195 passes, it will have a positive effect, because the same rule applies to medical malpractice cases. According to Mr. Myers, in medical malpractice cases, the attorneys make a strong case for the screening panel since they know information from the panel will be presented at a subsequent trial, and more cases are settled by the screening panel as a result.

Senator Care inquired whether Mr. Myers knew of any other jurisdictions with jury instructions similar to those proposed in the bill. Mr. Myers replied negatively. He did say, however, California has some sort of mandatory binding arbitration for smaller cases.

George Bochanis, Concerned Citizen, testified that he has been an attorney in Las Vegas since 1982. His practice is devoted exclusively to representing victims in

automobile accident cases. He has witnessed the arbitration program since its inception in 1989 with its various jurisdictional limits and the trial de novo process. Mr. Bochanis asserted the statistics compiled by Commissioner Biggar (Exhibit C) understate to a considerable degree the number of trials de novo being filed by certain insurance companies. He reiterated that trials de novo are being filed indiscriminately and that some insurance companies use the trial de novo process as a form of economic extortion against victims in automobile accident cases. Mr. Bochanis claimed the insurance companies consistently bring in the same experts from California who call themselves "biomechanical engineers," and hire local "traffic reconstructionists" who perform flawed studies regarding the speed or angle of vehicles and so forth. He referred to his handout titled "Trials de novo filed by Allstate Insurance Company since October 1997-100% TDN rate" (Exhibit D), and explained the list consists of every arbitration award his office has had with Allstate since October 1997. Since preparation of the list, Mr. Bochanis reported his office has received three additional requests for trial de novo. He pointed out that with a 100-percent trial de novo rate, one would think the award would be in the $30,000 to $40,000 range. However, the last five awards on the list are under $10,000. Mr. Bochanis commented that the jurors are surprised when small award cases go to trial de novo rather than being settled by arbitration. In his opinion, a solution to trial de novo "abuse" is to pass S.B. 315 or S.B. 195.

Senator Care referred to three cases on Exhibit D that were settled for under $5,000, and inquired whether opposing counsel ever offers an explanation for the basis for such requests. Mr. Bochanis replied the explanation he receives is that opposing counsel was instructed to file a trial de novo. He mentioned that a week ago an insurance adjuster told members of his staff regarding a few pending cases that his firm had better accept the insurance company's settlement offers or expect a jury trial in 2 to 3 years.

Chairman James remarked that after reviewing NRS 41A.069, the committee should consider the change to the jury instructions as set out in the two bills. He also noted it appears the appellant in the *Barrett* v. *Baird* case was an allegedly injured claimant who was saying his right to a trial by jury had been deprived by virtue of the instruction that told the results of the screening panel. Chairman James pointed out that it works both ways; the jury instruction telling the outcome of arbitration can help the defendant as well as the plaintiff. He noted the wording should be drafted in a way so as not to be partial to either side. Additionally, Chairman James said the additional language beginning at line 21, "The findings of the arbitrator . . . " has been stated in the previous sentence, and the remaining language is already included in standard jury instructions.

Mr. Wilkinson read from the *Barrett* v. *Baird* case, and surmised the jury was given supplemental instruction. He noted the Nevada Supreme Court appeared to support doing that. Mr. Wilkinson explained that is why the additional language was included in S.B. 315 and S.B. 195.

Ivan R. Ashleman II, Lobbyist, Concerned Citizen, stated he was cochairperson of the supreme court committee to implement these rules. He remarked the committee has not

yet met, and he was appearing on his own behalf and offering his personal opinion. Mr. Ashleman testified that as an arbitrator, he has observed that very few of his nonpersonal injury cases are appealed; however, all of his personal injury cases have been appealed. He agreed with previous speakers that there is a "knee-jerk" process of appeal on personal injury cases. Mr. Ashleman advised the supreme court committee is having difficulty recruiting members because it is a futility. In his opinion, passage of S.B. 315 or S.B. 195 is worth a try and will not hurt anybody.

Chairman James remarked that lest anyone believes arbitrators take such cases to make money, a former partner in his law firm that handled personal injury arbitration in the past considered such cases his pro bono contribution to the firm. Mr. Ashleman added there is a $300 cap for each arbitrated case, and they sometimes last 2 or 3 days.

Bill Bradley, Lobbyist, Nevada Trial Lawyers' Association, remarked he was at the hearing to reiterate the testimony of the judges and lawyers from Las Vegas.

Clark (Danny) Lee, Lobbyist, Nevada General Insurance Company, testified his background is not in law, but rather in insurance. It was his understanding, after reading a definition of "trial de novo" (Exhibit E), bringing information about a prior arbitration award to a trial de novo is contrary to the definition. Further, in his opinion, the amount of the arbitration award is not as important as whether it was a just arbitration. He also mentioned that he has not seen statistics indicating that certain attorneys are challenged more than others, which is the case with his company. Mr. Lee stated NGIC takes arbitration seriously. He suggested perhaps the Legislature should address how arbitration is conducted for an answer to reducing the number of trials de novo. In Mr. Lee's opinion, S.B. 315 or S.B. 195 would jeopardize and prejudice a jury in a trial de novo.

Chairman James called Mr. Lee's attention to the second page of Exhibit C and indicated that in approximately 71 percent of small automobile accident cases the defendant requested a trial de novo, whereas in the miscellaneous tort cases, the plaintiff requested most trials de novo. Mr. Lee maintained that in the past, insurance companies would "buy" claims because it was simpler. He said normally in arbitration the award is three times "specials," the lost wages, medical bills, and so forth. Additionally, NGIC is of the opinion that every $1 that may be wrong up front, is $3 more later on. Mr. Lee asserted insurance companies currently, instead of buying the smaller claims with which they do not agree, are challenging those claims.

Senator Care queried how NGIC determines for which cases to seek trials de novo. Mr. Lee replied NGIC has in-house counsel, who as far as he knows, influences that decision. He also advised he has more recent statistics regarding the trial de novo rate for NGIC that he will provide to the committee. Chairman James remarked that would be helpful, because according to the statistics in Exhibit C, of all the cases NGIC lost in arbitration, only seven did not result in a request for trial de novo.

Wesley M. Ayres, Discovery Commissioner, and Arbitration Commissioner, Second Judicial District Court, remarked that as the Arbitration Commissioner, he is responsible for administering the arbitration program in that district. Mr. Ayres stated in addition to the Second Judicial District Court, he was representing the arbitration commissioners in the First and Ninth Judicial Districts. He advised that all are opposed to both S.B. 315 and S.B. 195 in their current form. Further, Mr. Ayres testified that if the bill were changed in some way so that it applied strictly to the Eighth Judicial District, Clark County, there would be no opposition from the First, Second, or Ninth Judicial Districts. The primary reason given by Mr. Ayres for opposition to these bills is the negative impact they will have on the arbitration program. He explained the current program greatly reduces the cost to litigants by eliminating two of the most costly aspects of litigation: 1) the discovery process of the trial and investigation; and 2) motion practice, which is litigation of various side issues apart from the merits. Mr. Ayres remarked, as the keeper of the second district's statistics, less than 1 percent of all cases assigned to the arbitration program in his district go to a trial de novo.

Continuing, Mr. Ayres remarked as the importance of the arbitration decision is increased, the time, effort, energy, and money that both sides pour into the arbitration will increase as well. He asserted if these bills are passed in their current form, attorneys will be forced to put on the best possible arbitration case. Chairman James requested Mr. Ayres provide a copy of the statistics to which he referred to the committee for the record.

Senator Titus asked how Mr. Ayres accounts for the difference between the trial de novo rate in northern and southern Nevada. Mr. Ayres replied he does not know. His educated guess is that Clark County has four times the caseload of the Second Judicial District. Another possible reason mentioned by Mr. Ayres is that Clark County takes a different approach to the arbitration program than northern Nevada. In northern Nevada, if both sides agree the case should not be arbitrated, in other words, if both sides agree the case has a probable jury award value of in excess of $40,000, Mr. Ayres lets the case out of the arbitration process.

Chairman James expressed doubt that the second reason Mr. Ayres offered would explain the difference. He pointed out that the average award is $11,000, and 70 percent are defendant-requested trials de novo. Chairman James said he would like to see statistics that show the results of the trials de novo compared to the results of arbitration. Additionally, Chairman James questioned Mr. Ayres' comment that attorneys do not put on their best case to the arbitrators and are satisfied by a less than full effort. Mr. Ayres explained that the intent behind alternative dispute resolution (ADR), is to give the parties a "gentle nudge" toward settlement without litigation. He commented that in northern Nevada the parties, with good counsel, go into the program recognizing that. He said nobody wants to litigate small cases because it costs too much money. Mr. Ayres added an attorney that does not put forward the best possible case in litigation is setting himself up for a potential malpractice suit. Conversely, in arbitration an attorney can put on a case that is "good enough," and if the result is unreasonable, the attorney may then request a trial de novo.

Chairman James remarked, in his opinion, attorneys can and should put on their best case in arbitration. He opined the reason arbitration costs less is because it is a less formal procedure, but the attorney still has to discover the evidence. Further, he asserted the defendant's viewpoint that he does not care about his case in arbitration because if the outcome is not what he wants, he can go to court, is the abuse to which Clark County witnesses have testified. In response, Mr. Ayres stated the view that the parties should put on their best case in arbitration is absolutely a legitimate viewpoint; however, it increases the costs to the people in the arbitration program. He said currently those costs can be deferred to a later time. As an example, Mr. Ayres advised if he is the defense counsel, he can go talk to a witness and see what the witness has to say. He may or may not think it is worth taking a deposition, and he can save money by not taking a deposition. He said he does not need the deposition because he knows what the facts show, and he does not have to incur the process-related costs. On the other hand, if he goes to trial, he had better get the deposition to prevent a malpractice claim later if the results are not in the defendant's favor. Mr. Ayres agreed attorneys do have to conduct a fact finding, but it may be done in a less-expensive manner than for a jury trial.

Mr. Ayres mentioned testimony regarding the futility of the arbitration program driving some arbitrators out, and stated he has heard far more complaints from arbitrators about the burden imposed by the length of arbitration cases. He asserted if the significance of the arbitrators' decisions is increased, they will be spending far more time on arbitration cases. Chairman James asked why the jury should not know that a case was arbitrated and the arbitrator's findings. Mr. Ayres replied that was the next point he planned to address. However, the main point he wished to address is the negative impact of the bill on the arbitration program. In his opinion as the Arbitration Commissioner, there are good reasons not to inform the jury of the arbitrator's findings. Mr. Ayres commented that jurors make decisions based on evidence, and the arbitrator's findings are not evidence of anything, but simply one person's opinion. Chairman James inquired what evidence the medical malpractice screening panel has. Mr. Ayres stated there has been a good deal of discussion about the *Barrett* v. *Baird* case, in which the Nevada Supreme Court has placed strong, consistent evidence on the nature of the panel, which the supreme court characterizes as no more than an expert opinion. One difference is that it is a panel rather than an individual making the decision. Another key difference mentioned by Mr. Ayres is that with a medical panel, the panel gives an opinion; the arbitrator does not give an opinion that there is a reasonable likelihood the defendant was negligent, for instance.

After listening to Mr. Ayres' explanation of the way arbitration works, Senator Titus asked why arbitration is mandatory rather than voluntary. Mr. Ayres remarked that Senator Titus made an excellent point. He advised that different jurisdictions handle it in different ways. He said some jurisdictions do not have mandatory, nonbinding arbitration, but rather voluntary, binding arbitration. In other words, if the parties can agree to go into arbitration, it is binding and they cannot request a trial de novo at the end. Mr. Ayres pointed out that arbitration is only one ADR solution. There are others such as summary jury trials, mini trials, and so forth. The federal court in Nevada recently adopted a program called "early neutral evaluation," in that the magistrate

judges try to settle the case before trial costs are incurred. Northern California has a great deal of success with this program. In Mr. Ayres' opinion, the answer is to provide as many different kinds of ADR techniques as possible.

Referring to Chairman James' earlier question as to why withhold the arbitrator's decision from the jury, Mr. Ayres stated arbitrators make mistakes. He asserted there is no reason why the jury must be told about a result that is legally incorrect. In conclusion, Mr. Ayres said the only decision the arbitrator makes is a bottom-line decision. For example, the arbitrator may award the plaintiff $18,000 in a case, when in fact the damages were $30,000, but he found the plaintiff 40-percent negligent. The jury will never hear any explanation of how the arbitrator came to his or her decision, and that can mislead and improperly skew the results.

