

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jan 09 2020 01:06 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.

PETITIONER WALKER APPENDIX VOLUME 7

William R. Kendall, Esq.

State Bar No. 3453

137 Mt. Rose Street

Reno, NV 89509

(775) 324-6464

Attorney for Petitioners

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WALKER APPENDIX VOLUME 7 INDEX

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EXHIBIT 5

EXHIBIT 5

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 SHEILA MICHAELS

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

11 JOHN S. WALKER,

12 Plaintiffs,

13 vs.

14 SHEILA MICHAELS; DOES I-V, inclusive,
15 Defendants.
16

Case No.: CV18-01798

DEPT. NO. 7

17 **DEFENDANTS' INITIAL EAC PRODUCTION**

18 **I. Initial Production of Documents**

- 19 1. Color photographs of Bicycle;
20 2. Color photographs of Defendant's vehicle;
21 3. Defendant's Answer to Plaintiff's Complaint.
22 4. Transcribed Statement of witness, Donald Mello.
23 5. Defendant's Auto Insurance Policy and Declaration Page.

24 Defendants reserve the right to supplement this disclosure as additional information becomes known.

25 Defendants reserve the right to object to the authenticity of any document produced in discovery.

26 Defendants hereby reserve the right to amend this NRCP 16.1 Production of Documents should,
27 during the course of the discovery of this matter, additional documentation become known to Defendant
28 or Defendant's Counsel.

1 Defendants specifically reserve the right to rely on any and all documents listed by any party to
2 this action and specifically incorporates as though formally disclosed any and all documents identified
3 by any party herein.

4 II. List of Potential Witnesses

5 1. Plaintiffs, John S. Walker, by and through counsel of record William Kendall, Esquire.,
6 137 Mt. Rose Street, Reno, NV 89509: It is anticipated that Plaintiff will testify as to the facts and
7 circumstances surrounding the accident which gives rise to this action, the injuries sustained therein, if any,
8 the medical treatment rendered for those injuries, the diagnosis and prognosis and the allegations as
9 contained in the Complaint on file herein.

10 2. Defendant, Sheila Michaels, by and through her attorneys of record, The Law Offices of
11 Karl H. Smith - Reno, 50 West Liberty Street, Suite 303, Reno, NV 89501. It is anticipated that
12 Defendant will testify as to the facts and circumstances surrounding the accident which gives rise to this
13 action.

14 3. Witness, Donald Mello, 2000 Skyline Blvd., Reno, NV 89509. It is anticipated that this
15 witness will testify as to the facts and circumstances surrounding the accident which gives rise to this
16 action.

17 4. All witnesses listed by the Plaintiff.

18 5. Defendants reserve the right to call rebuttal and/or impeachment witnesses.

19 6. Defendants reserve the right to supplement this list as additional witnesses become known.

20 Medical providers, including doctors, nurses, technicians, custodians of records, or other relevant
21 personnel whose names and/or identifications appear on the documents attached and/or hereafter listed
22 under PRODUCTION OF DOCUMENTS, will testify thereof, including any injuries to the Plaintiffs
23 from the underlying incident, including their evaluation, treatment and related necessity and
24 reasonableness of costs thereof, and diagnoses and prognoses.

25 Medical Experts and Independent Medical Examiner unknown at this time. It is anticipated that
26 Medical Experts and Independent Medical Examiners, unknown at this time, will testify as to the care
27 rendered to Plaintiffs.

28 Liability experts, including accident reconstructionist, biomechanical, custodians of records, or
other relevant personnel whose names and/or identifications appear on the documents attached and/or
hereafter listed under PRODUCTION OF DOCUMENTS, will testify thereof, including any injuries to
the Plaintiffs from the underlying incident, including their evaluation, treatment and related necessity

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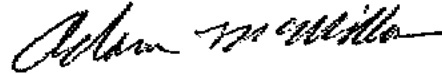
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1 and reasonableness of costs thereof, and diagnoses and prognoses.

2
3
4 DATED: December 5, 2018

THE LAW OFFICES OF KARL H. SMITH –
RENO

5 BY:

6 

7 ADAM P. MCMILLEN, ESQ.
8 Attorney for Defendant,
9 SHEILA MICHAELS
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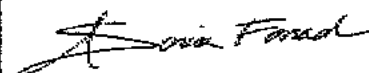
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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 5th day of December, 2018, I served a true and correct copy of the above and foregoing **DEFENDANTS' INITIAL EAC PRODUCTION** on the parties addressed as shown below:

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

William 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



SONIA FOUAD, An Employee of
The Law Offices of Karl H. Smith - Reno

EXHIBIT 6

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

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DISTRICT COURT
WASHOE COUNTY, NEVADA

JOHN S. WALKER,
Plaintiff,

vs.

SHEILA MICHAELS; DOES I-V, inclusive,
Defendants.

Case No.: CV18-01798

DEPT. NO. 7

REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS TO JOHN S. WALKER

Pursuant to NRCP 34, Defendants request that Plaintiff JOHN S. WALKER responds to the following requests.

REQUEST NO. 1:

Please produce all written or recorded statements, summaries of statements, and written or recorded reports made by any party, witness, investigator, adjuster, or any person with knowledge of the accident that is the subject of this litigation.

REQUEST NO. 2:

Please produce color copies of any and all photographs regarding the accident that is the subject of this litigation, including, but not limited to, the accident scene, objects and instrumentalities involved

1 in or related to the accident, persons involved in the accident, and any and all photographs that purport
2 to show the injuries you allege the accident caused.

3 REQUEST NO. 3:

4 If this lawsuit involves a claim for lost wages, income or future lost earning capacity, please
5 produce all federal income tax documents you filed with the Internal Revenue Service dating from two
6 years prior to the date the accident that is the subject of this litigation occurred, up to, and including, the
7 present, and all other documents upon which you intend to rely to support any claim of lost wages,
8 income or future lost earning capacity.
9

10 REQUEST NO. 4:

11 If you are claiming that you lost income from employment due to the accident that is the subject
12 of this litigation, please produce a copy of your entire employment file from each job from which you
13 claim you lost income.
14

15 REQUEST NO. 5:

16 If you are claiming that you incurred expenses, including medical expenses, due to the accident
17 that is the subject of this litigation, please produce copies of all receipts, bills, invoices and purchase
18 orders, and any and all other documents regarding the alleged expenses.
19

20 REQUEST NO. 6:

21 Please produce a copy of the entire file of each expert you have retained to testify.

22 REQUEST NO. 7:

23 If you are claiming that you lost income from a business, hobby or other enterprise, regardless
24 of whether it was licensed as a business, due to the incident that is the subject of this litigation, please
25 produce all financial records from that business, hobby or other enterprise, dating from two years prior
26 to the incident to the present.
27

28 REQUEST NO. 8:

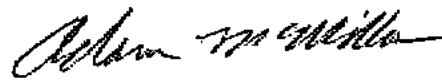
Please return signed originals of the attached employment, workers' compensation and HIPAA
REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS TO JOHN S. WALKER - 2

1 compliant authorizations.

2
3 DATED: December 5, 2018

THE LAW OFFICES OF KARL H. SMITH -
RENO

4
5 BY:



6 ADAM P. MCMILLEN, ESQ.
7 Attorney for Defendant,
8 SHEILA MICHAELS
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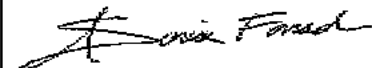
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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of
THE LAW OFFICES OF KARL H. SMITH - RENO and that on the 5TH day of December, 2018,
I served a true and correct copy of the above and foregoing **REQUEST FOR PRODUCTION OF
DOCUMENTS AND TANGIBLE THINGS TO JOHN S. WALKER** on the parties addressed as
shown below:

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

William 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



SONIA FOUAD, An Employee of
The Law Offices of Karl H. Smith - Reno

LAW OFFICES OF KARL H. SMITH
7455 Arroyo Crossing Parkway, Suite 200
Las Vegas, Nevada 89113
Phone: (702) 408-3800
Facsimile: (702) 369-1675

AUTHORIZATION FOR MEDICAL RECORDS AND REPORTS

In compliance with the Health Insurance Portability and Accountability Act ("HIPAA")
45 CFR 164.508.

This authorization authorizes:

TO:

1. The undersigned authorizes and directs all doctors, hospitals, clinics, therapy centers, other medical providers and/or treaters, and their employees and representatives, all known as "Providers," to release to the law office of **LAW OFFICES OF KARL H. SMITH, 7455 Arroyo Crossing Parkway, Suite 200, Las Vegas, NV 89113** or their representatives, Med-R and/or US Legal traffic accident reports, police and/or incident reports, police photographs taken, witness statements, any and all information, medical records, medical reports, imagery films, and itemized medical billings regarding my physical and mental condition, treatment, hospitalization, or other medical treatment provided to me for the years 2010 to the present time. The purpose for this authorization of records release is Litigation.

2. The named parties may inspect, review and receive copies of all medical records, including, but not limited to, medical histories, hospital charts, notes, imagery films and reports, medical findings, opinions and diagnoses as well as billing records.

3. A photocopy of this authorization is to have the same force and effect as the original.

4. This authorization will expire two years from the date of signature.

5. I understand this authorization covers records relating to communicable diseases, acquired immunodeficiency syndrome ("AIDS"), human immunodeficiency virus ("HIV"), behavioral and/or mental health care, alcohol and/or drug abuse treatment, and genetic testing, if any such records exist.

6. I acknowledge: (1) I have the right to revoke this authorization at any time, (2) I acknowledge the protected health information provided may be subject to re-disclosure by the recipient; and (3) I understand once the information is disclosed, it may no longer be protected by Federal privacy law. I also understand I may revoke this authorization only in writing and sent by certified mail to any relevant Provider. The revocation will be effective only upon receipt, except: (1) to the extent the Provider has acted in reliance on the authorization, or (2) the authorization was obtained as a condition of obtaining insurance coverage and the insurer wishes to use the protected health information to lawfully contest a claim. Further information on the right to revoke may be provided from time to time in any relevant Provider's Notice of Privacy Practices.

7. Treatment by any Provider is not conditioned on my signing this authorization, although exceptions will be made for: (a) research-related treatment, (b) for treatment, the purpose of which is to create protected health information for a third party, such as pre-employment physicals, and (c) except for psychotherapy notes, regarding health plans which condition enrollment or on an authorization requested prior to enrollment, or where payment is conditioned on an authorization to use PHI to determine payment.

Patient Name: _____

Patient DOB: _____

Patient SSN: _____

Date: _____

Signed by: _____

Printed Name: _____

Print Parent/Legal Guardian
Name (if patient is a minor): _____

SUBSCRIBED AND SWORN to before me

this _____ day of _____, 2018

NOTARY PUBLIC in and for
said County and State

AUTHORIZATION AND CONSENT TO RELEASE CELLULAR PHONE RECORDS

TO: _____

RE: Customer: _____

YOU ARE HEREBY AUTHORIZED AND INSTRUCTED to release to LAW OFFICES OF
KARL H. SMITH or its representatives, Med-R and/or US Legal the copies of my cellular
phone records for the period of _____ through
_____.

This authorization is given upon the express condition that any costs incurred will be borne by
LAW OFFICES OF KARL H. SMITH.

You are further authorized and instructed to accept a photocopy of this signed authorization in the
place and stead of the executed original thereof.

By: _____

STATE OF NEVADA)

COUNTY OF CLARK)

) ss.:
)

On this ____ day of _____, 2018 before me, _____ personally appeared before
me a Notary Public in and for Clark County, Nevada, duly commissioned and sworn, known to me to be
the person whose name is subscribed to the foregoing instrument and who acknowledged to me that she
executed the same freely, voluntarily, and for the uses and purposes therein mentioned.

NOTARY PUBLIC, in and for said
County and State

**AUTHORIZATION FOR RELEASE OF
WORKER'S COMPENSATION of NEVADA CLAIMS FILE**

TO: EMPLOYERS INSURANCE COMPANY OF NEVADA

This is to authorize all doctors, chiropractors, osteopaths, hospitals, clinics, therapy centers, employers, and state and federal agencies to release and make available to **LAW OFFICES OF KARL H. SMITH, 7455 Arroyo Crossing Parkway, Suite 200, Las Vegas, Nevada 89113, US** Legal and/or Med-R or any representative thereof, the complete social security file including any and all medical records, charts, x-ray films and x-ray reports, office notes, questionnaires, consultation reports, correspondence, copies of itemized bills pertaining to treatment rendered, any decisions rendered, including any disability rating given concerning the undersigned, claims file and any other documentation which you may have concerning the undersigned.

DATED this ____ day of _____, 2018

Name:

Date of Birth:

Social Security No.:

A PHOTOCOPY OF THIS RELEASE HAS THE SAME FORCE AND EFFECT AS THE ORIGINAL.

