

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

JOHN S. WALKER, and RALPH  
ORTEGA,

Petitioners,

vs.

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

Respondents.

SHEILA MICHAELS and  
KATHERYN FRITTER, real parties in  
interest.

Electronically Filed  
May 28 2020 01:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 80358

**APPENDIX TO ANSWER OF REAL PARTIES IN INTEREST**

ROBERT L. EISENBERG  
(Nevada Bar No. 0950)  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519  
775-786-6868  
775-786-9716  
[rle@lge.net](mailto:rle@lge.net)

ADAM MCMILLEN  
(Nevada Bar No. 10678)  
The Law Office of S. Denise McCurry - Reno  
200 S. Virginia Street  
8<sup>th</sup> Floor  
Reno, NV 89501  
775-329-2221  
[adam.mcmillen@farmersinsurance.com](mailto:adam.mcmillen@farmersinsurance.com)

**ATTORNEYS FOR REAL PARTIES IN INTEREST**

## **CHRONOLOGICAL INDEX TO APPENDIX TO ANSWER**

The following documents were exhibits to the Declaration of Adam McMillen filed in the *Ortega v. Fritter* case on July 25, 2019. The declaration is in Petitioners' appendix at 1 App. 190. An index of 14 exhibits to the declaration is in Petitioners' appendix at 1 App. 205. For some unexplained reason, however, not all of the exhibits were provided with Petitioners' appendix. Instead, the appendix omitted exhibit numbers 8, 9, 10, 11 and 12. Accordingly, the omitted exhibits are now being provided with the answer in the present appendix.

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>PAGE NO.</u></b>
1.	Declaration of Adam McMillen Exhibit 8: Offer of Judgment	07/25/19	1-3
2.	Declaration of Adam McMillen Exhibit 9: Motion to Strike Request for Trial De Novo	07/25/19	4-14
3.	Declaration of Adam McMillen Exhibit 10: Motion for Stay Short Trial Proceedings	07/25/19	15-20
4.	Declaration of Adam McMillen Exhibit 11: Opposition to Motion to Strike Request for Trial De Novo	07/25/19	21-31
5.	Declaration of Adam McMillen Exhibit 12: Declaration of Adam McMillen in Support of Opposition to Motion to Strike	07/25/19	32-36

## EXHIBIT 8

## EXHIBIT 8

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

**DISTRICT COURT**  
**WASHOE COUNTY, NEVADA**

RALPH ORTEGA,

Plaintiff,

vs.

KATHERYN JEAN FRITTER; DOES I-V;  
 inclusive,

Defendants.

Case No.: CV18-02032

DEPT. NO. 4

**OFFER OF JUDGMENT**

TO: Ralph Ortega, Plaintiff

TO: William Kendall, Esquire., Attorney for Plaintiff

Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Defendant, Katheryn Jean Fritter, offers to allow judgment to be taken by Plaintiff, Ralph Ortega, in this action in the amount of \$14,000.00, excluding in that sum all costs and interest in full satisfaction of all claims against Defendant, Katheryn Jean Fritter. This Offer of Judgment is made for the purposes specified in Rule 68 and is not to be construed as an admission of any kind whatsoever.

DATED: December 3, 2018

THE LAW OFFICES OF STACEY A. UPSON -  
 RENO

BY: 


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

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of THE LAW OFFICES OF STACEY A. UPSON - RENO and that on the 4<sup>th</sup> day of December, 2018, I served a true and correct copy of the above and foregoing **OFFER OF JUDGMENT** on the parties addressed as shown below:

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

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

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

## EXHIBIT 9

## EXHIBIT 9

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

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

\*\*\*\*

JOHN S. WALKER,

Plaintiff,

CASE NO.: CV18-01798

vs.

DEPT. NO.: 7

SHEILA MICHAELS;  
DOES I-V; inclusive,

Defendants.

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

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

Dated this 2<sup>nd</sup> day of April, 2019.

WILLIAM R. KENDALL, ESQ.



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## POINTS AND AUTHORITIES

### 1. BACKGROUND FACTS OF CASE

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

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

Adam P. McMillen is an employee-attorney of Farmers Insurance Exchange, who insured and represented Defendant, Michaels, in this case. See 9/18/2018 letter from McMillen, attached hereto as Exhibit 1.

A "person search" on the official Second Judicial District Court website ([www.washoecourts.com](http://www.washoecourts.com)) searching the name "Adam McMillen" produced a list of **all** cases in which Adam P. McMillen has been counsel of record. See 12 page printout of cases attached hereto as Exhibit 2.

The Court may take judicial notice of this official record, pursuant to NRS 47.130, which states that "a judicially noticed fact must be (a) generally known within the territorial jurisdiction of the trial court, or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The list of cases contained on the Washoe Courts official website satisfies both (a) and (b).