Theresa Badoy, Government Relations Manager, Allstate Insurance Company, testified that it was her understanding Allstate was accused earlier in the meeting of a 100-percent de novo rate. She maintained that was not accurate. Ms. Badoy explained that approximately 1 year ago it was brought to her company's attention that the number of trials de novo being requested in the arbitration process was excessive in Las Vegas. She said it appeared to Allstate that there was an imbalance between the arbitration award and the jury award when going to trial. Ms. Badoy stated Allstate had started working with the trial bar to find a solution to the overloaded judges' docket. She advised they have been working over the last 8 months on improving the process and shortening trials de novo. Ms. Badoy pointed out Allstate is the same insurance company in Reno as it is in Las Vegas, and she cannot recall the last trial de novo they held in Reno. She asserted their problem is in the Eighth Judicial District. Chairman James mentioned that it would be helpful to have a copy of the statistics referred to by Ms. Badoy, particularly the ones showing the jury awards were less compared to the arbitration awards. Ms. Badoy stated she brought a sample of the award amounts for arbitration and jury trials (Exhibit F). The exhibit is a sample of 15 cases from 1997 and 1998. In four of the cases there was a zero defense verdict after Allstate had made an offer.

Chairman James inquired how Allstate chose the sample cases. Ms. Badoy advised out of a total of 30 cases, the results of which were tracked after she was made aware of the problem, the sample 15 had the most complete information. Chairman James asked if there was only one case where the jury agreed with the arbitration award rather than the defense's offer. Ms. Badoy replied negatively and repeated this is a sample of 15 of the last 30 cases. Chairman James advised that the committee needs a more inclusive sample, because if the cases are "cherry-picked," the results could be skewed. Ms. Badoy replied that she did not "cherry-pick" the cases. She said the files on the 15 excluded cases were incomplete. Chairman James pointed out that Allstate must have the information in the case files for all of its cases. He told Ms. Badoy that in order to make a decision, the committee needs more facts than a sample of 15 cases. He said in the case of medical malpractice, an actuary examined all the case files and then noted all the verdicts. Ms. Badoy commented that she gathered the sample data in a week, and that the committee was welcome to bring an independent auditing firm into her office to gather the information. Chairman James requested Ms. Badoy prepare an

analysis of all the cases in her office for the committee. Ms. Badoy agreed to provide the committee with a reasonable sample from 1998.

Senator Titus pointed out that the numbers that show victories for Allstate do not necessarily mean that Allstate is always right. She referred to what Mr. Burris had mentioned about the resources that are available to major insurance companies that are not available to an individual who was involved in an automobile accident. Senator Titus asserted the win rate has to do with what the party can bring to the court as well as the merits of the case.

Senator Care asked whether Allstate has a policy to seek a trial de novo in those cases in the Eighth Judicial District where the plaintiff has been given an arbitration award. Ms. Badoy answered that she does not know if Allstate has such a policy. Chairman James inquired whether there is anybody from Ms. Badoy's office that does have that information. Ms. Badoy replied the claims manager from her office has been working directly with Bill Bradley on Allstate's short-trial proposal, and if the committee wished, she could bring him before the committee.

Robert B. Feldman, Lobbyist, Nevada General Insurance Company (NGIC), explained the handout that Mr. Lee distributed titled "Summary of De Novo Jury Awards (as of January 29, 1999)" (Exhibit G). He remarked the seven cases on the handout include six from district court and one from justice court, and include all of the cases NGIC has tried from an appeal on arbitration awards. He added they do have approximately 40 cases coming up for trial this year. Mr. Feldman advised NGIC is a small company without a lot of resources, and they take each case on an individual basis. He said NGIC has a committee that reviews each case, and they have accepted a few arbitration awards. Mr. Feldman referred to a report compiled by Commissioner Biggar (Exhibit H) which shows the insurance companies winning 82 percent of the last 50 jury trials. In Mr. Feldman's opinion, this shows the arbitrators are awarding too much money. He added in the case on the list that had an arbitration award of $33,648 reduced to $13,733, NGIC offered $12,700, and the judge made NGIC pay $9,000 in legal fees for the other party because they missed their offer of judgment by $200. He asserted that is the only case they have missed, and they are very careful in their offers due to the penalty of underestimating the offer of judgment.

Continuing, Mr. Feldman advised his company has been working with the court system, where he has learned that other states also have a high trial de novo appeal rate. He maintained the only reason they are doing this is to keep insurance rates down for the consumer. Senator Titus inquired whether that means NGIC plans to decrease their rates. Mr. Feldman answered affirmatively, and mentioned he has recently filed a 6.1-percent rate decrease, and he plans to file another rate decrease. He added that in the past 5 years, NGIC has had a minus 1.7 rate factor in Nevada.

Richard E. Shrader Jr., Lobbyist, AAA Nevada Insurance Bureau, California State Automobile Association, suggested perhaps his company could provide information for a particular time frame regarding arbitration cases that ultimately went to trial and the results of those trials. He stated his industry is opposed to the bill. In his opinion it

jeopardizes the trial by jury system, and it is prejudicial on one of the key points the insurance company is trying to determine; what the case is worth. Mr. Shrader maintained his company's policy is to pay no more or no less than what the case is worth. He stated they do not automatically appeal any case, and they take the arbitration system seriously. However, Mr. Shrader added they have an obligation to their motorists to pay only what the case is worth, and he urged non-passage of the bill.

Senator Care asked Mr. Shrader if he heard Mr. Myer's comments earlier in the meeting regarding an AAA meeting in San Francisco where the company's strategy for handling case settlements was discussed. Mr. Shrader answered he did hear Mr. Myer's comments but disagreed with what was said. He asserted his company's policy is to evaluate each case carefully and to pay what is reasonable on each case. Chairman James mentioned earlier testimony regarding preparation for arbitration, and queried whether Mr. Shrader's company prepares carefully and participates meaningfully in arbitration. Mr. Shrader replied affirmatively and stated there is no incentive to drag out the proceedings.

Chairman James expressed his concern that companies do not prepare thoroughly for arbitration, and then go to trial well prepared and have a higher success rate. He questioned whether the statistics indicated more successes for jury trials due to a lack of preparation for arbitration. Mr. Shrader responded by reiterating his company does prepare fully for arbitration, and they are interested in settling cases as timely as possible. He continued they compare reasonable arbitration awards to what, in their opinion, the jury would agree to, and they do not automatically appeal cases.

Bill Bradley, Lobbyist, Nevada Trial Lawyers' Association, advised his association is working on a 1-day jury process, in which each side will be given 3 hours to present evidence. He emphasized, however, that he does not want anyone to be of the opinion the Nevada Trial Lawyers' Association sees this as a cure for the current problems. Mr. Bradley said the best they can get from the industry is that it will be voluntary. The Nevada Trial Lawyers' Association would like to have a 1-day jury trial in lieu of arbitration and in lieu of trial de novo. However, he remarked, because they are not able to get a mandatory 1-day trial instead of arbitration or trial de novo, he fears they will have the same problem and be back in front of the committee 2 years from now.

Mr. Feldman pointed out that lawyers, judges, and arbitrators, live in a "$200- an-hour world," and jurors live in a "$10- to $20-an-hour world;" and the awards that are coming from juries are based on what juries believe they are worth, whereas lawyers, judges, and arbitrators have a different perspective. He maintained his company has been accused of doing too much work for arbitration cases. Mr. Feldman also pointed out with the rapid growth in Las Vegas, one to two judges need to be added each year.

Chairman James stated, with his experience as a trial lawyer, there is no predictability that juries award more money than judges or arbitrators. Additionally, he made the point that plaintiffs most often request jury trials.

There being no further business to come before the committee, Chairman James adjourned the meeting at 10:58 a.m.

RESPECTFULLY SUBMITTED:

Jo Greenslate,

Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE:

Exhibit 15

Exhibit 15

DECLARATION OF WILLIAM R. KENDALL

I, William R. Kendall, hereby declare under penalty of perjury that the following statements are true and correct:

1. I am an attorney licenced to practice law in the State of Nevada and I am counsel of record for Plaintiff, Ralph Ortega in ARB18-02032;
2. Attached to the foregoing motion as Exhibit 1 is a true and correct copy of a letter dated 11/7/2018 from Adam P. McMillen;
3. Attached to the foregoing motion as Exhibit 2 is a true and correct copy of a "personal search" printout obtained from the official Second Judicial District Court website searching the name "Adam McMillen" of all cases in which Adam McMillen has been counsel of record;
4. Attached to the foregoing motion as Exhibits 3-13 are true and correct copies of pleadings obtained from the Washoe County District Court Eflex system for those cases listed on page 3 of this motion;
5. Attached to the foregoing motion as Exhibit 14 is a true and correct copy of the Minutes of the Senate Committee on Judiciary, Seventieth Session, March 11, 1999;
6. The statements contained in Plaintiff's Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery are true and correct to be best of my knowledge and belief.

Dated this 15th day of July, 2019.

William R. Kendall, Esq.

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KATHERYN JEAN FRITTER

DISTRICT COURT

WASHOE COUNTY, NEVADA

RALPH ORTEGA, Plaintiff, vs. KATHERYN JEAN FRITTER; DOES I-V; inclusive, Defendants.	Case No.: CV18-02032 DEPT. NO. 4

DECLARATION OF ADAM MCMILLEN IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY

I, ADAM MCMILLEN, declare as follows:

1. I am the attorney of record for Defendant KATHERYN JEAN FRITTER.
2. I, along with my staff, prepared and timely served Defendant's Initial EAC Production of documents and witnesses (Exhibit **1**), REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS TO RALPH ORTEGA (Exhibit **2**), INTERROGATORIES TO PLAINTIFF RALPH ORTEGA (Exhibit **3**); DEFENDANT'S 1st SUPPLEMENTAL INITIAL EAC PRODUCTION (Exhibit **4**); DEFENDANT'S 2nd SUPPLEMENTAL INITIAL EAC PRODUCTION (Exhibit **5**); a true and correct copy of each of these items is attached hereto as Exhibits 1-5, respectively.
3. On April 17, 2019, I took the Plaintiff's deposition in this matter. *See* Exhibit **6**, which is a true and correct copy of his deposition transcript.

4. On June 14, 2019, I timely served DEFENDANT'S ARBITRATION BRIEF in this matter. *See* Exhibit **7**, which is a true and correct copy of Defendant's Arbitration Brief.
5. On December 4, 2018, on behalf of Defendant, I served an exclusive offer of judgment on Plaintiff in the amount of $14,000.00. *See* Exhibit **8**, which is a true and correct copy of the offer of judgment.
6. I vigorously represented Defendant's interests during the arbitration hearing.
7. Defendant was unable to participate in the arbitration hearing because of an emergency at work; however, Defendant did not contest liability and the only issue to be decided was damages.
8. I prepared the arbitration brief, appeared at the hearing, cross examined the Plaintiff and vigorously represented Defendant at the arbitration hearing.
9. On June 20, 2019, the arbitrator, David Zaniel, filed an Arbitration Decision and an Arbitration Award. The arbitration award was in favor of the Plaintiff in the amount of $20,448.00.
10. There was no finding of bad faith, for either party, by the arbitrator, Mr. Zaniel.
11. Every case I handle, and every decision regarding a request for trial de novo, is carefully made and based upon the facts and circumstances of each individual case.
12. There has never been a finding of bad faith conduct in any of the cases I have handled while working at Farmers, let alone the cases cited by William Kendall.
13. William Kendall has filed the exact same motion work in CV18-01798:
    a. MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY, filed therein on 4/2/19, which is attached hereto as Exhibit **9**.
    b. MOTION TO STAY SHORT TRIAL PROCEEDINGS, filed therein on 4/2/19, which is attached hereto as Exhibit **10**.
14. I responded previously to his previous motions in CV18-01798:
    c. OPPOSITION TO MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY, filed therein on 4/12/19, which is attached hereto as Exhibit **11**.
    d. DECLARATION OF ADAM MCMILLEN IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS;

AND PERMIT DISCOVERY, filed therein on 4/12/19, which is attached hereto as Exhibit **12**.

e. OPPOSITION TO MOTION TO STAY SHORT TRIAL PROCEEDINGS, filed therein on 4/12/19, which is attached hereto as Exhibit **13**.

15. On June 19, 2019, Judge Connie J. Steinheimer entered her ORDER ADDRESSING 1) MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS AND PERMIT DISCVOERY, and 2) MOTION TO STAY SHORT TRIAL PROCEEDINGS, which is attached hereto as Exhibit **14**.

