

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

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Jan 09 2020 01:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOHN S. WALKER, and RALPH
ORTEGA,

Petitioners,

DISTRICT COURT NOS.:

VS.

CV18-01798 and CV18-02032

THE SECOND JUDICIAL DISTRICT

COURT and BARRY L. BRESLOW, as
District Judge,

Respondents.

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

WALKER APPENDIX VOLUME 6

William R. Kendall, Esq.

State Bar No. 3453

137 Mt. Rose Street

Reno, NV 89509

(775) 324-6464

Attorney for Petitioners

WALKER APPENDIX VOLUME 6 INDEX

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1 William R. Kendall, Esq.
2 State Bar No. 3453
3 137 Mt. Rose Street
4 Reno, NV 89509
5 (775) 324-6464
6 Attorney for Plaintiff

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

9 *****

10 JOHN S. WALKER,

11 Plaintiff,

CASE NO.:

12 vs.

DEPT. NO.:

13 SHEILA MICHAELS;
14 DOES I-V; inclusive,

15 Defendants.
16 _____/

17 **COMPLAINT**

18 Plaintiff, JOHN S. WALKER, by and through his counsel, WILLIAM R. KENDALL, ESQ.,
19 for claims against Defendants, and each of them, avers and alleges as follows:

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

22 2. At all times material hereto, upon information and belief, Defendant, SHEILA
23 MICHAELS, was a resident of the City of Reno, Washoe County, Nevada.

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

25 4. The true names and capacities, whether individual, corporate, associate or otherwise of
26
27
28

1 Defendants named herein as DOES I-V, were unknown to Plaintiff, who therefore, sues these
2 Defendants by said fictitious names. Plaintiff is informed and believes and therein alleges that each of
3 the Defendants designated as DOES is responsible in some manner for the events and happenings
4 referred to in this Complaint and caused damages proximately to Plaintiff as alleged. Plaintiff will seek
5 leave of Court to amend the Complaint to insert the true names and capacities of DOES I-V, inclusive,
6 when the same have been ascertained.
7

8
9 5. At all times relevant herein, each of the Defendants named as DOES I-V, were agents
10 of the other remaining Defendants and were acting with actual and/or apparent authority in the conduct
11 alleged.
12

13 6. The actions of the Defendants and their and employees, whether or not within the scope
14 of their agency, were ratified by the other remaining individual, corporate or partnership Defendants.
15

16 7. On or about June 16, 2018, Plaintiff was lawfully riding his bicycle in the bicycle lane
17 southbound on Arlington Ave. and was approaching the intersection with Island Drive.
18

19 8. At said time and place, Defendant, SHEILA MICHAELS, was operating a motor
20 vehicle and was southbound on Arlington Ave., and was overtaking Plaintiff.
21

22 9. At said time and place, Defendant overtook Plaintiff and made a right turn into Island
23 Drive, directly across the path of Plaintiff, violating his right-of-way, and causing Plaintiff to collide with
24 her vehicle.
25

26 10. Defendant had a duty to yield to bicycle traffic before executing a right turn across the
27 bicycle lane.
28

11. Defendant breached said duty to Plaintiff by violating his right-of-way and causing a
collision.

12. Defendant also breached said duty by violating the Nevada revised statutes, including but not limited to NRS 484A.210, applicable to right-of-way, and is, therefore, negligent *per se*.

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

14. As a further direct and proximate result of Defendants' negligence, Plaintiff has incurred medical expenses treating injuries caused by Defendant, and should be compensated therefore.

15. 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.

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 31st day of August, 2018.

WILLIAM R. KENDALL, ESQ.

Walter R. Kendall

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

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1 ANS
2 ADAM P. MCMILLEN, ESQ.
3 State Bar No. 10678
4 **THE LAW OFFICES OF KARL H. SMITH - RENO**
5 Mail to:
6 P.O. Box 258829
7 Oklahoma City, OK 73125-8829
8 Physical Address:
9 50 West Liberty Street, Suite 303
10 Reno, NV 89501
11 Phone: (775) 329-2116
12 adam.mcmillen@farmersinsurance.com
13 Attorney for Defendant,
14 SHEILA MICHAELS
15

9 **DISTRICT COURT**
10 **WASHOE COUNTY, NEVADA**
11

12 JOHN S. WALKER,

13 Plaintiff,

14 vs.

15 SHEILA MICHAELS; DOES I-V, inclusive,

16 Defendants.

Case No.: CV18-01798

DEPT. NO. 7

17 **DEFENDANT SHEILA MICHAELS' ANSWER TO PLAINTIFF'S COMPLAINT**
18

19 COMES NOW, Defendant, SHEILA MICHAELS, by and through their attorney of record, ADAM
20 P. MCMILLEN, ESQ., of **THE LAW OFFICES OF KARL H. SMITH - RENO**, and answer Plaintiff's
21 Complaint, as follows:

22 1. Answering Paragraphs 1, 4, 5, 6, 8 of Plaintiffs' Complaint, Answering Defendants are
23 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the
24 allegations contained therein and, therefore, deny the same.

25 2. Answering Paragraphs 7, 9, 10, 11, 12, 13, 14, 15 of Plaintiffs' Complaint, Answering
26 Defendants deny the allegations contained therein.

27 3. Answering Paragraphs 2, 3 of Plaintiffs' Complaint, Answering Defendants admit the
28 allegations contained therein.

As to those matters, if any, not herein answered, Answering Defendant(s) expressly deny/denies any

1 and all allegations relating thereto.

2 **AFFIRMATIVE DEFENSES**

3 **FIRST AFFIRMATIVE DEFENSE**

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

6 **SECOND AFFIRMATIVE DEFENSE**

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

9 **THIRD AFFIRMATIVE DEFENSE**

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

12 **FOURTH AFFIRMATIVE DEFENSE**

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

16 **FIFTH AFFIRMATIVE DEFENSE**

17 Plaintiff has failed to mitigate their damages.

18 **SIXTH AFFIRMATIVE DEFENSE**

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

21 **SEVENTH AFFIRMATIVE DEFENSE**

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

26 **EIGHTH AFFIRMATIVE DEFENSE**

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

WHEREFORE, Answering Defendant prays for relief as follows:

1. That Plaintiff take nothing by way of their 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: September 20, 2018

THE LAW OFFICES OF KARL H. SMITH -
RENO

BY: 

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 KARL H. SMITH - RENO and that on the 21st day of September, 2018, I
served a true and correct copy of the above and foregoing **DEFENDANT SHEILA MICHAELS'**
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)]
☒ *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

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

1 **CODE: A201**
2 Graham Galloway
3 Nevada State Bar No. 221
4 Galloway & Jensen
5 222 California Avenue
6 Reno, Nevada 89509
7 (775) 333-7555
8 *Court Appointed Arbitrator*

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF**

10 **THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 JOHN S. WALKER,

Case No.: ARB18-01798

13 Plaintiff,

Dept. No.: ARB

14 vs.

15 SHEILA MICHAELS,
16 DOES I - V, inclusive;

17 Defendants.
18 _____ /

19 **ARBITRATOR'S AWARD**

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

25 ///

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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

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Adam McMillen
Law Offices of Karl H. Smith
50 W. Liberty Street, Suite 303
Reno, Nevada 89509
Attorney for Defendant

[None]

Yennifer Sanchez
Yennifer Sanchez

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).

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DATED: March 18, 2019

BY: /s/ Adam McMillen

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
SHEILA MICHAELS

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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

1 William R. Kendall, Esq.
2 State Bar No. 3453
3 137 Mt. Rose Street
4 Reno, NV 89509
5 (775) 324-6464
6 Attorney for Plaintiff

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

JOHN S. WALKER,

Plaintiff,

CASE NO.: CV18-01798

vs.

DEPT. NO.: 7

SHEILA MICHAELS;
DOES I-V; inclusive,

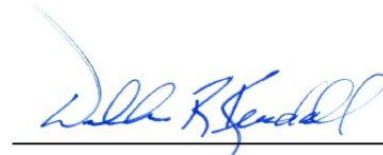
Defendants.

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

Plaintiff, JOHN S. WALKER, 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 2nd day of April, 2019.

WILLIAM R. KENDALL, ESQ.



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

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POINTS AND AUTHORITIES

1. BACKGROUND FACTS OF CASE

This case stems from a collision between Plaintiff while riding his bicycle in a designated bicycle lane, and Defendant, operating a motor vehicle. On 3/13/2019, the case was arbitrated before court-appointed arbitrator, Graham Galloway, Esq. On 3/18/2019, Mr. Galloway filed the Arbitration Award, finding in favor of Plaintiff, assessing 20 % comparative negligence, and awarding total damages of \$ 12,469.60. The next day, 3/19/2019, 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 9/18/2018 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 12 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).

1 After obtaining the listing of all of attorney McMillen's cases, a simple review of each
2 case on the Washoe County District Court Eflex system revealed in which cases McMillen
3 represented a Farmers insured, the outcome of each case, and the frequency of filing of requests
4 for trials de novo. The Court can also take judicial notice of the information contained upon the
5 Washoe County District Court Eflex system pertaining to all of McMillen's cases.
6

7 Starting with McMillen's first arbitration case for Farmers, resulting in an arbitration
8 award for the plaintiff, through the most recent case to result in an arbitration award for the
9 plaintiff, the instant case, McMillen/Farmers filed a request for trial de novo in the following
10 cases. These are **all** of the cases in which McMillen/Farmers represented a defendant, suffered an
11 arbitration award for the plaintiff, and then filed a request for trial de novo.
12

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

1 The above 10 cases constitute **all** of the cases arbitrated by McMillen/Farmers to-date
2 which resulted in an award for the plaintiff. McMillen/Farmers filed a request for trial de novo in
3 **every single one of them, 100 %**. There are no cases where McMillen/Farmers suffered a
4 plaintiff's arbitration award in which they did not request a trial de novo. Attached hereto as
5 Exhibits 3-12 are true and correct copies of the arbitration award, request for trial de novo, and, in
6 some cases, the trial de novo verdict.

8 **3. ARGUMENT**

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

16 Shortly after the Mandatory Arbitration Program was implemented, the Senate Committee
17 on Judiciary met on 3/11/1999, to consider changes to the rules to attempt to ensure "good faith
18 participation." See Minutes of the Senate Committee on Judiciary, Seventieth Session, March 11,
19 1999, attached hereto as Exhibit 13. Mark W. Gibbons, District Court Judge at that time, noted
20 that minimal participation in arbitration, followed by request for trial de novo had "created an
21 additional obstacle to speedy trials and increased the expenses to various parties." They
22 specifically discussed abuse of the program by routine requests for trial de novo. Then District
23 Court Judge Michael A. Cherry, noted that "some of the insurance adjusters have said if they
24

1 owed money, they will have to go to trial to get the verdict.”

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

8
9 NAR 22 provides:

10
11 If, during the proceedings in the trial de novo, the district court
12 determines that a party or attorney engaged in conduct designed to
13 obstruct, delay or otherwise adversely affect the arbitration proceedings,
14 it may impose, in its discretion, any sanction authorized by NRCP 11 or
15 NRCP 37.

16
17 In *Gittings v. Hartz*, 116 Nev. 386, 394 (2000), the Nevada Supreme Court held:

18
19 ...competent statistical information that demonstrates that an insurance
20 company has routinely filed trial de novo requests without regard to the
21 facts and circumstances of each individual case may be used to support
22 a claim of bad faith.

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

27
28 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

1 necessary in each case. It is conceivable that a detailed statistical
2 analysis, properly authenticated, could be used in more than one
3 proceeding or that testimony taken in one hearing might be admissible
4 in other hearings involving the same carrier under the doctrine of collateral
5 estoppel.

6 *Id.*

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

11 The statistics cited herein show beyond a doubt that McMillen/Farmers has automatically
12 filed a request for trial de novo in **every** case resulting in an arbitration award for the Plaintiff.
13 Plaintiff submits that the official Washoe Courts website case lists and the official Washoe
14 County District Court Eflex system data irrefutably prove that McMillen/Farmers has routinely
15 filed trial de novo requests in 100 % of adverse arbitration cases without regard to the facts and
16 circumstances of each individual case. Plaintiff submits that this evidence is “competent
17 statistical information” (*Gittings*, at 394) upon which this Court can conclude that
18 McMillen/Farmers have not been participating in the arbitration process in good faith. As a
19 consequence, the request for trial de novo in this case should be stricken.
20

21 Should this Court find that additional information is needed, Plaintiff requests an
22 evidentiary hearing and the opportunity to perform narrowly tailored discovery into Farmers’
23 practices associated with requests for trial de novo.
24

25 Plaintiff also requests that this Court preclude the Defendant from conducting any
26 discovery which it could have performed during the arbitration process, but failed to perform.
27

1 **4. CONCLUSION**

2 Based upon the foregoing proof that McMillen and Farmers file a request for trial de novo
3 in 100 % of cases where the arbitration award is for the Plaintiff, Plaintiff's Motion to Strike Trial
4 De Novo should be granted and sanctions imposed, or in the alternative, Plaintiff should be
5 provided the opportunity to conduct narrowly tailored discovery into Farmer's practices and
6 should be provided the opportunity to conduct an evidentiary hearing in order to provide the Court
7 with competent evidence that Farmers has been abusing the arbitration process. Defendant should
8 be precluded from conducting discovery which could have been performed during the arbitration
9 process.
10
11

12 Dated this 2nd day of April, 2019.

13 WILLIAM R. KENDALL, ESQ.

14
15 
16

17 137 Mt. Rose Street
18 Reno, NV 89509
19 (775) 324-6464
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

Certificate of Service

RE: CV18-01798

Judge: HONORABLE JUDGE EGAN WALKER

Court: Second Judicial District Court - State of Nevada

Case Title: Walker v. Michaels

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

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I hereby certify that on 04-02-2019, 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 2nd day of April, 2019.

A handwritten signature in blue ink, appearing to read "William R. Kendall", is written over a horizontal line.

William R. Kendall

1 **SECOND JUDICIAL DISTRICT COURT**
2 **COUNTY OF WASHOE, STATE OF NEVADA**

3 **AFFIRMATION**

4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document
6 filed in case number: **CV18-01798**_____



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

9 Date: **4/2/2019**_____

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LIST OF EXHIBITS

1.	Exhibit 1 (9/18/2018 McMillen letter).....	p. 11
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3.	Exhibit 3 (Castro-Avalos pleadings).....	p. 26
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13.	Exhibit 13 (Minutes of the Senate Committee on Judiciary).....	p. 135
14.	Exhibit 14 (Declaration of William R. Kendall).....	p. 149

Exhibit 1

Exhibit 1

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

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

David T. Spurlock, Jr.
Stacie L. Brown
Adam P. McMillen
Sarah A. Smith
John R. Hawley

PHYSICAL ADDRESS:
7455 ARROYO CROSSING PARKWAY
SUITE 200
LAS VEGAS, NV 89113
TELEPHONE (702) 408-3800
FACSIMILE (702) 369-1675

MAILING ADDRESS
PO BOX 258829
OKLAHOMA CITY, OK 73125-8829
Facsimile (855)472-9294

PHYSICAL ADDRESS:
50 WEST LIBERTY STREET
SUITE 303
RENO, NEVADA 89501
TELEPHONE (775) 329-2116
FACSIMILE (775) 329-2121

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

September 18, 2018

William R. Kendall
Law Offices of William R. Kendall
137 Mt. Rose St.
Reno, NV 89509

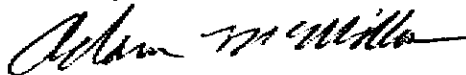
Re: Walker v. Michaels
Case No.: CV18-01798
Date of Loss: June 16, 2018
Our File No.: 18-516365

Dear Bill:

This case has been referred to our office for handling the defense of Sheila Michaels. Once the Defendant have 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

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Exhibit 2

Exhibit 2



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McMillen, Esq.	Adam	10678	CV19-00507 (/Query/CaseInformation/CV19-00507)	FARMERS INS. EXC. VS RDBERT 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 (D15)
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)
McMillen, Esq.	Adam	10678	CV19-00099 (/Query/CaseInformation/CV19-00099)	MAYRA VERDUZCO-SILVA VS JULIE NICDLE ETAL (D6)
McMillen, Esq.	Adam	10678	CV19-00088 (/Query/CaseInformation/CV19-00088)	JACOB BARNES VS GEORGE W. HOWARD (D1)

WA028

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McMillen, Esq.	Adam	10678	CV19-00067 (/Query/CaseInformation/CV19-00067)	PAOLA VAZQUEZ VS NESTOR HERNANDEZ ET AL (ARB)
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	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	ARB18-00974 (/Query/CaseInformation/ARB18-00974)	GREGORY LORENZO VS MARIA PEREZ-VICEN (ARB)
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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)
McMillen, Esq.	Adam	10678	ARB18-01619 (/Query/CaseInformation/ARB18-01619)	DONNA LACROIX VS KELLY SANDERS (ARB)

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McMillen, Esq.	Adam	10678	CV18-01673 (/Query/Caselnformation/CV18-01673)	ARMANDO NAVA; ET AL VS. RHONDA LOWE (ARB)
McMillen, Esq.	Adam	10678	ARB18-00744 (/Query/Caselnformation/ARB18-00744)	TYLER CODMAN VS PATRICIA GREGORY (ARB)

WA030

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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)	KRISTDPHER CARROLL VS KRISTINAL WILLIAMS (ARB)
McMillen, Esq.	Adam	10678	CV18-01428 (/Query/CaseInformation/CV18-01428)	MINDR 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)	TDNYA 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)
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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 MD DRE ETAL (D7)
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McMillen, Esq.	Adam	10678	CV18-00744 (/Query/CaseInformation/CV18-00744)	TYLER CODMAN VS PATRICIA GREDDRY (ARB)
McMillen, Esq.	Adam	10678	CV18-00713 (/Query/CaseInformation/CV18-00713)	MARIA REYES; ET AL VS. JDSEPH SCHLER (D1)
McMillen, Esq.	Adam	10678	CV18-00662 (/Query/CaseInformation/CV18-00662)	DAVID M. SIBAJA VS JULIE CHING (5TP)
McMillen, Esq.	Adam	10678	CV18-00620 (/Query/CaseInformation/CV18-00620)	MELISSA HOTARY ETAL VS TAMARA EVANS ETAL (D7)

WA032

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McMillen, Esq.	Adam	10678	ARB17-00764 (/Query/Caselnformation/ARB17-00764)	REGINA Y. LANE VS LINDA T. SCHOFIELD (ARB)
McMillen, Esq.	Adam	10678	CV18-00565 (/Query/Caselnformation/CV18-00565)	VIRGINIA M. HIGGINS VS DIANA H. WINGO (D7)
McMillen, Esq.	Adam	10678	CV18-00530 (/Query/Caselnformation/CV18-00530)	MELISSA SILVA VS DAULTON D. D'CONNELL (D8)
McMillen, Esq.	Adam	10678	CV18-00504 (/Query/Caselnformation/CV18-00504)	MINORS COMP: KATE SIERRA BALZER (D9)
McMillen, Esq.	Adam	10678	CV18-00491 (/Query/Caselnformation/CV18-00491)	KAYLA METZGER VS CYNTHIA F. ROBERTS (D1)
McMillen, Esq.	Adam	10678	CV18-00457 (/Query/Caselnformation/CV18-00457)	VERTIS AMIEL HAGAN VS ALEXANDER G. GREEN (STP)
McMillen, Esq.	Adam	10678	CV18-00439 (/Query/Caselnformation/CV18-00439)	RDNALD FREETO VS LISA E. ROGERS (D15)
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McMillen, Esq.	Adam	10678	ARB17-02237 (/Query/Caselnformation/ARB17-02237)	MARY A. LAZZARI VS WILLIAM C. HAW (ARB)
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McMillen, Esq.	Adam	10678	CV18-00204 (/Query/Caselnformation/CV18-00204)	SARAH FRANKLIN VS DAVID TOPETE (ARB)
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McMillen, Esq.	Adam	10678	CV18-00163 (/Query/Caselnformation/CV18-00163)	WILLIAM JOHNSON VS VALLEY TECH INVEST ET AL (D7)