STATE OF NEVADA)
) s.s.
COUNTY OF CLARK)

ON THIS ____ day of _____, 2018 before me appeared _____ to me personally known, and who acknowledged the execution of the foregoing instrument as his free act and deed, for the consideration set forth herein.
My commission expires:

NOTARY PUBLIC in and for said County and State

LAW OFFICE OF KARL H. SMITH
7455 Arroyo Crossing Parkway, Suite 200
Las Vegas, Nevada 89113
Phone: (702) 408-3800
Facsimile: (702) 369-1675

AUTHORIZATION FOR RELEASE OF EMPLOYMENT INFORMATION

TO:

RE: Employee:
Date of Birth:
Social Security No.:

YOU ARE HEREBY AUTHORIZED AND INSTRUCTED to release to LAW OFFICE OF KARL H. SMITH, or their representatives, Med-R and/or US Legal copies of any and all wage claim documents, copies of my entire employment file, including payroll records, and from the interviewing to the present time for my present and former employers.

This authorization is given upon the express condition that any costs incurred will be borne by LAW OFFICE OF KARL H. SMITH.

It is understood and agreed that a photocopy of this Authorization will have the same force and effect as the original.

DATED this ___ day of _____, 2018

SUBSCRIBED AND SWORN to before me

this ___ day of _____, 2018

NOTARY PUBLIC in and for said
County and State

LAW OFFICES OF KARL H. SMITH
7455 Arroyo Crossing Parkway, Suite 200
Las Vegas, Nevada 89113
Phone: (702) 408-3800
Facsimile: (702) 369-1675

AUTHORIZATION FOR RELEASE OF WORKER'S COMPENSATION CLAIMS
FILES

TO:

RE: Employee:
Date of Birth:
Social Security No.:

YOU ARE HEREBY AUTHORIZED AND INSTRUCTED to release to LAW OFFICES OF KARL H. SMITH, or their representatives, US Legal and/or Med-R copies of any and all medical records, charts, x-ray films and x-ray reports, office notes, questionnaires, consultation reports, correspondence, copies of itemized billings pertaining to treatment rendered, any decisions rendered regarding worker's compensation benefits, including any disability ratings given concerning the undersigned, claims file and any other documentation which you may have concerning the undersigned

This authorization is given upon the express condition that any costs incurred will be borne by LAW OFFICES OF KARL H. SMITH.

It is understood and agreed that a photocopy of this Authorization will have the same force and effect as the original.

DATED this ___ day of _____, 2018

SUBSCRIBED AND SWORN to before me

this ___ day of _____, 2018

NOTARY PUBLIC in and for said
County and State

Social Security Administration
Consent for Release of Information

Form Approved
OMB No. 0860-0868

SSA will not honor this form unless all required fields have been completed (*signifies required field).

TO: Social Security Administration

*Name _____ *Date of Birth _____ *Social Security Number _____

I authorize the Social Security Administration to release information or records about me to:

*NAME _____ *ADDRESS _____

*I want this information released because:

There may be a change for releasing information.

*Please release the following information selected from the list below:

You must check at least one box. Also, SSA will not disclose records unless applicable date ranges are included.

- ☐ Social Security Number
- ☐ Current monthly Social Security benefit amount
- ☐ Current monthly Supplemental Security Income payment amount
- ☐ My benefit/payment amounts from _____ to _____
- ☐ My Medicare entitlement from _____ to _____
- ☐ Medical records from my claims folder(s) from _____ to _____
If you want SSA to release a minor's medical records, do not use this form but instead contact your local SSA office.
- ☐ Complete medical records from my claims folder(s)
- ☐ Other record(s) from my file (e.g. applications, questionnaires, consultative examination reports, determinations, etc.) _____

I am the individual to whom the requested information/record applies, or the parent or legal guardian of a minor, or the legal guardian of a legally incompetent adult. I declare under penalty of perjury in accordance with 28 C.F.R. § 16.41(d)(2004) that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge. I understand that anyone who knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000. I also understand that any applicable fees must be paid by me.

*Signature: _____ *Date: _____

Relationship (If not the individual): _____ *Daytime Phone: _____

Form SSA-3288 (07-2010) EF (07-2010)

**Social Security Administration
Consent for Release of Information**

Form Approved
OMB No. 0960-0566

Instructions for Using this Form

Complete this form only if you want us to give information or records about you, a minor, or a legally incompetent adult, to an individual or group (for example, a doctor or an insurance company). If you are the natural or adoptive parent or legal guardian, acting on behalf of a minor, you may complete this form to release only the minor's non-medical records. If you are requesting information for a purpose not directly related to the administration of any program under the Social Security Act, a fee may be charged.

NOTE: Do not use this form to:

- Request us to release the medical records of a minor. Instead, contact your local office by calling 1-800-772-1213 (TTY-1-800-328-0778), or
- Request information about your earnings or employment history. Instead, complete form SSA-7050-F4 at any Social Security office or online at www.ssa.gov/online/ssa-7050.pdf.

How to Complete this Form

We will not honor this form unless all required fields are completed. An asterisk (*) indicates a required field. Also, we will not honor blanket requests for "all records" or the "entire file." You must specify the information you are requesting and you must sign and date this form.

- Fill in your name, date of birth, and social security number or the name, date of birth, and social security number of the person to whom the information applies.
- Fill in the name and address of the individual (or organization) to whom you want us to release your information.
- Indicate the reason you are requesting us to disclose the information.
- Check the box(es) next to the type(s) of information you want us to release including the date ranges, if applicable.
- You, the parent or legal guardian acting on behalf of a minor, or the legal guardian of a legally incompetent adult, must sign and date this form and provide a daytime phone number where you can be reached.
- If you are not the person whose information is requested, state your relationship to that person. We may require proof of relationship.

PRIVACY ACT STATEMENT

Section 205(e) of the Social Security Act, as amended, authorizes us to collect the information requested on this form. The information you provide will be used to respond to your request for SSA records information or process your request when we release your records to a third party. You do not have to provide the requested information. Your response is voluntary; however, we cannot honor your request to release information or records about you to another person or organization without your consent.

We rarely use the information provided on this form for any purpose other than to respond to requests for SSA records information. However, in accordance with 5 U.S.C. § 552a(b) of the Privacy Act, we may disclose the information provided on this form in accordance with approved routine uses, which include but are not limited to the following: 1. To enable an agency or third party to assist Social Security in establishing rights to Social Security benefits and/or coverage; 2. To make determinations for eligibility in similar health and income maintenance programs at the Federal, State, and local level; 3. To comply with Federal laws regarding the disclosure of the information from our records; and, 4. To facilitate statistical research, audit, or investigative activities necessary to assure the integrity of SSA programs.

We may also use the information you provide when we match records by computer. Computer matching programs compare our records with those of other Federal, State, or local government agencies. Information from these matching programs can be used to establish or verify a person's eligibility for Federally-funded or administered benefit programs and for repayment of payments or delinquent debts under these programs.

Additional information regarding this form, routine uses of information, and other Social Security programs are available from our Internet website at www.socialsecurity.gov or at your local Social Security office.

PAPERWORK REDUCTION ACT STATEMENT

This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the **Paperwork Reduction Act of 1995**. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 3 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE.** You can find your local Social Security office through SSA's website at www.socialsecurity.gov. Offices are also listed under U.S. Government agencies in your telephone directory or you may call 1-800-772-1213 (TTY 1-800-328-0778). You may send comments on our time estimate above to: SSA, 8401 Security Blvd., Baltimore, MD 21236-6401. Send only comments relating to our time estimate to this address, not the completed form.

Form SSA-3288 (07-2010) EF (07-2010) Destroy Prior Editions

1. Print Your Name Your Medicare Number Your Date of Birth

4. Fill in the reason for the disclosure (you may write "at my request"):

5. Fill in the name and address of the person(s) or organization(s) to whom you want Medicare to disclose your personal health information:

6. I authorize Medicare to disclose my personal health information listed above to the person(s) or organization(s) I have named on this form. I understand that my personal health information may be re-disclosed by the person(s) or organization(s) and may no longer be protected by law.

Sign Your Name

Your Telephone Number

Date

☐ Check here if you are signing as a personal representative. Please attach the appropriate documentation (for example, Power of Attorney).

7. Send your completed, signed authorization to:

8. Note:

You have the right to take back ("revoke") your authorization at any time, in writing, except to the extent that Medicare has already acted based on your permission. If you would like to revoke your authorization, send a written request to the address shown above.

Your refusal to authorize this disclosure of your personal health information will have no effect on your enrollment, eligibility for benefits, or the amount Medicare pays for the health services you receive.

If you need help with this form, call 1-800-MEDICARE (1-800-633-4227).

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0830. The time required to complete this information collection is estimated to average 15 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to CMS, Attn: Reports Clearance Officer, 7500 Security Boulevard, Baltimore, Maryland 21224-1850.

Form **4506**

(Rev. September 2013)

Department of the Treasury
Internal Revenue Service**Request for Copy of Tax Return**

OMB No. 1545-0023

Request may be rejected if the form is incomplete or illegible.

Tip. You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a Tax Return Transcript for many returns free of charge. The transcript provides most of the line entries from the original tax return and usually contains the information that a third party (such as a mortgage company) requires. See Form 4506-T, Request for Transcript of Tax Return, or you can quickly request transcripts by using our automated self-help service tool. Please visit us at irs.gov and click on "Order a Return or Account Transcript" or call 1-800-898-9946.

1a Name shown on tax return. If a joint return, enter the name shown first.

1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)

2a If a joint return, enter spouse's name shown on tax return.

2b Second social security number or individual taxpayer identification number if joint tax return

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)

4 Previous address shown on the last return filed if different from line 3 (see instructions)

5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.

UPSON SMITH, 7485 Arroyo Crossing Parkway, Suite 200, Las Vegas, NV 89113 (702) 404-3800

Caution. If the tax return is being mailed to a third party, ensure that you have filed in lines 6 and 7 before signing. Sign and date the form once you have filed in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your tax return to the third party listed on line 6, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your return information, you can specify this limitation in your written agreement with the third party.

6 Tax return requested, Form 1040, 1120, 941, etc. and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ▶

Note: If the copies must be certified for court or administrative proceedings, check here ☐

7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than eight years or periods, you must attach another Form 4506.

8 Fee. There is a \$50 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN, TIN, or EIN and "Form 4506 request" on your check or money order.

a Cost for each return

b Number of returns requested on line 7

c Total cost. Multiply line 8a by line 8b

\$ 50.00

\$

9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 6, check here ☐**Caution.** Do not sign this form unless all applicable lines have been completed.

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer. Note: For tax returns being sent to a third party, this form must be received within 120 days of the signature date.

Sign
Here

Signature (see instructions)

Date

Title (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature

Date

Phone number of taxpayer on line
1a or 2a

For Privacy Act and Paperwork Reduction Act Notice, see page 2.

Cat. No. 41721E

Form 4506 (Rev. 9-2013)

WA267

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about Form 4508 and its instructions, go to www.irs.gov/form4508. Information about any recent developments affecting Form 4508, Form 4508T and Form 4508T-EZ will be posted on that page.

General Instructions

Caution. Do not sign this form unless all applicable lines have been completed.

Purpose of form. Use Form 4508 to request a copy of your tax return. You can also designate (on line 5) a third party to receive the tax return.

How long will it take? It may take up to 75 calendar days for us to process your request.

Tip. Use Form 4508-T, Request for Transcript of Tax Return, to request tax return transcripts, tax account information, W-2 information, 1099 information, verification of non-filing, and records of account.

Automated transcript request. You can quickly request transcripts by using our automated self-help service tools. Please visit us at irs.gov and click on "Order a Return or Account Transcript" or call 1-800-608-9948.

Where to file. Attach payment and mail Form 4508 to the address below for the state you lived in, or the state your business was in, when that return was filed. There are two address charts: one for individual returns (Form 1040 series) and one for all other returns.

If you are requesting a return for more than one year and this chart below shows two different addresses, send your request to the address based on the address of your most recent return.

Chart for Individual returns (Form 1040 series)

If you filed an individual return and lived in:

Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Texas, a foreign country, American Samoa, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or A.P.O. or F.P.O. address

Internal Revenue Service
RAVBS Team
Stop 6716 ALJCO
Arlington, TX 73801

Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming

Internal Revenue Service
RAVBS Team
Stop 6710H
Fresno, CA 93885

Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia

Internal Revenue Service
RAVBS Team
Stop 6703 P-6
Kansas City, MO 64688

Chart for all other returns

If you lived in or your business was in:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, a foreign country, or A.P.O. or F.P.O. address

Mail to:

Internal Revenue Service
RAVBS Team
P.O. Box 6941
Mail Stop 6734
Ogden, UT 84400

Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin

Internal Revenue Service
RAVBS Team
P.O. Box 145500
Stop 2800 F
Cincinnati, OH 45250

Specific Instructions

Line 1b. Enter your employer identification number (EIN) if you are requesting a copy of a business return. Otherwise, enter the first social security number (SSN) or your individual taxpayer identification number (ITIN) shown on the return. For example, if you are requesting Form 1040 that includes Schedule C (Form 1040), enter your SSN.

Line 3. Enter your current address. If you use a P.O. box, please include it on this line 3.