16. I began working at Farmers Insurance on October 30, 2017.

17. As of this date, I have been assigned over 180 matters.

18. Since working for Farmers, I have participated in settling and/or resolving **54** matters outside of the mandatory arbitration program:

a. CV-C-15-568 Regan v. Sturges: settled for $36,501.00 prior to trial in Fourth Judicial District Court.

b. CV-C-16-245 Howell v. Evans: settled for $100,000 policy limits in Fourth Judicial District Court.

c. ADR #16-999 Silberberg v Country Club Mall HOA: assisted in resolving this matter before Nevada Real Estate Division.

d. 16-CV-1456 Pick v. Saiyo and Burgess: settled for $10,000 prior to trial in Third Judicial District Court.

e. CV16-02080 Reed vs. Farmers Insurance Exchange: settled for $100,000 prior to trial in Second Judicial District Court.

f. 16TRT000521B Medina v. High Sierra Company Plus, et al: on May 2, 2018, the First Judicial District Court granted summary judgment against Plaintiff.

g. CV-10775 Shawnee Johnson vs. Mills Enterprises, Inc.: settled for $24,000 prior to trial in the Eleventh Judicial District Court.

h. CV17-00192 (Second Judicial) Brooks v. Jet Services, Inc.: settled for $52,000 at settlement conference with Judge Elliot Sattler.

i. CV17-01042 (Second Judicial) Jones v Farmers Insurance: February 26, 2018, settled through binding arbitration with Robert Enzenberger.

j. CV17-00588 (Second Judicial) Nationwide Insurance v. Schenker: my motion for summary judgment granted in favor of defendants.

k. 17 SC 00032 3H (Walker River Township Justice Court) Stanton v. Stokes: on November 20, 2017, settled prior to hearing for $5,000.00.

l. CV17-00604 (Second Judicial) Ka Yee Li vs. Alec Thomas Flores and Steve King: December 7, 2017 settled for $7,218.00 prior to defendants' answering complaint.

m. 17-SSC-2353 (Sparks Justice) Security Self Storage v. Sotooden: plaintiff voluntarily dismissed all claims immediately prior to hearing without any payment from defendant.

n. CV17-01721 (Second Judicial) Folsom v. Northwest Partners: on May 31, 2018, plaintiff accepted defendant's $65,000 offer of judgment prior to trial.

o. CV17-01839 (Second Judicial) Pierce v. Farmers Insurance: on January 28, 2019, this matter settled for $95,000 prior to trial.

p. CV17-01633 (Second Judicial) Nila Rene Gerlett vs Rachel Lynn Gustin: on March 14, 2019, this matter settled at a settlement conference with Judge Freeman for $75,000.00 prior to trial.

q. CV17-01399 (Second Judicial) Skees v. Binzel: on June 13, 2016, plaintiff demanded $97,500; on December 18, 2018, this matter settled prior to trial for $9,500.00.

r. RJC2016-095332 (Reno Justice Court) State Farm as Subrogee of Lynda Bhishop-Amann v. Arreguin: on April 4, 2018, the court granted defendant's motion to dismiss.

s. CV17-01723 (Second Judicial) Quevedo v. Carey: on March 21, 2018, plaintiff accepted defendant's $25,000 offer of judgment.

t. CV17-02288 (Second Judicial) Mathews v. Lewis: this matter settled prior to trial for $85,000.00.

u. CV17-02380 (Second Judicial) Spiropoulos v. McDowell and Crown Beverage: on April 26, 2018, this matter settled for $25,000 prior to trial.

v. ISC18-00001 (Incline Village Justice Court) Cordova v Wagner: after the appointed hearing/trial at justice court, plaintiff's case was dismissed in favor of defendant.

w. CV17-02351 (Second Judicial) Reyes v. Andersen and Eaken: on March 22, 2018, plaintiff accepted $47,000.00 offer of judgment, plus costs of $724.00 and interest of $454.59, which acceptance was made prior to trial.

x. CV17-02215 (Second Judicial) Carey v. Brazell, et al: on April 19, 2018, this matter settled prior to trial for $50,000.00.

y. Rachel Ditmanson adv. Sean Latshaw et al (5 vehicle accident): settlement prior to lawsuit; on March 20, 2019, this matter settled for policy limits of $300,000 globally after mediation with Matt Sharp as mediator.

z. CV17-02197 (Second Judicial) Leffler v. Kocher: on August 2, 2018, this matter settled prior to trial for $1,100.

aa. Paul and Linda Loring UIM Claim: on March 29, 2018, this matter settled prior to lawsuit for $100,000.00.

bb. CV17-02192 (Second Judicial) Woods v. Taasaas: on May 25, 2018, this matter settled for $36,000 prior to answering the complaint.

cc. 3:18-CV-00140-RCJ-VPC (Federal District Court) Loper v. Creason, et al.: on September 11, 2018, this matter settled prior to trial for $25,000 from Farmers, $100,000 from Financial Pacific and $15,000 from Dairyland (Viking) Insurance.

dd. RJC2018-100706 (Reno Justice Court) TORRES V FLANAGAN: on April 1, 2019, this matter was settled prior to trial for $1,000 for Simplicio Torres and $1,000 for Maria Torres.

ee. Brenda Sixta et al (Pre-Suit Settlement): on August 2, 2018, this matter settled for $100,000.

ff. RJC2018-101241 (Reno Justice Court) Valadez v. Shultz: on September 21, 2018, plaintiff accepted the $3,000.00 offer of judgment prior to trial.

gg. RJC2018-101242 (Reno Justice Court) Tamayo-Rodriquez v. Shultz: on September 21, 2018, plaintiff accepted the $3,000.00 offer of judgment prior to trial.

hh. RJC2018-101098 (Reno Justice Court) Juarez-So v. Shultz: on September 21, 2018, plaintiff accepted the $2,000.00 offer of judgment prior to trial.

ii. CV18-01000 (Second Judicial) Tanner v. Edge at Reno Condominium: on February 21, 2019, this matter settled prior to trial for $60,000.00.

jj. 18-CV-00657 (Third Judicial) Schmidt v. Simper: on February 19, 2019, plaintiff accepted $3,500 offer of judgment.

kk. CV18-00949 (Second Judicial) York v. Craddock (UIM Intervention): on January 15, 2019, the UIM portion settled prior to trial for $50,000.00.

ll. RJC2018-101384 (Reno Justice Court) Villalobos v. Botsford: on January 18, 2019, this matter settled prior to trial for $5,600.00.

mm. CV17-01761 (Second Judicial) Neubert v. Turner (UIM Intervention): this matter settled at mediation prior to trial within underlying tortfeasor's policy limits.

nn. CV17-01255 (Second Judicial) Mollath Trust v. Sande Family Trust: on August 13, 2018, this matter settled prior to trial (settlement terms are confidential).

oo. CV-C-17-777 (Fourth Judicial) Duke v. Alexander and Mid-Century: on November 15, 2018, the court granted defendant's motion to dismiss.

pp. CV17-00108 (Second Judicial) Maria Eisemann vs. Mid-Century Insurance Company: on January 9, 2019, this matter was resolved in binding arbitration.

qq. CV18-00565 (Second Judicial) Higgins v. Wingo: on October 31, 2018, this matter settled prior to trial for $100,000.00.

rr. I was counsel for Farmers in CV16-01903 (Second Judicial) Robert Dennis vs. Andrea Figueroa, et. al: Farmers was an intervenor in this matter; on November 30, 2017, plaintiff demanded $55,000 from Farmers; on or about March 20, 2019, Farmers offered plaintiff $13,000; on March 21, 2019, plaintiff demanded $25,000 from Farmers; on or about March 21, 2019, the other two defendants had offered plaintiff a total of $38,000 and with Farmers offering $13,000, plaintiff was offered a total of $51,000; on April 26, 2019, after a 5 day jury trial, the jury returned a verdict in favor of plaintiff for a total of $36,720.00, below the combined total offered by Farmers and the two defendants.

ss. 18-CV-00918 (Second Judicial) Abraham v. Hanefeld: on November 1, 2018, this matter settled prior to trial for $50,000.00.

tt. CV18-01697 (Second Judicial) Rintacutan v. Palomar-Linzarez: on July 15, 2019, I filed a notice of acceptance of plaintiff's $50,000 offer of judgment against defendant and $5,000 offer of judgment against plaintiff.

uu. Mark Riesen – Pre-suit settlement: on June 14, 2019 this matter settled for $25,000 prior to suit being filed.

vv. CV18-01901 (Second Judicial) Claiborne v. Cisneros: on March 6, 2019, this matter settled for $50,000.00 prior to trial.

ww. RJC2018-103679 (Reno Justice Court) Carpio, et al. v. Nisbeth: on June 26, 2019, this matter settled prior to trial at a judicial settlement conference for $11,900.00.

xx. CV19-00229 (Second Judicial) Cruz-Falcon v. Western Mill Fabricators and Plaza Franchise Group: on April 18, 2019, this matter settled without my client or Farmers paying anything as co-defendant paid entire settlement amount.

yy. RJC2018-102977 (Reno Justice Court) Dollar Thrifty Automotive Group v Vaenuku: on March 19, 2019, this matter settled prior to trial for $6,582.00.

zz. NRED ADR #19-187 – Alexander v Governors Square Townhomes: on May 16, 2019, NRED notified the parties that the plaintiff had voluntarily dismissed his claim.

aaa. CV18-02402 (Second Judicial) Lantz v. Rhoda: on May 13, 2019, this matter was settled prior to filing an answer for $19,352.00.

bbb. RSC-2019-000311 (Reno Justice Court) Ellis vs. Farmers Insurance Exchange: on May 21, 2019, the plaintiff dismissed his claim against Farmers at the court ordered mediation.

19. Since working for Farmers, I have participated in settling and/or resolving **29** cases in the mandatory arbitration program **prior** to the arbitration hearing:

a. CV17-01260 & CV17-01468 (Second Judicial) (multiple parties on both sides): on May 10, 2018, settled Lizaola for $3,333.00 and settled Malinas for $90,000.

b. CV17-01380 (Second Judicial) Jackson v. Lucas Foods, et al.: on March 15, 2018, plaintiff accepted defendant's $20,000 offer of judgment prior to arbitration hearing.

c. 17TRT 00030 1B (First Judicial) Amber Starr vs. Kristian Michael Fountain: on December 7, 2017, case settled prior to arbitration hearing for $13,000; a $13,001 offer of judgment was served on September 28, 2017.

d. CV17-01448 (Second Judicial) Sherwin, Godfrey and minor Grubb vs. Alisha and Vanoia Allen: on January 26, 2018, settled prior to arbitration hearing for total of $3,995.75 ($750.00 for Jennifer; $1,000.00 for Samuel; and $2,245.75 for Emily Sherwin).

e. CV17-01666 (Second Judicial) Orquidea Cedillo and Sophia Cedillo, a minor vs. Nathaniel McVay: December 4, 2018, settled prior to arbitration hearing for $25,000 total.

f. ARB17-01505 (Second Judicial) Sutherland v. Goicoechea: February 2, 2018 settled for $4,250 prior to arbitration hearing.

g. CV17-01641 (Second Judicial) Martin v. Munson: on February 6, 2018, I settled Kelly Martin's claim for $4,320.00; on April 23, 2018, I settled Paul Martin's claim for $27,147.00; both settlements came before the arbitration hearing.

h. CV17-01629 (Second Judicial) Dennis Blair vs. Lacie Rose Johns and Debra Johns: at the location of the arbitration hearing, immediately before the hearing was to begin, the parties settled this matter for $15,000.00.

i. CV17-02237 (Second Judicial) Lazarri v. Haw: on September 18, 2018, this matter settled prior to the arbitration hearing for $11,045.00.

j. CV17-01568 (Second Judicial) Martinez-Silva v. Vazquez-Macias: on July 6, 2018, this matter settled prior to the arbitration hearing for $15,000.00.

k. CV18-00031 (Second Judicial) Maria del Carmen Guerra et al v. Anheier: on June 25, 2018 this matter settled prior to the arbitration hearing as follows: Maria Guerra $7,000, Itzyana Carlon $6,500, Yatziri Carlon $8,500, Jancarlos Carlon $4,800.

l. CV18-00005 (Second Judicial) Cordero v. Planeta: on September 5, 2018, this matter settled prior to the arbitration hearing for $24,000.00.

m. ARB17-01517 (Second Judicial) Nazaire v. Kellison: on April 27, 2018, this matter settled prior to the arbitration hearing for $25,000.00.

n. CV17-00764 (Second Judicial) Lane v. Schofield: on July 18, 2018, this matter settled prior to the arbitration hearing for $19,600.00.

o. CV18-00204 (Second Judicial) Franklin v. Topete: on April 30, 2018, this matter settled prior to arbitration hearing for $15,000.00.