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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)
McMillen, Esq.	Adam	10678	ARB17-01939 (/Query/CaseInformation/ARB17-01939)	JENNIFER HAKANSSON VS. CARTON SLOAN (ARB)

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Last Name	First Name	ID No.	Case Number	Case Description
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 GDICDECHEA (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 (STP)
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 DALMACID VS BRIAN PALOMAR-LINAREZ (ARB)
McMillen, Esq.	Adam	10678	CV17-01666 (/Query/CaseInformation/CV17-01666)	CONS: ORQUIDEA CEDILLO VS NATHANIEL MCVAY (D9)
McMillen, Esq.	Adam	10678	CV17-01641 (/Query/CaseInformation/CV17-01641)	PAUL S. MARTIN ETAL VS ZACHARY J. MUNSON (ARB)

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McMillen, Esq.	Adam	10678	CV17-01629 (/Query/Caselnformation/CV17-01629)	DENNIS BLAIR VS LACIE ROSE & DEBRA JOHNS (D15)
McMillen, Esq.	Adam	10678	CV17-01614 (/Query/Caselnformation/CV17-01614)	ANTHONY ELK VS. MICHAEL MURPHY (STP)
McMillen, Esq.	Adam	10678	CV17-01568 (/Query/Caselnformation/CV17-01568)	DULCE MARTINEZ-SILVA VS MONICA VAZQUEZ-MACIAS (D4)
McMillen, Esq.	Adam	10678	ARB17-01260 (/Query/Caselnformation/ARB17-01260)	GUADALUPE J. LIZAOLA VS KELLY MALINAS ET AL (ARB)
McMillen, Esq.	Adam	10678	CV17-01517 (/Query/Caselnformation/CV17-01517)	CESAR NAZAIRE VS VINCENT KELLISON (ARB)
McMillen, Esq.	Adam	10678	CV17-01505 (/Query/Caselnformation/CV17-01505)	JACQUELINE SUTHERLAND VS ANTHONY GOICOECHEA (ARB)
McMillen, Esq.	Adam	10678	CV17-01468 (/Query/Caselnformation/CV17-01468)	*consolidated into CV17-01260
McMillen, Esq.	Adam	10678	CV17-01448 (/Query/Caselnformation/CV17-01448)	EMILY SHERWIN, ET AL VS ALISHA ALLEN ET AL (4)

WA036

Last Name	First Name	ID No.	Case Number	Case Description
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 JACKSDN 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 KDCHER, 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 MICKELSDN; 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)
McMillen, Esq.	Adam	10678	CV17-00192 (/Query/CaseInformation/CV17-00192)	JANET BROOKS VS JET SERVICES, INC. (D1)

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McMillen, Esq.	Adam	10678	CV17-00108 (/Query/CaselInformation/CV17-00108)	MARIA EISEMANN VS MID-CENTURY INSURANCE CO (D1)
McMillen, Esq.	Adam	10678	ARB16-02166 (/Query/CaselInformation/ARB16-02166)	TRACY PISCORAN VS ROBERT MCGEORGE, ET AL (ARB)
McMillen, Esq.	Adam	10678	CV16-02521 (/Query/CaselInformation/CV16-02521)	MODESTO CASTRO-AVALOS VS CHASE PORSOW (STP)
McMillen, Esq.	Adam	10678	CV16-02166 (/Query/CaselInformation/CV16-02166)	TRACY PISCORAN VS ROBERT MCGEORGE, ET AL (D9)
McMillen, Esq.	Adam	10678	CV16-02080 (/Query/CaselInformation/CV16-02080)	JENNY REED VS FARMERS INSURANCE EXCHANGE (D6)
McMillen, Esq.	Adam	10678	CV16-02062 (/Query/CaselInformation/CV16-02062)	ALICE DELANDE VS. ANNE MARIE KOCHER, ET AL (STP)
McMillen, Esq.	Adam	10678	CV16-01903 (/Query/CaselInformation/CV16-01903)	ROBERT DENNIS VS ANDREA FIGUEROA ET AL (D1)
McMillen, Esq.	Adam	10678	CV16-01806 (/Query/CaselInformation/CV16-01806)	U.S. SEAL INTL VS SURFACE SQUAD,LLC ET AL (D10)
McMillen, Esq.	Adam	10678	CV16-01472 (/Query/CaselInformation/CV16-01472)	EXCEDIS CORP VS EDWARD BOLLMANN, JAMES KERR (D10)

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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
McMillen, Esq.	Adam	10678	CV11-01836 (/Query/CaseInformation/CV11-01836)	DONALD&LAURA WIKEY ET AL. VS. K&M HOMES ET AL(D15)

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Exhibit 3

Exhibit 3

1 **A560**
2 HERB SANTOS, JR., Esq.
3 Bar #4376
4 The Law Firm of Herb Santos, Jr.
5 225 South Arlington Avenue, Suite C
6 Reno, Nevada 89501
7 (775) 323-5200
8 Arbitrator

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

11 MODESTO CASTRO-AVALOS, an individual
12 Plaintiff,
13 vs.
14 CHASE PORSOW, an individual;
15 and DOES I-10, respectfully,
16 Defendants.

Case No. ARB16-02521
Department No. ARB

17 **ARBITRATOR'S DECISION**

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

23 The hearing was not reported.

24 **I. BACKGROUND FACTS.**

25 **A. Accident Summary.**

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

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

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

22 **II. STIPULATED FACTS**

23 None.

24 **III. FINDINGS OF FACT**

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

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

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

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

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

27 PLAINTIFF'S TREATMENT

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

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

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

18 The Plaintiff followed up with Dr. Fischer who, according to the testimony of him and his
19 wife, he had seen in the past. No prior records were submitted by either party. The Plaintiff saw
20 Dr. Fischer on July 23, 2015, November 17, 2015 and March 3, 2016. Although the notes on July
21 23, 2015 state that the Plaintiff was rear ended, the next visit on November 17, 2015 has the NO
22 circled for the question "Auto or Work Related". There was no other treatment by Dr. Fischer.

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

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

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

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

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

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

17 On July 15, 2016 the Plaintiff started physical therapy.

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

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

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

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

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

11 IV. APPLICABLE LAW.

12 In a case of negligence, the law in Nevada is clear and well settled. To prevail on a
13 negligence theory, the plaintiff generally must show that: (1) the defendant had a duty to exercise
14 due care towards the plaintiff; (2) the defendant breached the duty; (3) the breach was an actual
15 cause of the plaintiff's injury; (4) the breach was the proximate cause of the injury; and (5) the
16 plaintiff suffered damage. *Perez v. Las Vegas Medical Center*, 107 Nev. 1, 4, 805 P.2d 589, 591
17 (1991).

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

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

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

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

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

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

2 A party cannot recover damages for loss that he could have avoided by reasonable efforts.

3 *Conner v. Southern Nevada Paving, Inc.*, 103 Nev. 353, 355, 741 P.2d 800, 801 (1987).

4 A person who has been damaged by the wrongful act of another is bound to exercise
5 reasonable care and diligence to avoid loss and to minimize the damages, and he may not recover
6 for losses which could have been prevented by reasonable efforts on his part or by expenditures
7 that he might reasonably have made. *Silver State Disposal v. Shelley*, 105 Nev. 309, 774 P.2d
8 1044 (1989).

9 In any action to recover damages for death or injury to persons or for injury to property in
10 which comparative negligence is asserted as a defense, the comparative negligence of the plaintiff
11 or the plaintiff's decedent does not bar a recovery if that negligence was not greater than the
12 negligence or gross negligence of the parties to the action against whom recovery is sought. NRS
13 41.141.

14 V. CONCLUSIONS OF LAW.

15 A. Liability.

16 In Nevada, a driver has a duty to decrease speed given the current road conditions. NRS
17 484B.603 The rule states that

18 "The fact that the speed of a vehicle is lower than the prescribed limits does not relieve a
19 driver from the duty to decrease speed when approaching and crossing an intersection,
20 when approaching and going around a curve, when approaching a hill crest, when traveling
21 upon any narrow or winding highway, or when special hazards exist or may exist with
22 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).

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

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

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

1 until such movement can be made with reasonable safety, and then only after giving a
2 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.

3 2. A signal of intention to turn right or left, or otherwise turn a vehicle from a direct
4 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
5 prior to changing the course of a vehicle. This rule shall be observed, regardless of the
weather.

6 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
7 484B.413.

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

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

17 B. Damages Caused by the Subject Accident.

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

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

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

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 FACTORS CONSIDERED	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

1	TOTAL	\$11,750.00
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2 I find that for those months the Plaintiff did not seek treatment, a minimal amount for pain
3 and suffering is appropriate. This is based upon the Plaintiff's testimony and his wife's testimony
4 regarding the effect the injuries had on his daily activities. It is felt that if he was able to work and
5 did not seek medical treatment, the pain was minimal. As to when the Plaintiff sought treatment, I
6 find that he probably was experiencing sufficient pain that warranted seeking medical treatment.

7 As to the medical bills, based upon Dr. Burke's report (**Exhibit 17**) which was not
8 contradicted by any other medical report or medical opinion, I find that the entire amount of
9 \$32,235.50 must be awarded.

10 **VI. ARBITRATOR'S FINDINGS.**

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

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

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

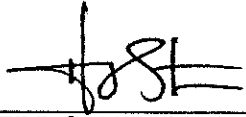
26 An award of attorney's fees and/or costs may be awarded upon proof and if allowed by
27 law. As to interest, Plaintiffs' counsel shall make the appropriate calculations for submission
28 along with any motion for attorney's fees and costs if allowed by law.

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

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

3 DATED this 26 day of December, 2017.

4 THE LAW FIRM OF HERB SANTOS, JR.
5 225 South Arlington Avenue, Suite C
6 Reno, Nevada 89501

7 By 
8 HERB SANTOS, JR., ESQ.
9 Attorney for Plaintiff

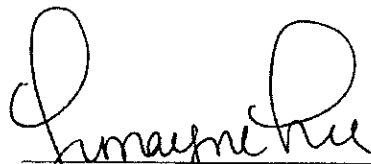
CERTIFICATE OF SERVICE

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.

1 ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
2 **LAW OFFICES OF KARL H. SMITH - RENO**
Mail to:
3 P.O. Box 258829
Oklahoma City, OK 73125-8829
4 Physical Address:
50 W. Liberty Street, Suite 303
5 Reno, NV 89501
Phone: (775) 329-2116
6 adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
7 CHASE PORSOW

8
9 **SECOND JUDICIAL DISTRICT COURT**
10 **WASHOE COUNTY, NEVADA**

11 MODESTO CASTRO-AVALOS, an individual,
12 Plaintiff,
13 vs.
14 CHASE PORSOW, an individual; and DOES 1-
15 10, respectively,
16 Defendants.

Case No.: CV16-02521
ARB16-02521
DEPT. NO. 9

17 **REQUEST FOR TRIAL DE NOVO**

18
19 NOTICE IS HEREBY GIVEN that on December 26, 2017, an Arbitration Award was filed in
20 this action. Defendant, Chase Porsow herein requests a Trial De Novo of this action in the District
21 Court.

22 The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest
23 pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as
24 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
25 \$3,000.00.

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

1 **AFFIRMATION Pursuant to NRS 239B.030:**

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

4
5 DATED: January 5, 2018

LAW OFFICES OF KARL H. SMITH - RENO

6 BY: /s/ Adam P. McMillen

7 ADAM P. MCMILLEN, ESQ.

8 Attorney for Defendant,

9 CHASE PORSOW
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3 **CERTIFICATE OF SERVICE**

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

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

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

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

11 _____ *Via Facsimile* [E.D.C.R. 7.26(a)]
12

13 Sean P. Rose
14 Rose Law Office
15 150 W. Huffaker Lane
16 Suite 101
17 Reno, NV 89511
18 Attorney for Plaintiff, Modesto Castro-Avalos
19 Phone: (775) 824-8200
20 Fax: (775) 657-8517

21 /s/ Adam P. McMillen

22 _____
23 ADAM P. MCMILLEN, An Employee of the
24 Law Offices of Karl H. Smith - Reno
25
26
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Exhibit 4

Exhibit 4

1 A201
2 ALICE KUNG HERBOLSHEIMER, ESQ.
3 Nevada Bar No. 6389
4 GEORGESON ANGARAN, CHTD.
5 5450 Longley Lane
6 Reno, Nevada 89511
7 775.827.6440
8 775.827.9256 – Fax
9 alice@renotahoelaw.com

6 Court-Appointed Arbitrator

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

11 PETE W. ECKERT

12 Plaintiff,

13 vs.

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

16 Defendants.

Case No.: ARB17-00623

Dept. No.: ARB

17 **ARBITRATION AWARD**

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

25 If any party deems itself entitled to an award of costs and/or attorney's fees, such request
26 shall be made in accordance with the Nevada Rules of Civil Procedure and the Nevada
27 Arbitration Rules.
28

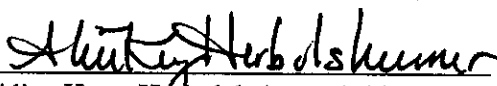
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AFFIRMATION

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 Herbolzheimer, Arbitrator

1 CERTIFICATE OF SERVICE

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

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

7 _____ Personal delivery.

8 _____ Facsimile (FAX).

9 _____ Federal Express or other overnight delivery.

10 _____ Reno/Carson Messenger Service.

11 XXXXXX By Electronic notification

12
13 I hereby certify that on October 19, 2017, I electronically filed the foregoing with the Clerk of
14 the Court by using the ECF system, which served the following parties electronically:

15 John F. Kirsch, Esq.
16 432 Court Street
17 Reno, Nevada 89501

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

18 DATED this 19th day of October, 2017.

19 
20 _____
21 TAMMY MARTINELLI
22
23
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27
28

KARL H. SMITH, ESQ.
State Bar No. 06504
ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
LAW OFFICES OF KARL H. SMITH - RENO
50 W. Liberty Street, Suite 303
Reno, NV 89501
Phone: (775) 329-2116
karl.smith@farmerssinsurance.com
adam.mcmillen@farmersinsurance.com
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).

///

1 **AFFIRMATION Pursuant to NRS 239B.030:**

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

4 **DATED:** November 1, 2017

LAW OFFICES OF KARL H. SMITH - RENO

6 BY:



7 KARL H. SMITH, ESQ.

 Attorney for Defendants,

8 JANICE K. MICKELSON AND JOHN MICKELSON

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

1 Code: STP
2 *SHERRY B. BOWERS, ESQ.* (NV #3038)
3 63 Keystone Ave., Ste. 107
Reno, NV 89503
Telephone: 775/323-1469

4 Presiding Judge,
5 Short Trial Program

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

8 oo0oo

9 PETE W. ECKERT,

10 Plaintiff,
11 vs.

CASE NO.: CV17-00623

DEPT. NO.: STP

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

13 Defendants.
14

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

18 At the short trial on March 19, 2018, the jury awarded the Plaintiff \$16,606.00
19 for medical expenses, and \$16,606.00 for general damages (pain and suffering), for
20 total damages in the amount of \$33,212.00. Sherry B. Bowers, Short Trial Judge,
21 presided. Plaintiff filed a motion for attorneys' fees, costs, and a request for
22 prejudgment interest. Defendants has no objection to plaintiff's request for costs, but
23 opposed the motion for attorney's fees. By separate order, the short trial judge has
24 awarded Plaintiff attorney's fees in the amount of \$6,000.00, costs in the amount of
25 \$1,161.30, and prejudgment interest and continuing interest, as allowed by law.

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

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 (#99276)

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

3 DATED this 23 day of April, 2018

4
5 By: Connie I. Steinheimer
6 DISTRICT JUDGE
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Exhibit 5

Exhibit 5

1 **DAVID M. ZANIEL, ESQ.**

2 Nevada Bar No. 7962

3 **RANALLI, ZANIEL, FOWLER & MORAN LLP**

4 50 West Liberty Street, Suite 1050

5 Reno, Nevada 89501

6 Telephone: (775) 786-4441

7 Arbitrator

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUTY OF WASHOE**

10 MARIBEL RODRIGUEZ VALDEZ,)

11 Plaintiff,)

12 vs.)

Case No. ARB17-00534

Dept. No. ARB

13 MAYA MICHEL REAGAN, LAURA JEAN)

14 MICHEL, and DOES 1-V, inclusive.)

15 Defendants.)

16 **ARBITRATION DECISION**

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

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

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

25 Initially, both sides did an excellent job in focusing on the issues of the case and
26 presenting their case in a clear and concise manner. Both the Plaintiff and the Defendant were
27
28

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

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

5 The accident occurred on Sun Valley near the intersection of Gepford Parkway¹. The
6 speed limit is 35 miles per hour. Defendant testified that she was traveling approximately 25
7 miles per hour at the time of impact. Plaintiff testified that she was at a complete stop and was
8 surprised by the impact. The arbitrator agrees that the police report is hearsay for purposes of
9 the argument that this was a "moderate impact" as indicated in the report. Defendant describes
10 the impact as "less than a bumper car" and Plaintiff describes it as "forceful." The actual
11 impact, in my opinion, was greater than that of a bumper car ride. The visible damage to
12 Plaintiff's vehicle is not major by any extent. However, the property damage report does
13 indicate damage to the rear bumper and rear body. Parts were replaced as opposed to repaired.
14 Further, the damage to the front of the Defendant's vehicle, I would say is greater than
15 minimum damage. There is a gap between the body and the hood. I believe that the impact,
16 although not major, was enough to cause injury. The question turns to what treatment was
17 required as a result of said accident.

18 Plaintiff Maribel Rodriguez Valdez is currently 46 years old, employed by running her
19 own company and maintaining a household of herself, her husband, her three (3) adult children
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24 ¹ Plaintiff's Answers to Interrogatories were used to impeach Plaintiff that she was involved in
25 another accident on Pyramid Highway in which she did in fact answer and verify those answers
26 to her interrogatories. Plaintiff denied being in another accident. Defendant was afforded the
27 opportunity to investigate this (although as the interrogatories were signed well before the
28 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.

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

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

21 Defendant has no expert to refute the Plaintiff's medical treatment. While an expert is
22 certainly not required, in the review of the medical records, and the Plaintiff's testimony, the
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1 arbitrator finds that the medical treatment in this case is reasonable and necessary. As such,
2 Plaintiff is awarded medical specials of \$11,806.00.

3 The more difficult aspect of the case is general damages. In my opinion, the significant
4 facts of her age, pain levels, employ, running her household and the additional issue added to
5 her life of seeking treatment and being in pain all go into the assessment of general damages.
6 Based upon Plaintiff's testimony, the pain from the accident caused issues at home while Ms.
7 Rodriguez-Valdez did her best to maintain the household including cooking and shopping.
8 Plaintiff also continued to work during these times in which driving was painful. She ultimately
9 was able to resume her Zumba classes. Another significant aspect is the duration of treatment.
10 While Plaintiff testified that she has occasional pain², the timeframe in which Plaintiff had to
11 endure a more significant pain, deal with treatment, undergo injection therapy to reach the point
12 of relief was just about four (4) months. This was not a lengthy time period. Based upon the
13 totality of the evidence, \$8,000.00 is appropriate for general damages.
14

15
16 As such, the arbitrator finds for Ms. Rodriguez-Valdcz and awards her medical expenses
17 and \$8,000.00 for general damages for a total of \$19.806.00.
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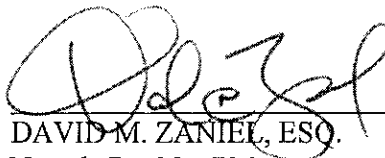
25
26 ² Plaintiff reported 90% improvement at the last visit with Dr. Miles on December 8, 2016.
27 However, all test findings were normal other than mild neck pain at the end of a range of motion
28 exam. In my opinion, this would not correlate to her ongoing subjective reporting of pain, at
least due 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 3rd 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).