Line 4. Enter the address shown on the last return filed if different from the address entered on line 3.

Note. If the address on Lines 3 and 4 are different and you have not changed your address with the IRS, file Form 8822, Change of Address. For a business address, file Form 8822-B, Change of Address or Responsible Party - Business.

Signature and date. Form 4508 must be signed and dated by the taxpayer listed on line 1a or 2a. If you completed line 5 requesting the return be sent to a third party, the IRS must receive Form 4508 within 180 days of the date signed by the taxpayer or it will be rejected. Ensure that all applicable lines are completed before signing.

Individuals. Copies of jointly filed tax returns may be furnished to either spouse. Only one signature is required. Sign Form 4508 exactly as your name appeared on the original return. If you changed your name, also sign your current name.

Corporations. Generally, Form 4508 can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, or (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer.

Partnerships. Generally, Form 4508 can be signed by any person who was a member of the partnership during any part of the tax period requested on line 7.

All others. See section 6109(e) if the taxpayer has died, is insolvent, in a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

Documentation. For entities other than individuals, you must attach the authorization document. For example, this could be the letter from the principal officer authorizing an employee of the corporation or the latest testamentary authorizing an individual to act for an estate.

Signature by a representative. A representative can sign Form 4508 for a taxpayer only if this authority has been specifically delegated to the representative on Form 2848, Sec. 5, Form 2848 showing the delegation must be attached to Form 4508.

Privacy Act and Paperwork Reduction Act Notice. We ask for this information on this form to establish your right to gain access to the requested return(s) under the Internal Revenue Code. We need this information to properly identify the return(s) and respond to your request. If you request a copy of a tax return, sections 6103 and 6109 require you to provide this information, including your SSN or EIN, to process your request. If you do not provide this information, we may not be able to process your request. Providing false or fraudulent information may subject you to penalties.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and other state, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other agencies under a tax treaty, to federal and state agencies to enforce federal tax collection laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file Form 4508 will vary depending on individual circumstances. The estimated average time is: Learning about the law or the form, 10 min.; Preparing the form, 16 min.; and Copying, assembling, and sending the form to the IRS, 20 min.

If you have comments concerning the accuracy or usefulness of these instructions or suggestions for making Form 4508 simpler, we would be happy to hear from you. You can write to:

Internal Revenue Service
Tax Forms and Publications Division
1111 Constitution Ave., NW, IR-5528
Washington, DC 20224

Do not send the form to this address. Instead, see *Where to file* on this page.

EXHIBIT 7

EXHIBIT 7

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
4 Oklahoma City, OK 73125-8829
Physical Address:
5 50 West Liberty Street, Suite 303
Reno, NV 89501
6 Phone: (775) 329-2116
adam.mcmillen@farmersinsurance.com
7 Attorney for Defendant,
8 SHEILA MICHAELS

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

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 **INTERROGATORIES TO PLAINTIFF JOHN S. WALKER**

18 Pursuant to NRCP 33, Defendants request that Plaintiff JOHN S. WALKER answers the
19 following interrogatories.
20

21 **INTERROGATORY NO. 1:**

22 Please list your full name, your Social Security Number, all names by which you ever have been
23 known, and your date of birth.

24 **INTERROGATORY NO. 2:**

25 Regarding the incident that is the subject of this litigation, state the time and location that the
26 incident occurred and describe fully what you witnessed happen.
27

28 //

//

1 INTERROGATORY NO. 3:

2 Please list each health care provider with whom/which you have treated or consulted dating from
3 five years prior to the incident that is the subject of this litigation to the present, **including care**
4 **providers with whom/which you treated for reasons not claimed to be due to the incident,**
5 specifically listing:
6

- 7 a) the name of each care provider;
8 b) the address of each care provider;
9 c) the reason you obtained treatment from or consulted with each care provider; and
10 d) the inclusive dates of treatment.

11 INTERROGATORY NO. 4:

12 If, from the five years prior to the incident that is the subject of this litigation to the present, you
13 have made any claims regarding injuries to yourself, including, but not limited to, claims with or against
14 another person's or entity's insurer, worker's compensation claims, social security disability claims
15 and/or lawsuits, please list:
16

- 17 a) the date each claim was made;
18 b) the person or entity to whom or which and/or against whom or which each claim was made;
19 c) the underlying facts that resulted in the claim being made;
20 d) the claim number and/or case number of each claim and/or lawsuit; and
21 e) each claim's current status.
22

23 INTERROGATORY NO. 5:

24 If you claim you missed time from your job or some other enterprise in which you earned money
25 as a result of the incident that is the subject of this litigation, for each job or other enterprise from which
26 you claim you missed time, please list:
27

- 28 a) the name, address and telephone number of the employer;

- 1 b) the specific injuries, symptoms, illnesses or disabilities which you claim caused you to miss
2 time;
3 c) the total number of hours you claim you missed from the job or other enterprise;
4 d) the dollar amount of income you claim lost due to the missed time;
5 e) the method by which you calculated the amount listed for subpart (d); and
6 f) the nature and dollar amount of any benefit other than income you claim you lost due to the
7 missed time;
8

9 INTERROGATORY NO. 6:

10 For each employer you have had, dating from five years prior to the incident that is the subject of
11 this litigation to the present, please list:

- 12 a) each employer's name, address and telephone number;
13 b) your duties and title;
14 c) the name of your immediate supervisor; and
15 d) the inclusive dates you were employed.
16

17 INTERROGATORY NO. 7:

18 If you are claiming that any of the injuries you believe were caused or aggravated by the incident
19 that is the subject of this litigation are permanent, please list:

- 20 a) which injuries you are claiming are permanent;
21 b) what, if any, disabilities you contend such injuries will cause;
22 c) the nature of any future treatment that you claim will be necessary;
23 d) the dollar amount of the cost of any future treatment that you claim will be necessary; and
24 e) the name, address and telephone number of the person or health care provider advising of
25 such necessity.
26

27 //

28 //

1 INTERROGATORY NO. 8:

2 Please list each and every bodily injury (whether physical, emotional or otherwise) you believe
3 you sustained due to the incident that is the subject of this litigation.

4 INTERROGATORY NO. 9:

5 If you claim that the accident that is the subject of this litigation caused damage to property you
6 owned, please list:

- 7 a) the dollar amount of damage you claim was caused;
8 b) a description of the property damaged;
9 c) the dollar amount paid by a third-party for the cost of repair or reimbursement for the
10 damage; and
11 d) whether the damage has been repaired.

12 INTERROGATORY NO. 10:

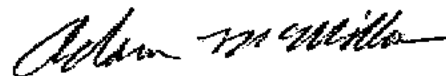
13 Relating to Medicare, please provide:

- 14 a) your Medicare status at the time of this incident (whether or not you were a beneficiary, and
15 if not, whether you were Medicare eligible);
16 b) your plan id number;
17 c) list all bills which Medicare paid; and
18 d) state whether you have been notified of a potential lien against any settlement funds.

19 DATED: December 5, 2018

20 THE LAW OFFICES OF KARL H. SMITH -
21 RENO

22 BY:

23 

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

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 5TH day of December, 2018,
5 I served a true and correct copy of the above and foregoing **INTERROGATORIES TO PLAINTIFF**
6 **JOHN S. WALKER** on the parties addressed as shown below:
7

8 X *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

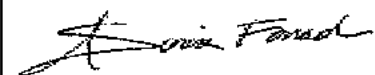
21 
22 _____
23 SONIA FOUAD, An Employee of
24 The Law Offices of Karl H. Smith - Reno
25
26
27
28

EXHIBIT 8

EXHIBIT 8

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 **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 **DEFENDANTS' ARBITRATION BRIEF**

18 Defendants, SHEILA MICHAELS, by and through the undersigned attorney of record, of The Law
19 Offices of S. Denise McCurry - Reno, hereby submit their pre-hearing statement pursuant to NAR 13.

20 **I.**

21 **STATEMENT OF FACTS**

22 Plaintiff John Walker was riding his bicycle and ran into Defendant's vehicle when Defendant
23 was already making a right turn. Witness Don Mello saw the entire incident and along with Defendant's
24 version indicates Plaintiff 100% at fault.

25 **II.**

26 **DAMAGES**

27 Plaintiff's Claimed Medical Specials:

Renown 3,776.00
NNEP 660.00
Reno Rad 108.00
SVMC 4,565.00
Total: \$9109.00

Renown

6/17/18 Diagnosis: unsp sprain of right shoulder joint; unsp sprain of right elbow. Bicyclist struck by a car at low speed yesterday c/o injured rt shoulder and elbow. No helmet. No other complaints. Patient has good range of motion of the right elbow with no tenderness over the anterior aspect.

South Virginia Medical Center
(GAP)

6/28/18 Chief Complaint: right shoulder pain and elbow pain. Rates pain 3-6/10. Impression: 1. Right elbow and shoulder contusion, rule out internal derangement. He is having quite a bit of loss of motion and significant pain. Plan: 1. Continue anti-inflammatories. 2. Ordered MRI's of rt shoulder/elbow. 3. Recheck 1 week.

7/9/18 Rt shoulder 50% improved. Still having tenderness over posterior scapula. Rt elbow 75% improved. Still having tenderness over olecranon.

7/23/18 Released from care. Rt shoulder not really bothering him. Still gets tenderness on right medial elbow. Declines a specialist. Recheck as needed.

8/4/18 Discharge Summary. MRI of right shoulder performed on 6/30/18 showed unremarkable right shoulder with no acute abnormality. Right elbow MRI of same date showed bony contusion, soft tissue of the posterior right olecranon with mild edematous appearance of ulnar nerve which could represent posttraumatic neurpraxia.

Plaintiff also claims \$478.00 in lost wages.

III.

WITNESSES

1. Defendant Sheila Michaels;
2. Don Mello.

IV.

EXHIBITS

1. Picture of Plaintiff's Bicycle;
2. Pictures of Defendant's Vehicle.

\\

V.

CONCLUSION

Given the facts of the accident, Defendant respectfully requests an award in favor of the Defendant.

DATED: March 12, 2019

THE LAW OFFICES OF S. DENISE MCCURRY
- RENO

BY: /s/ Adam P. 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 12th day of March, 2019, I
served a true and correct copy of the above and foregoing **DEFENDANTS' ARBITRATION BRIEF** 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)]

 X Via Email

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

Graham Galloway
222 California Ave
Reno, NV 89509

/s/ Adam P. McMillen

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

EXHIBIT 9

EXHIBIT 9

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
16 **DECLARATION OF ADAM MCMILLEN IN SUPPORT OF DECLARATION OF ADAM**
17 **MCMILLEN REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT**
DISCOVERY

18 I, ADAM MCMILLEN, declare as follows:

- 19 1. I am the attorney of record for Defendant Sheila Michaels.
- 20 2. I, along with my staff, prepared and served written requests for production of documents and
21 interrogatories on Plaintiff John Walker's counsel in this matter.
- 22 3. I took the Plaintiff's deposition in this matter.
- 23 4. I timely served Defendant's arbitration brief in this matter.
- 24 5. I vigorously represented Defendant's interests during the arbitration hearing and ensured witness
25 Don Mello appeared at the hearing.
- 26 6. Defendant participated in the arbitration process and appeared at the arbitration hearing.
- 27 7. I prepared the arbitration brief, presented a witness at the hearing, cross examined the Plaintiff,
28 examined Defendant and vigorously represented Defendant at the arbitration hearing.


- 1 8. Every case I handle, and every request for trial de novo, is based upon the facts and circumstances
2 of each individual case.
- 3 9. There has never been a finding of bad faith conduct in any of the cases cited by Plaintiff.
- 4 10. Regarding Castro-Avalos v. Porsow; ARB16-02521: This case stemmed from an auto accident on
5 June 4, 2015. Plaintiff slowed abruptly and tried to turn right into a private parking-lot from lane
6 1 and across lane 2. Defendant, driving in lane 1, did not anticipate the abrupt turn and rear-
7 ended the Plaintiff. On December 30, 2016, Defendant served an offer of judgment for \$15,000.
8 On December 15, 2017, the arbitration hearing was held. On December 26, 2017, the arbitrator
9 filed his decision and found Plaintiff and Defendant 50/50 liable for the accident and an ultimate
10 award to Plaintiff of \$21,992.50. On January 5, 2018, the Defendant filed a request for trial de
11 novo and demand for jury trial. On January 24, 2018, Plaintiff signed a release for \$15,000. On
12 February 5, 2018, a stipulation and order of dismissal with prejudice was filed. This case was
13 litigated in good faith based upon the facts and circumstances of this case. There is nothing in
14 the record to demonstrate otherwise.
- 15 11. Regarding Hakansson v. Sloan; ARB17-01939: On April 4, 2017, Sloan rear ended a vehicle at a
16 stop light and then struck the passenger side of Hakansson's vehicle. Hakansson claimed \$3,942.00
17 in medical specials. On June 9, 2018, the arbitrator provided an award in favor of Hakansson in the
18 amount of \$11,942.00. On June 18, 2018, Sloan filed a request for trial de novo. On December 10,
19 2018, after the short trial, the jury returned a verdict in the amount of \$8,000.00. On December 5,
20 2019, a notice of satisfaction of verdict was filed. This case was also litigated in good faith based
21 upon the facts and circumstances of this case.
- 22 12. Since I started working for Farmers and representing Farmers' insureds, I have been assigned
23 167 matters.
- 24 13. Plaintiff's statistics do not account for all the many matters handled by the undersigned that
25 settled prior to or after arbitration, what amounts cases have settled for and when, or arbitrations
26 in other jurisdictions, or binding arbitrations, or small claims cases, etc.
- 27 I declare under penalty of perjury that the foregoing is true and correct.
- 28

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

3 DATED: April 12, 2019

THE LAW OFFICES OF S. DENISE MCCURRY
- RENO

4
5 BY:


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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of
3 THE LAW OFFICES OF S. DENISE MCCURRY - RENO and that on the _____ day of April, 2019, I
4 served a true and correct copy of the above and foregoing **DECLARATION OF ADAM MCMILLEN** on the
5 parties addressed as shown below:

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

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

17
18 MARSHA J. CINKEL, An Employee of The Law Ofi
19 Denise McCurry - Reno
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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

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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,

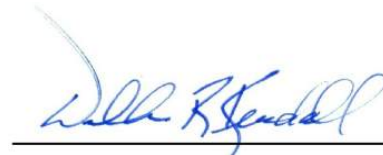
Defendants.