p. ARB18-00163 (Second Judicial) Johnson v. Valley-Tech, et al.: on November 16, 2018, this matter settled prior to the arbitration hearing for $11,000.00.

q. CV18-00244 (Second Judicial) Strickland v Smith: on December 5, 2018, this matter settled the morning of the arbitration hearing at the time and place of the arbitration hearing for $4,000.00.

r. CV18-00439 (Second Judicial) Freeto v. Rogers: on July 24, 2018, this matter settled prior to the arbitration hearing for $21,500 ($6,500 from Farmers and $15,000 from State Farm).

s. CV18-00530 (Second Judicial) Silva v. O'Connell: on February 6, 2019, this matter settled prior to the arbitration hearing for $4,695.93.

t. CV18-01147 (Second Judicial) Hernandez-Valtierra v. Casci: on January 23, 2019, this matter settled prior to the arbitration hearing for $40,000.00.

u. 18-TRT000301B (First Judicial) Zaza v. Diaz and Dominguez: on May 3, 2019, this matter settled for $4,500.00.

v. CV18-00187 (Second Judicial) Najar v. Olivas-Antillon and Palacios: on September 21, 2018, this matter settled prior to the arbitration hearing for $7,000.00.

w. CV18-01619 (Second Judicial) Lacroix v. Sanders: on February 6, 2019, this matter settled prior to the arbitration hearing for $6,000.00.

x. CV17-00879 (Second Judicial) Cano v. Pinson, Nelson, et al.: on September 13, 2018, this matter settled prior to the arbitration hearing for $2,500.

y. CV18-01441 (Second Judicial) Carroll v. Williams: on July 8, 2019, this matter settled prior to the arbitration hearing for $15,000.00.

z. CV18-01318 (Second Judicial) Gugich v. Kelly: on September 6, 2018, plaintiff accepted defendant's $12,000 exclusive offer of judgment prior to the arbitration hearing.

aa. CV18-01532 (Second Judicial) Woodman v. McVay: on December 5, 2018, this matter settled prior to the arbitration hearing for $5,000.00.

bb. CV18-01691 (Second Judicial) Gardner v. Miller: on July 18, 2019, this matter settled prior to the arbitration hearing for $37,500.00.

cc. ARB19-00347 (Second Judicial) Hovore v Stone: on July 25, 2019, this matter settled prior to the arbitration hearing for $100,000.00.

20. Since working for Farmers, I have participated in settling and/or resolving **11** cases in the mandatory arbitration program **after** an arbitration hearing but **prior** to a short trial (2 of these matters (j and k) defendant accepted the arbitration award; 8 of these matters (a, b, c, d, e, g, h, i) were settled below the amount of the arbitration award; 1 of these matters (f) the award was paid after the trial de novo was stricken for paying arbitrator late):

a. CV16-01269 (Second Judicial) Barajas-Ayala v. Caswell: This matter had an arbitration hearing on April 3, 2017 (handled by Brent Harsh); on April 7, 2017, the Arbitrator Brent Kolvet awarded $13,465.75 to martin Barajas-Ayala and $10,139.04 to Juan Barajas-Ayala; on April 28, 2017, Defendant filed a request for trial de novo; short trial was scheduled for December 4, 2017; on November 16, 2017, I settled this matter for a total of $18,000 ($11,500 to Martin and $6,500 to Juan).

b. CV16-02166 (Second Judicial) Tracy Piscoran v. Robert McGeorge, James Roberts and Maximillian Roberts (matter was eventually moved out of short trial program by plaintiff): June 30, 2017 arbitration award only against Defendant McGeorge in the amount of $42,000; on July 21, 2017, Defendant Roberts filed a request for trial de novo; on March 12, 2018, I settled Defendant McGeorge's portion for $3,000 and Co-Defendants Roberts settled their portion for $22,000.

c. ARB16-02521 (Second Judicial) Castro-Avalos v. Porsow: On December 30, 2016, Defendant served an offer of judgment for $15,000; on December 15, 2017, the arbitration hearing was held; on December 26, 2017, the arbitrator filed his decision and found Plaintiff and Defendant 50/50 liable for the accident and after apportioning liability made an ultimate award to Plaintiff of $21,992.50; on January 5, 2018, I filed a request for trial de novo; on

January 18, 2018, I settled this matter for $15,000. This case stemmed from an auto accident on June 4, 2015. Plaintiff slowed abruptly and tried to turn right into a private parking-lot from lane 1 and across lane 2. Defendant, driving in lane 1, did not anticipate the abrupt turn and rear-ended the Plaintiff. This case was litigated in good faith based upon the facts and circumstances of this case. There is nothing in the record to demonstrate otherwise.

d. A-16-744689-C (Eighth Judicial) Ritchie vs. Wynant: December 13, 2017 arbitration award of $17,000; January 5, 2018 request for trial de novo filed; short trial scheduled for June 22, 2018; on June 19, 2018, I settled this matter globally for $10,000.

e. CV17-00534 (Second Judicial) Maribel Rodriguez Valdez vs. Reagan Maya Michel and Laura Jean Michel: September 28, 2017, defendant served a $15,000 offer of judgment; on May 4, 2017, the arbitrator awarded plaintiff $19,806.00; on May 15, 2018, I filed a request for trial de novo; on June 7, 2018, I settled this matter for $18,000.

f. CV17-01356 (Second Judicial) Paz Dalmacio vs. Brian Palomar-Linarez: on August 18, 2017, defendant served an $8,501 offer of judgment; on January 29, 2018, the arbitrator awarded plaintiff $34,330.50; on February 27, 2018, I filed a request for trial de novo; on June 11, 2018, the request for trial de novo was stricken for defendant's failure to pay the arbitrator's fees timely; judgment was then paid.

g. 17TRT000541B (First Judicial) Dzurec v. Farmers Insurance: on May 22, 2018, arbitrator assessed plaintiff's total damages to be $19,298.02; because plaintiff had received $20,000 from the underlying tortfeasor and med pay, Farmers received a $20,000 offset; on June 25, 2018 this matter settled for $1,000.00 prior to any request for trial de novo being filed by either party.

h. 18-CV-0036 (Ninth Judicial) Chandler v. Dumas: on January 10, 2019 the arbitrator, Karen Winters, awarded plaintiff $26,764.00; on January 16, 2019, I filed a request for trial de novo; on January 31, 2019, I served an exclusive $10,000 offer of judgment on plaintiff's counsel; on February 8, 2019, the offer of judgment was accepted by plaintiff ($10,000 + $1302.36 in costs/interests for a total of $11,302.36).

i. CV18-01749 (Second Judicial) McDonald v. Rothgeb: on October 1, 2018, I served a $5,000 offer of judgment; on May 20, 2019, the arbitrator, Bob Jensen, awarded plaintiff $8,490.00; on June 7, 2019, this matter settled for $7,000.00.

j. CV18-01419 (Second Judicial) Russell v. Lund and Guevara-Zermeno: on July 3, 2019, the arbitrator awarded plaintiff $8,656.00; on July 19, 2019, I filed defendant's acceptance of arbitration award.

k. CV18-01633 (Second Judicial) Smith v. Graffam: on December 3, 2018, I served a $17,500 offer of judgment; on May 31, 2019, the arbitrator awarded plaintiff $26,012.00; defendant accepted the arbitrator's award and paid plaintiff's award of fees, costs and interests as well.

21. Since working for Farmers, I have defensed **2** cases in the mandatory arbitration program where no trial de novo was filed:

a. CV17-01349 (Second Judicial) Allstate Insurance v. Master Service Plumbing: June 22, 2018, arbitrator found in favor of defense and awarded nothing to plaintiff.

b. CV18-00974 (Second Judicial) Lorenzo v. Perez-Vicen: on May 9, 2019, the arbitrator entered an award in favor of defendant and against plaintiff.

22. Since working for Farmers, I have tried **5** matters to verdict in the short trial program and thereby reduced the arbitration award:

a. A-16-742226-C (Eighth Judicial) Delarosa vs. Klone: September 18, 2017 arbitration award of $20,000; I took over trial counsel duties for Michael Rowe, Esq.; I tried the case on March 9, 2018 with the jury returning a verdict in the amount of $3,500.00.

b. CV17-01939 (Second Judicial) Hakansson v. Sloan: On April 4, 2017, Sloan rear ended a vehicle at a stop light and then struck the passenger side of Hakansson's vehicle. Hakansson claimed $3,942.00 in medical specials. On January 4, 2018, defendant served a $5,000 exclusive offer of judgment. On June 9, 2018, the arbitrator provided an award in favor of Hakansson in the amount of $11,942.00. On June 18, 2018, I filed a request for trial de novo. On December 10, 2018, after the short trial, the jury returned a verdict in the amount of $8,000.00. On December 5, 2019, a notice of satisfaction of verdict was filed. This case was litigated in good faith based upon the facts and circumstances of this case.

c. 17-TRT-00067 1B (First Judicial) Torres-Manzano v. Malone: on May 15, 2018, defendant served a $12,069 offer of judgment; on July 6, 2018, the arbitrator awarded plaintiff $20,515.00; on July 10, 2018, I filed a request for trial de novo; on January 17, 2019, the jury returned a verdict in favor of the plaintiff and awarded her a total of $11,625.30.

d. CV18-00457 (Second Judicial) Hagan v. Green: on May 10, 2018, I served a $6,385.00 offer of judgment on Plaintiff Vertis Hagan and a $1,037 offer of judgment on Plaintiff Micah Hagan; on May 18, 2018, Plaintiff Micah Hagan accepted the offer of judgment; on November 11, 2018, the arbitrator awarded $11,233.00 to Plaintiff Vertis Hagan; on November 28, 2018, I filed a request for trial de novo and served a $7,500 offer of judgment; on May 20, 2019, the jury returned a verdict in favor of Plaintiff Vertis Hagan for a total of $8,733.00.

e. CV18-01416 (Second Judicial) Wright v. Pritchard: on January 16, 2019, the arbitrator, Brent Harsh, awarded Plaintiff $26,372.97; on January 23, 2019, I filed a request for trial de novo; on March 15, 2019, I served a $16,501.00 exclusive offer of judgment on Plaintiff's counsel; on June 24, 2019, the jury returned a special verdict finding Defendant 60% at fault for the accident and Plaintiff 40% at fault for the accident and provided a total award to the plaintiff for $29,827.97; with the comparative negligence finding by the jury, the award of $29,827.97 was reduced by 40% to $17,896.78.

23. Since working for Farmers, I have tried **1** matter to verdict in the short trial program after plaintiff, not me, filed a request for trial de novo:

a. CV16-02062 (Second Judicial) Alice Delande vs. Anne Marie Kocher and Beat Kocher: on October 4, 2017, Farmers offered plaintiff $15,000 to settle; at the arbitration hearing, plaintiff requested $50,000; on February 22, 2018 the arbitrator provided an arbitration award in favor of Defendants; on March 1, 2018, on behalf of plaintiff, Bob Jensen filed a request for trial de novo; after the short trial the jury returned a verdict of $13,598.11.

24. Since working for Farmers, I have tried **1** matter to verdict in the short trail program after prior defense counsel filed a request for trial de novo and not reduced the arbitration award:

a. CV17-00623 (Second Judicial) Eckert v. Mickelson: on June 28, 2017, defendant served plaintiff with a $20,001 offer of judgment; on October 20, 2017, the arbitrator awarded plaintiff $32,606.00; on November 1, 2017, Karl Smith filed a request for trial de novo; on March 19, 2018, the jury returned a verdict in favor of plaintiff and awarded him $33,212.00.

25. Since working for Farmers, I have tried **2** cases in the Justice Court:

a. RJC2017-098430 (Reno Justice Court): on May 6, 2019, plaintiff did not appear for trial so her case was dismissed at trial; RJC2017-098177: on May 6, 2019, jury returned a verdict for the amount of plaintiff's medical specials ($4,029.75) and nothing else; RJC2017-098429: on May 6, 2019, jury returned a verdict for the amount of plaintiff's medical specials ($4,555.00) and nothing else.

b. RJC2018-000927 NOW CV19-00351 Vickroy v. Zui: on January 9, 2019, a bench trial was held and the judge entered a verdict in favor of the defense; plaintiff filed an appeal and the appeal was affirmed by the district court on July 8, 2019.

26. ARB18-00744 (Second Judicial) Codman v. Gregory: on March 11, 2019, the arbitrator, Richard Hill, awarded plaintiff $19,999.00; on March 12, 2019, I filed a request for trial de novo; this matter is currently scheduled for trial on September 9, 2019.