///

1 **AFFIRMATION Pursuant to NRS 239B.030:**

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

4
5 DATED: May 14, 2018

THE LAW OFFICES OF KARL H. SMITH -
RENO

6
7 BY: 

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

1
2
3 **CERTIFICATE OF SERVICE**

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

7 X Via U.S. Mail by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]
8 X Via Electronic Filing [N.E.F.R. 9(b)]
9 _____ Via Electronic Service [N.E.F.R. 9]
10 _____ Via Facsimile [E.D.C.R. 7.26(a)]
11
12

13 Peter A. Tomaino
14 201 West Moana Lane
15 Reno, NV 89509
16 Attorney for Plaintiff, Maribel Rodriguez Valdez
17 Phone: (775) 324-1744
18 Fax: (775) 324-1782

19 Marsha J. Cinkel
20 MARSHA J. CINKEL, An Employee of
21 The Law Offices of Karl H. Smith - Reno
22
23
24
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28

Exhibit 6

Exhibit 6

1 A560
HERB SANTOS, JR., Esq.
2 Bar #4376
The Law Firm of Herb Santos, Jr.
3 225 South Arlington Avenue, Suite C
Reno, Nevada 89501
4 (775) 323-5200

5 Arbitrator

6
7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10
11 PAZ DALMACIO,

12 Plaintiff,

13 vs.

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

15 Defendants.
16

Case No. ARB17-01356

Department No. ARB

17 ARBITRATOR'S DECISION

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

24 The arbitration hearing was not reported.

25 **I. BACKGROUND FACTS.**

26 **A. Accident Summary.**

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

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

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

2 Exhibit 1 Accident Report Statements of Defendant and Lorenzo B. Rintacutan

3 Exhibit 2 Case Summary from Reno Municipal Court

4 Exhibit 3 Photographs taken by Plaintiff

5 Exhibit 4 Photographs taken by the Nevada Highway Patrol

6 Exhibit 5 Google Earth Photograph of Accident Scene

7 Exhibit 6 Estimate of Mr. Rintacutan's Vehicle

8 Exhibit 7 Plaintiff's Wage Loss Information

9 Exhibit 8 Medical Records of Paul Ludlow, MD

10 Exhibit 9 Medical Records of Renown Urgent Care

11 Exhibit 10 Medical Records from Complete Family Care

12 Exhibit 11 Medical Records from North Hills Chiropractic

13 Exhibit 12 Medical Records from Orthopedic Specialists

14 Exhibit 13 Medical Records from Reno Diagnostic Centers

15 Exhibit 14 Summary of Plaintiff's Medical Charges

16 Exhibit 15 Declaration of David Berg, DC

17 Exhibit 16 Plaintiff's Complaint

18 Exhibit 17 Defendant's Answer to Complaint

19 Exhibit 18 Recorded Statement of Defendant

20 **II. STIPULATED FACTS**

21 None.

22 **III. FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

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

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

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

5 Dr. Berg also provided a Declaration which states that he took the Plaintiff off work from January
6 9, 2017 through May 3, 2017 with light duty through June 5, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 IV. APPLICABLE LAW.

8 In a case of negligence, the law in Nevada is clear and well settled. To prevail on a
9 negligence theory, the plaintiff generally must show that: (1) the defendant had a duty to exercise
10 due care towards the plaintiff; (2) the defendant breached the duty; (3) the breach was an actual
11 cause of the plaintiff's injury; (4) the breach was the proximate cause of the injury; and (5) the
12 plaintiff suffered damage. *Perez v. Las Vegas Medical Center*, 107 Nev. 1, 4, 805 P.2d 589, 591
13 (1991).

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

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

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

20 The party seeking damages has the burden of providing an evidentiary basis upon which the
21 fact finder may properly determine the amount of damages. *Mort Wallin v. Commercial Cabinet*,
22 105 Nev. 855, 857, 784 P.2d 954, 955 (1989).

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

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

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

1 reasonable care and diligence to avoid loss and to minimize the damages, and he may not recover
2 for losses which could have been prevented by reasonable efforts on his part or by expenditures
3 that he might reasonably have made. *Silver State Disposal v. Shelley*, 105 Nev. 309, 774 P.2d
4 1044 (1989).

5 **V. CONCLUSIONS OF LAW.**

6 **1. Liability.**

7 The Plaintiff contends that the Defendant pulled into the number 2 slow lane when it was
8 not safe to do so. The Defendant contends that he cannot be found liable for the damages suffered
9 by the Plaintiff as it was Mr. Rintacutan who caused the accident because he ran into the
10 Defendant. There are two traffic rules which are applicable in this case. The first is NRS
11 484B.603. The rules states

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

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

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

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

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

6 **2. Damages.**

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

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

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

19 As to past pain and suffering, I have gone over the medical records thoroughly. The
20 records contain many inconsistencies regarding the Plaintiff's subjective complaints. This makes it
21 very difficult to determine the extent to which the injuries caused her pain and interfered with her
22 daily activities. The period of time that the records support that there was some associated pain is
23 from January 1, 2017 through June 5, 2017, a little over five (5) months. The value is discounted
24 given the many inconsistencies documented in the records. For example, the Plaintiff told Dr.
25 Berry on February 23, 2017 that her pain in the neck was an 8/10 in the morning, 7/10 in the
26 afternoon and 8/10 at night. On February 20, 2017 when she saw Dr. Berg, her neck pain was a
27 2/10. On February 22, 2017 the neck was listed as a 7/10 but was improved. With her low back
28 she was a 10/10 from January 10 through February 1. On February 3 her pain dropped to a 2 and

1 stayed that way until February 16 when it spiked to a 6. What was confusing was that almost all
2 complaints substantially dropped on February 3 when her new complaint of shoulder pain, which
3 was a 10, was first noted. There is no question that the Plaintiff did experience some pain as a
4 result of the accident and should be fairly compensated. I find that \$2,000.00 for January and
5 \$500.00 for each month thereafter (five months at \$2,000.00) fairly compensates her for her pain
6 related to the accident.

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

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

18 **VI. ARBITRATOR'S FINDINGS.**

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

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

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

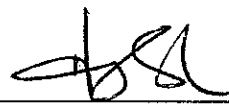
1 Plaintiff in his Complaint, the Arbitrator finds in favor of the Plaintiff and awards damages in the
2 amount of \$34,330.50.

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

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

8 DATED this 29 day of January, 2018.

9 THE LAW FIRM OF HERB SANTOS, JR.
10 225 South Arlington Avenue, Suite C
11 Reno, Nevada 89501

12 By 
13 HERB SANTOS, JR., ESQ.
14 Arbitrator
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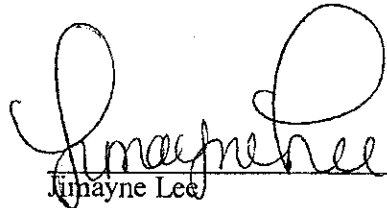
1 CERTIFICATE OF MAILING

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

6 Robert Jensen, Esq.
7 Galloway & Jensen
8 222 California Avenue
9 Reno, Nevada 89509

10 Adam McMillen, Esq.
11 Law Offices of Karl Smith - Reno
12 50 West Liberty Street, Suite 303
13 Reno, Nevada 89501

14 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

1 ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
2 **LAW OFFICES OF KARL H. SMITH - RENO**
50 West Liberty Street, Suite 303
3 Reno, NV 89501
Phone: (775) 329-2116
4 adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
5 BRIAN PALOMAR-LINAREZ

6
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 PAZ DALMACIO,

10 Plaintiff,

11 vs.

12 BRIAN PALOMAR-LINAREZ, And DOES I-X,

13 Defendants.

Case No.: CV17-01356

DEPT. NO. 8

14
15 **REQUEST FOR TRIAL DE NOVO**

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

19 The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest
20 pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as
21 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
22 \$3,000.00.

23 I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have
24 been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that
25 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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1 **AFFIRMATION Pursuant to NRS 239B.030:**

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

4
5 DATED: February 26, 2018

LAW OFFICES OF KARL H. SMITH - RENO

6
7 BY: 

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

1
2 **CERTIFICATE OF SERVICE**

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

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

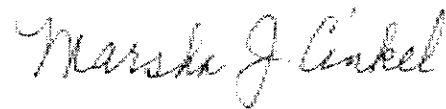
8 ☐ *Via Electronic Service* [N.E.F.R. 9]

9 ☐ *Via Facsimile* [E.D.C.R. 7.26(a)]
10

11 Robert R. Jensen
12 Galloway & Jensen
13 222 California Avenue
14 Reno, Nevada 89509
15 Attorney for Plaintiff, Paz Dalmacio
16 Phone: (775) 333-7555
17 Fax: (775) 323-4993

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

19 Herb Santos, Jr.
20 The Law Firm of Herb Santos, Jr.
21 225 S. Arlington Ave., Suite C
22 Reno, NV 89501
23 Attorney for, Arbitrator
24 Phone: (775) 323-5200
25 Fax: (775) 323-5211
26
27
28



24 MARSHA J. CINKEL, An Employee of Law Offices
25 H. Smith - Reno
26
27
28

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.

1
2 DCR 13(7) provides that "[n]o motion once heard and disposed of shall be renewed in the
3 same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court
4 granted upon motion therefore, after notice of such motion to the adverse parties." WDCR 12(8)
5 requires that the rehearing of motions to be done in conformity with DCR 13(7). WDCR 12(8)
6 further provides in relevant part that "[a] party seeking reconsideration of a ruling of the court...
7 must file a motion for such relief within 10 days after service of written notice of entry of the
8 order or judgment, unless the time is shortened or enlarged by order." The Nevada Supreme
9 Court has held that "[a] district court may reconsider a previously decided issue if substantially
10 different evidence is subsequently introduced or the decision is clearly erroneous." Masonry and
11 Title Contractors Ass'n of Southern Nevada v. Jolley, Urga, & Wirth, Ltd., 113 Nev. 737, 741
12 (1997).

13 Nevada Arbitration Rule 18 states:

14 (A) Within 30 days after the arbitration award is served upon the parties,
15 any party may file with the clerk of the court and serve on the other parties and
16 the commissioner a written request for trial de novo of the action. Any party
17 requesting a trial de novo must certify that all arbitrator fees and costs for such
18 party have been paid or shall be paid within 30 days, or that an objection is
19 pending and any balance of fees or costs shall be paid in accordance with
20 subsection (C) of this rule.

21 (B) The 30-day filing requirement is jurisdictional; an untimely request for
22 trial de novo shall not be considered by the district court.

23 (C) Any party who has failed to pay the arbitrator's bill in accordance with
24 this rule shall be deemed to have waived the right to a trial de novo; if a timely
25 objection to the arbitrator's bill has been filed with the commissioner pursuant to
26 Nevada Arbitration Rules 23 and/or 24, a party shall have 10 days from the date
27 of service of the commissioner's decision in which to pay any remaining balance
28 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

1 districts that are required to provide a short trial program under the Nevada Short
2 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
3 N.S.T.R. 5.

4 (F) If the district court strikes, denies, or dismisses a request for trial de
5 novo for any reason, the court shall explain its reasons in writing and shall enter a
6 final judgment in accordance with the arbitration award. A judgment entered
7 pursuant to this rule shall have the same force and effect as a final judgment of the
8 court in a civil action, and may be appealed in the same manner. Review on
9 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.

10 (G) A motion to strike a request for trial de novo may not be filed more than
11 30 days after service of the request for trial de novo. (emphasis added).

12 Plaintiff PAZ DALMACIO asserts that the Court inaccurately calculated the time for
13 Plaintiff to file her Motion to Strike Request for Trial De Novo, thus, it should be reconsidered.
14 PAZ DALMACIO asserts that the first day of the calculated 30 day time period within which
15 PAC DALMACIO had to file his motion to strike started on February 27, 2018. As such, the
16 thirtieth (30th) day fell on March 28, 2018, and adding three (3) days for service pursuant to
17 Administrative Order 2013-03, the deadline would have been Saturday, March 31, 2018.
18 Because the last day fell on a Saturday, the last day is extended to the next business day,
19 Monday, April 2, 2018. NRCP 6(a). PAZ DALMACIO filed his motion to strike on April 2,
20 2018; therefore, his motion was timely. BRIAN PALOMAR –LINAREZ argues that even if the
21 motion to strike was timely, PAZ DALMACIO is ignoring the other bases for denying the
22 motion - payment of the arbitrator's fees and Nevada's policy of resolving cases on their merits.
23 In reply, PAZ DALMACIO argues that Defendant acknowledges he did not timely pay the
24 arbitrator's fees and costs under NAR 18(A). As such, he has waived his right to file a request
25 for trial de novo because the time limit for payment of fees and costs is mandatory. NAR 18(c).
26 Additionally, PAZ DALMACIO argues that the public policy consideration has no application in
27 the instant case because it was heard on its merits in arbitration.

28 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

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

6 The Court will next address PAZ DALMACIO's motion to strike BRIAN PALOMAR-
7 LINAREZ's Request for Trial De Novo based upon his failure to pay the Arbitrator's fees within
8 the thirty (30) days pursuant to NAR 18(A). As noted above, BRIAN PALOMAR-LINAREZ
9 admits that he did not timely pay the arbitrator's fees within the 30 day timeframe. NAR 18(C)
10 states that "[a]ny party who has failed to pay the arbitrator's bill in accordance with this rule
11 shall be deemed to have waived the right to a trial de novo." When a statute's language is plain
12 and unambiguous, and the statute's meaning clear and unmistakable, the courts are not permitted
13 to look beyond the statute for a different or expansive meaning or construction." DeStefano v.
14 Berkus, 121 Nev. 627, 629 (2005); see also 3A Sutherland Statutory Construction §67.15, 7th ed.
15 2010)("[i]n one form or another almost every rule of construction for statutes finds application in
16 the interpretation of the rules of practice." The word "shall" is mandatory and does not denote
17 judicial discretion." Johanson v. Eighth Judicial Dist. Court, 124 Nev. 245, 249-50 (2008).
18 Given that BRIAN PALOMAR-LINAREZ concedes that he did not pay the arbitrator within
19 thirty days-despite certification to the district court that they would timely pay the arbitrator – he
20 waived the right to a trial de novo. Additionally, the Nevada Supreme Court has found that a
21 party's right of access to the courts will be upheld unless the burden imposes "onerous
22 conditions, restrictions, or regulations which would make the right practically unavailable."
23 Zamora v. Price, 125 Nev. 388, 393 (2009). Timely payment requirements rarely are an onerous
24 burden. See, Firelock Inc. v. Dist. Court, 776 P.2d 1090 (1096 (Colo. 1989); See, also, 47
25 Am.Jur.2d Jury § 62 (2006)("Generally, state statutes and court rules requiring the payment of
26 fees, deposits, or security by the party requesting a jury trial in a civil case do not
27 unconstitutionally interfere with ...[the] right to a jury trial."). Finally, the Nevada Supreme
28 Court Court has found that a "statute meets rational basis review so long as it is reasonably

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

7 Based on the foregoing, and good cause appearing,

8 IT IS HEREBY ORDERED that PAZ DALMACIO’s motion for rehearing is
9 GRANTED.

10 IT IS HEREBY FURTHER ORDERED that PAZ DALMACIO’s Motion to Strike
11 Request for Trial De Novo is GRANTED; therefore, the Clerk of the Court shall strike
12 Defendant BRIAN PALOMAR-LINAREZ’s Request for Trial De Novo filed on February 26,
13 2018 for failure to pay arbitrator’s fees timely pursuant to NAR 18(A).

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

16 DATED this 11 day of June, 2018.

17
18 Connie J. Steinheimer
19 DISTRICT JUDGE
20
21
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28

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.

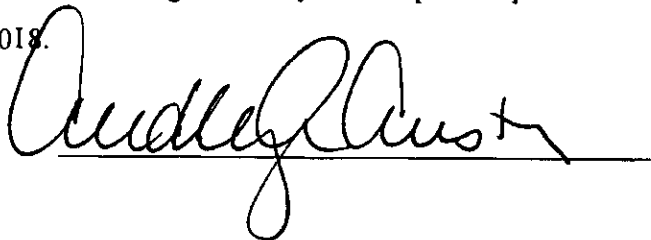


Exhibit 7

Exhibit 7

1 **A201**

2 Michael E. Sullivan, Esq. (SBN 5142)
3 **ROBISON, SHARP, SULLIVAN & BRUST**
4 71 Washington Street
5 Reno, Nevada 89503
6 Telephone: (775) 329-3151
7 Facsimile: (775) 329-7169
8 *Arbitrator*

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE
13

14 ANTHONY ELK,

Case No.: ARB17-01614

15 Plaintiff,

Dept. No.: ARB15

16 v.

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

19 Defendants.
20 _____/

21 **ARBITRATOR'S DECISION**

22 **I. INTRODUCTION**

23 The arbitration hearing in this matter was held on the 9th day of April, 2018 at the
24 law offices of Robison, Sharp, Sullivan & Brust in Reno, Nevada. Attorney Graham
25 Galloway, Esq. appeared on behalf of the Plaintiff, Anthony Elk. Defendant Michael
26 Bergin Murphy was present with his attorney Adam P. McMillen, Esq. It should first be
27 noted that both attorneys made excellent presentations and provided the Arbitrator with
28 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

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

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

9
10 **II. CONCLUSION**

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

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

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

22 DATED this 10th day of April, 2018.

23 ROBISON, SHARP, SULLIVAN & BRUST
24 71 Washington Street
25 Reno, Nevada 89503

26 By: 

27 MICHAEL E. SULLIVAN, ESQ.
28 Court-appointed Arbitrator

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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.

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

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

MICHAEL E. SULLIVAN, ESQ.
Court-Appointed Arbitrator

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SIMONS,
4 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:

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

7 _____ personal delivery/hand delivery

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

11 Graham Galloway, Esq.
12 Attorney for Plaintiff

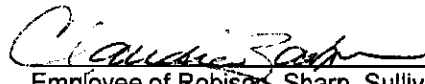
13 Karl Smith, Esq.
14 Attorney for Defendant

15 Adam P. McMillen, Esq.
16 Attorney for Defendant

17 _____ Federal Express/UPS or other overnight delivery

18 _____ Reno Carson Messenger Service

19 Dated this 10th day of April, 2018.

20
21 
22 _____
23 Employee of Robison, Sharp, Sullivan & Brust

24
25 J:\WPData\MES\Arbitrator\6103.001 Elk v. Murphy\P-Arbitrator Decision 4-9-18.docx
26
27
28

1 ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
2 **LAW OFFICES OF KARL H. SMITH - RENO**
50 West Liberty Street, Suite 303
3 Reno, NV 89501
Phone: (775) 329-2116
4 adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
5 MICHAEL BERGIN MURPHY

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

9 ANTHONY ELK, an individual,,

10 Plaintiff,

11 vs.

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

14 Defendants.

Case No.: CV17-01614

DEPT. NO. 15

15
16 **REQUEST FOR TRIAL DE NOVO**

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

20 The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest
21 pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as
22 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
23 \$3,000.00.

24 I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have
25 been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that
26 an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).
27

28 ///

///

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

1
2
3 **CERTIFICATE OF SERVICE**

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

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

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

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

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

11
12
13 Graham Galloway, Esq.
14 Galloway & Jensen
15 222 California Avenue
16 Reno N, NV 89509
Attorney for Plaintiff, Anthony Elk
Phone: (775) 333-7555
Fax: (775) 323-4993

17 Michael E. Sullivan
18 Robison, Belaustegui, Sharp & Low
19 71 Washington St
20 Reno, NV 89503
21 ARBITRATOR
22 Fax: (775) 329-7169


23 
24 MARSHA J. CINKEL, An Employee of the
25 Law Offices of Karl H. Smith - Reno
26
27
28

Exhibit 8

Exhibit 8

1 ARB 201
2 PAUL A. KAPITZ, ESQ.
3 Nevada State Bar No. 5386
4 137 Mt. Rose Street
5 Reno, Nevada 89509
6 (775) 329-1888

7 Arbitrator

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

10 * * *

11 JENNIFER HAKANSSON,
12 Plaintiff,

13 CASE NO. ARB17-01939

14 vs.