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO STRIKE REQUEST FOR TRIAL
DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY**

Plaintiff, JOHN S. WALKER, hereby files his Reply in Support of 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 18th 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. FARMERS TOTALLY MISSES THE MARK

Farmers¹ spends 6 ½ pages of the opposition arguing an irrelevant point. Specifically, Farmers goes into detail attempting to show the Court that it “meaningfully participated in good faith during the arbitration process....” (Opp. at p.3, line 22) However, this is not the issue.²

Farmers’ bad faith lies not in how they prepared for the arbitration hearing or in how they conducted themselves at the hearing. Farmers’ bad faith lies in their practice of automatically requesting a trial de novo regardless of the arbitration process in every single case in which an adverse arbitration award is render. This is a tactic designed to increase the time and expense of litigation for claimants, use the arbitration process as a device to obstruct and delay payment, and to pressure a settlement for less. This nefarious conduct is designed to frustrate the purpose of the arbitration program, which is to “...provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters.” NAR 2(A).

Regardless of the “participation” in the arbitration hearing, Farmers’ undeniable practice of requesting trial de novo in every case they lose at arbitration demonstrates that they intended to file a de novo request if they lost. That is the essence of bad faith.

2. FARMERS PRACTICE OF REQUESTING TRIAL DE NOVO IN EVERY CASE IT LOSES IS BAD FAITH

In *Gittings v. Hartz*, 116 Nev. 386, 393-394 (2000), the Supreme Court eliminated as

¹ The actions of Farmers are attributable to its insured when reviewing an arbitration proceeding. *Gittings v. Hartz*, 116 Nev. 386, 394 (2000).

² Farmers’ extensive dialog of the “facts” and “evidence” is worthless, since this Court is not called upon to assess the merits of the case. Nor is it at all relevant to an assessment of bad faith due to a practice of routinely filing requests for trial de novo upon losing arbitration.

1 possible support for the striking of the request for trial de novo the level of “participation” in the
2 arbitration hearing by the defendant. The Court went on to rule on the issue of routinely filing
3 requests for trial de novo, holding that:

4
5 ...competent statistical information that demonstrates that an
6 insurance company has routinely filed trial de novo requests
7 without regard to the facts and circumstances of each individual
8 case may be used to support a claim of bad faith.

9 Accordingly, the extent of “participation” Farmers demonstrated before and during the
10 arbitration hearing is irrelevant to whether they failed to participate in the Program in good faith
11 because they de novo every case they lose. The clearly proven fact that they have filed for trial de
12 novo in **all of the cases they lost at arbitration** is clear and convincing evidence of bad faith. **If**
13 **they lose, they de novo.**

14 2. FARMERS FILES FOR DE NOVO IN EVERY CASE IT LOSES

15 What better statistics are there than the official records of the Second Judicial District
16 Court from where Plaintiff obtained the proof that Farmers files for de novo in every case it loses?
17 Those statistics conclusively show that Farmers, under McMillen’s tenure, has lost 10 cases at
18 arbitration (as of the filing of this motion) and requested trial de novo in every one of them. This
19 is exactly the type of statistics that the *Gittings* Court held would support a conclusion that
20 Farmers automatically requests a trial de novo regardless of the arbitration process because they
21 do it every single time.

22
23 The total number of cases that McMillen has handled for Farmers insureds is also
24 irrelevant.³ We are concerned with the total number of arbitration verdicts rendered against
25

26
27 ³ Likewise, the cases that settled before arbitration, the amounts they settled for and when, and information about arbitrations in
28 other jurisdictions, binding arbitrations, or small claims cases are not relevant to the issue before the Court.

1 Farmers compared to the number of requests for trial de novo in those cases. Those statistics
2 show that Farmers/McMillen lost 10 cases and filed for trial de novo in every one of them.

3 This is clear evidence that Farmers goes into arbitration with the plan that if they lose, they
4 will file a request for trial de novo. There exists a clear correlation between requests for trial de
5 novo and arbitration verdicts against Farmers.

7 Farmers offers no explanation for why it has routinely filed requests for trial de novo in
8 every single case where an arbitration award was rendered against it. Farmers has offered no
9 explanation to refute the allegation, evidence in support thereof, and conclusion that it
10 automatically requests a trial de novo every time it loses.

12 Farmer's "discussion" of the *Castro-Avalos v. Porsow* case is an example of how Farmers'
13 practice of filing for trial de novo whenever it loses worked to force the Plaintiff to accept a
14 settlement that was less than the arbitration award.

16 Farmers' "discussion" of the *Hakansson v. Sloan* case is an example of utilizing the trial
17 de novo to increase the expense of litigation for claimants and obstruct and delay payment.
18 Hakansson obtained an arbitration award of \$ 11,942.00. Farmers filed for trial de novo. At the
19 short trial, six months later, the jury awarded Plaintiff \$ 8,000.00. Farmers neglects to inform the
20 Court that the Plaintiff was also awarded \$ 5,939.81 in fees and costs, bringing the total judgment
21 to \$ 13,939.81, nearly \$ 2,000.00 more than the arbitration award.

23 The pattern and practice of Farmers, as shown by these irrefutable statistics, is to file a
24 request for trial de novo in **every** case that goes against them. The "strategy" of filing trial de
25 novo requests without regard to the facts and circumstances of each individual case is a tactic that
26 is designed to increase the time and expense of litigation for claimants, use the arbitration process
27

1 as a device to obstruct and delay payment, and pressure a settlement for less.

2 NAR 22 provides:

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

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

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

15 3. CONCLUSIONS

16 How Farmers prepared for and what it did at the arbitration hearing are not relevant. The
17 only cases that are relevant to the issue of bad faith requests for trial de novo are those cases in
18 which Farmers filed requests for trial de novo.

19 The statistics cited herein show beyond a doubt that McMillen/Farmers have automatically
20 filed a request for trial de novo in **every** case resulting in an arbitration award for the Plaintiff.
21 Plaintiff submits that the official Washoe Courts website case lists and the official Washoe
22 County District Court Eflex system data irrefutably prove that McMillen/Farmers has routinely
23 filed trial de novo requests in 100 % of adverse arbitration cases without regard to the facts and
24 circumstances of each individual case. Plaintiff submits that this evidence is “competent
25
26

1 statistical information” (*Gittings*, at 394) upon which this Court can conclude that

2 McMillen/Farmers have not been participating in the arbitration process in good faith.

3
4 As a consequence, the request for trial de novo in this case should be stricken or discovery
5 followed by an evidentiary hearing should be granted.

6 Dated this 18th day of April, 2019.

7 WILLIAM R. KENDALL, ESQ.

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9
10 

11 137 Mt. Rose Street
12 Reno, NV 89509
13 (775) 324-6464
14 Attorney for Plaintiff
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1 **Certificate of Service**

2 **RE:** CV18-01798

3 **Judge:** HONORABLE JUDGE EGAN WALKER

4 **Court:** Second Judicial District Court - State of Nevada

5 **Case Title:** Walker v. Michaels

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

7 **Date Generated:** 04-18-2019.

8 **I hereby certify that on 04-18-2019, I electronically filed the foregoing with the Clerk of the**
9 **Court by using the electronic filing system which will send a notice of electronic filing to the**
10 **following:**


11 Adam McMillen, Esq.

12 **The following people need to be notified:**

13 None.

14 Dated this 18th day of April, 2019.

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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: **4/18/2019**_____

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

5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR COUNTY OF WASHOE**

8 *****

9 JOHN S. WALKER,

10 Plaintiff,

CASE NO.: CV18-01798

11 vs.

DEPT. NO.: 7

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


14 Defendants.
15 _____/

16 **MOTION FOR NRCP 11 SANCTIONS**

17 Plaintiff, JOHN S. WALKER, hereby files his Motion for NRCP 11 Sanctions, and
18 submits the following Points and Authorities, exhibits and argument in support thereof.

19 Dated this 9th day of August, 2019.

20 WILLIAM R. KENDALL, ESQ.

21
22 
23 _____

24 137 Mt. Rose Street
25 Reno, NV 89509
26 (775) 324-6464
Attorney for Plaintiff
27
28

1 **1. Facts**

2 This case stems from a collision between Plaintiff while riding his bicycle in a designated
3 bicycle lane, and Defendant, operating a motor vehicle. On 3/13/2019, the case was arbitrated
4 before court-appointed arbitrator, Graham Galloway, Esq. On 3/18/2019, Mr. Galloway filed the
5 Arbitration Award, finding in favor of Plaintiff, assessing 20 % comparative negligence, and
6 awarding total damages of \$ 12,469.60. The next day, 3/19/2019, Defendant, through Farmers'
7 attorney Adam P. McMillen, filed a Request for Trial De Novo.
8

9 On April 2, 2019, Plaintiff filed his Motion to Strike Request for Trial De Novo; Impose
10 Sanctions; and Permit Discovery. The basis of Plaintiff's Motion is that Farmers does not
11 participate in the Arbitration Program in good faith. Specifically, the "strategy" of filing trial de
12 novo requests without regard to the facts and circumstances of each individual case is a tactic that
13 is designed to increase the time and expense of litigation for claimants and uses the arbitration
14 process as a device to obstruct and delay payment. This conduct is designed to frustrate the
15 purposes of the arbitration program, which are to "...provide a simplified procedure for obtaining
16 a prompt and equitable resolution of certain civil matters." NAR 2(A).
17

18 The statistics show without a doubt that Farmers files requests for trial de novo in nearly
19 100 % of cases where an arbitration award in favor of Plaintiff occurs.
20

21 **2. Argument**

22 NRCP 11 provides that by presenting a pleading to the court, the attorney is certifying to
23 the best of his knowledge, information, and belief, formed after an inquiry reasonable under the
24 circumstances that (1) it is not being presented for any improper purpose, such as to harass or to
25 cause unnecessary delay or needless increase in the cost of litigation.
26
27

1 Plaintiff asserts that Farmers files requests for trial de novo for these delineated improper
2 purposes. Accordingly, Plaintiff asserts that NRCP 11 sanctions are in order.

3 **3. Conclusions**

4
5 Plaintiff respectfully submits that should the Court grant his Motion to Strike Request for
6 Trial De Novo, finding that Farmers has engaged in the nefarious conduct alleged, then NRCP 11
7 sanctions are warranted. Therefore, Plaintiff requests that the Court rule upon this motion for
8 sanctions at or after the hearing scheduled for 10/22/2019, and grant such other or further relief
9 that the Court deems just and fair.

10 Dated this 9th day of August, 2019.

11
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15 William R. Kendall, Esq.
16 137 Mt. Rose Street
17 Reno, NV 89509
18 Attorney for Plaintiff
19
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Certificate of Service

RE: CV18-01798

Judge: HONORABLE JUDGE CONNIE STEINHEIMER

Court: Second Judicial District Court - State of Nevada

Case Title: Walker v. Michaels

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

Date Generated: 8-9-2019.

I hereby certify that on 08-09-2019, 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 9th day of August, 2019.



William R. Kendall, Esq.

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**_____



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

10 Date: **8/9/2019**_____

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

DISTRICT COURT
WASHOE COUNTY, NEVADA

JOHN S. WALKER,

Plaintiffs,

vs.

SHEILA MICHAELS; DOES I-V, inclusive,

Defendants.