27. In none of the above cases have I or Farmers ever been found to have participated in bad faith.

Affirmation: Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

DATED: July 25, 2019

THE LAW OFFICES OF S. DENISE MCCURRY - RENO

BY: /s/ Adam McMillen
ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
KATHERYN JEAN FRITTER

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the 25th day of July, 2019, I served a true and correct copy of the above and foregoing DECLARATION OF ADAM MCMILLEN IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY on the parties addressed as shown below:

____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

_X_ *Via Electronic Filing* [N.E.F.R. 9(b)]

____ *Via Electronic Service* [N.E.F.R. 9]

____ *Via Facsimile* [E.D.C.R. 7.26(a)]

William R. Kendall, Esq.
137 Mount Rose St
Reno, NV 89509
Attorney for Plaintiff, Ralph Ortega

/s/ Adam McMillen

An Employee of The Law Offices of
S. Denise McCurry - Reno

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ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
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KATHERYN JEAN FRITTER

DISTRICT COURT

WASHOE COUNTY, NEVADA

RALPH ORTEGA,

Plaintiff,

vs.

KATHERYN JEAN FRITTER; DOES I-V; inclusive,

Defendants.

Case No.: CV18-02032

DEPT. NO. 4

OPPOSITION TO MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY

This is William Kendall's second MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY.[1] By filing this nearly identical motion for a second time, without regard to the facts and circumstances of each case, and without regard to the actual statistics, Mr. Kendall is engaging in the very behavior that he is wrongfully accusing Farmers and the undersigned of.

I. STATEMENT OF FACTS

The subject matter stems from an auto accident that occurred on November 6, 2017 at the intersection of Plumas Street and La Rue Avenue, Reno, Nevada. It is undisputed that Defendant rear ended Plaintiff. What is disputed is the amount of damages resulting from the accident.

[1] DECLARATION OF ADAM MCMILLEN IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY (hereinafter "Dec. of Adam McMillen"), filed concurrently herewith, ¶ 13.

Given no complaints of injury at the scene of the accident, that the Plaintiff continued to work as a mechanic and lift heavy objects at work, that the Plaintiff continued to ride his performance road bikes performing stunts, and that there was no verified loss of income, Defendant respectfully requested that the arbitrator provide a reasonable award for this matter.[2] Unfortunately, the arbitrator's award is higher than what is believed a reasonable jury will provide for this matter based upon recent jury verdicts in similar matters in Washoe County.

II. PROCEDURAL HISTORY

On October 10, 2018, Plaintiff filed his Complaint. On November 13, 2018, Defendant filed her answer. On October 18, 2018, this matter was ordered into the court annexed arbitration program. On December 4, 2018, Defendant served an exclusive offer of judgment on Plaintiff in the amount of $14,000.00.[3] On December 20, 2018, David Zaniel was appointed as arbitrator in this action. On March 13, 2019, the arbitration hearing was held. On June 17, 2019, the arbitrator issued an award in favor of the Plaintiff for $20,448.00. On July 5, 2019, Defendant filed a request for trial de novo.

Without regard to the facts and circumstances of this case, on July 15, 2019, Mr. Kendall filed his motion to strike Defendant's request for trial de novo; impose sanctions; and permit discovery along with a motion to stay and a motion to consolidate.

III. ARGUMENT

a. Kathryn Fritter Has Not Waived Her Right To Trial De Novo

Defendant Kathryn Fritter, and her attorney, Adam McMillen, meaningfully participated in good faith during the arbitration process and did not waive any right to a trial de novo. Therefore, the court should deny Plaintiff's motion.

i. In Order to Determine Good or Bad Faith, Fritter's Actual Participation in the Arbitration Process Should Be Evaluated

1. Only Bad-Faith Participation Waives the Right to a Jury Trial

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[2] *See* Dec. of Adam McMillen, Exhibit 6 at 10:7-12, 12:3-11; 16:13-17:10; and Exhibit 7.
[3] *See* Dec. of Adam McMillen, ¶ 5, Exhibit 8.

A jury trial is an important constitutional right.[4] Under Nevada's mandatory arbitration process, the right to a trial can only be waived by a participant's failure to "either prosecute or defend a case in good faith during the arbitration proceedings" under NAR 22(A). "However, the important constitutional right to a jury trial is not waived simply because individuals can disagree over the most effective way to represent a client at an arbitration proceeding."[5]

In this context, the Nevada Supreme Court has equated Rule 22's "good faith" requirement with "meaningful participation" in the arbitration process.[6] To sanction a party for lack of good faith and meaningful participation under NAR 22(A), the district court must "provide specific written findings of fact and conclusions of law describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation."[7]

The Nevada Supreme Court has made clear that "it is the substance of the hearing... that is important in determining the good faith of the participants."[8]

ii. Judicial Definition of Meaningful Interpretation

Courts have found bad faith and lack of meaningful participation when a party "simply 'goes through the motions,"'[9] fails to respond timely to discovery requests,[10] or refuses to participate at all.[11] Courts have found no bad faith, however, where parties failed to call witnesses or to attend the arbitration hearing,[12] refused to enter into meaningful settlement negotiations,[13] inadequately prepared for the arbitration,[14] or even advised the court that no settlement offer would be forthcoming.[15]

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[4] U.S. Const. amend. 7; Nev. Const. Art. One, Sec. 3; *Gittings v. Hartz*, 116 Nev. 386, 390, 996 P.2d 898, 900–01 (2000) (citing *Chamberland v. Labarabera*, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994)).
[5] *Gittings*, 116 Nev. at 390, 996 P.2d at 901 (citation omitted).
[6] *Gittings*, 116 Nev. at 390, 996 P.2d at 901 (citing *Casino Properties, Inc. v. Andrew*, 112 Nev. 1332, 1335, 911 P.2d 1181, 1182-83 (1996) (appellant failed to defend arbitration in good faith by refusing to produce documents during discovery, failing to timely deliver a pre-arbitration statement and failing to produce a key witness at the arbitration) (favorably referencing *Gilling v. Eastern Airlines, Inc.*, 680 F.Supp. 169 (D. N.J. 1988)).
[7] *Chamberland*, 110 Nev. at 705, 877 P.2d at 525 (1994) (citing Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 787 P.2d 777 (1990).
[8] *Gittings*, 116 Nev. at 393, 996 P.2d at 902.
[9] *Gittings*, 116 Nev. at 393, 996 P.2d at 902.
[10] *Casino Properties, Inc.*, 112 Nev. at 135, 911 P.2d at 1183.
[11] *Gilling v. Eastern Airlines*, 680 F. Supp. 169, 171 (D. N.J. 1988).
[12] *Gittings*, 116 Nev. at 392, 996 P.2d at 902.
[13] *Campbell v. Maestro*, 116 Nev. 380, 385, 996 P.2d 412, 415 (2000).
[14] *Nationwide Mutual Ins. Co. v. Kogut*, 819 N.E.2d 1127, 1130 (Ill. App. 2004).
[15] *Halaby, McCrea & Cross v. Hoffman*, 831 P.2d 902, 908 (Colo. 1992) (en banc).

In *Gittings*, for example, the Nevada Supreme Court determined that four of the six reasons cited by the trial court could sustain striking a request for trial de novo on the basis of bad-faith participation.[16] Because the hearing was neither recorded nor transcribed, the trial court used no reviewable facts to support its supposition that *Gittings* "took a lackadaisical approach to the process."[17] In fact, the Court noted that, had the arbitrator made "detailed factual findings illustrating a lackadaisical attitude," then no transcript or recording would be needed to support a bad faith finding.[18] Finally, the Court noted that, even where an insurance company files for trial de novo in over **50% of its cases**,[19] the **statistics will not support bad faith unless it can be shown they do so without regard to the facts and circumstances of each case**.[20]

The *Gittings* Court explained the intent of the arbitration program as follows:

> The Court Annexed Arbitration Program is intended to be a simplified, informal procedure to resolve certain types of civil cases. See NAR 2(A) and (D). It is designed to give the arbitrator a good understanding of the essential factual disputes and the legal positions of the parties. The decisions issued by the arbitrators, as neutral fact finders, are intended to promote settlement of cases at an early stage of the proceedings. Thus it is the substance of the hearing, not its length, that is important in determining the good faith of the participants.[21]

As suggested in *Gittings*, *Gilling*, and *Nationwide Mutual Ins.*, the district court must examine the entirety of the arbitration process, **including the facts and circumstances of each case**, in

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[16] *Gittings*, 116 Nev. at 393, 996 P.2d at 902. The district court cited the following reasons: (1) Gittings' failure to attend the arbitration hearing, (2) failure to call any witnesses to testify at the hearing, (3) the length of the hearing and the amount of time Gittings used to present her issues at the hearing, (4) failure to contest liability, (5) failure to request an independent medical examination or present any countervailing medical evidence, and (6) the high percentage of trial de novo requests filed by Gittings' insurer... *Id.* at 901. The Nevada Supreme Court discussed the district court's evaluation of the amount of time taken in the arbitration process but dismissed reasons 1, 2, 4, and 5 out of hand. Id., 116 Nev. at 392, 996 P.2d at 902.

[17] *Gittings*, 116 Nev at 392, 996 P.2d at 902.

[18] *Id.* at note 6.

[19] Mr. Kendall is only looking at attorney Adam McMillen's cases, not all of Farmers' cases in Nevada, and therefore this is another example that Mr. Kendall's statistical analysis does not show that Farmers has a pattern and practice of ignoring the facts and circumstances of each case.

[20] *Id.*, 116 Nev. at 394, 996 P.2d at 903 ("competent statistical information that demonstrates that an insurance company has routinely filed trial de novo requests **without regard to the facts and circumstances of each individual case** may be used to support a claim of bad faith. However, the statistics in this case are incomplete. While a comparatively high percentage of de novo requests are filed by Allstate, **there is no analysis accompanying the statistics to support a conclusion that the statistics prove that Allstate automatically requests a trial de novo regardless of the arbitration process**. For example, **no correlation has been shown between requests for trial de novo and verdicts for or against the party who filed the request**. Without an evidentiary hearing or a more comprehensive qualitative and quantitative statistical analysis, the statistics cited by Hartz to the district court were not sufficient to justify termination of proceedings in Hartz' favor.") (emphasis added).

[21] *Gittings*, 116 Nev. at 393, 996 P.2d at 902.

determining whether Fritter (or the undersigned or Farmers) lacked good faith or meaningful participation.

b. There is No Record Demonstrating Bad Faith

There is no record of Fritter, her attorney or insurer refusing to participate fully in the arbitration process or acting to impede the process or delay the process or otherwise adversely affect the arbitration proceedings. As in *Gittings,* there is nothing to suggest Fritter "took a lackadaisical approach to the process." Like *Gittings,* there is neither a transcript nor recording of the arbitration hearing. Here, as in *Gittings*, "[w]ithout detailed information on what actually transpired at the hearing, we are left with **bare allegations** that [plaintiff] did not defend herself in good faith."[22] "**[B]are assertions of this nature are not appropriate foundations for a motion to strike a trial de novo.**"[23]

Mr. Kendall fails to examine the facts and circumstances of this matter or any of the other cases he cites. This failure, alone, should be enough to deny Mr. Kendall's motion.

i. The Defendant Did Participate in Good Faith

Fritter's attorney served a written offer of judgment.[24] He engaged in written discovery and took the Plaintiff's deposition.[25] He timely served Defendant's arbitration statement.[26] He vigorously represented his client's interests during the arbitration hearing.[27] He prepared the arbitration brief, appeared at the hearing, cross examined the Plaintiff and vigorously represented his client at the arbitration hearing.[28]

On the other hand, nothing in the record supports a view that Fritter, her attorney or her insurer, ever refused to comply with any court order, purposefully denied Plaintiff of their ability to participate fully, or even refused to discuss settlement at any time during the arbitration process. Notably, the arbitrator, in his award, never alluded to any bad faith or lack of meaningful participation on Fritter's part, her attorney's part or her insurer's part.

c. The Plaintiff's Bare Statistics

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[22] *Gittings*, 116 Nev. at 392, 996 P.2d at 902.
[23] *Gittings*, 116 Nev. at 389, 996 P.2d at 900, n.1.
[24] *See* Dec. of Adam McMillen, ¶ 5, Exhibit 8.
[25] *See* Dec. of Adam McMillen, ¶¶ 2-3, Exhibits 1-6.
[26] *See* Dec. of Adam McMillen, ¶ 4, Exhibit 7.
[27] *See* Dec. of Adam McMillen, ¶ 6.
[28] *See* Dec. of Adam McMillen, ¶¶ 6-8.

i. The Actual Statistics Demonstrate That The Undersigned and Farmers Carefully Consider The Facts And Circumstances Of Each Individual Case When Deciding To File A Request For Trial De Novo

Mr. Kendall only looks at 11 cases handled by the undersigned in a frivolous attempt to demonstrate the undersigned and Farmers file requests for trial de novo without regard to the facts and circumstances of each individual case and with an intent to increase the time and expense of litigation for claimants and to obstruct payment.[29] Not only does Mr. Kendall fail to make any assessment of the facts and circumstances of those 11 cases, Mr. Kendall ignores the actual statistics of the cases handled by the undersigned.