15 DEPT. NO. ARB

16 CARLTON GARFIELD
17 SLOAN, DOES I-X, inclusive,
18 Defendants.
19

20 **ARBITRATOR'S AWARD**

21 Based upon the evidence presented at the arbitration hearing
22 concerning the cause of action alleging negligence brought by Plaintiff,
23 Jennifer Hakansson, as against Defendant, Carlton Garfield Sloan, the
24 Arbitrator finds in favor of Plaintiff Jennifer Hakansson and awards Plaintiff
25 Jennifer Hakansson, the total sum of Eleven Thousand Nine Hundred Forty-
26 Two and 00/100 Dollars (\$11,942.00).
27

28 *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) 329-1888 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)

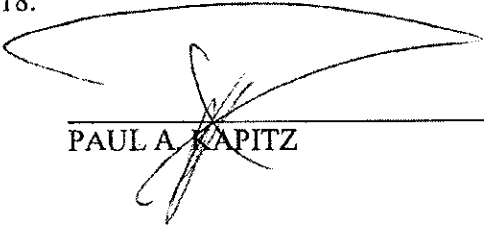
This certificate was automatically generated by the courts auto-notification system.

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

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

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

11 JENNIFER HAKANSSON,

12 Plaintiff,

13 vs.

14 CARLTON GARFIELD SLOAN, DOES I
15 through X, inclusive,

16 Defendants.

Case No.: CV17-01939

DEPT. NO. 1

17
18 **REQUEST FOR TRIAL DE NOVO**

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

22 The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest
23 pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as
24 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
25 \$3,000.00.

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

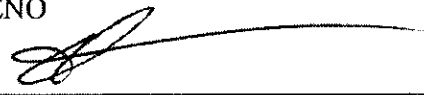
AFFIRMATION Pursuant to NRS 239B.030:

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

1
2
3 **CERTIFICATE OF SERVICE**

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

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

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

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

10 Via Facsimile [E.D.C.R. 7.26(a)]
11
12

13 Matt L. Dion
14 Matt Dion & Associates
15 275 Hill Street, Suite 248
16 Reno, NV 89501
Attorney for Plaintiff, Jennifer Hakansson
Phone: (775) 737-4500
Fax:

17
18
19 Marsha J. Cinkel

20 MARSHA J. CINKEL, An Employee of The Law Of
21 Karl H. Smith - Reno
22
23
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 JENNIFER HAKANSSON,
9 Plaintiff,

10 vs.

11 CARLTON GARFIELD SLOAN,
12 DOES I through X, inclusive,
13 Defendant.

)
)
) Case No: CV17-01939
) Dept. No: STP
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14 **VERDICT**

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

18 Medical Expenses: \$ 4,000
19 Pain and Suffering: \$ 4,000
20 TOTAL \$ 8,000.-

21 DATED this 10th day of December 2018.

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24 FOREPERSON
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Exhibit 9

Exhibit 9

Code: A201
1 Brian M. Brown, Esq.
2 Nevada Bar No. 5233
3 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
4 6590 S. McCarran, Suite B
5 Reno, Nevada 89509
6 Court-Appointed Arbitrator

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

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

11 Plaintiff,

12 vs.

13 ALEXANDER GARY GREEN, DOES I
14 through X, inclusive,

15 Defendant.

Case No. ARB18-00457

Dept. No. ARB

16 **ARBITRATION AWARD**

17 The arbitration hearing in this matter was held on the 16th day of November, 2018. Based
18 upon the evidence presented at the arbitration hearing concerning the cause of action for
19 negligence, the arbitrator finds in favor of Plaintiff and awards damages in the amount of
20 \$11,233.00.

21 **AFFIRMATION**

22 **Pursuant to NRS 239B.030**

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

25 DATED this 16th day of November, 2018.

26 THORNDAL, ARMSTRONG,
27 DELK, BALKENBUSH & EISINGER

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

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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

1 ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
2 **THE LAW OFFICES OF KARL H. SMITH - RENO**
50 West Liberty Street, Suite 303
3 Reno, NV 89501
Phone: (775) 329-2116
4 adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
5 ALEXANDER GARY GREEN
6

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

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

11 Plaintiff,

12 vs.

13 ALEXANDER GARY GREEN, DOES I through
X, inclusive,

14 Defendants.
15

Case No.: CV18-00457

DEPT. NO. 9

16 **REQUEST FOR TRIAL DE NOVO**

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

20 The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest
21 pursuant to statute or N.R.C.P. 68. Attorney's fees awarded pursuant to N.A.R. 20 must not exceed
22 \$3,000.00.

23 I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have
24 been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that
25 an objection is pending and any balance of fees or costs shall be paid in accordance with N.A.R. 18(C).
26

27 ///

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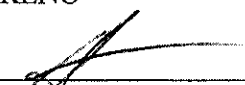
AFFIRMATION Pursuant to NRS 239B.030:

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

DATED: November 28, 2018

THE LAW OFFICES OF KARL H. SMITH -
RENO

BY:


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

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of
4 THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 25th day of November, 2018, I
5 served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the
6 parties addressed as shown below:

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

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

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

10 Via Facsimile [E.D.C.R. 7.26(a)]
11
12

13 Matthew Dion
14 Mathew Dion and Associates
15 275 Hill Street, Suite 248
16 Reno, NV 89501
17 Attorney for Plaintiff, Vertis Amiel Hagan
18 Phone: (775) 737-4500
19 Fax: (775) 737-4510

20 Marsha J. Cinkel
21 MARSHA J. CINKEL, An Employee of
22 The Law Offices of Karl H. Smith - Reno
23
24
25
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1 **CODE: STP**
2 Graham Galloway
3 Nevada State Bar No. 221
4 Galloway & Jensen
5 222 California Avenue
6 Reno, Nevada 89509
7 (775) 333-7555
8 *Short Trial Judge*

9 IN THE SECOND JUDICIAL DISTRICT COURT OF

10 THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

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

Case No.: CV18-00457

Dept. No.: STP

15 Plaintiff,

16 vs.

17 ALEXANDER GREEN, and
18 DOES I-X, inclusive,

19 Defendants.
20 _____/

21 **SHORT TRIAL PROGRAM-SCHEDULING ORDER**

22 **TO: ALL PARTIES OR THEIR RESPECTIVE COUNSEL OF RECORD**

23 A. The above-entitled case is set to be tried as part of the Short Trial Program (STP)
24 before Short Trial Judge Graham Galloway. Pursuant to Section IV, Rule 12 of the Nevada Short
25 Trial Rules, good cause exists for the trial being scheduled beyond 120 days from the appointment
26 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.

1 B. Scheduling Order deadlines are as follows:

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

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

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

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

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

22 F. A Pretrial Conference is scheduled to be held **May 10, 2019 at 10:00 a.m. at**
23 **Galloway & Jensen, 222 California Avenue, Reno, Nevada 89509**. Counsel should appear in
24 person at this conference and have representatives available to engage in meaningful settlement
25 discussions. During this conference, any motions or disputes may be ruled on, including motions to
26 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

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

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

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

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

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

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

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

23 ///

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

3 DATED this 5 day of February, 2019

4
5
6 By: 

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

1 **CERTIFICATE OF SERVICE**

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

6 Matthew Dion, Esq.
7 Matt Dion & Associates LLC
8 275 Hill Street #248
9 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

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

13 [None]

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16 Jennifer Sanchez
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Exhibit 10

Exhibit 10

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

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

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

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

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

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

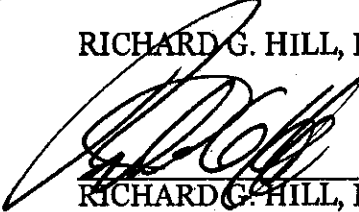
5
6 IT IS SO ORDERED.

7
8 **AFFIRMATION Pursuant to NRS 239B.030**

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

11 DATED this 11th day of March, 2019.

12 RICHARD G. HILL, LTD.

13
14 
15 RICHARD G. HILL, ESQ.
16 652 Forest Street
17 Reno, Nevada 89509
18 Arbitrator
19
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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 14 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



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

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

11 TYLER DAVID CODMAN,

12 Plaintiff,

13 vs.

14 TERESA LYNN GREGORY, and DOES 1
15 through 10,

16 Defendants.

Case No.: CV18-00744

DEPT. NO. 1

17 **REQUEST FOR TRIAL DE NOVO**

18
19 NOTICE IS HEREBY GIVEN that on March 11, 2019, an Arbitration Award was filed in this
20 action. Defendant, Teresa Lynn Gregory herein requests a Trial De Novo of this action in the District
21 Court.

22 The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest
23 pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as
24 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
25 \$3,000.00.

26 I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have
27 been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that
28 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

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of
5 THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the 11th day of March, 2019,
6 I served a true and correct copy of the above and foregoing **REQUEST FOR TRIAL DE NOVO** on the
parties addressed as shown below:

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

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

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

10 Via Facsimile [E.D.C.R. 7.26(a)]
11
12

13 Charles C. Diaz
14 Diaz & Galt, LLC
15 443 Marsh Avenue
16 Reno, NV 89509

17 Marsha J. Cinkel
18 MARSHA J. CINKEL, An Employee of
19 The Law Offices of S. Denise McCurry - Reno
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Exhibit 11

Exhibit 11

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2 A201
3 Brent H. Harsh, Esq.
4 COULTER HARSH LAW
5 403 Hill Street
6 Reno, Nevada 89501
7 (775) 324-3380
8 Arbitrator

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

EDITH VANESSA WRIGHT,

CASE NO.: ARB18-01416

Plaintiffs,

DEPT. NO.: ARB

vs.

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

Defendants.

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/1 st Day Storage:	\$331.40
<u>Reasonable Storage (30 days at \$50/day):</u>	<u>\$1,500.00</u>
TOTAL:	\$26,372.97

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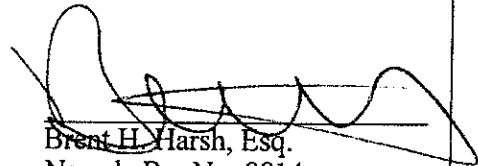
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AFFIRMATION

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

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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;

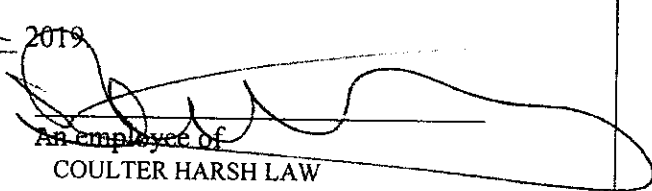
☒ Via facsimile;

☒ 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).

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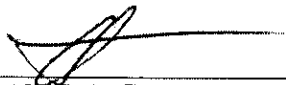
AFFIRMATION Pursuant to NRS 239B.030:

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

DATED: January 22, 2019

THE LAW OFFICES OF STACEY A. UPSON -
RENO

BY:


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

1
2
3 **CERTIFICATE OF SERVICE**

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

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

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

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

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

12
13 Peter A. Tomaino
14 201 West Moana Lane
15 Reno, NV 89509
16 Attorney for Plaintiff, Edith Vanessa Wright
17 Phone: (775) 324-1744
18 Fax: (775) 324-1782

19 *Marsha J. Cinkel*

20 MARSHA J. CINKEL, An Employee of The Law Of
21 Stacey A. Upson - Reno
22
23
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28

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

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

3 2. A Pre-Trial Conference and Settlement Conference set a minimum of ten days
4 pre-trial is set for **Monday June 3, 2019 @ 10:00 a.m. at 526 Lander Street, Reno, Nevada,**
5 **89509.** Counsel, their clients and representatives authorized to engage in final settlement
6 negotiations shall attend the conference; If not settled, the court shall hear and decide any
7 disputes regarding pre-trial motions, objections, jury instructions, exhibits, and witnesses.

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

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

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

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

25 F. At the **Pre-Trial Conference** (PTC) Counsel AND CLIENTS must appear in
26 person and have representatives available to engage in meaningful settlement discussions.
27 During this conference, any motions or disputes may be ruled on, including motions to exclude
28 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.

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

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

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

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

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

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

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

25 DATED this 25th day of March, 2019

26
27
28

PRESIDING JUDGE PRO TEMPORE
LANCE R. VAN LYDEGRAF

1 **CERTIFICATE OF SERVICE**

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

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

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

11 _____ Personal delivery via RCMS

12 _____ Facsimile

13 _____ Federal Express or other overnight delivery

14 xx _____ Email MM /E-flex

15 Addressed as follows:

16 Kyle Stooki, Esq.
17 Peter A. Tomaino, Inc.
18 201 W. Moana Lane
19 Reno, Nevada 89509
20 Attorney for Plaintiff

21 775-324-1744
22 775-324-1782
23 diana@tomainolaw.com

24 peter@tomainolaw.com

25 Adam P. McMillen, Esq.,
26 Law Office S. Denise McCurry
27 50 W. Liberty St. Suite 303
28 Reno, Nevada 89501

775 329-2221
775 329-2121

Adam.mcmillen@farmersinsurance.com

Dated this 25 day of March, 2019



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



1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 * * *

4 JOHN S. WALKER, and RALPH
5 ORTEGA,

6 Petitioners,

DISTRICT COURT NOS.:

7
8 vs.

CV18-01798 and CV18-02032

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

12 Respondents.

13
14 SHEILA MICHAELS, and KATHERYN
15 FRITTER, real parties in interest.

16 _____ /
17
18 **APPENDIX VOLUME 6A**

19
20 William R. Kendall, Esq.

21 State Bar No. 3453

22 137 Mt. Rose Street

23 Reno, NV 89509

24 (775) 324-6464

25 Attorney for Petitioners
26
27
28

APPENDIX VOLUME 6A INDEX

17. Exhibit 12.....p. 142

18. Exhibit 13.....p. 149

19. Exhibit 14.....p. 164

20. Opposition to Motion to Strike.....p. 166

21. Exhibit 1.....p. 177

FILED
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CV18-01798
2019-04-02 02:10:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7197480 : csulezlc

Exhibit 12

Exhibit 12

WA142

1 **CODE: A201**
2 **Graham Galloway**
3 **Nevada State Bar No. 221**
4 **Galloway & Jensen**
5 **222 California Avenue**
6 **Reno, Nevada 89509**
7 **(775) 333-7555**
8 **Court Appointed Arbitrator**

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
10 **THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 **JOHN S. WALKER,**

Case No.: ARB18-01798

13 Plaintiff,

Dept. No.: ARB

14 vs.

15 **SHEILA MICHAELS,**
16 **DOBS I - V, inclusive;**

17 Defendants.
18 _____/

19 **ARBITRATOR'S AWARD**

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

25 ///

///

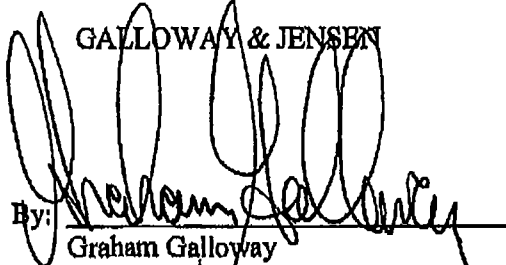
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AFFIRMATION Pursuant to NRS 239B.030: The undersigned does hereby affirm that
the preceding document does not contain the social security number of any person.

DATED this 10th day of March, 2019.

GALLOWAY & JENSEN

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

1 **CERTIFICATE OF SERVICE**


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

6 William Kendall, Esq
7 Law Offices of William R. Kendall
8 137 Mt. Rose Street
9 Reno, NV 89509
10 *Attorney for Plaintiff*

Adam McMillen
Law Offices of Karl H. Smith
50 W. Liberty Street, Suite 303
Reno, Nevada 89509
Attorney for Defendant

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

14 [None]

15 
16 Jennifer Sanchez

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

8
9 IN THE SECOND JUDICIAL DISTRICT COURT
10 WASHOE COUNTY, NEVADA

11 JOHN S. WALKER,

12 Plaintiffs,

13 vs.

14 SHEILA MICHAELS; DOES I-V, inclusive,

15 Defendants.

Case No.: CV18-01798

DEPT. NO. 7

16
17 REQUEST FOR TRIAL DE NOVO

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

20 The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest
21 pursuant to statute or N.R.C.P. 68. A party is entitled to a separate award of attorney's fees and costs as
22 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
23 \$3,000.00.

24 I hereby certify pursuant to N.R.C.P. 11 and N.A.R. 18(A) that all arbitrator's fees and costs have
25 been paid or shall be paid within thirty (30) days of the filing of this Request for Trial de Novo, or that
26 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: March 18, 2019

THE LAW OFFICES OF S. DENISE MCCURRY
- RENO

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

1
2
3 **CERTIFICATE OF SERVICE**

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

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

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

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

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

12
13 William R. Kendall
14 Law Offices of William R. Kendall
15 137 Mt. Rose St.
16 Reno, NV 89509
Attorney for Plaintiff, John S. Walker
Phone: (775) 324-6464
Fax: (775) 324-3735

17
18
19
20 //s// Marsha J. Cinkel

21 MARSHA J. CINKEL, An Employee of
22 The Law Offices of S. Denise McCurry - Reno
23
24
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2019-04-02 02:10:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7197480 : csulezic

Exhibit 13

Exhibit 13

WA149

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 Bochanls, 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 Carr 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:

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Exhibit 14

Exhibit 14

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statements are true and correct:

- Dated this 2nd day of April, 2019.

William R. Kendall, Esq.

1 ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
2 THE LAW OFFICES OF S. DENISE MCCURRY - RENO
50 West Liberty Street, Suite 303
3 Reno, NV 89501
Phone: (775) 329-2116
4 adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
5 SHEILA MICHAELS

6
7 DISTRICT COURT
8 WASHOE COUNTY, NEVADA

9
10 JOHN S. WALKER,

11 Plaintiffs,

12 vs.

13 SHEILA MICHAELS; DOES I-V, inclusive,

14 Defendants.

Case No.: CV18-01798

DEPT. NO. 7

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

17 Defendant, SHEILA MICHAELS, by and through the undersigned attorney of record, of The Law
18 Offices of S. Denise McCurry - Reno, hereby opposes Plaintiff's MOTION TO STRIKE REQUEST FOR
19 TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY.

20 I. STATEMENT OF FACTS

21 On June 16, 2018, Defendant Shella Michaels was making a right turn from Arlington Avenue
22 onto Island Drive when Plaintiff John Walker was riding his bicycle, without a helmet, and ran into the
23 right side of Defendant's vehicle. Plaintiff testified that prior to the accident he was going "around 8 to
24 12 miles an hour". See Exhibit 1, John Walker's Deposition, 2/20/19, 12:7-10. As he approached the
25 intersection of Arlington and Island, he slowed down, as he saw pedestrians crossing the street. *Id.* at
26 14:10-16. He was about 40 feet back from the crosswalk when he saw the pedestrians. *Id.* at 15:1-4.
27 He said three to four vehicles had stopped to let the pedestrians cross the street. *Id.* at 16:4-9. Michaels'
28 vehicle was at the front.

1 Afterwards, Plaintiff saw Defendant's vehicle. Plaintiff said he was about 30 feet behind
2 Defendant's vehicle when he saw her vehicle. *Id.* at 15:10-11; 16:13-20. When he first saw
3 Defendant's vehicle, Plaintiff said Defendant had already "proceeded into a right turn." *Id.* at 16:13-14.
4 Plaintiff said, "When I first noticed her car it was when she had first initiated the turn and that was
5 about 30 feet away." *Id.* at 16:18-20; *see also id.* at 16:23-25; 17:9-11, 17:14-16, 18:16-18, 19:1-5.
6 Plaintiff testified that Defendant's vehicle was moving slowly, maybe about 6 to 10 miles an hour. *Id.* at
7 19:6-11. Plaintiff admits that even though he saw her from 30 feet away executing a right turn, he
8 proceeded to run into Defendant's vehicle. *Id.* at 29:9-12, 33:13-19.

9 Plaintiff said he did not see Defendant's right turn signal before the accident. *Id.* at 20:10-12.
10 Plaintiff's attempt to slow down before the accident only consisted of reaching for his brake and letting
11 off pedaling. *Id.* at 22:21-24.

12 After the accident, Defendant asked Plaintiff if he was okay and Plaintiff told Defendant he was
13 okay. *Id.* at 27:8-13, 35:1-5. The police were not called. *Id.* at 33:21. Plaintiff was not taken by
14 ambulance anywhere. After exchanging information with Defendant, Plaintiff's roommate picked
15 Plaintiff up and took him home. *Id.* at 38:16-39:3. About 45 minutes later, Plaintiff went to his
16 bandmate's house. *Id.* at 39:8-10. About 20-30 minutes later, Plaintiff went back home and stayed there
17 the rest of the day. *Id.* at 39:16-20.