Case No.: CV18-01798

DEPT. NO. 7

OPPOSITION TO MOTION FOR RULE 11 SANCTIONS

In their Rule 11 Motion, Plaintiff, through counsel, make the kind of accusation that is of the utmost seriousness. They not only attempt to impugn the character of another lawyer, but charge that lawyer and his client with “nefarious” conduct. Such accusations should not and cannot be made or taken lightly; the lawyer who casts such aspersions against another lawyer without a well-grounded basis for doing so is violating his duty as an officer of the Court and subjects himself to sanctions and punishment.

Without providing any factual basis, Plaintiff’s counsel makes the following bald assertions at page 2, lines 11-18 of the motion:

The basis of Plaintiff’s Motion is that Farmers does not participate in the Arbitration Program in good faith. Specifically, the “strategy” of filing trial de novo requests without regard to the facts and circumstances of each individual case is a tactic that is designed to increase the time and expense of litigation for claimants and uses the arbitration process as a device to obstruct and delay payment. This conduct is designed to frustrate the purposes of the arbitration program, which are to “...provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters.” NAR 2(A).

1 Without providing any factual basis, Plaintiff's counsel further contends at page 2, line 23 through
2 page 3, line 2 of the motion:

3 NRCP 11 provides that by presenting a pleading to the court, the attorney is certifying to the
4 best of his knowledge, information, and belief, formed after an inquiry reasonable under the
5 circumstances that (1) it is not being presented for any improper purpose, such as to harass
6 or to cause unnecessary delay or needless increase in the cost of litigation. Plaintiff asserts
that Farmers files requests for trial de novo for these delineated improper purposes.
Accordingly, Plaintiff asserts that NRCP 11 sanctions are in order.

7 Such serious accusations, if true, should be dealt with by any court. However, the corollary
8 is equally as true; that is, if such accusations are not true, and known not to be true, or are otherwise
9 recklessly made without regard to their veracity, the Court also needs to deal with such falsehoods just as
10 severely and swiftly:

11 Rule 11 is not a toy. A lawyer who transgresses the rule abuses the special role our legal
12 system has entrusted to him. *E.g., Dreis & Krump Mfg. Co. v. International Association of*
13 *Machinists and Aerospace Workers*, 802 F.2d 247, 255 (7th Cir.1986). He can suffer severe
14 financial sanctions and, if his misconduct persists, he can find himself before a disciplinary
15 commission. *See, e.g., Model Rule of Professional Responsibility 3.1* ("A lawyer shall not
bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis
for doing so that is not frivolous."). In short, a Rule 11 violation is a serious thing, and an
accusation of such wrongdoing is equally serious.

16 An unjustly accused attorney who argues a losing position may seek to demonstrate that,
17 although his argument was unsuccessful, his opponents' Rule 11 accusation was
18 frivolous. *See Local 106 v. Homewood Memorial Gardens, Inc.*, 838 F.2d 958 (7th
19 Cir.1988). When the accused attorney actually prevails on his underlying position, his effort
to turn the tables on his accuser has particular strength. It will be a rare case indeed in which
such an attorney cannot successfully show that the accusation lacked a reasonable basis in
fact and law.

20 Rule 11 forces lawyers to think twice before filing; this mandate applies with equal force
when the filing includes a Rule 11 claim.

21 *Draper & Kramer, Inc. v. Baskin-Robbins, Inc.*, 690 F. Supp. 728, 732 (N.D. Ill. 1988).

22 As was abundantly demonstrated prior to the filing of Plaintiff's motion for Rule 11 sanctions,
23 Plaintiff's accusations are patently untrue. *See* OPPOSITION TO MOTION TO STRIKE REQUEST FOR
24 TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY, filed herein on 4/12/19;
25 DECLARATION OF ADAM MCMILLEN IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE
26 REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY, filed herein
27 on 4/12/19.
28

1 Therefore, Plaintiff's motion was never well grounded or supported in either fact or law, and he
2 knew or should have known this, but brought the motion anyway to harass or to cause unnecessary delay or
3 needless increase in the cost of litigation. For his conduct, Plaintiff's counsel should be properly punished
4 and reprimanded by the Court for filing this frivolous motion. *See Rivero v. Rivero*, 125 Nev. 410, 441, 216
5 P.3d 213, 234 (2009) (The district court may award attorney fees as a sanction under NRS 18.010(2)(b) and
6 NRCp 11 if it concludes that a party brought a frivolous motion).

7 Also, Plaintiff's counsel's motion is a character assassination against Defense counsel and his
8 professional integrity and ethics. Defense counsel has no adequate remedy to "unring" a bell that has been
9 rung by Plaintiff's counsel's false accusations, because they are contained in a public record. Therefore,
10 Defense counsel is entitled not only to a denial of Plaintiff's motion, and whatever sanctions this Court sees
11 fit, Defense counsel should also be entitled to an express exoneration of these serious accusations.

12 By filing this additional motion for sanctions, without regard to the facts and circumstances of each
13 case, and without regard to the actual statistics, Plaintiff's counsel is engaging in the very behavior that he is
14 wrongfully accusing Farmers and the undersigned of.

15 The request for trial de novo, filed in this matter, is based upon the facts and circumstances of
16 this case. The requests for trial de novo, filed in all other matters, are based upon the facts and
17 circumstances of each individual case. There is no evidence to the contrary. Plaintiff's counsel's
18 motion should be denied. If any sanctions are warranted, they should be directed at Plaintiff's counsel
19 for bringing this frivolous motion and engaging in the very behavior he is accusing the undersigned of.

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

22 DATED: August 19, 2019

THE LAW OFFICES OF S. DENISE MCCURRY
- RENO

24 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 19th day of August, 2019, I served a true and correct copy of the above and foregoing OPPOSITION TO MOTION FOR RULE 11 SANCTIONS 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/ Adam McMillen

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.

**PLAINTIFF'S REPLY IN FURTHER SUPPORT OF MOTION FOR NRCP 11
SANCTIONS**

Plaintiff, JOHN S. WALKER, hereby files his Reply in Further Support of Motion for
NRCP 11 Sanctions as follows.

Dated this 21st day of August, 2019.

WILLIAM R. KENDALL, ESQ.



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


1 The factual basis of Plaintiff's Motion is contained at length in his Motion to Strike
2 Request for Trial De Novo, which is currently set for hearing on 10/22/2019. Plaintiff will prove
3 by statistical analysis of the trial de novo request statistics that Farmers and McMillen routinely
4 request trial de novo in nearly every case that they lose. It is nearly 100 %. Plaintiff asserts that
5 this is *per se* bad faith participation in the Arbitration Program. Plaintiff asserts that such
6 statistical analysis will show ulterior motivation for such filings, ie, that the requests are made for
7 "improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost
8 of litigation." NRCP 11.
9

10
11 When the Court agrees and holds that Farmers and McMillen routinely file requests for
12 trial de novo in nearly 100 % of cases that they lose at arbitration, such conduct, necessarily fits
13 squarely within the definition of a Rule 11 violation.

14 **3. Conclusions**

15 Plaintiff respectfully submits that should the Court grant his Motion to Strike Request for
16 Trial De Novo, finding that Farmers has engaged in the nefarious conduct alleged, then NRCP 11
17 sanctions are warranted. Therefore, Plaintiff requests that the Court rule upon this motion for
18 sanctions at or after the hearing scheduled for 10/22/2019, and grant such other or further relief
19 that the Court deems just and fair.
20

21 Dated this 21st day of August, 2019.
22



23
24
25 William R. Kendall, Esq.
26 137 Mt. Rose Street
27 Reno, NV 89509
28

1 **Certificate of Service**

2 **RE:** CV18-01798

3 **Judge:** HONORABLE JUDGE CONNIE STEINHEIMER

4 **Court:** Second Judicial District Court - State of Nevada

5 **Case Title:** Walker v. Michaels

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

7 **Date Generated:** 8-21-2019.

8 **I hereby certify that on 08-21-2019, I electronically filed the foregoing with the Clerk of the**
9 **Court by using the electronic filing system which will send a notice of electronic filing to the**
10 **following:**

11 Adam McMillen, Esq.

12 **The following people need to be notified:**

13 None.

14 Dated this 21st day of August, 2019.

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William R. Kendall, Esq.

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Pursuant to NRS 239B.030

Date: 8/21/2019

Walter R. Kendall

William R. Kendall

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 THE COUNTY OF WASHOE

* * *

JOHN S. WALKER,

Plaintiff,

CASE NO.: CV18-01798

vs.

DEPT. NO.: STP

SHEILA MICHAELS;
DOES I-V; inclusive,

Defendants.

PLAINTIFF'S DISCLOSURE OF EXPERT WITNESSES

Plaintiff, JOHN S. WALKER, by and through his counsel, William R. Kendall, Esq.,
submits the following Disclosure of Expert Witnesses produced in accordance with NRCP 16.1:
1. Dr. Gilbert Coleman, Ph.D., 40 Pine View Court, Reno, NV 89511-2761. Dr. Coleman's
report, CV, list of publications, list of testimonies, and fee schedule are attached hereto. Dr.
Coleman is expected to testify in accordance with his report, elaborating upon it where necessary.

Dated this 13th day of September, 2019.

WILLIAM R. KENDALL, ESQ.



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

Certificate of Service
RE: CV18-01798

Judge: HONORABLE JUDGE CONNIE STEINHEIMER

Court: Second Judicial District Court - State of Nevada

Case Title: Walker v. Michaels

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

Date Generated: 09-13 -2019.

I hereby certify that on 09-13-2019, 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 13th day of September, 2019.



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: **9/13/2019**_____

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LIST OF EXHIBITS

1.	Exhibit 1(Coleman report).....	p. 6
2.	Exhibit 2 (Coleman CV).....	p. 24
3.	Exhibit 3 (Coleman list of testimonies).....	p. 28
4.	Exhibit 4 (Coleman fee schedule).....	p. 32

Exhibit 1

Exhibit 1

GILBERT COLEMAN, PH.D.
ECONOMIC CONSULTING, INC.

40 PINE VIEW COURT
RENO, NV 89511-2761
TELEPHONE 775-852-3259
FAX 775-852-3033
E-MAIL Grcoleman@colemaneconomics.com
WEBSITE www.colemaneconomics.com

September 12, 2019

William R. Kendall, Esq.
Attorney at Law
137 Mt. Rose Street
Reno, NV 89509

Dear Mr. Kendall:

I have completed a statistical analysis of the cases on which Adam McMillen represented clients of Farmers Insurance Company and for which trial de novo was requested. The results of that statistical analysis are reported on the enclosed report and accompanying quantitative addendum.

Please call me if you have any questions.

Sincerely

A handwritten signature in black ink, appearing to read 'G. Coleman', followed by a long horizontal line.

Gilbert R. Coleman, Ph.D.
President

enclosures

Introduction

In the Gittings v. Hartz case (116 Nev. 386,386(2000)), the issue of the percentage of the cases that were referred to arbitration pursuant to the Nevada Arbitration Rules and subsequently resulted in a request for trial de novo was raised by the Appellant. The ruling on the case discusses the use of statistics to demonstrate the percentage of de novo requests filed by the Respondent's insurance company. The Court ruled as follows:

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.¹

The purpose of this report is to provide a comprehensive quantitative statistical analysis that can be used to evaluate the percentage of de novo requests from Attorney Adam P. McMillen for Farmers' Insurance.

Discussion of the Analysis

The Rules Governing Alternative Dispute Resolution were effective March 3, 2005.² There has been, therefore, many years of experience with the latest version of the rules. In fact, in the 2015 Annual Report of the Nevada Judiciary, the results of the Alternative Dispute Resolution Caseload and Settlement Rates, Fiscal Year 2015 were reported on Table 10.³ I have reproduced the Long-Term Average entry for the Second Judicial District. This is the district in which Mr. McMillen's cases were filed.

Table 10. Alternative Dispute Resolution Caseload and Settlement Rates, Fiscal Year 2015

Second Judicial District Court

	Long-Term Average
Civil Caseload	4,131
Cases Entered	412
Cases Removed	375
Cases Settled or Dismissed	295
Settlement Rate	85%
Trials De Novo Requested	51
Trials De Novo Rate	15%

¹ 116 Nev. 386,386(2000) Gittings v. Hartz; Headnote 10. Page 8

² Rules Governing Alternative Dispute Resolution, Adopted by the Supreme Court of Nevada, dated December 22, 2004

³ 2015; Annual Report of the Nevada Judiciary, Fiscal Year 2015; Table 10; page 35

For the purposes of this analysis, I assume that the system works. By this, I mean that as a general rule, the parties in the system participate in good faith. The results over the long term in the Second Judicial District will, from this assumption, demonstrate how the Alternate Dispute Resolution process would work when in general participants act in good faith. For any particular participant, significant divergence from the long-term results would yield a conclusion that the participant was not acting according to the general process of good faith and could yield the conclusion, if the actions thwarted the purpose of the Alternate Resolution process, that the participant was acting in bad faith.