Since working for Farmers, the undersigned has participated in settling and/or resolving **54 matters** outside of the mandatory arbitration program in various courts throughout Nevada.[30]

Since working for Farmers, the undersigned has participated in settling and/or resolving **29 matters** in the mandatory arbitration program **prior** to the arbitration hearing.[31]

Since working for Farmers, the undersigned has participated in settling and/or resolving **11 matters** in the mandatory arbitration program **after** an arbitration award but **prior** to a short trial (2 of these matters, *see* Dec. of Adam McMillen, ¶ 20 (j) and (k), **defendant accepted the arbitration award**; 8 of these matters, *see* Dec. of Adam McMillen, ¶ 20 (a), (b), (c), (d), (e), (g), (h), (i), were **settled below the amount of the arbitration award**; 1 of these matters, *see* Dec. of Adam McMillen, ¶ 20 (f), the award was paid after the trial de novo was stricken for paying the arbitrator late).

Since working for Farmers, the undersigned defensed **2 matters** in the mandatory arbitration program where no trial de novo was filed.[32]

Since working for Farmers, the undersigned has tried **5 matters** to verdict in the short trial program and thereby reduced the arbitration award.[33]

Since working for Farmers, the undersigned has tried **1 matter** to verdict in the short trial program after plaintiff, not the undersigned, filed a request for trial de novo.[34]

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[29] *See* MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY, filed herein on 7/15/19, 4:10-13.
[30] *See* Dec. of Adam McMillen, ¶ 18 (a – bbb).
[31] *See* Dec. of Adam McMillen, ¶ 19 (a – cc).
[32] *See* Dec. of Adam McMillen, ¶ 21 (a – b).
[33] *See* Dec. of Adam McMillen, ¶ 22 (a – e).

Since working for Farmers, the undersigned has tried **1 matter** to verdict in the short trail program after prior defense counsel or the undersigned filed a request for trial de novo and not reduced the arbitration award.[35]

Since working for Farmers, the undersigned has tried **2 matters** in the Justice Court where the results were more favorable to the defense.[36]

These statistics overwhelmingly demonstrate the undersigned and Farmers settle more cases than they try in the short trial program or any other court. These statistics also demonstrate that the undersigned and Farmers only try cases after carefully considering the facts and circumstances of each case.

Regarding the undersigned's participation in the short trial program, of the 6 matters that were tried to verdict in the short trial program by the undersigned, where the defense filed the request for trial de novo, the arbitration award was reduced in 5 of those cases.

The actual statistics demonstrate the undersigned and Farmers carefully consider the facts and circumstances of each individual case when deciding to file a request for trial de novo. There is nothing in the record to support Mr. Kendall's bare arguments otherwise. In addition, there has never been a finding of bad faith conduct in any of the cases cited by Mr. Kendall or any of the cases handled by the undersigned.[37]

IV. CONCLUSION

The request for trial de novo, filed in this matter, is based upon the facts and circumstances of this case. The requests for trial de novo, filed in all other matters, are based upon the facts and circumstances of each individual case. There is no evidence to the contrary. Mr. Kendall's motion to strike the request for trial de novo, impose sanctions or conduct discovery into Farmers' practices should be denied.

If any sanctions are warranted, they should be directed at Mr. Kendall for bringing this frivolous motion.

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[34] *See* Dec. of Adam McMillen, ¶ 23 (a).
[35] *See* Dec. of Adam McMillen, ¶ 24 (a).
[36] *See* Dec. of Adam McMillen, ¶ 25 (a - b).
[37] *See* Dec. of Adam McMillen, ¶ 27.

Affirmation: Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

DATED: July 25, 2019

THE LAW OFFICES OF S. DENISE MCCURRY - RENO

BY: /s/ Adam McMillen
ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
KATHERYN JEAN FRITTER

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the 25th day of July, 2019, I served a true and correct copy of the above and foregoing OPPOSITION TO MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY on the parties addressed as shown below:

_____ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

_X_ *Via Electronic Filing* [N.E.F.R. 9(b)]

_____ *Via Electronic Service* [N.E.F.R. 9]

_____ *Via Facsimile* [E.D.C.R. 7.26(a)]

William R. Kendall, Esq.
137 Mount Rose St
Reno, NV 89509
Attorney for Plaintiff, Ralph Ortega

/s/ Adam McMillen

An Employee of The Law Offices of
S. Denise McCurry - Reno

Exhibit 2

Exhibit 2

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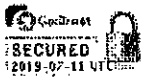

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McMillen, Esq.	Adam	10678	CV18-01691 (/Query/CaseInformation/CV18-01691)	BARBARA A. GARDNER VS MARK A. MILLER (ARB)
McMillen, Esq.	Adam	10678	CV18-01673 (/Query/CaseInformation/CV18-01673)	ARMANDO NAVA; ET AL VS. RHONDA LOWE (ARB)

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	ARB18-00744 (/Query/CaseInformation/ARB18-00744)	TYLER CODMAN VS PATRICIA GREGORY (ARB)
McMillen, Esq.	Adam	10678	CV18-01633 (/Query/CaseInformation/CV18-01633)	CHARLES V. SMITH VS ROY D. GRAFFAM (ARB)
McMillen, Esq.	Adam	10678	CV18-01619 (/Query/CaseInformation/CV18-01619)	DONNA LACROIX VS KELLY SANDERS (ARB)
McMillen, Esq.	Adam	10678	CV18-01629 (/Query/CaseInformation/CV18-01629)	JULIUS MILITANTE VS. STEVE VANDERMAY; ET AL (D10)
McMillen, Esq.	Adam	10678	CV18-01S32 (/Query/CaseInformation/CV18-01S32)	*consolidated into CV17-01666
McMillen, Esq.	Adam	10678	CV18-01441 (/Query/CaseInformation/CV18-01441)	KRISTOPHER CARROLL VS KRISTINAL WILLIAMS (ARB)
McMillen, Esq.	Adam	10678	CV18-01428 (/Query/CaseInformation/CV18-01428)	MINOR COMP: COLE MEACHAM (DDD)
McMillen, Esq.	Adam	10678	CV18-01416 (/Query/CaseInformation/CV18-01416)	EDITH WRIGHT VS KERRY PRITCHARD (STP)
McMillen, Esq.	Adam	10678	CV18-01419 (/Query/CaseInformation/CV18-01419)	TONYA RUSSELL VS. NANCY LUND; ET AL (ARB)
McMillen, Esq.	Adam	10678	CV18-01382 (/Query/CaseInformation/CV18-01382)	AMBER HILL VS NICHOLAS & JAVIER ARGUELLO (D9)
McMillen, Esq.	Adam	10678	CV18-01318 (/Query/CaseInformation/CV18-01318)	DANIEL GUGICH VS. NOREEN KELLY (ARB)
McMillen, Esq.	Adam	10678	CV18-01147 (/Query/CaseInformation/CV18-01147)	ADRIANNA HERNANDEZ VS. NICOLE CASCI (D8)
McMillen, Esq.	Adam	10678	ARB18-004S7 (/Query/CaseInformation/AR818-004S7)	VERTIS AMIEL HAGAN VS ALEXANDER G. GREEN (ARB)
McMillen, Esq.	Adam	10678	ARB18-00S30 (/Query/CaseInformation/ARB18-00S30)	MELISSA SILVA VS DAULTON D. D'CONNELL (ARB)
McMillen, Esq.	Adam	10678	CV18-01000 (/Query/CaseInformation/CV18-01000)	MARVIN TANNER VS. EDGE AT RENO CONDO O.A. (D1)
McMillen, Esq.	Adam	10678	CV18-00982 (/Query/CaseInformation/CV18-00982)	DANA SALERNO VS RODGENE MOORE ETAL (D7)

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McMillen, Esq.	Adam	10678	CV18-00974 (/Query/CaseInformation/CV18-00974)	GREGORY LORENZO VS MARIA PEREZ-VICEN (D7)
McMillen, Esq.	Adam	10678	CV18-00949 (/Query/CaseInformation/CV18-00949)	TARYN YORK VS MARGARET CRADDOCK (D1S)
McMillen, Esq.	Adam	10678	ARB18-00244 (/Query/CaseInformation/ARB18-00244)	RYAN STRICKLAND VS. LEVI SMITH (ARB)
McMillen, Esq.	Adam	10678	ARB18-00163 (/Query/CaseInformation/ARB18-00163)	WILLIAM JOHNSON VS VALLEY TECH INVEST ET AL (ARB)
McMillen, Esq.	Adam	10678	ARB18-00439 (/Query/CaseInformation/ARB18-00439)	RONALD FREETO VS LISA E. ROGERS (ARB)
McMillen, Esq.	Adam	10678	ARB18-00204 (/Query/CaseInformation/ARB18-00204)	SARAH FRANKLIN VS DAVID TOPETE (ARB)
McMillen, Esq.	Adam	10678	CV18-00744 (/Query/CaseInformation/CV18-00744)	TYLER CODMAN VS PATRICIA GREGORY (STP)
McMillen, Esq.	Adam	10678	CV18-00713 (/Query/CaseInformation/CV18-00713)	MARIA REYES; ET AL VS. JOSEPH SCHLER (D1)
McMillen, Esq.	Adam	10678	CV18-00662 (/Query/CaseInformation/CV18-00662)	DAVID M. SIBAJA VS JULIE CHING (STP)

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV18-00620 (/Query/CaseInformation/CV18-00620)	MELISSA HOTARY ETAL VS TAMARA EVANS ETAL (D7)
McMillen, Esq.	Adam	10678	ARB17-00764 (/Query/CaseInformation/ARB17-00764)	REGINA Y. LANE VS LINDA T. SCHOFIELD (ARB)
McMillen, Esq.	Adam	10678	CV18-00565 (/Query/CaseInformation/CV18-00565)	VIRGINIA M. HIGGINS VS DIANA H. WINGO (D7)
McMillen, Esq.	Adam	10678	CV18-00530 (/Query/CaseInformation/CV18-00530)	MELISSA SILVA VS DAULTON D. O'CONNELL (D8)
McMillen, Esq.	Adam	10678	CV18-00504 (/Query/CaseInformation/CV18-00504)	MINORS COMP: KATE SIERRA BALZER (D9)
McMillen, Esq.	Adam	10678	CV18-00491 (/Query/CaseInformation/CV18-00491)	KAYLA METZGER VS CYNTHIA F. ROBERTS (D1)
McMillen, Esq.	Adam	10678	CV18-00457 (/Query/CaseInformation/CV18-00457)	VERTIS AMIEL HAGAN VS ALEXANDER G. GREEN (STP)
McMillen, Esq.	Adam	10678	CV18-00439 (/Query/CaseInformation/CV18-00439)	RONALD FREETO VS LISA E. ROGERS (D15)
McMillen, Esq.	Adam	10678	ARB17-01568 (/Query/CaseInformation/ARB17-01568)	DULCE MARTINEZ-SILVA VS MONICA VAZQUEZ-MACIAS(ARB)
McMillen, Esq.	Adam	10678	ARB18-00031 (/Query/CaseInformation/ARB18-00031)	MARIA DEL CARMEN GUERRA VS ALFRED F. ANHEIER (D8)
McMillen, Esq.	Adam	10678	ARB18-00005 (/Query/CaseInformation/ARB18-00005)	NYCTE CORDERO VS LASHAWNA L. PLANETA (ARB)
McMillen, Esq.	Adam	10678	ARB17-01629 (/Query/CaseInformation/ARB17-01629)	DENNIS BLAIR VS LACIE ROSE & DEBRA JOHNS (ARB)
McMillen, Esq.	Adam	10678	ARB17-02237 (/Query/CaseInformation/ARB17-02237)	MARY A. LAZZARI VS WILLIAM C. HAW (ARB)
McMillen, Esq.	Adam	10678	CV18-00244 (/Query/CaseInformation/CV18-00244)	RYAN STRICKLAND VS. LEVI SMITH (D10)
McMillen, Esq.	Adam	10678	CV18-00204 (/Query/CaseInformation/CV18-00204)	SARAH FRANKLIN VS DAVID TOPETE (ARB)
McMillen, Esq.	Adam	10678	CV18-00187 (/Query/CaseInformation/CV18-00187)	MARIA NAJAR VS MELANIE OLIVAS-ANTILLON ETAL (ARB)