18 Plaintiff went to Renown the next day to get checked out and he was diagnosed with an
19 unspecified sprain of the right shoulder joint and an unspecified sprain of right elbow. Over a week
20 later, Plaintiff went to South Virginia Medical Center. Plaintiff claims \$9,109.00 in medical specials.
21 Plaintiff also claims he missed 4 days of work as a server/host at Pegs for a total of \$478.00.

22 Independent witness, Don Mello, was following the Defendant's vehicle when the accident
23 happened. *See Exhibit 2, Recorded Statement of Don Mello, dated 6/22/18, page 2.* He said Defendant
24 had stopped at the intersection for pedestrian traffic and once the pedestrian had finished crossing,
25 Defendant proceeded to make a right turn onto Island. *Id.* Further, Mr. Mello said:

26 Uh, while she was doing that, I noticed off the side of me, a bicyclist ride by at, between,
27 he had to be doing between 7 and 10 feet per second, given how fast he went past me and
28 he was accelerating. It was clear that he was accelerating. Uh, at this point, as he's
passing me, the lady in front of me is already halfway into her turn, so she, the front of
her car would be at about a 2:00 position. And he continued to accelerate, I considered, I
wished I had my, uh, phone out so I could record what was happening, uh, he continued

1 to accelerate, I wanted to honk, but I didn't want to scare her, cause her to do something
2 and I didn't know if he was even gonna pay attention if I did honk. But anyway, he
3 proceeded to, uh, southbound and ran right into her, ran into the side of her car, and, uh, I
4 think pr-, pr-, uh, proceeded to tumble across her hood and into the street...
5 Uh, it, it, it looked to me almost as if it was an, a setup, the way that it occurred.

6 *Id.* Mr. Mello said Michaels had her right turn blinker on. *Id.* at page 3. He made it clear that Michaels
7 had already started making her turn when he saw Plaintiff on the right side of his vehicle. *Id.* at page 4.
8 Mr. Mello believed Plaintiff had time to hit his brakes and stop but he did nothing to try and stop. *Id.* at
9 page 5. He also said he did not see any road rash or scratches on the Plaintiff and that Plaintiff's bike
10 wheel was not bent. *Id.* at page 7; *see also* Exhibit 3, pictures of Defendant's vehicle and Plaintiff's bike
11 after the accident.

12 **II. PROCEDURAL HISTORY**

13 On August 31, 2018, Plaintiff filed his Complaint. On September 21, 2018, Defendant filed her
14 answer. On October 18, 2018, this matter was ordered into the court annexed arbitration program. On
15 October 30, 2018, Graham Galloway, Esq., was appointed as arbitrator in this action. On March 13,
16 2019, the arbitration hearing was held. On March 18, 2019, the arbitrator issued an award in favor of
17 the Plaintiff for \$12,469.60 and also found Plaintiff 20% comparatively at fault. On March 18, 2019,
18 Defendant filed a request for trial de novo. On March 19, 2019, Plaintiff filed an application for
19 attorney's fees, costs and interest. On April 2, 2019, Plaintiff filed his motion to strike request for trial
20 de novo; impose sanctions; and permit discovery.

21 **III. ARGUMENT**

22 **a. Sheila Michaels Has Not Waived Her Right To Trial De Novo**

23 Defendant Sheila Michaels, and her attorney, Adam McMillen, meaningfully participated in
24 good faith during the arbitration process and did not waive Michaels' right to trial de novo. Therefore,
25 the district court should deny Plaintiff's motion.

26 **i. In Order to Determine Good or Bad Faith, Michaels' Actual Participation in 27 the Arbitration Process Should Be Evaluated**

28 **1. Only Bad-Faith Participation Waives the Right to Jury Trial**

1 A jury trial is an important constitutional right.¹ Under Nevada's mandatory arbitration process,
2 the right to a trial can only be waived by a participant's failure to "either prosecute or defend a case in
3 good faith during the arbitration proceedings" under NAR 22(A). "However, the important
4 constitutional right to a jury trial is not waived simply because individuals can disagree over the most
5 effective way to represent a client at an arbitration proceeding."²

6 In this context, the Nevada Supreme Court has equated Rule 22's "good faith" requirement with
7 "meaningful participation" in the arbitration process.³ To sanction a party for lack of good faith and
8 meaningful participation under NAR 22(A), the district court must "provide specific written findings of
9 fact and conclusions of law describing what type of conduct was at issue and how that conduct rose to
10 the level of failed good faith participation."⁴

11 The Nevada Supreme Court has made clear that "it is the substance of the hearing... that is
12 important in determining the good faith of the participants."⁵

13 ii. Judicial Definition of Meaningful Interpretation

14 Courts have found bad faith and lack of meaningful participation when a party "simply 'goes
15 through the motions,'"⁶ fails to respond timely to discovery requests,⁷ or refuses to participate at all.⁸
16 Courts have found no bad faith, however, where parties failed to call witnesses or to attend the
17 arbitration hearing,⁹ refused to enter into meaningful settlement negotiations,¹⁰ inadequately prepared
18 for the arbitration,¹¹ or even advised the court that no settlement offer would be forthcoming.¹²

21 ¹ U.S. Const. amend. 7; Nev. Const. Art. One, Sec. 3; *Glittings v. Hartz*, 116 Nev. 386, 390, 996 P.2d 898, 900-01 (2000)
22 (citing *Chamberland v. Labarabera*, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994)).

23 ² *Glittings*, 116 Nev. at 390, 996 P.2d at 901 (citation omitted).

24 ³ *Glittings*, 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)).

25 ⁴ *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)).

26 ⁵ *Glittings*, 116 Nev. at 393, 996 P.2d at 902.

27 ⁶ *Glittings*, 116 Nev. at 393, 996 P.2d at 902.

28 ⁷ *Casino Properties, Inc.*, 112 Nev. at 135, 911 P.2d at 1183.

⁸ *Gilling v. Eastern Airlines*, 680 F. Supp. 169, 171 (D. N.J. 1988).

⁹ *Glittings*, 116 Nev. at 392, 996 P.2d at 902.

¹⁰ *Campbell v. Maestro*, 116 Nev. 380, 385, 996 P.2d 412, 415 (2000).

¹¹ *Nationwide Mutual Ins. Co. v. Kogut*, 819 N.E.2d 1127, 1130 (Ill. App. 2004).

¹² *Halaby, McCrea & Cross v. Hoffman*, 831 P.2d 902, 908 (Colo. 1992) (en banc).

1 In *Gittings*, for example, the Nevada Supreme Court determined that four of the six reasons
2 cited by the trial court could sustain striking a request for trial de novo on the basis of bad-faith
3 participation.¹³ Because the hearing was neither recorded nor transcribed, the trial court used no
4 reviewable facts to support its supposition that *Gittings* "took a lackadaisical approach to the process."¹⁴
5 In fact, the Court noted that, had the arbitrator made "detailed factual findings illustrating a lackadaisical
6 attitude," then no transcript or recording would be needed to support a bad faith finding.¹⁵ Finally, the
7 Court noted that, even where an insurance company files for trial de novo in over 50% of its cases, the
8 statistics will not support bad faith unless it can be shown they do so without regard to the facts
9 and circumstances of each case.¹⁶

10 The *Gittings* Court explained the intent of the arbitration program as follows:

11 The Court Annexed Arbitration Program is intended to be a simplified, informal
12 procedure to resolve certain types of civil cases. See NAR 2(A) and (D). It is designed to
13 give the arbitrator a good understanding of the essential factual disputes and the legal
14 positions of the parties. The decisions issued by the arbitrators, as neutral fact finders, are
15 intended to promote settlement of cases at an early stage of the proceedings. Thus it is the
16 substance of the hearing, not its length, that is important in determining the good faith of
17 the participants.¹⁷

18 As suggested in *Gittings*, *Gilling*, and *Nationwide Mutual Ins.*, the district court must examine
19 the entirety of the arbitration process, including the facts and circumstances of each case, in determining
20 whether Michaels lacked good faith or meaningful participation.

21 **b. The Record Demonstrates Counsel's Good Faith**

22 ¹³ *Gittings*, 116 Nev. at 393, 996 P.2d at 902. The district court cited the following reasons: (1) *Gittings*' failure to attend the
23 arbitration hearing, (2) failure to call any witnesses to testify at the hearing, (3) the length of the hearing and the amount of
24 time *Gittings* used to present her issues at the hearing, (4) failure to contest liability, (5) failure to request an independent
25 medical examination or present any countervailing medical evidence, and (6) the high percentage of trial de novo requests
26 filed by *Gittings*' insurer... *Id.* at 901. The Nevada Supreme Court discussed the district court's evaluation of the amount of
27 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.

28 ¹⁴ *Gittings*, 116 Nev. at 392, 996 P.2d at 902.

¹⁵ *Id.* at note 6.

¹⁶ *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).

¹⁷ *Gittings*, 116 Nev. at 393, 996 P.2d at 902.

1 There is no record of Michaels, her attorney or insurer refusing to participate fully in the
2 arbitration process or acting to impede the process or delay the process or otherwise adversely affect the
3 arbitration proceedings. As in *Gittings*, there is nothing to suggest Michaels “took a lackadaisical
4 approach to the process.” Like *Gittings*, there is neither a transcript nor recording of the arbitration
5 hearing. Here, as in *Gittings*, “[w]ithout detailed information on what actually transpired at the hearing,
6 we are left with bare allegations that [plaintiff] did not defend herself in good faith.”¹⁸ “[B]are
7 assertions of this nature are not appropriate foundations for a motion to strike a trial de novo.”¹⁹

8 **i. The Defendant Did Participate in Good Faith**

9 Michaels’ attorney served a written offer of judgment.²⁰ He engaged in written discovery and
10 took the Plaintiff’s deposition.²¹ He timely served Defendant’s arbitration statement.²² He also
11 vigorously represented his client’s interests during the arbitration hearing and ensured witness Don
12 Mello appeared at the hearing.²³ Michaels participated in the arbitration process and appeared at the
13 arbitration hearing.²⁴ Her counsel prepared the arbitration brief, presented a witness at the hearing, cross
14 examined the Plaintiff, examined Michaels and vigorously represented his client at the arbitration
15 hearing.²⁵ On the other hand, nothing in the record supports a view that Michaels, her attorney or her
16 insurer, ever refused to comply with any court order, purposefully denied Plaintiff of their ability to
17 participate fully, or even refused to discuss settlement at any time during the arbitration process.²⁶
18 Notably, the arbitrator, in his award, never alluded to any bad faith or lack of meaningful participation
19 on Michaels’ part, her attorney’s part or her insurer’s part.

20 **c. The Plaintiff’s Bare Statistics**

21 **i. None Of The Cases Cited By Plaintiff Include A Finding Of Bad Faith**

22
23
24

25 ¹⁸ *Gittings*, 116 Nev. at 392, 996 P.2d at 902.

¹⁹ *Gittings*, 116 Nev. at 389, 996 P.2d at 900, n.1.

²⁰ See Exhibit 4, Defendant’s Offer of Judgment.

²¹ See Exhibit 5, Defendant’s Initial EAC Production; Exhibit 6, Request for Production of Documents to John S. Walker;
26 Exhibit 7, Interrogatories to Plaintiff John S. Walker; Exhibit 1, Plaintiff’s Deposition Transcript.

²² See Exhibit 8, Defendant’s Arbitration Brief.

²³ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 5.

²⁴ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 6.

²⁵ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 7.

²⁶ Plaintiff never served an offer of judgment and made no settlement demands during the entire litigation process.

1 Plaintiff cites 10 cases where the undersigned was involved in the filing of a request for trial de
2 novo. Each case was handled based upon the facts and circumstances of each individual case.²⁷ There
3 is nothing in the record to support Plaintiff's bare arguments otherwise. In addition, there has never
4 been a finding of bad faith conduct in any of the cases Plaintiff cites.²⁸

5 **ii. Each Case Cited By Plaintiff Belies Plaintiff's Bare Assertions**

6 **1. Examples²⁹:**

7 **a. Castro-Avalos v. Porsow; ARB16-02521**

8 This case stemmed from an auto accident on June 4, 2015.³⁰ Plaintiff slowed abruptly and tried
9 to turn right into a private parking-lot from lane 1 and across lane 2.³¹ Defendant, driving in lane 1, did
10 not anticipate the abrupt turn and rear-ended the Plaintiff.³² On December 30, 2016, Defendant served
11 an offer of judgment for \$15,000.³³ On December 15, 2017, the arbitration hearing was held.³⁴ On
12 December 26, 2017, the arbitrator filed his decision and found Plaintiff and Defendant 50/50 liable for
13 the accident and an ultimate award to Plaintiff of \$21,992.50.³⁵ On January 5, 2018, the Defendant filed
14 a request for trial de novo and demand for jury trial.³⁶ On January 24, 2018, Plaintiff signed a release
15 for \$15,000.³⁷ On February 5, 2018, a stipulation and order of dismissal with prejudice was filed.³⁸
16 This case was litigated in good faith based upon the facts and circumstances of this case.³⁹ There is
17 nothing in the record to demonstrate otherwise.

18 **b. Hakansson v. Sloan; ARB17-01939**

19 On April 4, 2017, Sloan rear ended a vehicle at a stop light and then struck the passenger side of
20 Hakansson's vehicle.⁴⁰ Hakansson claimed \$3,942.00 in medical specials.⁴¹ On June 9, 2018, the

21
22 ²⁷ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 8.

23 ²⁸ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 9.

24 ²⁹ If the Court so desires, a full and complete analysis of each case can be provided to demonstrate the good faith actions of
25 each Defendant, the undersigned and their insurer in requesting a trial de novo.

26 ³⁰ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 10.

27 ³¹ *Id.*

28 ³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at ¶ 11.

1 arbitrator provided an award in favor of Hakansson in the amount of \$11,942.00.⁴² On June 18, 2018,
2 Sloan filed a request for trial de novo.⁴³ On December 10, 2018, after the short trial, the jury returned a
3 verdict in the amount of \$8,000.00.⁴⁴ On December 5, 2019, a notice of satisfaction of verdict was
4 filed.⁴⁵ This case was also litigated in good faith based upon the facts and circumstances of this case.⁴⁶
5 There is nothing in the record to demonstrate otherwise.

6 **iii. Plaintiff's Bare Statistics Do Not Take Into Account Hundreds Of Other**
7 **Cases Handled By Michaels' Attorney**

8 Since working for Farmers and representing Farmers' insureds, the undersigned has been
9 assigned 167 matters.⁴⁷ Out of those 167 matters, Plaintiff has cited 10. Plaintiff's statistics do not
10 account for all the many matters handled by the undersigned that settled prior to or after arbitration,
11 what amounts cases have settled for and when, or arbitrations in other jurisdictions, or binding
12 arbitrations, or small claims cases, etc.⁴⁸

13 **IV. CONCLUSION**

14 The request for trial de novo, filed in this matter, is based upon the facts and circumstances of
15 this case. The requests for trial de novo, filed in all other matters, are based upon the facts and
16 circumstances of each individual case. There is no evidence to the contrary, except bare assertions
17 based upon bare statistics. Plaintiff's request to strike the request for trial de novo, impose sanctions or
18 conduct discovery into Farmers' practices should be denied.

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

21 DATED: April 12, 2019

THE LAW OFFICES OF S. DENISE MCCURRY
- RENO

22 BY: 

23 ADAM P. MCMILLEN, ESQ.
24 Attorney for Defendant, SHEILA MICHAELS

25 ⁴¹ *Id.*

26 ⁴² *Id.*

27 ⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

28 ⁴⁶ *Id.*

⁴⁷ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 12.

⁴⁸ Exhibit 9, Declaration of Adam P. McMillen in Support of Opposition, dated 4/12/19, ¶ 13.

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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 April, 2019, I
served a true and correct copy of the above and foregoing OPPOSITION TO MOTION TO STRIKE 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)]

☒ *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

Marsha J. Cinkal

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

INDEX OF EXHIBITS

CV18-01798

1. John Walker's Deposition, 2/20/19	53 pgs.
2. Recorded Statement of Don Mello, dated 6/22/18	10 pgs.
3. Pictures of Defendant's vehicle and Plaintiff's bike	2 pgs.
4. Defendant's Offer of Judgment, dated 11/13/18	2 pgs.
5. Defendant's Initial EAC Production, dated 12/5/18	64 pgs.
6. Request for Production of Documents to John S. Walker, dated 12/5/18	16 pgs.
7. Interrogatories to Plaintiff John S. Walker, dated 12/5/18	5 pgs.
8. Defendant's Arbitration Brief, dated 3/12/19	4 pgs.
9. Declaration of Adam P. McMillen in Support of Opposition	pgs.

FILED
Electronically
CV18-01798
2019-04-12 10:37:45 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7215910 : csulezlc

EXHIBIT 1

EXHIBIT 1

WA176

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

- - 000 - -

JOHN S. WALKER,

Plaintiff,

vs.

SHEILA MICHAELS, DOES I-V,
inclusive,

Defendants.

Case No.
ARB18-01798

DEPOSITION OF JOHN WALKER
WEDNESDAY, FEBRUARY 20, 2019
Reno, Nevada

REPORTED BY:

Janet Menges, CCR #206 (NV)
CCR #5785 (CA)

1
2 APPEARANCES:3
4 For the Plaintiff:5 LAW OFFICE OF WILLIAM KENDALL
6 Attorneys at Law
7 By: WILLIAM KENDALL, ESQ.
8 137 Mt. Rose Street
9 Reno, NV

10 For the Defendants:

11 LAW OFFICES OF STACEY A. UPSON
12 Attorneys at Law
13 By: ADAM MCMILLEN, ESQ.
14 50 West Liberty Street
15 Suite 303
16 Reno, NV
17
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1 PURSUANT TO NOTICE, and on Wednesday, the
2 20th day of February, 2019, at the hour of 9:00 a.m.
3 of said day, at the offices of Stacey A. Upson, 50
4 West Liberty Street, Reno, Nevada, before me, Janet
5 Menges, a notary public, personally appeared JOHN
6 WALKER.

7 -oOo-

8
9 JOHN WALKER,
10 having been duly sworn,
11 was examined and testified as follows:

12
13 EXAMINATION

14 BY MR. McMILLEN:

15 Q Good morning, Mr. Walker. My name is
16 Adam McMillen. I represent Sheila Michaels.

17 Can you please state your name for the
18 record?

19 A John S. Walker.

20 Q Have you ever given a deposition before?

21 A No.

22 Q Have you ever been involved in litigation
23 before?

24 A No.

25 Q Or since?

1 A No.

2 Q Okay.

3 What is your date of birth?

4 A June 12th, 1996.

5 Q Where your born?

6 A Port Orchard, Washington.

7 Q Graduate from high school?

8 A Yes.

9 Q When?

10 A 2014.

11 Q Where?

12 A Reed High.

13 Q Did you go to college afterwards?

14 A No.

15 Q What have you done since high school?

16 A Just working, play music.

17 Q Where have you been working and playing
18 music?

19 A I work at Patagonia currently and then I
20 do gigs around town like casinos and bars.

21 Q What kind of gigs do you do?

22 A I play like jazz mainly, just like with
23 groups there.

24 Q What kind of instrument do you play?

25 A I play drums.

1 Q Any other instruments that you play?

2 A Huh-uh, not really.

3 Q Okay.

4 Married?

5 A No.

6 Q Ever been married?

7 A No.

8 Q Any siblings?

9 A Yeah, I've got three.

10 Q Where do they live?

11 A We all live in town.

12 Q How about your parents?

13 A Yeah, we all -- they live in town as
14 well.

15 Q If you don't mind my asking, what are
16 your parents' name?

17 A John, Sr. and Kelly Walker.

18 Q And your siblings' names?

19 A Natalie, Hailey and Jessie.

20 Q They all have the same last name?

21 A Natalie does, and then the other two are
22 married.

23 Q What are their last names?

24 A Jessie Roberts and Hailey Miners.

25 Q Any hobbies other than the music?

1 A That takes up most of my time, I would
2 say, not really.

3 Q How often do you play at casinos or gigs
4 around town?

5 A At least once a week, probably six, seven
6 times a month.

7 Q How much do you get paid for a gig?

8 A Not usually a lot, split it with other
9 people. I mean 50, a hundred bucks usually.

10 Q Per night?

11 A Yeah.

12 Q Before the accident that we're here for
13 today had you ever been injured?

14 A No.

15 Q No broken bones or anything in your life?

16 A No, I've never broken a bone that I know
17 of.

18 Q Did you play sports or anything in high
19 school or junior high?

20 A Yeah, I did in high school and in junior
21 high as well.

22 Q What sports did you play?

23 A I played football, soccer and basketball.

24 Q Never had any sports injuries?

25 A No, nothing related to sports ever.

1 Q Let's talk about the incident that is the
2 subject of this litigation.

3 A Okay.

4 Q Do you remember the date of the accident?

5 A June 16th.

6 Q 2018?

7 A Yeah.

8 Q About what time of day, do you remember?

9 A 3:45, I believe.

10 Q Does that time stick out to you for any
11 reason?

12 A I had somewhere to be at 4:00 and I had
13 been on my way, usually give myself about 20 minutes,
14 so I would say about 3:45.