In this instance, the purpose is to compare the results of cases on which Adam McMillen was the attorney to the long-term results of the Alternative Resolution process. This is done using a test of the equality of means of two random processes. The assumption of the analysis, called the null hypothesis in statistical terms, is that the percentage of Mr. McMillen's cases that go through the Alternative Resolution process and end up going to a request for trial de novo is not significantly greater than the percentage of cases in the Second Judicial District over the long term that go through the process and end up going to a request for trial de novo. The other option, called the alternative hypothesis, is that the percentage of McMillen case is greater than the long-term average.

Data Analysis

The data used to calculate the sample mean of the long-term results for the Second Judicial District comes from the 2015 Annual Report of the Nevada Judiciary.⁵ This is a primary source of data. There was one piece of information missing from the table. It is number of cases eligible for a de novo request. There is no specific heading for that information nor is there any number that corresponds to it given the data descriptions that are listed. However, it is a simple value to calculate from the data available and to confirm from the other relationships on the table. I have made that calculation.

I compiled the data for the McMillen analysis from the Washoe County Courts website. I recorded all the cases listed on the Washoe County website from 2006 to the present in which McMillen was counsel. I was able to determine the process of each case and could determine whether the case had gone to arbitration at all, if the case had been referred to arbitration and then returned prior to the arbitration to the regular trial process, if the case had been referred to arbitration, had the arbitration, but settled before the arbitration ruling was issued, if the case has not been completed yet, and if the case had gone through the arbitration process to the arbitration award and either the award accepted or there was a request for trial do novo. The only cases of interest were the ones that went through the arbitration process to an award and either the award was accepted, the decision was for the defense and, therefore, in Mr. McMillen's and Farmer's favor, or trial de novo was requested by McMillen. I have eliminated all other cases from the

⁴ This value is the result of the calculation of 51 De Novo trial requests being 15% of the cases that could result in De Novo trial requests

⁵ Nevada Supreme Court; Annual Report of the Nevada Judiciary Fiscal Year 2015, Page 35, Table 10

analysis. They were eliminated because they were not either entered into the Alternative Dispute Resolution process, for cases that have been resolved, or have not entered into the process for cases that are on-going, or they started with the process but resolved before the process continued through to either acceptance of the award or request for trial de novo. As a result, these eliminated cases were not relevant to an analysis of the percentage of cases where trial de novo could be requested since the cases did not reach the point where trial de novo was an option.

There were eighteen total cases involving Mr. McMillen that were eligible for trial de novo request. In two cases, trial de novo was requested by the party not represented by Mr. McMillen and these two were not included in the statistical analysis. In three cases, the arbitrator's decision was in favor of the defense and, therefore, the party represented by Mr. McMillen and Farmer's. There would be no reason why the defense would request trial de novo when it had prevailed in the arbitration. As a result, these three cases were also not included in the statistical analysis. Of the remaining thirteen cases, trial de novo was requested in eleven and the award was accepted in two.

See the McMillen Cases page on the attached spreadsheet for the full list of McMillen cases and the Cases Eligible page for the list of eligible cases represented by Mr. McMillen

Statistical Analysis

I ran a test of the equality of two sample means for the statistical analysis. The null and alternate hypotheses are:

Null Hypothesis: $p_1 \leq p_2$

Alternate Hypothesis: $p_1 > p_2$

where p_1 is the proportion of eligible cases for which Mr. McMillen requests trial de novo and p_2 is the proportion of eligible cases for which trial de novo is requested in the Second Judicial District over the ten years between 2005 and 2015. If the null hypothesis is accepted, Mr. McMillen requests trial de novo at the same rate or less than the long-term average. If the alternative hypothesis is accepted, Mr. McMillen requests trial de novo significantly more often than the long-term average.

The test statistic, also called a z-statistic or a standard normal statistic is calculated using:

$$z = \frac{\left(\hat{p}_1 - \hat{p}_2 \right) - (p_1 - p_2)}{\sqrt{p(1-p)\left(\frac{1}{n_1} + \frac{1}{n_2}\right)}}$$

where \hat{p}_1 is the proportion of cases for which Mr. McMillen has requested trial de novo, \hat{p}_2 is the proportion of cases that request trial de novo in the long – term Second Judicial District data, p_1 and p_2 are the proportion of cases where trial de novo are requested by Mr. McMillen and in the Second Judicial District assuming that the null hypothesis is true and therefore are equal, and n_1 and n_2 are the two sample sizes.

$$\hat{p} = \frac{n_1\hat{p}_1 + n_2\hat{p}_2}{n_1 + n_2}$$

If $z \leq 2.5758293$, we accept the null hypothesis that Mr. McMillen's request for trial de novo is insignificantly different from the long-term average in the Second Judicial District. If $z > 2.5758293$, we accept the alternate hypothesis that Mr. McMillen's request for trial de novo is significantly greater from the long-term average in the Second Judicial District. This test is conducted at the 99% level.

See the Statistical Analysis page of the attached spreadsheet for the calculations of these values.

Statistical Results

Mr. McMillen requests trial de novo **84.62%** of the time compared to 15% of the time over the long term in the Second Judicial District. From the analysis, we can state that we accept the alternate hypothesis at the 99% level. This means that the analysis demonstrates that Mr. McMillen requests trial de novo significantly more often than trial de novo requested in the long-term average in the Second Judicial District. The z-statistic is 6.47383126. This is a large z-statistic compared to the critical value of 2.5758293. This value yields a conclusion that Mr. McMillen certainly, by any reasonable measure, requests trial de novo more often than the long-term average.

Conclusions

The basic statistical conclusion of this analysis is that Mr. McMillen's use of the request for trial de novo is significantly different from and significantly greater than the average use of request for trial de novo by attorneys practicing in the Second Judicial District. In the Gittings ruling, the Nevada Supreme Court wrote:

(C)ompetent 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.⁶

⁶ Gittings Ruling page 8

No statistical analysis looks at individual cases. Statistical analysis looks at averages to determine what the common practice is. This analysis demonstrates that Mr. McMillen in his role as representative of Farmers Insurance routinely requests trial de novo at a rate that is so much higher than the common practice in the Second Judicial District that the conclusion must be drawn that Farmers Insurance does not approach the Alternative Dispute Resolution process as is common practice among other attorneys for insurance companies.

McMillen Cases

Case Number	Arbitration?	Settled?	Arbitration Award	Request for De Novo
CV06-00013	No			
CV07-00233	No			
CV08-00067	No			
CV08-00261	No			
CV08-02918	No			
CV08-03239	No			
ARB08-02918	Yes	Yes		
ARB08-03239	Yes	Yes		
CV09-00666	No			
CV09-02189	No			
CV09-02547	No			
CV09-02823	Yes	No		Plaintiff
CV09-02862	No			
CV09-03225	No			
CV09-03256	No			
ARB09-02547	Yes	Yes		
ARB09-02823	Yes	No	Yes	Plaintiff
CV10-00757	No			
CV10-00881	No			
CV10-01122	No			
ARB10-00757	Yes	Yes		
CV10-01408	No			
CV10-01544	No			
CV10-01682	No			
CV10-01745	No			
CV10-02169	No			

ARB10-01122	Yes		
CV10-03697	No		
CV10-03736	No		
CV11-01836	No		
CV11-02059	No		
CV11-02272	No		
CV11-02675	No		
CV11-03473	No		
CV11-03683	No		
CV12-00786	No		
CV12-01400	No		
CV12-01751	No		
ARB12-01400	Yes		
CV13-01234	No		
PR13-00306	No		
CV13-01440	No		
CV14-00653	No		
CV14-01057	No		
CV16-00915	No		
CV16-01472	No		
CV16-01806	No		
CV16-01903	No		
CV16-02062	Yes	Yes	Plaintiff
CV16-02080	No		
CV16-02166	No		
CV16-02521	Yes	No	Defendant/McMillen Not McMillen
ARB16-02166	Yes	No	
CV17-00108	No	Yes	
CV17-00192	No		
CV17-00534	Yes	Yes	Defendant/McMillen
CV17-00588	No		
CV17-00623	Yes	No	Yes
CV17-00764	Yes	Dismissed	

CV17-00879	Yes	Yes		
ARB17-00623	Yes	No	Yes	Defendant/McMillen
ARB16-02062	Yes	No	Yes	Plaintiff
CV17-01094	No			
CV17-01260	No			
CV17-01349	Yes	No	Yes	Defense award
CV17-01356	Yes	No	Yes	Defendant/McMillen
CV17-01380	Yes	Yes	Yes	
CV17-01399	No			
ARB17-01094	No			
CV17-01448	No			
CV17-01468	No			
CV17-01505	Yes	Yes		
CV17-01517	No			
ARB17-01260	Yes	Yes		
CV17-01568	Yes	Yes		
CV17-01614	Yes	No	Yes	Defendant/McMillen
CV17-01629	Yes	Yes		
CV17-01633	No	Yes		
CV17-01641	Yes	Yes		
CV17-01666	Yes	Yes		
ARB17-01356	Yes	No	Yes	Defendant/McMillen
CV17-01723	No			
CV17-01721	No			
CV17-01761	No			
ARB17-01448	No			
CV17-01839	No			
CV17-01939	Yes	No	Yes	Defendant/McMillen
ARB17-01614	Yes	No	Yes	Defendant/McMillen
ARB17-01666	No			
ARB17-01505	Yes	Yes		
ARB17-01349	Yes	No	Yes	Defense Award
CV17-02197	No			

CV17-02215	No			
CV17-02237	No			
ARB17-01939	Yes	No	Yes	Defendant/McMillen
CV17-02247	No			
CV17-02288	No			
CV17-02351	No			
CV17-02380	No			
CV18-00005	Yes	Yes		
CV18-00031	Yes	Yes		
ARB17-01839	No			
ARB17-01641	Yes	Yes		
CV18-00163	No			
CV18-00187	Yes	Yes		
CV18-00204	Yes	Yes		
CV18-00244	No			
ARB17-02237	Yes	Yes		
ARB17-01629	Yes	Yes		
ARB18-00005	Yes	Yes		
ARB18-00031	Yes	Yes		
ARB17-01568	Yes	Yes		
CV18-00439	No			
CV18-00457	Yes	No	Yes	Defendant/McMillen
CV18-00491	No			
CV18-00504	No			
CV18-00530	No			
CV18-00565	No			
ARB17-00764	Yes	Yes		
CV18-00620	No			
CV18-00662	No			
CV18-00713	No			
CV18-00744	Yes	No	Yes	Defendant/McMillen
ARB18-00204	Yes	Yes		
ARB18-00439	Yes	Yes		

ARB18-00163	Yes	Yes	
ARB18-00244	Yes	Yes	
CV18-00949	No		
CV18-00974	Yes	No	Defense Award
CV18-00982	Yes		
CV18-01000	No		
ARB18-00530	Yes	Yes	
ARB18-00457	Yes	No	Defendant/McMillen
CV18-01147	No		
CV18-01318	Yes	Yes	
CV18-01382	No		
CV18-01419	Yes		
CV18-01416	Yes	No	Defendant/McMillen
CV18-01428	No		
CV18-01441	Yes	Yes	
CV18-01532	No		
CV18-01629	No		
CV18-01619	Yes	Yes	
CV18-01633	Yes	Yes	
ARB18-00744	Yes	No	Defendant/McMillen
CV18-01673	Yes		
CV18-01691	No		
CV18-01697	No		
CV18-01749	Yes	Yes	
CV18-01798	Yes	No	Defendant/McMillen
ARB18-01147	Yes	Yes	
ARB18-01416	Yes	No	Defendant/McMillen
CV18-01865	No		
ARB18-01619	Yes	Yes	
CV18-01901	No		
ARB18-01441	Yes	Yes	
ARB18-01318	Yes	Yes	
CV18-02032	Yes	No	Defendant/McMillen

ARB18-01798	Yes	No	Yes	Defendant/McMillen
ARB18-00974	Yes	Yes		
CV18-02137	Yes			
ARB18-01749	Yes	Yes		
ARB18-00982	Yes	No	Yes	Accepted
CV18-02316	No			
ARB18-01419	Yes	No	Yes	Accepted
CV18-02383	No			
CV18-02391	No			
ARB18-01633	Yes		Accepted	
ARB18-02032	Yes	No	Yes	Defendant/McMillen
CV18-02504	No			
CV19-00067	Yes			
CV19-00088	Yes	Yes		
CV19-00099	Yes			
CV19-00132	Yes			
CV19-00151	Yes			
ARB18-01673	Yes			
CV19-00229	No			
CV19-00254				
CV19-00336	Yes			
CV19-00347	No			
CV19-00351	No			
CV19-00400	Yes			
CV19-00416	Yes			
ARB18-01691	No			
CV19-00507	No			
ARB19-00067	Yes			
CV19-00616	Yes			
ARB19-00088	Yes	Yes		
CV19-00705				
CV19-00716				
CV19-00706	Yes			

CV19-00739	
ARB19-00099	Yes
ARB19-00416	Yes
CV19-00886	Yes
CV19-00885	Yes
ARB19-00400	Yes
ARB19-00336	Yes
CV19-01201	
ARB19-00616	Yes
ARB19-00151	Yes
CV19-01192	
ARB19-00347	Yes
ARB19-00132	Yes
ARB19-00716	Yes
ARB19-00886	Yes
ARB19-00885	Yes