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Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV18-00163 (/Query/CaseInformation/CV18-00163)	WILLIAM JOHNSON VS VALLEY TECH INVEST ET AL (D7)
McMillen, Esq.	Adam	10678	ARB17-01641 (/Query/CaseInformation/ARB17-01641)	PAUL S. MARTIN ETAL VS ZACHARY J. MUNSON (ARB)
McMillen, Esq.	Adam	10678	ARB17-01839 (/Query/CaseInformation/ARB17-01839)	GRADY PIERCE VS. FARMERS INSURANCE EXCHANGE (ARB)
McMillen, Esq.	Adam	10678	CV18-00031 (/Query/CaseInformation/CV18-00031)	MARIA DEL CARMEN GUERRA VS ALFRED F. ANHEIER (D1)
McMillen, Esq.	Adam	10678	CV18-00005 (/Query/CaseInformation/CV18-00005)	NYCTE CORDERO VS LASHAWNA L. PLANETA (D8)
McMillen, Esq.	Adam	10678	CV17-02380 (/Query/CaseInformation/CV17-02380)	MICHELLE SPIROPOULOS VS KENDRA MCDOWELL ET AL (D9)
McMillen, Esq.	Adam	10678	CV17-02351 (/Query/CaseInformation/CV17-02351)	RAUL REYES VS. RONALD ANDERSON ETAL
McMillen, Esq.	Adam	10678	CV17-02288 (/Query/CaseInformation/CV17-02288)	PAMELA MATHEWS VS HELEN LEWIS (D9)
McMillen, Esq.	Adam	10678	CV17-02247 (/Query/CaseInformation/CV17-02247)	JACKIE MEISTER VS. DIANE MACDONALD; ET AL (D15)

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	ARB17-01939 (/Query/CaseInformation/ARB17-01939)	JENNIFER HAKANSSON VS. CARTON SLOAN (ARB)
McMillen, Esq.	Adam	10678	CV17-02237 (/Query/CaseInformation/CV17-02237)	MARY A. LAZZARI VS WILLIAM C. HAW (D10)
McMillen, Esq.	Adam	10678	CV17-02215 (/Query/CaseInformation/CV17-02215)	DAVID CAREY VS. SPENCER BRAZELL; ET AL (D4)
McMillen, Esq.	Adam	10678	CV17-02197 (/Query/CaseInformation/CV17-02197)	GERALD LEFFLER VS. ANNE KOCHER; ET AL (D6)
McMillen, Esq.	Adam	10678	AR817-01349 (/Query/CaseInformation/ARB17-01349)	ALLSTATE INS VS MASTER SERVICE PLUMBING (ARB)
McMillen, Esq.	Adam	10678	ARB17-01505 (/Query/CaseInformation/ARB17-01505)	JACQUELINE SUTHERLAND VS ANTHONY GOICOECHEA (ARB)
McMillen, Esq.	Adam	10678	ARB17-01666 (/Query/CaseInformation/ARB17-01666)	ORQUIDEA CEDILLO VS NATHANIEL MCVAY (ARB)
McMillen, Esq.	Adam	10678	ARB17-01614 (/Query/CaseInformation/ARB17-01614)	ANTHONY ELK VS. MICHAEL MURPHY (ARB15)
McMillen, Esq.	Adam	10678	CV17-01939 (/Query/CaseInformation/CV17-01939)	JENNIFER HAKANSSON VS. CARLTON SLOAN (5TP)
McMillen, Esq.	Adam	10678	CV17-01839 (/Query/CaseInformation/CV17-01839)	GRADY PIERCE VS. FARMERS INSURANCE EXCHANGE (D8)
McMillen, Esq.	Adam	10678	ARB17-01448 (/Query/CaseInformation/ARB17-01448)	EMILY SHERWIN, ET AL VS ALISHA ALLEN ET AL (ARB)
McMillen, Esq.	Adam	10678	CV17-01761 (/Query/CaseInformation/CV17-01761)	AIMEE NEUBERT VS MARJORIE TURNER (D15)
McMillen, Esq.	Adam	10678	CV17-01721 (/Query/CaseInformation/CV17-01721)	AARON LEE FOLSOM VS NORTHWEST PARTNERS DBA (D15)
McMillen, Esq.	Adam	10678	CV17-01723 (/Query/CaseInformation/CV17-01723)	SANTINO P. QUEVEDO VS ERIK CAREY (D1)
McMillen, Esq.	Adam	10678	ARB17-01356 (/Query/CaseInformation/ARB17-01356)	PAZ DALMACIO VS BRIAN PALOMAR-LINAREZ (ARB)
McMillen, Esq.	Adam	10678	CV17-01666 (/Query/CaseInformation/CV17-01666)	CONS: ORQUIDEA CEDILLO VS NATHANIEL MCVAY (D9)

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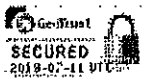

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Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV17-01641 (/Query/CaseInformation/CV17-01641)	PAUL S. MARTIN ETAL VS ZACHARY J. MUNSON (ARB)
McMillen, Esq.	Adam	10678	CV17-01633 (/Query/CaseInformation/CV17-01633)	NILA R. GERLETT VS RACHEL L. GUSTIN (D10)
McMillen, Esq.	Adam	10678	CV17-01629 (/Query/CaseInformation/CV17-01629)	DENNIS BLAIR VS LACIE ROSE & DEBRA JOHNS (D15)
McMillen, Esq.	Adam	10678	CV17-01614 (/Query/CaseInformation/CV17-01614)	ANTHONY ELK VS. MICHAEL MURPHY (STP)
McMillen, Esq.	Adam	10678	CV17-01568 (/Query/CaseInformation/CV17-01568)	DULCE MARTINEZ-SILVA VS MONICA VAZQUEZ-MACIAS (D4)
McMillen, Esq.	Adam	10678	ARB17-01260 (/Query/CaseInformation/ARB17-01260)	GUADALUPE J. LIZAOLA VS KELLY MALINAS ET AL (ARB)
McMillen, Esq.	Adam	10678	CV17-01517 (/Query/CaseInformation/CV17-01517)	CESAR NAZAIRE VS VINCENT KELLISON (ARB)
McMillen, Esq.	Adam	10678	CV17-01505 (/Query/CaseInformation/CV17-01505)	JACQUELINE SUTHERLAND VS ANTHONY GDICDECHEA (ARB)
McMillen, Esq.	Adam	10678	CV17-01468 (/Query/CaseInformation/CV17-01468)	*consolidated into CV17-01260

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV17-01448 (/Query/CaseInformation/CV17-01448)	EMILY SHERWIN, ET AL VS ALISHA ALLEN ET AL (4)
McMillen, Esq.	Adam	10678	ARB17-01094 (/Query/CaseInformation/ARB17-01094)	MARIE SYROVY VS RICHARD FLOCCHINI (ARB)
McMillen, Esq.	Adam	10678	CV17-01399 (/Query/CaseInformation/CV17-01399)	NADINE SKEES VS MELANIE BINZEL (D3)
McMillen, Esq.	Adam	10678	CV17-01380 (/Query/CaseInformation/CV17-01380)	KIM JACKSON VS LUCAS FOODS DBA SUBWAY ETAL (ARB)
McMillen, Esq.	Adam	10678	CV17-01356 (/Query/CaseInformation/CV17-01356)	PAZ DALMACIO VS BRIAN PALOMAR-LINAREZ (ARB)
McMillen, Esq.	Adam	10678	CV17-01349 (/Query/CaseInformation/CV17-01349)	ALLSTATE INS VS MASTER SERVICE PLUMBING (ARB)
McMillen, Esq.	Adam	10678	CV17-01260 (/Query/CaseInformation/CV17-01260)	CONS:GUADALUPE LIZAOLA VS KELLY MALINAS ETAL (ARB)
McMillen, Esq.	Adam	10678	CV17-01094 (/Query/CaseInformation/CV17-01094)	MARIE SYROVY VS RICHARD FLOCCHINI (D15)
McMillen, Esq.	Adam	10678	ARB16-02062 (/Query/CaseInformation/ARB16-02062)	ALICE DELANDE VS. ANNE MARIE KOCHER, ET AL (ARB)
McMillen, Esq.	Adam	10678	ARB17-00534 (/Query/CaseInformation/ARB17-00534)	MARIBEL VALDEZ VS. MELISSA MICHEL; ET AL (ARB)
McMillen, Esq.	Adam	10678	ARB17-00623 (/Query/CaseInformation/ARB17-00623)	PETE ECKERT VS. JANICE MICKELSON; ET AL (ARB)
McMillen, Esq.	Adam	10678	CV17-00879 (/Query/CaseInformation/CV17-00879)	WYATT CANO VS JIMMY L. PINSON (D9)
McMillen, Esq.	Adam	10678	CV17-00764 (/Query/CaseInformation/CV17-00764)	REGINA Y. LANE VS LINDA T. SCHOFIELD (ARB)
McMillen, Esq.	Adam	10678	CV17-00623 (/Query/CaseInformation/CV17-00623)	PETE ECKERT VS. JANICE MICKELSON; ET AL (STP)
McMillen, Esq.	Adam	10678	CV17-00588 (/Query/CaseInformation/CV17-00588)	NATIONWIDE MUTUAL VS. SHANELL SANDY; ET AL (D7)
McMillen, Esq.	Adam	10678	CV17-00534 (/Query/CaseInformation/CV17-00534)	MARIBEL VALDEZ VS. MELISSA MICHEL; ET AL (STP)

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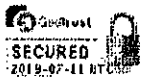

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McMillen, Esq.	Adam	10678	CV17-00192 (/Query/CaseInformation/CV17-00192)	JANET BROOKS VS JET SERVICES, INC. (D1)
McMillen, Esq.	Adam	10678	CV17-00108 (/Query/CaseInformation/CV17-00108)	MARIA EISEMANN VS MID-CENTURY INSURANCE CD (D1)
McMillen, Esq.	Adam	10678	ARB16-02166 (/Query/CaseInformation/ARB16-02166)	TRACY PISCORAN VS ROBERT MCGEORGE, ET AL (ARB)
McMillen, Esq.	Adam	10678	CV16-02521 (/Query/CaseInformation/CV16-02521)	MODESTO CASTRO-AVALOS VS CHASE PORSOW (STP)
McMillen, Esq.	Adam	10678	CV16-02166 (/Query/CaseInformation/CV16-02166)	TRACY PISCORAN VS ROBERT MCGEORGE, ET AL (D9)
McMillen, Esq.	Adam	10678	CV16-02080 (/Query/CaseInformation/CV16-02080)	JENNY REED VS FARMERS INSURANCE EXHANGE (D6)
McMillen, Esq.	Adam	10678	CV16-02062 (/Query/CaseInformation/CV16-02062)	ALICE DELANDE VS. ANNE MARIE KOCHER, ET AL (STP)
McMillen, Esq.	Adam	10678	CV16-01903 (/Query/CaseInformation/CV16-01903)	ROBERT DENNIS VS ANDREA FIGUEROA ET AL (D1)
McMillen, Esq.	Adam	10678	CV16-01806 (/Query/CaseInformation/CV16-01806)	U.S. SEAL INTL VS SURFACE SQUAD,LLC ET AL (D10)