15 Q Where were you coming from?

16 A I was coming from my house.

17 Q And where was that at the time?

18 A Vine Street.

19 Q What is the exact address, please?

20 A 58 Vine Street.

21 Q Where were you heading?

22 A I was heading to Reno Avenue.

23 Q Any particular location?

24 A Yeah, I was heading to a house. I don't
25 remember the address currently.

1 Q Whose house was it?

2 A It was my band I was playing with, their
3 house.

4 Q What was your purpose of going there?

5 A We were just going there to rehearse for
6 a show we had the following week, planning to meet up
7 there for it.

8 Q And you were riding your bicycle at the
9 time of the accident; right?

10 A Yeah.

11 Q What kind of bike were you riding?

12 A It's a Giant. It's green.

13 Q Do you know what kind?

14 A I don't know the exact model. I just
15 know it's a Giant brand.

16 Q Mountain bike?

17 A Just a street bike.

18 Q What kind of pedals did it have, like
19 clip-ins or --

20 A Just regular, no clip-ins, no straps or
21 anything.

22 Q Just a regular pedal?

23 A Yeah.

24 Q What kind of shoes were you wearing that
25 day?

1 A Say just tennis shoes. I don't have any
2 specific bicycle shoes.

3 Q I assume your bicycle had brakes?

4 A Yeah.

5 Q What kind?

6 A It had rear brakes on the left side.

7 Q Operated by your hands or your feet?

8 A By hand.

9 Q Were they functioning at the time?

10 A Yeah.

11 Q I see you're wearing glasses today. What
12 kind of prescription do you have?

13 A I have correction for astigmatism.

14 Q What kind of prescription do you have?

15 A Like pertaining to like --

16 Q Like the strength of your prescription,
17 like a negative 4, or do you know?

18 A I'm not entirely sure. Yeah, I don't
19 know the exact prescription.

20 Q When is the last time you had your
21 prescription updated?

22 A Ten days ago.

23 Q Before then when did you have it updated?

24 A April of the following year.

25 Q April of the following --

1 A 2017, sorry.

2 Q Okay.

3 And you just had it updated ten days ago,
4 but you don't know what your prescription is?

5 A Currently, no, I'm waiting on trials to
6 make sure that they're good.

7 Q Understood.

8 Trial glasses or something like that?

9 A Contacts, I typically wear contacts.

10 Q You typically wear contacts?

11 A Yeah.

12 Q Is that what you just said?

13 A Yeah.

14 Q Were you wearing contacts at the time of
15 the accident that we're here for today?

16 A Yeah.

17 Q Do you remember the strength of those
18 contacts?

19 A I do not. I don't know.

20 Q Were they dailies?

21 A Monthlies.

22 Q Any problems with your vision at the time
23 of the accident?

24 A No.

25 Q What was the weather like that day?

1 A It was sunny, probably in the high 80s.

2 Q Road was dry; correct?

3 A Yeah.

4 Q And you were driving southbound on your
5 bicycle on Arlington Avenue?

6 A Yeah.

7 Q How fast were you riding your bicycle
8 before the accident happened?

9 A I would say around 8 to 12 miles an hour,
10 around in there. I'm not entirely sure of the exact
11 speed.

12 Q Did you feel like you were going fast or
13 slow?

14 A I was going, I would say, a little bit
15 slower than usual for that area.

16 Q Why were you going slower than usual for
17 that area?

18 A It was just a hotter day and I was little
19 bit more winded than usual so I wasn't pedaling too
20 fast that day.

21 Q Tell me how the accident happened, if you
22 can?

23 A Yeah, so I was moving southbound, like
24 you mentioned, on Arlington. I was coming up on the
25 cross street of Island Drive, I believe is the name.

1 There were cars on the left side moving. From what I
2 remember there was people like on the sidewalks and
3 stuff.

4 As I came up towards Island Avenue there
5 were cars, like I mentioned, on the left side and I
6 proceeded to go through on the bike lane up the hill
7 and I was getting close to that as it slightly dips
8 before you go up and a car came in front of me
9 turning into the right side of Island Drive and like
10 before I could -- I had time to react or I had seen I
11 collided with the vehicle. I hit the right tire with
12 my front tire and I flew over the handlebars, kind of
13 tried to shield myself and landed on my shoulder and
14 my elbow and I had like road rash on my thighs.

15 Q So let's take this step by step. You're
16 crossing Arlington over the river; correct?

17 A Yeah.

18 Q Approaching Island Drive. You say you're
19 going about 10 to 12 miles an hour. When do you
20 first see my client's vehicle?

21 A I don't remember seeing her vehicle
22 specifically. There was kind of a line of cars
23 moving all kind of with each other.

24 Q So there were a line of cars behind my
25 client's vehicle?

1 A There were -- Yeah, they were also
2 preceding as well.

3 Q Do you know how many cars were behind my
4 client's vehicle?

5 A I don't remember specifically. Probably
6 three or four like -- that were traveling the same
7 way I was.

8 Q Were they stopped or were they going
9 normal speed, do you remember?

10 A As I was traveling on Arlington traffic
11 had slowed down ahead as there was people crossing
12 the street.

13 Q So there were pedestrians crossing in the
14 crosswalk at Island Drive and the intersection with
15 Arlington?

16 A Correct.

17 Q Do you know how many pedestrians there
18 were in the crosswalk?

19 A I'm not sure. From what I had seen it
20 was when I was further back.

21 Q How far back were you?

22 A At that point when I stopped seeing them
23 cross it looked like they were crossing, I would say,
24 eastbound and I had seen it cleared probably 40 feet
25 back from the crosswalk.

1 Q So you were 40 feet back from the
2 crosswalk when you saw that?

3 A Yeah, when I had first probably seen that
4 line of vehicles probably more clearly.

5 Q And you saw my client's vehicle?

6 A From my recollection there was a vehicle
7 that was larger than hers behind her and I hadn't
8 fully seen the vehicle. I had seen that there was a
9 vehicle in front, but definitively I hadn't seen the
10 -- I hadn't seen her car until I was probably less
11 than -- probably about like a car length behind.

12 Q Behind her car?

13 A Um-hum, yeah.

14 Q Is that a yes?

15 A In the bike lane.

16 Q So you were about a car length away from
17 my client's vehicle when you first saw her car?

18 A Yeah, from my recollection. As I had
19 turned onto Arlington there was cars already moving
20 so that is when I had first noticed.

21 Q Where did you turn onto Arlington from?

22 A I was on First Street turning onto
23 Arlington.

24 Q So you turned right onto Arlington?

25 A Correct.

1 Q Then about 40 feet from the crosswalk you
2 saw people crossing the crosswalk going eastbound, is
3 that what you said?

4 A Yeah, so from the side there's parking on
5 the river, they were crossing towards the other side
6 of Island towards that condo.

7 Q So three or four vehicles had stopped to
8 let them cross?

9 A Yeah.

10 Q And you kept proceeding southbound and
11 about a car length away from my client's vehicle you
12 saw her car. At that point where was her car?

13 A From when I was a car length behind she
14 had proceeded into a right turn.

15 Q So she was already turning right at that
16 point?

17 A When I had first -- I was about 40 feet
18 back. When I first noticed her car it was when she
19 had first initiated the turn and that was about
20 30 feet away.

21 Q Okay.

22 A So probably 1:00 to 2:00 o'clock.

23 Q So when you were about 30 feet away she
24 was already proceeding to turn right?

25 A Yes.

1 Q Did you attempt to slow down before the
2 accident?

3 A From when I had seen her car, by the time
4 I had seen it I had reached for my brake and
5 attempted to move, but -- but there wasn't enough
6 time to react to fully try to slow down enough.

7 Q Did you try to slow down when you were a
8 car length away or further back?

9 A So from when I was about a car length
10 away is when I first saw the turn and from there is
11 when I attempted to slow down.

12 Q I thought you said just a moment ago that
13 you saw her start her right turn about 30 feet away?

14 A With the car length behind I would say
15 it's about 30 feet is when I -- from when I had seen
16 her turn. The car length and 30 feet, between how
17 long her car would be and from behind that I would
18 assume about 30 feet.

19 Q And you weren't able to stop?

20 A No.

21 Q Tell me again why you think you weren't
22 able to stop?

23 A You know, with moving about, you know,
24 between I mean 8 to 10 miles an hour that would only
25 leave me a couple of seconds from when I first even

1 seen her move to react and with reaction time that's
2 not enough time to slow down.

3 Q Let's take this step by step.

4 So you're about 30 feet away from her
5 car?

6 MR. KENDALL: Hold on. What part of the
7 car?

8 MR. McMILLEN: That's what I'm going to
9 get into right now.

10 MR. KENDALL: Okay, good.

11 MR. McMILLEN: As far as location.

12 BY MR. McMILLEN:

13 Q So when you were 30 feet away from my
14 client's vehicle where exactly are you in the road?

15 A So on Arlington I would be in the bike
16 lane. In my opinion about a car length I was -- I
17 would say my front tire was around the rear tire of
18 the vehicle behind her.

19 Q So you were in the bike lane about the
20 distance you just described. Where exactly at that
21 point was my client's vehicle in the road?

22 A She was -- they had stopped at the
23 crosswalk, waited for the pedestrians and was
24 probably at 2:00 o'clock to turn, 1:00 o'clock to
25 2:00 o'clock to turn from there.

1 Q So she was already in a turning position
2 when you were about a car length behind her at the
3 rear tire of the car behind her?

4 A Yeah, she had just initiated it so the
5 car had just began to move, yes.

6 Q How fast was she moving at that point?

7 A She had just moved into the turn, so I
8 mean I could estimate, you know, 6 to 10 miles an
9 hour, just depending.

10 Q Slowly?

11 A Yeah.

12 Q Are you familiar with that area?

13 A Yes.

14 Q Or maybe a better question is before the
15 accident that we're talking about were you familiar
16 with that intersection?

17 A Yes.

18 Q How many times had you been through that
19 intersection before?

20 A On a bike?

21 Q Yes.

22 A 20 to 30 times.

23 Q Of those 20 to 30 times had you seen
24 pedestrian traffic on that same crosswalk before?

25 A Yes.

1 Q And during the summer would it be fair to
2 say it's typically busier because of the river and
3 the park right there?

4 A I would say there's about as many people
5 as usual for the summer.

6 Q It's a pretty busy area, would that be
7 fair to say?

8 A Typically in summer. I don't remember it
9 being exactly very busy that night or that evening.

10 Q Did you see my client's turn signal
11 before the accident happened?

12 A I did not.

13 Q Did you observe my client's brake lights
14 before the accident?

15 A From what I -- from what I remember
16 approaching that intersection her brake light was
17 blocked by the car behind her.

18 Q So as you approached that intersection
19 are you saying that you really weren't aware of what
20 my client's vehicle was going to do as far as either
21 go straight or turn?

22 A I mean I was as aware as usual in that
23 crosswalk. I try to -- you know, I try to be
24 cautious of the traffic that is around, and at that
25 time I had not seen a turn signal so typically, you

1 know, I just would cross over the intersection with
2 traffic.

3 Q What is your knowledge of the rules of
4 the road as far as riding a bicycle on the road in
5 the City of Reno?

6 A I'd say similar to being a motor vehicle,
7 still yielding to traffic, the right-of-way is still
8 to the persons proceeding in the straight route from
9 my understanding.

10 Q Do you know what your understanding is as
11 to the rules of the road for a bicyclist overtaking
12 other vehicles in the road?

13 A From my understanding, like I mentioned,
14 the -- you know, you would -- you would be traveling
15 in the bike lane as long as there's one, you would
16 yield to oncoming traffic in the case of a stop sign
17 or a stoplight, but in the sense of traveling
18 straight on a road you would yield to, you know, the
19 traffic around and to the pedestrians.

20 Q But my question is more specific as to
21 overtaking traffic. Do you know what the rules are
22 regarding that?

23 A I don't know the exact rules of
24 overtaking traffic, no.

25 Q Okay.

1 My understanding is you were not wearing
2 a helmet at the time; is that true?

3 A Yes.

4 Q Why weren't you wearing a helmet?

5 A I had left it at home.

6 Q What were you wearing that day?

7 A I was wearing khaki shorts, just a
8 T-shirt, tennis shoes.

9 Q Socks and shoes?

10 A Yeah.

11 Q Now, you say you made contact with my
12 client's right front tire; correct?

13 A Yes.

14 Q When you made contact do you know how
15 fast you were going at that time?

16 A With reaction time 8 to 10 miles an hour,
17 slightly slower.

18 Q Because you tried to slow down?

19 A At that point I had not been pedaling so
20 natural slowing down at that point.

21 Q So let's make the record clear. Did you
22 try to slow down at all before the accident happened?

23 A I had reached for my brake and let off
24 pedaling. That had been my attempt and I had
25 attempted to move, you know, right to kind of avoid.

1 Q When you made contact with my client's
2 vehicle was my client's vehicle beyond the curb there
3 at the intersection of Arlington and Island Drive?

4 A It was maybe a foot to the right of the
5 bike lane, her tire.

6 Q So not quite into the bike lane?

7 A Past the bike lane. So the bike lane,
8 she was probably a foot to the right of it as I had
9 also avoided to dodge it.

10 Q Do you know if there is a hash mark for
11 the bike lane on Arlington Drive at that
12 intersection?

13 A Like a bike lane mark?

14 Q You know how there's a white line?

15 A Um-hum.

16 Q Is that a yes?

17 A On Arlington?

18 Q Right.

19 A Yeah, there is, yes.

20 Q So at the point of impact with my
21 client's vehicle was there a white line?

22 A Yes.

23 Q And you're saying that my client's
24 vehicle was over the white line?

25 A Yes, she was.

1 Q Is there a white line in the
2 intersection?

3 A Up until the intersection. It goes to
4 about a foot or two, from what I remember, a foot or
5 two in front of where the crosswalk ends and then
6 that intersection begins. So from where the accident
7 occurred it was right when it was ending, but it was
8 still there.

9 Q So at the point of impact you say you
10 were going about 8 to 10 miles an hour, and my
11 understanding from reports that I have read in this
12 file you went over the handlebars; is that correct?

13 A Yes.

14 Q When you went over your handlebars did
15 you have your arms out in front of you?

16 A Yes.

17 Q Like Superman style?

18 A In an attempt to shield my fall.

19 Q Where did you first make contact when you
20 went over the handlebars?

21 A The first contact was my elbow on the
22 ground.

23 Q You didn't make contact with my client's
24 hood?

25 A I flew over the hood, no.

1 Q Did you fly over like the right corner of
2 the hood or did you land on the driver's side of the
3 hood, where did you land?

4 A I landed on, I would say, the left front
5 of the vehicle, so on the driver's side. If you like
6 split it in half, on the driver's side, but towards
7 the front of the car.

8 Q So you went completely over the front of
9 her hood?

10 A Yes.

11 Q That's impressive.

12 So you went over the hood and you landed
13 on your right elbow?

14 A Yeah, my right elbow, yes, and my left
15 hand.

16 Q Did you roll?

17 A No.

18 Q So you landed on your right elbow on the
19 street; correct?

20 A Yes.

21 Q What happened next?

22 A As I landed I ended up on my side and
23 two -- two or three people came to help me up.

24 Q Landed on your right side?

25 A Yes.

1 Q I think you indicated earlier, correct me
2 if I'm wrong, that you had something with your
3 thighs?

4 A Correct.

5 Q What was that?

6 A So I had rash on both of my thighs from
7 flying over the handlebars, they got caught.

8 Q Got caught on what?

9 A On my handlebars.

10 Q Did your bike come with you?

11 A Part of the way. It flipped partially
12 onto her hood and fell on the ground.

13 Q And then two or three people came and
14 spoke to you?

15 A Yeah, they helped me up, asked if I was
16 okay.

17 Q Who were they?

18 A I believe they were on the sidewalk
19 walking, just pedestrians.

20 Q What about the driver of the vehicle that
21 you flew over the hood?

22 A Was she -- did she get out?

23 Q Yeah.

24 A From what I remember they helped me up
25 and moved my bike onto the sidewalk and from there

1 she moved her car first into the parking lot.

2 Q Did you ever talk to her?

3 A Yes.

4 Q What did you say?

5 A She spoke first. I didn't really say
6 anything at first.

7 Q What did she say?

8 A She asked if I was okay and that she
9 didn't see me.

10 Q What did you say in response?

11 A I said -- I said I think I'm okay, I
12 didn't break anything. I don't think I broke
13 anything.

14 Q What about the other people that helped
15 you, did they ask you if you were okay?

16 A Yes.

17 Q What did you tell them?

18 A I didn't respond to the first people. I
19 was a little bit shocked from the incident.

20 Q Do you remember speaking to a Don Mello?

21 A Briefly.

22 Q What did you discuss with him?

23 A I don't believe I actually said anything
24 to him myself. It was more of he aggressively
25 approached me and was yelling at me.

1 Q Can you please explain what you mean by
2 that?

3 A Yeah, as I was on the sidewalk with my
4 bike just by the intersection Mr. Mello did approach
5 me aggressively and had said that -- like he got
6 pretty close to me and had said that this was my
7 fault and that I hit her and that I didn't understand
8 the rules of the road.

9 Q When you say he approached you
10 aggressively, what do you mean by that?

11 A I had been sitting on the sidewalk and he
12 came up to me fairly quickly and closely.

13 Q Other than that, that's what you mean by
14 aggressively?

15 A Yeah, there was no physical contact, but
16 it was definitely -- took me by surprise like how
17 quickly and how -- how quickly and how closely he got
18 to me.

19 Q And you didn't say anything in response
20 or did you say anything in response?

21 A I don't recollect saying anything from
22 that first -- that first part. At that point after
23 the accident I -- I was still kind of in shock at
24 that point. I don't remember saying anything
25 directly to him.

1 Q As you sit here do you agree or disagree
2 with what he said to you?

3 A I would say I disagree.

4 Q And why is that?

5 A From what he had said I don't agree that
6 -- I don't agree that I would -- that I would have
7 yielded to her in the sense of me being in the bike
8 lane and heading straight as opposed to her turning.

9 Q Would it be fair to say that you ran into
10 her or that she ran into you?

11 A It was a collision of -- I would say I
12 ran into her as her car moved into my line of path.

13 Q Who had the right-of-way?

14 MR. KENDALL: Objection, calls for a
15 legal conclusion. You can answer it if you have a
16 lay opinion on that.

17 THE WITNESS: With me traveling straight
18 I would say that I had the right-of-way.

19 BY MR. McMILLEN:

20 Q And what do you base your opinion on?

21 A Reading -- reading on bike law and --
22 before -- before the accident ever happened reading
23 up on the rules of the road before I would actually
24 ride my bike to make sure that I was following
25 correctly.

1 Q That's what I'm asking like specifically
2 what rule do you know of or what do you base your
3 opinion on that you had the right-of-way in this
4 instance?

5 A I was traveling straight and that was in
6 my own lane traveling and there was no stop sign. I
7 do yield, you know, to motor vehicles that are --
8 like for instance if the bike lane had ended or if
9 there were pedestrians, but I was traveling straight.