Yes

Case Eligible

	Case Number	Arbitration?	Settled?	Arbitration Award	Request for De Novo
1	CV09-02823 ARB09-02823	Yes Yes	No No	Yes Yes	Plaintiff Plaintiff
2	CV16-02062 ARB16-02062	Yes Yes	No No	Yes Yes	Plaintiff Plaintiff
3	CV16-02521 ARB16-02521	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
4	CV17-00534	Yes	No	Yes	Defendant/McMillen
5	CV17-00623 ARB17-00623	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
6	CV17-01349 ARB17-01349	Yes Yes	No No	Yes Yes	Defense Award Defense Award
7	CV17-01356 ARB17-01356	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
8	CV17-01614 ARB17-01614	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
9	CV17-01939 ARB17-01939	Yes Yes	No No	 Yes	Defendant/McMillen

10	CV18-00457 ARB18-00457	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
11	CV18-00744 ARB18-00744	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
12	CV18-00974	Yes	No	Yes	Defense Award
13	CV18-01416 ARB18-01416	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
14	CV18-01798 ARB18-01798	Yes Yes	No No	Yes Yes	Defendant/McMillen Defendant/McMillen
15	CV18-02032 ARB18-02032	Yes Yes		Yes	Defendant/McMillen Defendant/McMillen
16	ARB18-00982	Yes	No	Yes	Defense Award
17	ARB18-01419	Yes	No	Yes	Accepted
18	ARB18-01633	Yes	No	Yes	Accepted
Total Cases					13
Trial de novo requested					11
Award Accepted					2

Statistical Analysis

Test of the Difference in Population Proportions

Data

	Adam McMillen	Second Judicial District
de novo requests	11	51
potential cases to be requested	13	340
Percentage requested	84.62%	15.00%

$p =$

0.17563739

$z =$

6.47383126

z critical =

2.5758293

Probability of the z statistic

1

Exhibit 2

Exhibit 2

GILBERT R. COLEMAN

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Reno, Nevada 89511
E-mail: gcoleman@colemaneconomics.com

Telephone: 775-852-3259
Fax: 775-852-3033

EDUCATION

University of Southern California; Bachelor of Arts; Economics and Mathematics; 6/77

Stanford University; Master of Science; Operations Research; 6/80

Stanford University; Doctor of Philosophy; Economics; 6/83

EXPERIENCE

Professional

Economic consultant; Self-employed; Consultant of litigation, legislative issues, economic impact; economic feasibility; regulation, statistical analysis, and general economic issues, 3/84 to present. I have worked as a consultant for the United States, the State of Nevada, the State of California, Washoe County, Newmont Mining, Equitorial Mining Limited, Sempra Generation, the Airport Authority of Washoe County, First Interstate Bank, Nevada Bell, Sierra Pacific Power, the AFL-CIO, the Retired Public Employees of Nevada, Circus Circus, Atlantic Richfield Company, Western Hyway Trucking Company, Design Concepts West, Richard D. Irwin, Inc., Lawyers Title Company of Northern Nevada, Harvey's Wagon Wheel, The law firms of Woodburn and Wedge; Yetter and Warden, Lionel, Sawyer, and Collins; Beckley, Singleton, De Lanloy, Jemison, and List; Tuttle and Taylor; Perry and Spann; and Hibbs, Roberts, Lemons, and Grundy; as well as several others. I have appeared on television stations KCRL, KOLO, and KTVN and radio station KRNO, on Nevada Newsmakers and have been interviewed by the Reno Gazette-Journal, Reno News and Review, and the Northern Nevada Business Weekly as an economic expert.

University of Nevada, Reno; Part-time faculty; beginning 1/87.

University of St. Francis, Part-time faculty, beginning 1/03 to 6/09.

University of Phoenix, Part-time faculty, beginning 7/03 to 12/04.

University of Nevada, Reno; Assistant Professor of Economics; 1/83 to 6/86.

Merrill Lynch IBAR; Economist; 8/81 to 1/83. I worked as a consultant for litigation. I was responsible for legal cases involving personal injury, wrongful death, antitrust, lost profit, other business cases, pension evaluations, business evaluations, testimony, depositions, and client services.

Rosse and Olszewski; Research Assistant; 8/80 to 8/81. I was responsible for basic research into vertical integration issues for the AT&T antitrust litigation and statistical research into pricing behavior for price-fixing litigation involving Gulf Oil and a uranium cartel.

United States Committee on Commerce, Science, and Transportation; Intern summer of 1978 and 1979. I was responsible for background research and preparation of testimony on trucking and railroad regulation, productivity, international trade, and the Panama Canal Treaties implementing legislation.

Research

Study on Washoe County housing market; 3/85.

Nevada Economic Diversification Study; 6/84 to 11/84. I wrote and/or edited sections on labor, regulation, and science and technology.

Pacific Gas and Electric; Operations Research consultant; 4/80 to 6/80. I was part of a team working on a feasibility study regarding the construction of a coal-fired power plant.

Ongoing research involving taxes in Nevada, employment trends in Nevada counties, railroad regulation, pricing under uncertainty, oligopolies, and research and development.

PAPERS AND PUBLICATIONS

"Welfare Tradeoffs Between Innovation and Market Structure: An Examination of the Functional Form of Cost Reducing Activities"; Delivered to the Western Social Science Association; April 1986.

"A Model of Railroad Regulation"; University Microfilms; 1983.

"Rate Bureaus and Optimal Prices"; Studies in Industrial Economics; Stanford University; 1980.

HONORS

Phi Beta Kappa

Omicron Delta Epsilon

Trustees' Award at the University of Southern California

Sloan Fellow at Stanford

Who's Who in Business and Industry, 1991 through 1997

Who's Who in Science and Engineering, 1993

Who's Who in the West, 1996-1997

Who's Who International, 1995

Exhibit 3

Exhibit 3

GILBERT R. COLEMAN Ph.D.

TESTIMONY AND DEPOSITION EXPERIENCE

FOUR YEARS PRECEDING SEPTEMBER 2019

Depositions

<u>Case</u>	<u>Date Billed</u>
Portola vs. California	9/ 4/15
Simkins vs. PN II	11/ 2/15
Hansen vs. Werner	4/ 8/16
Atkins vs. Del Webb	8/29/16
Sacramento vs. Hardesty	11/30/16
Bard vs. Meritage	1/ 4/17
Phillips vs. Del Webb	1/22/18
Adams vs. California	4/ 5/18

Lombardi vs. PNC	5/15/18
Dilling vs. Meritage Homes	5/16/18
Prieto vs. KB Homes	7/30/18
Breeden vs. Prime Health Care Services	9/05/18
Pacific Energy vs. New Mexico Pipeline	10/11/18
Carlson vs. CVS	1/11/19
Henning vs. D. H. Horton	6/24/19

Trial Testimony

Ling vs. Georgiou	10/ 6/15
Portola vs. California	10/20/15
Hunt vs. Padilla	2/ 3/16
Hansen vs. Werner	5/ 3/16

Schneider and Hardesty vs. Sacramento	3/21/17
Chill vs. Skach	9/15/17
NRS vs. Waste Management	2/21/18
Browett vs. City of Reno	3/ 8/18
Adams vs. California	5/19/18
Borchik vs. Holtz	12/ 7/18
Angel vs. Brabender	6/ 7/19

Exhibit 4

Exhibit 4

Our fee schedule is as follows:

- \$ 300 per hour for regular work plus costs
- \$ 400 per hour for deposition or in court testimony plus costs with a two hour minimum
- \$4,000 maximum per day for out-of-town work plus costs
- \$ 500 surcharge in addition to hours for any work that requires a less than one working day deadline.

Regular work is all work involved in the analysis of the case that is not either deposition or in-court testimony. This includes but is not limited to all meetings involved in the case with attorneys and/or clients and/or other experts and/or anyone else involved in the case including but not limited to accountants, medical doctors, or relatives whether these meetings are held in person or over the telephone. Regular work also includes but is not limited to reading of documents, mathematical, statistical, and economic analysis, writing reports, and reading depositions, including our own. It also includes travel time. Testimony time includes travel to and from the place of testimony and all time spent waiting as well as the actual time of the testimony. Out-of-town work includes any work that is out of the Reno-Carson City-Douglas County-Lake Tahoe area. This time is billed at a flat fee regardless of the work being done. This fee schedule is subject to change at any time but the fee schedule on any given case will not change.

2840

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

JOHN S. WALKER,

Plaintiff,

vs.

SHEILA MICHAELS,
and DOES I-V, inclusive,

Defendant.

Case No. CV18-01798

Department No.: STP

**ORDER ADDRESSING 1) MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO;
IMPOSE SANCTIONS AND PERMIT DISCOVERY, and 2) MOTION TO STAY
SHORT TRIAL PROCEEDINGS**

An Arbitrator's Award, dated March 18, 2019, was served on the parties in Case ARB18-01798. On March 18, 2019, Defendant SHEILA A. MICHAELS (hereinafter "MICHAELS"), by and through her attorney, Adam P. McMillen, Esq. of the Law Offices of S. Denise McCurry-Reno, filed a *Request for Trial De Novo*. On April 2, 2019, Plaintiff JOHN S. WALKER (hereinafter "WALKER"), by and through his attorney, William R. Kendall, Esq., filed a *Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*. On April 12, 2019, MICHAELS filed her *Opposition to Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*. On April 18, 2019, MICHAELS filed *Plaintiff's Reply in Support of Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*, and the matter was submitted to the originally assigned department for the Court's consideration. Thereafter, the matter was transferred to the Short Trial Program Commissioner-District Judge for decision.

1 Contemporaneously with WALKER's motion to strike, he filed a *Motion to Stay Short*
2 *Trial Proceedings* on April 2, 2019. On April 12, 2019, MICHAELS filed her *Opposition to*
3 *Motion to Stay Short Trial Proceedings*. On April 18 2019, WALKER filed *Plaintiff's Reply in*
4 *Further Support of Motion to Stay Short Trial Proceedings*, and the matter was submitted to the
5 originally assigned department for the Court's consideration. Thereafter, the matter was
6 transferred to the Short Trial Program Commissioner-District Judge for decision.

7 NAR 18(A) provides that within 30 days after an arbitration award is served upon the
8 parties, any party may file with the clerk of the court and serve on the other parties and the
9 commissioner a written request for trial de novo of the action. NAR 18(b) provides that the 30
10 day filing requirement is jurisdictional. NAR 18(e) provides that after the filing and service of
11 the written request for trial de novo, the case shall be set for trial upon compliance with
12 applicable court rules. NAR 22(a) provides that "[t]he failure of a party or an attorney to either
13 prosecute or defend a cause in good faith during the arbitration proceedings shall constitute a
14 waiver of the right to a trial de novo." For the purposes of NAR 22(a), good faith is equivalent
15 to a requirement that the parties participate in the arbitration proceedings in a meaningful
16 manner. Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135 (1996)(appellant failed to
17 defend arbitration in good faith by refusing to produce documents during discovery, failing to
18 timely deliver a pre-arbitration statement and failing to produce a key witness at the arbitration
19 (citing Gilling v. Eastern Airlines, Inc., 680 F.Supp. 169 (D.N.J.1988)). However, the
20 constitutional right to a jury trial is not waived simply because individuals disagree over the most
21 effective way to represent a client at an arbitration proceeding. Chamberland v. Labarbera, 110
22 Nev. 701, 705 (1994). The denial of a request for trial de novo pursuant to NAR 22(a) must be
23 accompanied by specific written findings of fact and conclusions of law by the district court
24 describing what type of conduct was at issue and how that conduct rose to the level of bad faith
25 participation in the court annexed arbitration program. Chamberland, 110 Nev. at 705. The
26 Nevada Supreme Court has provided examples of circumstances that may indicate a failure of a
27 party to participate in good faith. Campbell v. Maestro, 116 Nev. 380, 385, 996 P.2d 412, 415
28 (2000). However, the Nevada Supreme Court ultimately reversed the district court's order

1 striking the request for trial de novo, finding that even through the defendant's tactics were
2 questionable, the record did not justify elimination of a right to trial. 116 Nev. at 386. Similarly,
3 in Chamberland, the Nevada Supreme Court found a failure to conduct discovery and failure to
4 attend the arbitration did not warrant the "draconian sanction" of terminating the defendant's
5 right to further litigation proceedings. 110 Nev. at 705.

6 In the instant matter, WALKER argues that MICHAELS' attorney, Adam McMillen,
7 Esq., has a pattern and practice to file a request for trial de novo in every case that goes against
8 them (Farmer's Insurance) without regard to the facts and circumstances of each individual case,
9 and that this is a tactic designed to increase the time and expense of litigation for claimants, uses
10 the arbitration process as a device to obstruct and delay payment, and designed to frustrate the
11 purposes of the arbitration program. Additionally, WALKER argues that the Nevada Supreme
12 Court supports the district court conducting an inquiry into the conduct of insurance companies
13 that appear to be abusing the arbitration program by routinely requesting trial de novo without
14 regard to the facts and circumstances of each case and the insurance companies' use of the de
15 novo process as a way to obstruct. Should the Court find that additional information is needed,
16 WALKER requests an evidentiary hearing and the opportunity to conduct narrowly tailored
17 discovery into Farmers' practices associated with requests for trial de novo. Finally, WALKER
18 argues that MICHAELS be precluded from conducting any discovery which it could have
19 performed during the arbitration process, but failed to perform.