Last Name	First Name	ID No.	Case Number	Case Description
McMillen, Esq.	Adam	10678	CV16-01472 (/Query/CaseInformation/CV16-01472)	EXCEDIS CORP VS EDWARD BOLLMANN, JAMES KERR (D10)
McMillen, Esq.	Adam	10678	CV16-00915 (/Query/CaseInformation/CV16-00915)	DDNALD PHILLIPS VS JEROLD CHILDERS (STP)
McMillen, Esq.	Adam	10678	CV14-01057 (/Query/CaseInformation/CV14-01057)	EXCEDIS CDRPORATION VS EDWARD BOLLMANN (D3)
McMillen, Esq.	Adam	10678	CV14-00653 (/Query/CaseInformation/CV14-00653)	GLEN JONES ETAL VS REGENT CARE OPERATIONS DBA
McMillen, Esq.	Adam	10678	CV13-01440 (/Query/CaseInformation/CV13-01440)	RILEY KAUFMAN ETAL VS. REGENT CARE ETAL (D
McMillen, Esq.	Adam	10678	PR13-00306 (/Query/CaseInformation/PR13-00306)	ESTATE; MATTIE CLAIRENE RILEY BINGHAM KAUFMAN (PR)
McMillen, Esq.	Adam	10678	CV13-01234 (/Query/CaseInformation/CV13-01234)	MANUFACTURING RESOURCE VS FRENCH GOURMET (D4)
McMillen, Esq.	Adam	10678	ARB12-01400 (/Query/CaseInformation/ARB12-01400)	AMANDA MUNDT VS. V & J CASTODIO (ARB)
McMillen, Esq.	Adam	10678	CV12-01751 (/Query/CaseInformation/CV12-01751)	ROBERT LUCIANO VS. DIGNITY HEALTH ETAL.(D10)
McMillen, Esq.	Adam	10678	CV12-01400 (/Query/CaseInformation/CV12-01400)	AMANDA MUNDT VS. V & J CASTODIO (ARB)
McMillen, Esq.	Adam	10678	CV12-00786 (/Query/CaseInformation/CV12-00786)	TARA LEWIS VS. ROBERT HOOFT (D10)
McMillen, Esq.	Adam	10678	CV11-03683 (/Query/CaseInformation/CV11-03683)	ROGER M. LINO ETAL..... VS. LAKEMONT COPPER (D15)
McMillen, Esq.	Adam	10678	CV11-03473 (/Query/CaseInformation/CV11-03473)	LINDA DOWNS VS. RIVER CITY GROUP, LLC ETAL..(D15)
McMillen, Esq.	Adam	10678	CV11-02675 (/Query/CaseInformation/CV11-02675)	change of venue 11-30-11
McMillen, Esq.	Adam	10678	CV11-02272 (/Query/CaseInformation/CV11-02272)	MINER VILLAGE HOME VS. MINER VILLAGE INVESTOR (D1)
McMillen, Esq.	Adam	10678	CV11-02059 (/Query/CaseInformation/CV11-02059)	FIDELITY AND DEPOSIT COMPANY VS. WAYNE ZIEGLER (D6

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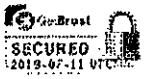

EXHIBIT 2

EXHIBIT 2

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State Bar No. 10678
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Attorney for Defendant,
KATHERYN JEAN FRITTER

DISTRICT COURT

WASHOE COUNTY, NEVADA

RALPH ORTEGA,
Plaintiff,

vs.

KATHERYN JEAN FRITTER; DOES I-V; inclusive,
Defendants.

Case No.: CV18-02032

DEPT. NO. 4

REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS TO RALPH ORTEGA

Pursuant to NRCP 34, Defendant requests that Plaintiff RALPH ORTEGA responds to the following requests.

REQUEST NO. 1:

Please produce all written or recorded statements, summaries of statements, and written or recorded reports made by any party, witness, investigator, adjuster, or any person with knowledge of the accident that is the subject of this litigation.

REQUEST NO. 2:

Please produce color copies of any and all photographs regarding the accident that is the subject of this litigation, including, but not limited to, the accident scene, objects and instrumentalities involved

in or related to the accident, persons involved in the accident, and any and all photographs that purport to show the injuries you allege the accident caused.

REQUEST NO. 3:

If this lawsuit involves a claim for lost wages, income or future lost earning capacity, please produce all federal income tax documents you filed with the Internal Revenue Service dating from two years prior to the date the accident that is the subject of this litigation occurred, up to, and including, the present, and all other documents upon which you intend to rely to support any claim of lost wages, income or future lost earning capacity.

REQUEST NO. 4:

If you are claiming that you lost income from employment due to the accident that is the subject of this litigation, please produce a copy of your entire employment file from each job from which you claim you lost income.

REQUEST NO. 5:

If you are claiming that you incurred expenses, including medical expenses, due to the accident that is the subject of this litigation, please produce copies of all receipts, bills, invoices and purchase orders, and any and all other documents regarding the alleged expenses.

REQUEST NO. 6:

Please produce a copy of the entire file of each expert you have retained to testify.

REQUEST NO. 7:

If you are claiming that you lost income from a business, hobby or other enterprise, regardless of whether it was licensed as a business, due to the incident that is the subject of this litigation, please produce all financial records from that business, hobby or other enterprise, dating from two years prior to the incident to the present.

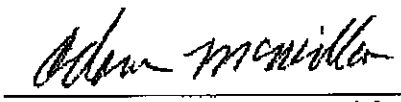
REQUEST NO. 8:

Please return signed originals of the attached employment, workers' compensation and HIPAA

compliant authorizations.

DATED: February 26, 2019

THE LAW OFFICES OF STACEY A. UPSON - RENO

BY: 

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
KATHERYN JEAN FRITTER

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF STACEY A. UPSON - RENO and that on the ___26TH___ day of February, 2019, I served a true and correct copy of the above and foregoing **REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS TO RALPH ORTEGA** on the parties addressed as shown below:

__X___ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

_____ *Via Electronic Filing* [N.E.F.R. 9(b)]

_____ *Via Electronic Service* [N.E.F.R. 9]

_____ *Via Facsimile* [E.D.C.R. 7.26(a)]

William Kendall, Esquire
William R. Kendall, Esq.
137 Mount Rose St
Reno, NV 89509
Attorney for Plaintiff, Ralph Ortega
Fax: (775) 324-3735

SONIA FOUAD, An Employee of
The Law Offices of Stacey A. Upson - Reno

LAW OFFICES OF STACEY A. UPSON
7455 Arroyo Crossing Parkway, Suite 200
Las Vegas, Nevada 89113
Phone: (702) 408-3800
Facsimile: (702) 369-1675

AUTHORIZATION FOR MEDICAL RECORDS AND REPORTS

In compliance with the Health Insurance Portability and Accountability Act ("HIPAA")
45 CFR 164.508.

This authorization authorizes:

TO:

1. The undersigned authorizes and directs all doctors, hospitals, clinics, therapy centers, other medical providers and/or treaters, and their employees and representatives, all known as "Providers," to release to the law office of **LAW OFFICES OF STACEY A. UPSON**, 7455 Arroyo Crossing Parkway, Suite 200, Las Vegas, NV 89113 or their representatives, **U.S. LEGAL SUPPORT, INC, and MED-R**, traffic accident reports, police and/or incident reports, police photographs taken, witness statements, any and all information, medical records, medical reports, imagery films, and itemized medical billings regarding my physical and mental condition, treatment, hospitalization, or other medical treatment provided to me for the years 2014 to the present time. The purpose for this authorization of records release is Litigation.

2. The named parties may inspect, review and receive copies of all medical records, including, but not limited to, medical histories, hospital charts, notes, imagery films and reports, medical findings, opinions and diagnoses as well as billing records.

3. A photocopy of this authorization is to have the same force and effect as the original.

4. This authorization will expire two years from the date of signature.

5. I understand this authorization covers records relating to communicable diseases, acquired immunodeficiency syndrome ("AIDS"), human immunodeficiency virus ("HIV"), behavioral and/or mental health care, alcohol and/or drug abuse treatment, and genetic testing, if any such records exist.

6. I acknowledge: (1) I have the right to revoke this authorization at any time, (2) I acknowledge the protected health information provided may be subject to re-disclosure by the recipient; and (3) I understand once the information is disclosed, it may no longer be protected by Federal privacy law. I also understand I may revoke this authorization only in writing and sent by certified mail to any relevant Provider. The revocation will be effective only upon receipt, except: (1) to the extent the Provider has acted in reliance on the authorization, or (2) the authorization was obtained as a condition of obtaining insurance coverage and the insurer wishes to use the protected health information to lawfully contest a claim. Further information on the right to revoke may be provided from time to time in any relevant Provider's Notice of Privacy Practices.

7. Treatment by any Provider is not conditioned on my signing this authorization, although exceptions will be made for: (a) research-related treatment, (b) for treatment, the purpose of which is to create protected health information for a third party, such as pre-employment physicals, and (c) except for psychotherapy notes, regarding health plans which condition enrollment or on an authorization requested prior to enrollment, or where payment is conditioned on an authorization to use PHI to determine payment.

Patient Name:

Patient DOB:

Patient SSN:

Date: _____

Signed by: _____

Printed Name:

Print Parent/Legal Guardian
Name (if patient is a minor): _____

SUBSCRIBED AND SWORN to before me

this _____ day of _____, 2019.

_____
NOTARY PUBLIC in and for
said County and State

AUTHORIZATION AND CONSENT TO RELEASE CELLULAR PHONE RECORDS

TO: _____

RE: Customer: _____
_____
_____

YOU ARE HEREBY AUTHORIZED AND INSTRUCTED to release to LAW OFFICES OF STACEY A. UPSON, or its representatives, Med-R and/or US Legal the copies of my cellular phone records for the period of _____ through _____.

This authorization is given upon the express condition that any costs incurred will be borne by LAW OFFICES OF .

You are further authorized and instructed to accept a photocopy of this signed authorization in the place and stead of the executed original thereof.

_____

By: _____

STATE OF NEVADA)
) ss.:
COUNTY OF CLARK)

On this ____ day of _____, 2019 before me, _____ personally appeared before me a Notary Public in and for Clark County, Nevada, duly commissioned and sworn, known to me to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that she executed the same freely, voluntarily, and for the uses and purposes therein mentioned.

_____

NOTARY PUBLIC, in and for said
County and State

AUTHORIZATION FOR RELEASE OF
WORKER'S COMPENSATION of NEVADA CLAIMS FILE

TO: EMPLOYERS INSURANCE COMPANY OF NEVADA

This is to authorize all doctors, chiropractors, osteopaths, hospitals, clinics, therapy centers, employers, and state and federal agencies to release and make available to **LAW OFFICES OF STACEY A. UPSON , 7455 Arroyo Crossing Parkway, Suite 200, Las Vegas, Nevada 89113,** US Legal and/or Med-R or any representative thereof, the complete social security file including any and all medical records, charts, x-ray films and x-ray reports, office notes, questionnaires, consultation reports, correspondence, copies of itemized bills pertaining to treatment rendered, any decisions rendered, including any disability rating given concerning the undersigned, claims file and any other documentation which you may have concerning the undersigned.

DATED this ____ day of _____, 2019

Name:

Date of Birth:

Social Security No.:

A PHOTOCOPY OF THIS RELEASE HAS THE SAME FORCE AND EFFECT AS THE ORIGINAL.

STATE OF NEVADA)
) s.s.
COUNTY OF CLARK)

ON THIS ____ day of _____, 2019 before me appeared _____ to me personally known, and who acknowledged the execution of the foregoing instrument as his free act and deed, for the consideration set forth herein.
My commission expires:

_____
NOTARY PUBLIC in and for said County and State

LAW OFFICE OF STACEY A. UPSON
7455 Arroyo Crossing Parkway, Suite 200
Las Vegas, Nevada 89113
Phone: (702) 408-3800
Facsimile: (702) 369-1675

AUTHORIZATION FOR RELEASE OF EMPLOYMENT INFORMATION

TO:

RE: Employee:
Date of Birth:
Social Security No.:

YOU ARE HEREBY AUTHORIZED AND INSTRUCTED to release to LAW OFFICE OF STACEY A. UPSON , or their representatives, Med-R and/or US Legal copies of any and all wage claim documents, copies of my entire employment file, including payroll records, and from the interviewing to the present time for my present and former employers.

This authorization is given upon the express condition that any costs incurred will be borne by LAW OFFICE OF STACEY A. UPSON .

It is understood and agreed that a photocopy of this Authorization will have the same force and effect as the original.

DATED this ___ day of _____, 2019

_____

SUBSCRIBED AND SWORN to before me

this _____ day of _____, 2019

_____
NOTARY PUBLIC in and for said
County and State

LAW OFFICES OFSTACEY A. UPSON
7455 Arroyo Crossing Parkway, Suite 200
Las Vegas, Nevada 89113
Phone: (702) 408-3800
Facsimile: (702) 369-1675

AUTHORIZATION FOR RELEASE OF WORKER'S COMPENSATION CLAIMS FILES

TO:

RE: Employee:
Date of Birth:
Social Security No.:

YOU ARE HEREBY AUTHORIZED AND INSTRUCTED to release to LAW OFFICES OF STACEY A. UPSON , or their representatives, **US Legal and/or Med-R** copies of any and all medical records, charts, x-ray films and x-ray reports, office notes, questionnaires, consultation reports, correspondence, copies of itemized billings pertaining to treatment rendered, any decisions rendered regarding worker's compensation benefits, including any disability ratings given concerning the undersigned, claims file and any other documentation which you may have concerning the undersigned

This authorization is given upon the express condition that any costs incurred will be borne by LAW OFFICES OF STACEY A. UPSON .

It is understood and agreed that a photocopy of this Authorization will have the same force and effect as the original.

DATED this ___ day of _____, 2019

_____

SUBSCRIBED AND SWORN to before me

this _____ day of _____, 2019

NOTARY PUBLIC in and for said
County and State