10 Q So in this case if my client had her turn
11 signal on after the pedestrians clear the crosswalk,
12 she begins to make her right turn and then you're
13 coming up behind her, what rule applies as far as the
14 right-of-way for you or my client, do you know?

15 A I do not know.

16 Q Earlier you indicated that your
17 understanding was that as a bicyclist in the City of
18 Reno you are subject to the same laws as vehicles; is
19 that correct?

20 A For the most part, yeah.

21 Q If I were driving a car, instead of a
22 bicycle in this situation where my client's vehicle
23 is turning right, if I tried to pass her on the right
24 who would have the right-of-way?

25 MR. KENDALL: Hold on.

1 You're talking about if there were two
2 lanes of travel? Okay, I'm going to object to the
3 question on the basis that it doesn't state
4 sufficient facts for him to be able to articulate on
5 that hypothetical.

6 MR. McMILLEN: Make your objection. I'm
7 trying to --

8 MR. KENDALL: I know, and I'm trying to
9 make sure you're not tricking him on something.

10 MR. McMILLEN: I'm trying to get him to
11 articulate his understanding of the law.

12 MR. KENDALL: I know what you're doing.

13 MR. McMILLEN: So that's what I'm asking.

14 BY MR. McMILLEN:

15 Q Do you understand my question?

16 A Well, if there was two lanes in this
17 sense with two vehicles and I was in the right lane
18 and she was in the left lane --

19 Q That's not what I'm asking and you know
20 that.

21 So if I were a vehicle traveling behind
22 my client's vehicle and my client signals to turn
23 right, who would have the right-of-way if I tried to
24 overtake her?

25 A I'm not sure what you mean in the sense

1 of I wasn't behind her in the same lane. I was in
2 the bike lane, which I mean it's part of the -- we're
3 going the same way, but it's two different lanes.

4 Q Does that help highlight the issue for
5 you as far as you're a bicyclist and you're
6 overtaking from the right; correct?

7 A Wouldn't overtaking mean that I would be
8 in her lane and get into a different lane?

9 Q I don't know.

10 What's your understanding?

11 A As a bicyclist I would never be -- I'm
12 never in the lane, the automobile lane anyway if
13 there's a bike lane, so I'm not sure.

14 Q But you can be, though, legally; correct?

15 A If there's a bike lane present, I don't
16 believe so, but I don't know the exact law.

17 Q What if you need to turn left, what's the
18 law, would you turn left from the bike lane?

19 A You would have to get into the lane, I
20 believe. I typically do not take any sort of left
21 turns, if there's a bike lane going straight, unless
22 I have to. So I'm not sure of the exact law on that
23 one.

24 Q Just to wrap this portion up as far as my
25 questioning goes, you're not sure of what the rule is

1 as far as your situation in this case where you're
2 overtaking in the bike lane my client, you don't know
3 who has the right-of-way, is that -- is that fair or
4 do you have a different understanding?

5 A From my understanding I think it depends
6 on the scenario, depending on turn signal or if there
7 was a stop sign, but in this scenario I'm not
8 entirely sure on the exact law, no.

9 Q Meaning under the circumstances as you
10 know them you're not clear as to who had the
11 right-of-way?

12 A No.

13 Q But you are clear that you're the one
14 that ran into my client?

15 A I would say her coming into my lane like
16 forced me into colliding with her.

17 Q That's just another way of saying it;
18 correct?

19 A Yeah.

20 Q Were the police called?

21 A No.

22 Q Why not?

23 A After the incident I was pretty shocked
24 and the lady was at her car and I was 15 feet away at
25 my bike and it didn't cross my mind as I was more --

1 I was more focused on my injuries at that point that
2 I wasn't -- that I hadn't thought of calling them.

3 Q So my understanding so far is that you
4 told at least my client that you were okay. Now
5 you're saying that you were focused on your injuries.
6 At what point did you know you were injured?

7 A I think it sometimes takes a couple of
8 minutes with adrenaline after an accident to really
9 understand how you're feeling. I had mentioned that
10 to her in the sense of, you know, I hadn't hit my
11 head or broken a bone that I had known of, but at
12 that point as I had assessed the situation I was
13 injured.

14 Q At what point?

15 A Maybe a couple of minutes after.

16 Q After when?

17 A After the accident.

18 Q Well, how long after the accident did you
19 talk to my client?

20 A Probably two or three minutes. She was
21 at her car and never approached me. I had gone up to
22 her vehicle after a couple of minutes to kind of, you
23 know, discuss the situation.

24 Q That's different than what you said
25 earlier, but let's go with it. So you approached my

1 client. What did you say to her?

2 A Well, I had walked up to the car and from
3 there she had asked me if I was okay.

4 Q And you said you were okay?

5 A Yeah, yeah, from -- so from there -- let
6 me back up, sorry, I'm not being very clear on that.

7 So she had pulled off to the side to park
8 and from there I had been on the sidewalk. She had
9 gotten out of her car, but had not actually come over
10 to me before then, but as then I came over to her
11 car, because she had mentioned -- or she -- I had
12 thought of, you know, exchanging information or
13 something like that.

14 Q And you exchanged information?

15 A Yeah, I got her insurance and her
16 license.

17 Q And why did you do that?

18 A Just in case like if I would need to file
19 a claim or, you know, get in contact with her
20 insurance after the accident.

21 Q So you were thinking about that at the
22 accident scene?

23 A A few minutes after, yes.

24 Q Was that before or after you realized you
25 were injured?

1 A I would say that was after.

2 Q When did you -- after the accident
3 happened how long after did you realize that you were
4 injured?

5 A From when it had happened, like exactly
6 when it had happened?

7 Q Yes.

8 A A couple of minutes of -- I'd say a
9 couple of minutes.

10 Q Where did you feel injured?

11 A The first thing I noticed was my
12 shoulder. My elbow hurt as well, but mainly it was
13 pain in my shoulder and the road rash on my thighs
14 hurt pretty bad as well, or the rash, not the road
15 rash.

16 Q Did you ever take a picture of the rash?

17 A I did take pictures a little bit later
18 on.

19 Q Of what?

20 A Of the rash on my right thigh. That was
21 the main one that could be seen.

22 Q Did you provide those to your attorney?

23 A Yeah.

24 Q You say that rash was created by the
25 handlebars?

1 A Yeah.

2 Q That didn't slow you down?

3 A Slow down with what?

4 Q Didn't keep you from flying over the
5 hood?

6 A The handlebars?

7 Q Yeah, I mean it sounds like your legs or
8 your thighs grabbed onto the handlebars, is that fair
9 to say?

10 A I would say they made contact as I exited
11 like the front of the car or the bike.

12 Q What kind of handlebars are they?

13 A Typical street bike handlebars with like
14 the underneath part.

15 Q So it's got the curve?

16 A Um-hum.

17 Q Is that a yes?

18 A Yeah.

19 Q And what kind of grip did you have on
20 your handlebars?

21 A Just typical grip that you apply yourself
22 that you get from the bike shop. It's a foam.

23 Q So are you saying your thighs caught onto
24 the grip and that's what caused the rash or do you
25 know?

1 A I think the rash was caused by my like
2 forward movement hitting my thigh from -- it would be
3 a combination of the handlebars itself and the foam.

4 Q And the what?

5 A Just being in the way. The foam, the
6 grip.

7 Q So your right shoulder hurt and your
8 right elbow; correct?

9 A Yeah.

10 Q Anything else?

11 A The thighs like I mentioned. Those four
12 were the main, yeah.

13 Q Nothing else?

14 A Not that I recall.

15 Q What happened next?

16 A We exchanged information. I went and sat
17 back down by my bike on the sidewalk and I called my
18 roommate so he could come pick me up.

19 Q Did he come pick you up?

20 A Yeah.

21 Q What's his name?

22 A Daniel Lawson.

23 Q What did he pick you up in?

24 A A Ford Ranger.

25 Q Did he put your bike in the back and he

1 took you where?

2 A Yeah, we put it in the back. He just
3 took me back home.

4 Q Who were you living with at the time?

5 A Just Daniel Lawson.

6 Q How long did you stay at home after he
7 took you home?

8 A Around 45 minutes.

9 Q Then where did you go?

10 A I went to my bandmate's house. She works
11 in the medical field and she had some supplies to
12 clean my elbow up and my thighs.

13 Q What's her name?

14 A Ashley Costello.

15 Q How long did that take?

16 A Probably around 20 to 30 minutes.

17 Q Where did you go after that?

18 A I went home.

19 Q How long were you at home?

20 A The rest of the day.

21 Do you mind if I run to the restroom real
22 quick?

23 MR. McMILLEN: Sure, good time to take a
24 break.

25 (A recess was taken.)

1 (The record was read by the reporter.)

2 BY MR. McMILLEN:

3 Q The next day you ended up going to urgent
4 care; correct?

5 A Yeah.

6 Q What prompted you to go to urgent care?

7 A The pain in my right shoulder and right
8 arm or elbow.

9 Q Can you describe your pain level on
10 June 17th, 2018?

11 A Like a 1 to 10 or --

12 Q Yeah, so however you want to describe it.
13 The typical scale is 1 to 10 with 10 being the worse
14 possible pain, 0 being no pain.

15 A Okay, I would say at that time my
16 shoulder and elbow were around a 6 to 7, that's why I
17 was kind of concerned because it was far worse than
18 the day before, the pain, so I thought I should maybe
19 get an X-ray or something.

20 Q According to your understanding of what
21 the pain scale is, what would a 1 be?

22 A Like maybe a paper cut or --

23 Q What would a 2 be?

24 A Like stubbing your toe.

25 Q What would a 3 be?

1 A A cut or something. I'm not sure, it
2 would be like kitchen cut, I don't --

3 Q What would be a 4 be?

4 A I don't know, maybe like getting punched.
5 I'm not sure.

6 Q How about a 5?

7 A I'm really not sure, say maybe like a
8 burn, like a smaller degree burn.

9 Q How about a 10?

10 A A 10? I mean getting shot or like having
11 something cut off, something like that, something
12 excruciating, I would say.

13 Q How about a 9?

14 A Say a similar level, just a little bit
15 less than a 10, I'd say. Probably a smaller kind of
16 excruciating pain, but a little bit less. I'm not
17 sure.

18 Q What about an 8?

19 A Maybe like a broken bone.

20 Q And you say the day after the accident
21 you were at a 6 or 7 with your right shoulder and
22 right elbow?

23 A Yeah.

24 Q How do you describe that, what's that
25 pain level?

1 A I would say it's enough that it affected
2 the movement heavily on the shoulder and the elbow.
3 I couldn't really move my elbow out very far because
4 of the swelling. I was concerned that something
5 might have been broken or fractured or that my
6 shoulder might have been dislocated.

7 Q When did you feel that way, first after
8 the accident when did you feel that way?

9 A Probably late that evening the day of the
10 accident like into the night.

11 Q Why didn't you go to urgent care then?

12 A Just based on the hours of the urgent
13 care being available. I wasn't sure if it was
14 something that I should go to the emergency room for.

15 Q Why not?

16 A Just based on -- just based on like
17 availability of getting X-rays. I didn't think it
18 would take as long to go to an urgent care.

19 Q When you went to urgent care did they
20 take X-rays?

21 A No.

22 Q Why not?

23 A I didn't successfully go to the urgent
24 care. I went there. I was never admitted.

25 Q What do you mean you were never admitted?

1 A I went to check in and I didn't actually
2 go to the urgent care. They suggested I go to the
3 emergency room from there.

4 Q Did you go to the emergency room?

5 A I did.

6 Q And did they take X-rays there?

7 A Yes.

8 Q And what were the results of those
9 X-rays?

10 A From what I remember the X-rays were that
11 I had sprained my shoulder and elbow, I believe.

12 Q Did you discuss your examination with any
13 doctor at the emergency room?

14 A Yeah, yeah, a doctor came in and kind of
15 went over the X-rays.

16 Q What did they tell you?

17 A Just that I had like severe swelling like
18 on my elbow and my shoulder, could possibly have a
19 smaller fracture that they wouldn't be able to get
20 from just a typical X-ray and he suggested maybe
21 getting an MRI in the future if I had a concern, from
22 what I remember.

23 Q Then over a week later you went to South
24 Virginia Medical Center; correct?

25 A Yeah.

1 Q What prompted you to go there?

2 A To seek -- I just wanted -- I knew that
3 they were kind of more specialized for automobile
4 accidents so I thought they would have a better
5 understanding of what to look for.

6 Q Who referred you over there?

7 A My attorney.

8 Q What was your pain level when you first
9 went to the South Virginia Medical Center?

10 A Say a 5 to a 6.

11 Q What did you complain about?

12 A Shoulder and elbow.

13 Q Anything else?

14 A Not that I remember.

15 Q Your records don't include any other
16 complaints. So is it fair to say you didn't complain
17 about anything else?

18 A Yeah.

19 Q Okay.

20 In your Answers to Interrogatories you
21 say that you injured your right shoulder, right arm,
22 right elbow, right thigh and some bruising, is that
23 accurate?

24 A Yes.

25 Q So you have already talked about your

1 right arm and your right elbow. What did you injure
2 as far as your right arm?

3 A Shoulder and elbow, just --

4 Q So that is just kind of included, right
5 arm?

6 A Yeah.

7 Q What about your right thigh?

8 A That's where the bruising would be.

9 Q Is it bruising or rash?

10 A Kind of both. It was from kind of just
11 like a higher impact there. It was kind of a rash
12 bruise both from the amount of force.

13 Q Did you have bruising anywhere else?

14 A My left thigh as well had some bruising,
15 but it was worse on my right.

16 Q And you took pictures of both?

17 A Just the right side.

18 Q You say you missed time from work at
19 Peg's?

20 A I did.

21 Q Three days, I think you say?

22 A I believe -- I think it was three days,
23 yes.

24 Q Why did you miss three days?

25 A I wasn't able to perform my job.

1 Q What job were you doing?

2 A I'm a waiter.

3 Q Why weren't you able to perform your job
4 as a waiter?

5 A I needed to be able to use my right arm
6 and I wasn't able to do so.

7 Q What days did you miss?

8 A I believe it was that Monday through
9 Wednesday of the following week, which would be, I
10 think, the 18th through the 20th.

11 Q What shift were you working at the time?

12 A I believe it was 8:00 to 2:00.

13 Q Do you have any documentation from Peg's
14 of the wage loss that you're claiming?

15 A Yes.

16 Q Have you provided that to your attorney?

17 A Yes.

18 Q Your Answers to Interrogatories also
19 state that you still have sensitivity in your right
20 elbow. Can you tell me about that?

21 A Yeah, so when I went to South Virginia
22 Medical Center they had mentioned that I could have
23 some nerve damage in there just from -- from the
24 accident and that the sensitivity could last for a
25 while. Typically it's kind of more of a topical

1 issue. If I have any sort of aggressive contact with
2 my elbow it still will be far more sensitive than it
3 was before.

4 Q But I'm asking about what your current
5 sensitivity is, can you explain it?

6 A I would say that it still presents a
7 problem when -- not when moving it back and forth but
8 if -- but it has sensitivity if hit or if it's bumped
9 compared to before that normally that wouldn't bother
10 me. Does that make sense? It's more sensitive than
11 it was before still.

12 Q Aside from the sensitivity that you just
13 described, do you have any other pain complaints
14 related to the accident?

15 A I would say my shoulder doesn't have full
16 range of motion, probably about 85 percent of what it
17 used to.

18 Q You had MRIs of your shoulder and your
19 elbow; correct?

20 A Yes.

21 Q What is your understanding of the results
22 of those?

23 A That there wasn't any -- there wasn't any
24 sort of fracture to the bone of either and just that
25 there was damage to the tissue of both, from what I

1 understand.

2 Q Really? Because my understanding from
3 your own medical records is both MRIs were normal?

4 A I guess that would have been the results
5 or going over what had happened with the doctor, I
6 guess, but not the MRI.

7 The MRI was clear of any -- any breaks or
8 anything. So I guess I would have discussed that
9 with my doctor.

10 Q When you were released from care from
11 South Virginia Medical Center did you tell them that
12 you still had issues?

13 A I told them about my sensitivity of my
14 elbow and he gave me recommended treatment to kind of
15 -- to ice my shoulder and my elbow.

16 Q Have you been doing that?

17 A Yeah, I had -- I have been for a few
18 months, not so much now unless there's sensitivity.

19 Q Why not so much now?

20 A It's gone mainly back to normal. I've
21 gained most -- most of the control of my shoulder and
22 my elbow doesn't seem to bother me as much any more
23 so it doesn't seem to need the constant icing.

24 Q Do you have any future plans to have any
25 more medical treatment?

1 A No.

2 Q My understanding from your interrogatory
3 responses is you had a front tire that was bent as a
4 result of the accident?

5 A Yeah.

6 Q And you fixed that for about ten bucks at
7 the Reno Bike Project?

8 A Yeah.

9 Q Did you take any pictures of that bent
10 rim?

11 A I don't think so.

12 Q Have you ever been convicted of a felony?

13 A No.

14 Q Did you give a recorded statement for
15 this accident to any insurance company?

16 A No.

17 MR. McMILLEN: I have no further
18 questions. Thank you, sir.

19 MR. KENDALL: Thank you, Adam.

20 (Adjourned at 10:15 a.m.)

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ERRATA SHEET/CORRECTIONS

PAGE

LINE

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)


4 I, JANET MENGES, a Certified Court
5 Reporter for the State of Nevada, do hereby certify;

6 That on Wednesday, the 20th day of February,
7 2019, at the hour of 9:00 a.m. of said day, at the
8 offices of Stacey A. Upson, 50 West Liberty Street,
9 Reno, Nevada, personally appeared JOHN WALKER, who
10 was duly sworn by me, was thereupon deposed in the
11 matter entitled herein, and that before the
12 proceedings completion the reading and signing of the
13 deposition has been requested by the deponent or
14 party;

15 That the foregoing transcript, consisting of
16 pages 1 through 53, is a full, true, and correct
17 transcript of my stenotype notes of said deposition
18 to the best of my knowledge, skill, and ability.

19 I further certify that I am not an attorney
20 or counsel for any of the parties, nor a relative or
21 employee of any attorney or counsel connected with
22 the action, nor financially interested in the action.

23 DATED: At Reno, Nevada, this 27th day of
24 February, 2019.

25 
JANET MENGES, CCR #206 (NV)
CSR #5785 (CA)

1 February 27, 2019

2

3 John Walker
4 C/O William Kendall, Esq.
5 137 Mt. Rose Street
6 Reno, NV 89509

6

7

In Re: Walker vs. Michaels

8

9

Dear Mr. Walker:

10 This letter is to inform you that, pursuant to Nevada
11 Court Rule 30 (e), the deposition given by you on
12 Wednesday, February 20, 2019, in the above-mentioned
13 matter is ready for reading and signing at the
14 offices of Bonanza Reporting & Videoconference
Center, 1111 Forest Street, Reno, Nevada 89509
(Telephone: 775 786-7655). Our office hours are
8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.
Monday through Friday.

15 You may change any answer either by appearing in
16 person or by a signed letter to me at the address
17 listed in the previous paragraph, and may approve the
18 transcript by signing it, or choose not to read and
sign the transcript, in which event after thirty (30)
days from today's date the deposition may be used by
the parties for any lawful purpose.

19

20

Sincerely,

21

22

23

24

25

JANET MENGES, CCR #206 (NV)
CSR #5785 (CA)
Bonanza Reporting & Videoconference Center
1111 Forest Street
Reno, Nevada 89509
(775) 786-7655
depo@BonanzaReporting.com

Cc: Deposition transcript

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

JOHN S. WALKER, and RALPH

ORTEGA,

Petitioners,

DISTRICT COURT NOS.:

VS.

CV18-01798 and CV18-02032

THE SECOND JUDICIAL DISTRICT

COURT and BARRY L. BRESLOW, as

District Judge,

Respondents.

SHEILA MICHAELS, and KATHERYN

FRITTER, real parties in interest.

PETITIONER WALKER APPENDIX VOLUME 6B

William R. Kendall, Esq.