20 In response, MICHAELS argues that only bad-faith participation in the arbitration
21 process waives her right to a jury trial and that she meaningfully participated in good faith during
22 the arbitration process and did not waive her right to trial de novo. To determine whether
23 MICHAELS did not participate in the arbitration in good faith, MICHAELS argues that the
24 Court must examine the entirety of the arbitration process, including the facts and circumstances
25 of the case. In support of that contention, MICHAELS states that her attorney served a written
26 offer of judgment, engaged in written discovery, took WALKER's deposition, timely served her
27 arbitration statement, never refused to comply with any court order, did not purposefully deny
28 WALKER of his ability to participate fully, refuse to discuss settlement at any time during the

1 process, her attorney represented her interests during the arbitration hearing by preparing an
2 arbitration brief, presented a witness at the hearing, examined her and cross-examined
3 WALKER, and the arbitrator, in his award, did not allude to any bad faith or lack of meaningful
4 participation on MICHAEL's, her attorney's, or her insurer's part. MICHAELS further argues
5 that the cases WALKER cites involving a filing of a request for trial de novo were handled based
6 upon the facts and circumstances of each of the individual cases and no finding of bad faith
7 conduct was cited in any of those cases.

8 In his reply, WALKER argues that MICHAEL's insurer's bad faith lies in their practice
9 of automatically requesting a trial de novo regardless of the arbitration process in which an
10 adverse arbitration award is rendered, and that it is irrelevant how the MICHAEL's attorney (and
11 insurer) prepared for the arbitration hearing.

12 The heart of WALKER's assertion of bad faith is the course of advocacy that
13 MICHAEL's counsel followed by filing a request for trial de novo in ten cases in which he
14 asserts were decided against MICHAEL's insurer. WALKER states that the total number of
15 cases that McMillen has handled for Farmers insureds, the number of cases settled before
16 arbitration, the amounts they settled for and when, and information about arbitrations in other
17 jurisdictions, binding arbitrations, or small claims cases are not relevant to the issue before the
18 Court. Rather, it is the statistics cited in his motion pulled from the Second Judicial District
19 Court's Eflex system data that prove that McMillen/Farmers routinely filed a request for trial de
20 novo in 100% of adverse arbitration cases without regard to the facts and circumstances of each
21 case. Gittings v. Hartz, 116 Nev. 386, 393 (competent statistical information that demonstrates
22 that an insurance company has routinely filed trial de novo requests without regard to the facts
23 and circumstances of each individual case may be used to support a claim of bad faith).

24 The Court finds that it does not have a factual record to support a finding that
25 MICHAELS, through her attorney/insurance company, acted in bad faith. Id., 116 Nev. at 393
26 (finding that the district court did not have a sufficient factual record to support a finding of bad
27 faith because it was based solely on the basis of statements made in the pleadings of the parties).
28 Moreover, the Court finds that the sanction of eliminating MICHAELS' right to trial must be

1 supported by an evidentiary hearing where competent evidence, including a qualitative and
2 quantitative statistical analysis, are provided to substantiate that MICHAELS' attorney/insurer
3 has routinely filed requests for trial de novo without regard to the facts and circumstances of
4 each individual case is necessary.¹

5 Next, WALKER has requested, that if the Court found an evidentiary hearing was
6 necessary, that he be afforded the opportunity to perform narrowly tailored discovery into
7 Farmers' practices associated with requests for trial de novo. NRCP 26(b)(1) states that
8 "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's
9 claims or defenses...." Farmers' business practices are outside the scope of NRCP 26(b)(1)
10 concerning WALKER's negligence (personal injury) claims or MICHAELS' defenses that are
11 the subject of this lawsuit.

12 Finally, WALKER has requested that MICHAELS be precluded from conducting any
13 discovery which it could have performed during the arbitration process, but failed to do so. The
14 issue as to whether MICHAELS should be precluded from conducting any discovery is an issue
15 for the Short Trial Program Pro Tempore Judge to decide, and therefore, will not be decided at
16 this time.

17 The Court next considers WALKER's Motion to Stay Short Trial Proceedings.
18 WALKER request a stay of the Short Trial Proceedings given the likelihood that his Motion to
19 Strike Trial De Novo will not be ruled upon until after the Short Trial process has been well
20 underway. As such, WALKER argues that a stay of the short trial proceeding is in order pending
21 resolution of his motion to strike. In her opposition MICHAELS argues that the motion to stay
22 the short trial proceedings should be denied as it is based upon an incompetent and incomplete
23 statistical analysis of each request for trial de novo filed by Mr. McMillen. In his reply,
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25 ¹ Gittings v. Hartz, 116 Nev. 386, fn 7. The Nevada Supreme Court states "[w]e recognize that the bare
26 statistics create the impression that certain insurance carriers are abusing the arbitration process, and we would have
27 no problem with supporting the denial of a jury trial if a hearing produced competent evidence to substantiate such a
28 conclusion. We are not, however, suggesting that an extensive evidentiary hearing would be necessary in each case.
It is conceivable that a detailed statistical analysis, properly authenticated, could be used in more than one
proceeding or that testimony taken in one hearing might be admissible in other hearings involving the same carrier
under the doctrine of collateral estoppel."

1 WALKER argues that as a matter of judicial economy and expedience, a stay of the proceedings
2 is in order until resolution of the motion to strike. After considering the arguments of the parties,
3 the Court finds that as a matter of judicial economy and as a matter of fundamental fairness, it is
4 appropriate to enter a short stay of the above-entitled matter until the motion to strike is resolved.

5 Based on the foregoing and good cause appearing,

6 IT IS HEREBY ORDERED that the above entitled matter is stayed until resolution of
7 John S. Walker's Motion to Strike Request for Trial De Novo is decided.

8 IT IS HEREBY FURTHER ORDERED that the parties shall appear before the
9 Administrative Assistant for Department 4 within 15 days to set this matter for an evidentiary
10 hearing to provide competent evidence, including a qualitative and quantitative statistical
11 analysis, to substantiate that Adam McMillen, Esq./Farmers Insurance Company has routinely
12 filed requests for trial de novo without regard to the facts and circumstances of each individual
13 case.

14 IT IS HEREBY FURTHER ORDERED that John S. Walker's request for discovery into
15 Farmers Insurance Company's practices associated with requests for trial de novo is denied.

16 DATED this 19 day of June, 2019.

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18 Connie J. Steinheimer
19 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV18-1798

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 19 day of June, 2019, I filed the **ORDER ADDRESSING 1) MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO; IMPOSE SANCTIONS AND PERMIT DISCOVERY, AND 2) MOTION TO STAY SHORT TRIAL PROCEEDINGS** 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.**

WILLIAM KENDALL, ESQ. for JOHN S. WALKER

ADAM MCMILLEN, ESQ. for SHEILA MICHAELS

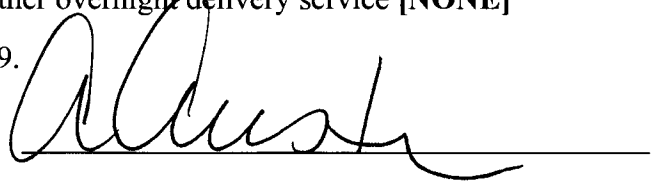
 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 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 19 day of June, 2019.



2840

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

JOHN S. WALKER,

Plaintiff,

vs.

SHEILA MICHAELS,

Defendant.

Case No.: CV18-01798 & CV18-02032

DEPT. NO. 8

RALPH ORTEGA,

Plaintiff,

vs.

KATHERYN FITTER,

Defendant.

ORDER ADDRESSING MOTIONS TO STRIKE AND FOR RULE 11 SANCTIONS

On April 2, 2019, Plaintiff JOHN S. WALKER (hereinafter "WALKER"), by and through his attorney, William R. Kendall, Esq., filed a *Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*. On April 12, 2019, SHEILA A. MICHAELS (hereinafter "MICHAELS"), filed her *Opposition to Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*. On April 18, 2019, MICHAELS filed *Plaintiff's Reply in Support of Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*, and the matter was submitted for the Court's consideration.

On August 9, 2019, WALKER, by and through his attorney, William R. Kendall, Esq., filed a *Motion for NRCP 11 Sanctions*. Additionally, on August 9, 2019, WALKER filed *Proof of NRCP*

1 *ll(c)(l)(A) 21 Day Notice*. On August 19, 2019, MICHAELS, by and through her attorney, Adam P.
2 McMillen, Esq., filed her *Opposition to Motion for Rule 11 Sanctions*. On August 21, 2019, *Plaintiff's*
3 *Reply in Further Support of Motion for NRCP 11 Sanctions* was filed and the matter was submitted for the
4 Court's consideration.

5 On July 15, 2019, Plaintiff RALPH ORTEGA (hereinafter "ORTEGA"), by and through his
6 attorney, William R. Kendall, Esq., filed a *Motion to Strike Request for Trial De Novo; Impose Sanctions;*
7 *and Permit Discovery*. On July 25, 2019, KATHERYN JEAN FRITTER (hereinafter "FRITTER") filed her
8 *Opposition to Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*, and a
9 *Declaration of Adam McMillen in Support of Opposition to Motion to Strike Request for Trial De Novo;*
10 *Impose Sanctions; and Permit Discovery* was filed. On July 31, 2019, ORTEGA filed *Plaintiff's Reply in*
11 *Support of Motion to Strike Request for Trial De Novo; Impose Sanctions; and Permit Discovery*.
12 Additionally, on July 31, 2019, the matter was submitted for the Court's consideration.

13 On August 9, 2019, ORTEGA, by and through his attorney, William R. Kendall, Esq., filed a
14 *Motion for NRCP 11 Sanctions*. Additionally, on August 12, 2019, ORTEGA filed *Proof of NRCP*
15 *ll(c)(l)(A) 21 Day Notice*. On August 19, 2019, FRITTER, by and through her attorney, Adam P. McMillen,
16 Esq., filed her *Opposition to Motion for Rule 11 Sanctions*. On August 21, 2019, *Plaintiff's Reply in Further*
17 *Support of Motion for NRCP 11 Sanctions* was filed and the matter was submitted for the Court's
18 consideration.

19 On November 12, 2019, the Court held an evidentiary hearing on the motions.

20 After considering the briefings, the arguments and evidence adduced at the hearing, the Court
21 observes that Plaintiffs argue that Farmers Insurance, through Adam McMillen, make requests for trial de
22 novo without regard to the facts and circumstances of each individual case. Plaintiffs provided statistics and
23 analysis therefrom and argued that the Court need look no further than the number of de novo requests in
24 relation to the number of adverse arbitration awards that went against the requestor, apply *Gittings v. Hartz*,
25 116 Nev. 386, 996 P.2d 898 (2000), and come to the ready conclusion that abuse is occurring to a sufficient
26 degree under Nevada Arbitration Rule 22 to strike the requests for trial de novo.

27 In opposition, Farmers Insurance, through Adam McMillen, suggests to the Court that *Gittings*,
28 fairly read, should direct this Court to look at all of Adam McMillen's cases in the arbitration program, not

1 just the 11 or 13 cases cited by Plaintiffs, and, in addition, look at the manner in which, among other things,
2 each individual case is handled in the arbitration process.

3 Farmers also argues that it has had success in a majority of the cases that it took to trial in the de
4 novo process, as well as the fact that it thoroughly analyzes, investigates, and processes the claims before it
5 on a case-by-case basis; all, according to Farmers, as evidence that it is taking its obligations seriously,
6 respectfully, and consistent with the goals as identified most particularly in Rule 2 of the Nevada
7 Arbitration Rules to proceed in the program in an effort to achieve quick, economical justice.

8 After considering the briefings, evidence and argument, the Court finds that based on the fairly
9 limited sample for this limited time period, and taking into account the uniqueness of the individual cases,
10 the results obtained on those cases that went to trial, and other circumstances, the Court is not convinced
11 that the identified requests for trial de novo statistically demonstrate that Farmers actions rise to the level of
12 bad faith.

13 As a result, the Court finds that Farmers Insurance and Adam McMillen have not engaged in bad-
14 faith arbitration practices.

15 Based on the foregoing and good cause appearing,

16 IT IS HEREBY ORDERED that both Motions to Strike Request for Trial De Novo and both
17 Motions for NRCP 11 Sanctions are hereby denied, along with any other remedies the parties have sought.

18 IT IS HEREBY FURTHER ORDERED that both matters (CV18-01798 & CV18-02032) shall
19 proceed in the Short Trial Program.

20 Dated this 20 day of November, 2019.

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DISTRICT JUDGE