State Bar No. 3453

137 Mt. Rose Street

Reno, NV 89509

(775) 324-6464

Attorney for Petitioners

WALKER APPENDIX VOLUME 6B INDEX

22. Exhibit 2.....p. 230
23. Exhibit 3.....p. 241
24. Exhibit 4.....p. 244

EXHIBIT 2

EXHIBIT 2

Insured's Name: Unknown
Person Providing Statement: Donald Mello
Claim No.: 3011034721

Q: Kyle Wegner
A: Donald Mello

[Recording: As a reminder, today's call is being recorded.]

Q: Uh, all right, OK, uh, this is a recorded statement between Kyle Wegner and, uh, d-, and I apologize Donald, I, I forget your, uh, last name?

A: Uh, Mello, M-E-L-L-O.

Q: All right, thank you Don, um, regarding a motor vehicle accident which was reported to us. Uh, today's date is, uh, June 22nd, uh, 2018 and the current time is 10:06 AM. Please note that this statement may be used by any employee or designated representative for the investigation of any claim associat-, associated with the incident that occurred on June 16th, 2018. All right, Don, do you understand this conversation is being recorded?

A: I do.

Q: Do I have your permission to record this conversation?

A: You do.

Q: All right, thank you. Uh, you already stated your full name. Um, go ahead and, uh, could you state your date of birth and your home address, please?

A: March 23rd, 1957, 2000 Skyline Boulevard, Reno, Nevada.

Q: All right, very good, um, 89509?

A: Yes.

Q: All right, very good. And, we're, uh, and we're talking about an incident that occurred on June 16th, uh, wh-, where did this, uh, incident occur at?

A: Uh, at the intersection of, uh, Arlington Avenue and Island Street.

Q: OK. And about what time of day did this occur at?

A: Uh, I think it was around 3:00. I, yeah, that's a good question, I was just thinking about that myself, uh, I can [crosstalk] maybe take some photographs.

Q: And what, is that in the afternoon or, uh, PM or AM.

A: P-, P-, PM.

- Q: OK, very good. Um, and then, uh, uh, I'll just go ahead and have you start, uh, go ahead in your own words, uh, tell me what you s-, what you saw happen?
- A: Uh, I was following a, uh, a Daewoo, the, I can't remember if it starts with an L [crosstalk] . . .
- Q: Leganza, uh-huh.
- A: Leganza on, uh, northbound on Arlington and, uh . . .
- Q: Northbound or southbound?
- A: We were, oh, I'm sorry, it's southbound . . .
- Q: OK.
- A: . . . southbound. Uh, we were southbound and I, uh, the, uh, there was a, a lot of, there was a lot of activity there. Uh, the lady in front of me stopped at Arlington to let a, uh, lady in a very bright yellow pantsuit cross the street and as the lady finished crossing the street, the lady in front of me proceeded to make a, a right hand turn onto, uh, Island Street.
- Q: OK.
- A: Uh, while she was doing that, I noticed off the side of me, a bicyclist ride by at, between, he had to be doing between 7 and 10 feet per second, given how fast he went past me and he was accelerating. It was clear that he was accelerating. Uh, at this point, as he's passing me, the lady in front of me is already halfway into her turn, so she, the front of her car would be at about a 2:00 position. And he continued to accelerate, I considered, I wished I had my, uh, phone out so I could record what was happening, uh, he continued to accelerate, I wanted to honk, but I didn't want to scare her, cause her to do something and I didn't know if he was even gonna pay attention if I did honk. But anyway, he proceeded to, uh, southbound and ran right into her, ran into the side of her car, and, uh, I think pr-, pr-, uh, proceeded to tumble across her hood and into the street.
- Q: OK.
- A: Uh, it, it, it looked to me almost as if it was an, a setup, the way that it occurred.
- Q: OK. Let me, uh, let me, let me [crosstalk] . . .
- A: If you had a, if you had a fall . . .
- Q: OK, let me take you back just a little bit. So you're, you're in the vehicle right behind, uh, uh, Sheila Michaels' vehicle the, the Dae-, the Daewoo, OK, um, how, how far, what was the distance or gap between your two vehicles?

A: Oh, maybe, uh, three or four feet.

Q: OK, just a few feet. Um, and then, uh, do you remember how long that you had, that, uh, that you had stopped in there in the roadway as she was waiting for the pedestrian to, to go through the, uh . . .

A: Uh, uh, I couldn't put a time on it, it's whatever it would take, there were pe-, people going in both directions so.

Q: OK.

A: It was a little bit longer than as if people had started at the same time at both sides.

Q: OK, five seconds, 10, 15, 20 seconds, somewhere in that ballpark or . . .

A: Um, I, just 15 or 20 seconds.

Q: OK. Um, and then, um, as she was stopped there waiting to make her right turn, do you recall seeing a, uh, right turn blinker indicator on her vehicle?

A: Yes.

Q: OK. Um, and then, uh, did the bicycle that, that passed you, did it pass you on the left or pass you on the right side of your vehicle?

A: Uh, it, it, on the right side of the vehicle between me and, uh, and . . .

Q: The bridge.

A: . . . uh, the sidewalk and bridge.

Q: And sidewalks, OK.

A: Yeah, the edge of the bridge, yes.

Q: Right, um, yeah, I think you had just come off the, just past the br-, but anyways, um, so a-, a-, once the, the pedestrian traffic cleared, she started to make her turn, uh, do you recall where the bicyclist was or where you saw the bicyclist at that time? Was it adjacent to you, was it behind your vehicle, was it in front of your vehicle?

A: I, I didn't see it until he got within my peripheral vision on the side of me.

Q: OK.

A: And she had already started making her turn when, by the time, when, when the bicycle appeared in my peripheral vision.

Q: Now, when you say your peripheral, n-, now is that just to the side of your vehicle right on the right hand side?

A: Yeah, yeah, it's out the right hand side window, probably from leading edge of the right hand side window.

Q: So, right, right in line with your passenger side door is then, that's about where you first .

..

A: Yes.

Q: . . . saw the bicycle? OK.

A: Yes.

Q: Exactly.

A: And just, just, just about equal to or a little bit ahead of the passenger seat.

Q: OK. And at this time, um, Sheila in her vehicle, she had already initiated her turn, do you know . . .

A: Yeah.

Q: . . . um, and then do you know how far forward she had moved, uh, in making that turn at this point? Where you saw the bicycle right on your, you know, where your passenger doors are?

A: Uh, yeah, yeah, yeah, if you were to, uh, draw a line from the edge of the sidewalk, uh, straight up the hill, the front end of her car would've intersected that line.

Q: OK.

A: So she would've broken the plane, of having exited the lane that she was in.

Q: OK. Now, there is a bike lane there that, that's right on the . . .

A: Yeah.

Q: . . . right hand side of the lane, um, would you say that her vehicle had, had fully gone into that bike lane or crossed over that?

A: Ab-, absolutely, absolutely, yeah, the, the bike lane, the bike lane would've been inside the plane that I just described.

Q: OK, and . . .

A: It would've been on the left side of that outer edge of the, of the line that she would've, had crossed.

Q: OK. And so she had moved forward a little bit and turned to the right so she was maybe, you know, 4, 5 or 6 feet in front of you at this point?

A: Yes.

Q: OK. And then, um, i-, in your mind from w-, from when she initiated that turn and got to that position to where you saw the bike, i-, was the, did the bike have time to, you know, hit their brakes, stop or, or try to, you know, miss that vehicle or . . .

A: Absolutely, and he did none of that.

Q: OK. He just continued straight forward and [crosstalk] . . .

A: Yes.

Q: . . . went right into the [crosstalk] . . .

A: And that's why I wanted to honk to, to alert somebody, but I didn't want to startle anybody and I didn't know if, if, if it would've even alerted. It, it appeared to me that he wasn't even paying attention to what was going on.

Q: OK. Do you recall, um, with what portion of, did so, like, the front tire of his bike went into the side of, of Sheila's vehicle?

A: Uh, he turned slightly [crosstalk] to hit it . . .

Q: OK.

A: . . . yeah, he didn't, he didn't hit it direct on, he turned a little bit, uh, again, it was almost as if he knew how to do this, how, how to do this without getting hurt.

Q: OK. Well, uh [laughs], un-, unless [laughs], unless you're an expert in that, it'd be hard, hard to say, but [crosstalk] . . .

A: Well, and the first thing that came to me in my mind was this is an insurance scam.

Q: OK, um, so he, he kinda turned a little bit and then did, do you recall if he went over the handlebars and onto the, the hood of the vehicle and then . . .

A: Yeah [crosstalk] . . .

Q: . . . over onto the ground [crosstalk] . . .

A: Yeah, yeah, he, he, he stretched his fingers out straight and went up over the handlebars and slid over the hood and, and down, uh, I believe in front of the car.

Q: OK, landed on the ground, OK. Um, do you recall where the impact was or the damages were on Sheila's vehicle? Where at on that passenger side?

A: Uh, I think it was either in line with, uh, the center of her wheel or slightly in front of it.

Q: OK. Um, and then what happened after, you know, he, he fell to the ground [inaudible], what, what happened next?

A: Oh, everybody stopped.

Q: OK.

A: Uh, he got up. Uh, Sheila was able to pull into a parking space that was right there, and what happened after that I don't know because I had to circle around the block a couple of times to find a parking spot to go back to talk to her.

Q: OK. You came back and you, you . . .

A: I went back.

Q: . . . spoke with, with Sheila, um, and . . .

A: Yes.

Q: OK. Uh, let her know that you, you witnessed the incident?

A: Yes.

Q: OK. Um, did you speak with the other, uh, the bicycle rider at all?

A: I did.

Q: OK.

A: I did. Well, he came over, he came over, what did he say to me? [pause] He, he could tell that I was comforting her and telling her that it wasn't her fault, and he said to me, but I was in the bike lane, and I told him that the rules for cars and for bikes are the same, and that he hit her.

Q: OK. Did the, and as I understand it, no police came to the scene, just everybody . . .

A: No.

Q: . . . exchanged information and then kinda went on their way?

A: Right, right.

Q: OK. Were there any other witnesses that, that came up and, and indicated that they saw the incident, leave their information or . . .

A: Uh, not that I'm aware of. There might've been in the, it took me about 20 minutes to find a parking space so, somebody else might have, but I don't, I don't know.

Q: OK, not that you remember seeing yourself?

A: Not that I remember seeing. There were a lot of people at that corner. He, if he had been paying more attention, he may have been able to swerve and go around her and proceed on up the hill like he was attempting to do, uh, but there were too many people around. Uh, so instead of hit the people, he hit the car.

Q: Gotcha, um . . .

A: There were other, there were people there, maybe even the lady in the yellow pant suit may have helped him get up off the ground.

Q: OK.

A: And I remember a man being there, uh, but no-, none of those people were there by the time I got back.

Q: OK. And then he was walking around, uh, seemed OK. Did he, did he, did you see any physical injuries on him? Any, you know, road rash or scratches or . . .

A: No, no, not a, not a thing, I did not see a thing on him, I, the, his, the wheel on his bike wasn't bent, like I would've expected it to have been.

Q: OK.

A: Uh, I took a picture of his bike.

Q: OK, OK. Um, did he complain of any injuries to you or say that, you know, uh, he had any injuries?

A: No, I remember somebody asked him if he was OK, and he said he was OK.

Q: OK, OK.

A: I, I would've expect to have seen, you know, his knees s-, scraped up, uh, uh, his arms scraped up, I didn't, I didn't see anything. I think for a while there he was standing there with his arms crossed.

Q: OK.

A: Uh, and then his arms down, uh, he was walking around. I, I saw no signs of, uh, physical injury to him whatsoever.

Q: OK. What kind of clothes or protective gear did he have on?

A: Uh, I, uh, uh, uh, it, it appeared to be, you know, some kind of bicycle attire, not, not, I, I don't remember if it, uh, was exactly bicycle attire, but, uh, short shorts, uh, tight shirt with, uh, uh, short sleeves.

Q: OK. Uh, did he have a helmet on?

A: I don't think so.

Q: OK. Do you remember if he had a helmet on a-, as you saw him ride past you?

A: I don't think he did.

Q: OK. Um, do you recall what kind of bike he had, like, if it was a, a road bike, a mountain bike or . . .

A: Uh, it k-, k-, kinda, uh, yeah, I got the picture here, it's kind of a crossover I think. It, uh, seemed to be an in between.

Q: OK. And I'll . . .

A: Uh . . .

Q: . . . I'll have you send me a copy of that, of the photo if you don't mind?

A: It, uh, uh, yeah, it, I mean, it's got the ten speed handlebars, the ten s-, speed feet on it, uh, uh, but I don't think it's a ten speed. It looks to be like a single speed. I don't see the derailleur on it.

Q: OK, maybe a fixed gear bike then?

A: Yeah, yeah, I think so, he, uh, it does, it does not have mountain bike tires, it has, uh, it has, uh, uh, skinny [crosstalk], uh, road tires.

Q: OK. Um, if I forgot to ask you this, uh, what was the weather like? Was it, uh, was it rainy out, was it sunny out?

A: It was clear, no . . .

Q: OK, [crosstalk] . . .

A: . . . it was clear.

Q: Clear. Roads were dry?

A: Yes, roads were dry.

Q: OK. Um, I think that's all the questions I can think of. Uh, I think we've gone over that pretty good. Is there anything else that you, you know, think is missing or you think is pertinent to how this incident occurred that you'd like to add?

A: No, other than the, uh, I don't know that, uh, i-, i-, i-, i-, his expectation that, uh, because he was in the bike lane, he had the right-of-way. Uh, I don't think he had the right-of-way when he's two car lengths behind her when she's starting to make a turn.

Q: OK, OK.

A: Uh, it would seem to me that, uh, anyone else would get a ticket for passing on the, for passing on the right or attempting to pass on the right, if, uh, in, in a, in a similar situation, in a car.

Q: Sure. And what kind of vehicle were you driving? Uh, I don't think I asked you that.

A: A, uh, two th-, a Hyundai Tucson, a white Hyundai Tucson.

Q: That's like a small SUV?

A: Yes.

Q: OK, all right, very good. Um, that's all the questions I have. Um, uh, again if you have anything else to add, let me know, but, um, otherwise, uh, I will, uh, uh, conclude this, uh, statement.

A: OK.

Q: OK. Um, uh, thank you for the information. Um, have you answered the foregoing questions truthfully and factually to the best of your ability and knowledge?

A: Yes.

Q: And do you understand that this interview has been recorded and recorded . . .

A: Yes.

Q: . . . with your permission?

A: Yes.

Q: All right, and would you please repeat your full name for me, please?

A: Uh, Don Mello, M-E-L-L-O.

Q: All right, thank you Don. This is Kyle Wegner, I'm now concluding the recorded part of this interview at 10:21 AM.

[Recording: The recording has ended.]

EXHIBIT 3

EXHIBIT 3

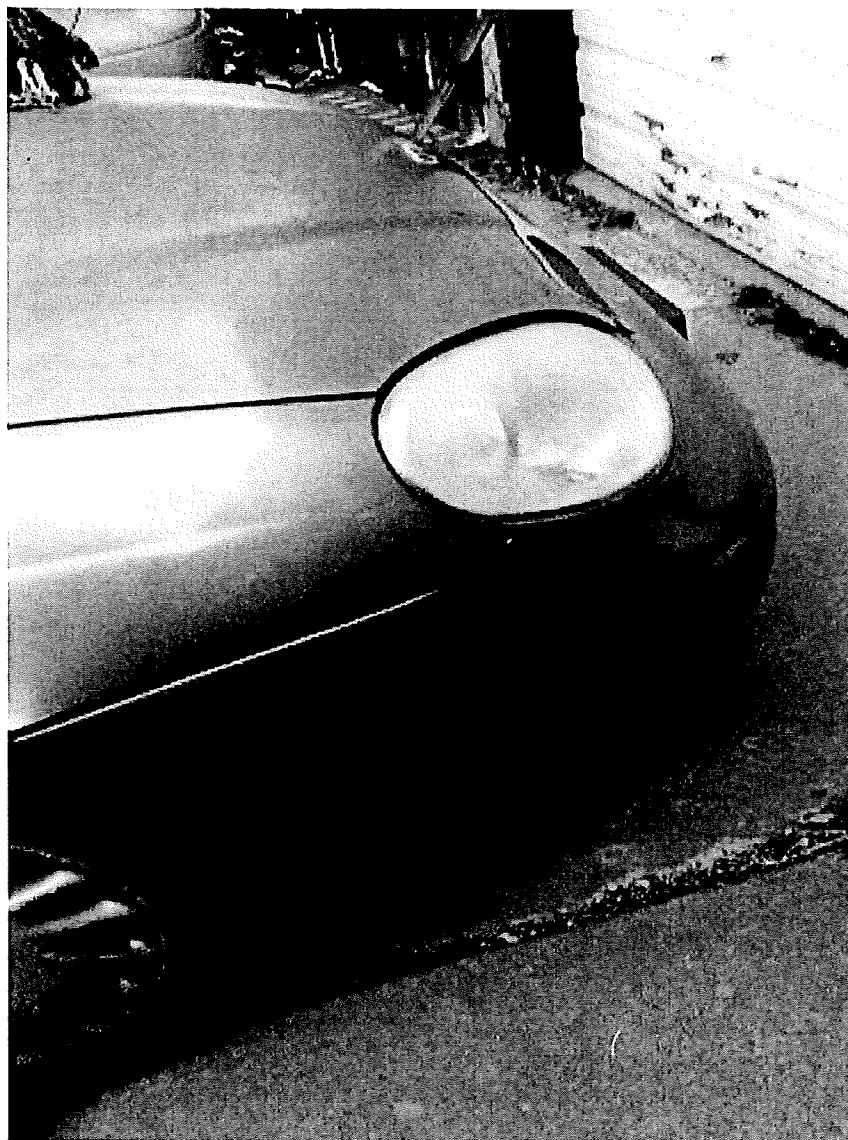




EXHIBIT 4

EXHIBIT 4

1 ADAM P. MCMILLEN, ESQ.
State Bar No. 10678
2 **THE LAW OFFICES OF KARL H. SMITH - RENO**
50 West Liberty Street, Suite 303
3 Reno, NV 89501
Phone: (775) 329-2116
4 adam.mcmillen@farmersinsurance.com
Attorney for Defendant,
5 SHEILA MICHAELS

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

9
10 JOHN S. WALKER,

11 Plaintiffs,

12 vs.

13 SHEILA MICHAELS; DOES I-V, inclusive,

14 Defendants.

Case No.: CV18-01798

DEPT. NO. 7

15 **OFFER OF JUDGMENT**

16
17 TO: John Walker, Plaintiff

18 TO: William Kendall, Esquire., Attorney for Plaintiff

19 Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Defendants, Sheila Michaels, offer to
20 allow judgment to be taken by Plaintiff, John Walker, in this action in the amount of \$1,001.00, including
21 in that sum all costs and interest in full satisfaction of all claims against Defendants, Sheila Michaels. This
22 Offer of Judgment is made for the purposes specified in Rule 68 and is not to be construed as an admission
23 of any kind whatsoever.

24
25 DATED: November 13, 2018

THE LAW OFFICES OF KARL H. SMITH -
RENO

26
27 BY:

ADAM P. MCMILLEN, ESQ.
Attorney for Defendant,
SHEILA MICHAELS

28 OFFER OF JUDGMENT

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of
5 THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 13th day of November, 2018, I
6 served a true and correct copy of the above and foregoing **OFFER OF JUDGMENT** on the parties
7 addressed as shown below:

8 ☒ *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]
9 ☐ *Via Electronic Filing* [N.E.F.R. 9(b)]
10 ☐ *Via Electronic Service* [N.E.F.R. 9]
11 ☐ *Via Facsimile* [E.D.C.R. 7.26(a)]
12

13 William R. Kendall
14 Law Offices of William R. Kendall
15 137 Mt. Rose St.
16 Reno, NV 89509
17 Attorney for Plaintiff, John S. Walker
18 Phone: (775) 324-6464
19 Fax: (775) 324-3735

20 Marsha J. Cinkel
21 MARSHA J. CINKEL, An Employee of
22 The Law Offices of Karl H. Smith - Reno
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24
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