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

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

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

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

### 8 **3. ARGUMENT**

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

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

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

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

8  
9 NAR 22 provides:

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

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

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

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

27  
28 We recognize that the bare statistics create the impression that certain  
carriers are abusing the arbitration process, and we would have no  
problem with supporting the denial of a jury trial if a hearing produced  
competent evidence to substantiate such a conclusion. We are not,  
however, suggesting that an extensive evidentiary hearing would be

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

6 *Id.*

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

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

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

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

1 **4. CONCLUSION**

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

12 Dated this 2<sup>nd</sup> day of April, 2019.

13 WILLIAM R. KENDALL, ESQ.

14  
15   
16

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

**Certificate of Service**

**RE:** CV18-01798

**Judge:** HONORABLE JUDGE EGAN WALKER

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

**Case Title:** Walker v. Michaels

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

**Date Generated:** 04-02-2019.

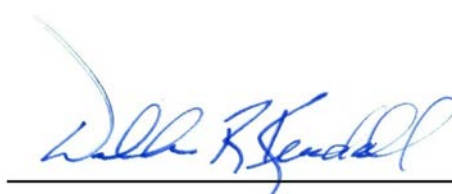
**I hereby certify that on 04-02-2019, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:**

Adam McMillen, Esq.

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

None.

Dated this 2<sup>nd</sup> day of April, 2019.



William R. Kendall

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

**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document  
filed in case number: **CV18-01798**\_\_\_\_\_



Document does not contain the social security number of any person

Date: **4/2/2019**\_\_\_\_\_



\_\_\_\_\_

## LIST OF EXHIBITS

1.	Exhibit 1 (9/18/2018 McMillen letter).....	p. 11
2.	Exhibit 2 (Washoe Courts website case printout).....	p. 13
3.	Exhibit 3 (Castro-Avalos pleadings).....	p. 26
4.	Exhibit 4 (Eckert pleadings).....	p. 42
5.	Exhibit 5 (Valdez pleadings).....	p. 51
6.	Exhibit 6 (Dalmacio pleadings).....	p. 61
7.	Exhibit 7 (Elk pleadings).....	p. 83
8.	Exhibit 8 (Hakansson pleadings).....	p. 91
9.	Exhibit 9 (Hagan pleadings).....	p. 98
10.	Exhibit 10 (Codman pleadings).....	p. 109
11.	Exhibit 11 (Wright pleadings).....	p. 117
12.	Exhibit 12 (Walker pleadings).....	p. 128
13.	Exhibit 13 (Minutes of the Senate Committee on Judiciary).....	p. 135
14.	Exhibit 14 (Declaration of William R. Kendall).....	p. 149



EXHIBIT 10

EXHIBIT 10

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

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

\*\*\*\*

JOHN S. WALKER,

Plaintiff,

CASE NO.: CV18-01798

vs.

DEPT. NO.: 7

SHEILA MICHAELS;  
DOES I-V; inclusive,

Defendants.

**MOTION TO STAY SHORT TRIAL PROCEEDINGS**

Plaintiff, JOHN S. WALKER, hereby files his Motion to Stay Short Trial Proceedings,  
and submits the following Points and Authorities, exhibits and argument in support thereof.

Dated this 2<sup>nd</sup> day of April, 2019.

WILLIAM R. KENDALL, ESQ.



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## POINTS AND AUTHORITIES

### 1. BACKGROUND FACTS OF CASE

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

### 2. ARGUMENT

Contemporaneously with the filing of this Motion to Stay Short Trial Proceedings, Plaintiff has filed his MOTION TO STRIKE TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY, wherein Plaintiff moves the Court to strike Defendant's Request for Trial De Novo. Said motion is based upon competent statistical analysis of official Washoe County District Court case records showing that attorney McMillen and his employer, Farmers, have filed requests for trial de novo in 100 % of case in which McMillen was defense counsel of record for a Farmers insured/defendant where an arbitration award in favor of the Plaintiff was entered.

NAR 18(F) and (G) permit and govern the filing of a motion to strike. NAR 18(F) requires that, if the District Court strikes a request for trial de novo, the Court must explain its reasons in writing and shall enter a final judgment in accordance with the arbitration award.

Given the likelihood that Plaintiff's MOTION TO STRIKE TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY will not be ruled upon until after the Short Trial

1 process has been well underway, Plaintiff submits that a stay of the Short Trial proceedings  
2 pending resolution of his MOTION TO STRIKE TRIAL DE NOVO; IMPOSE SANCTIONS;  
3 AND PERMIT DISCOVERY is in order.  
4

5 **3. CONCLUSION**

6 For the reasons set out above, Plaintiff respectfully requests that the Court enter its order  
7 staying the Short Trial proceedings in this case pending final resolution of Plaintiff's MOTION  
8 TO STRIKE TRIAL DE NOVO; IMPOSE SANCTIONS; AND PERMIT DISCOVERY, or enter  
9 such other orders which are just and appropriate given the circumstances.  
10

11 Dated this 2<sup>nd</sup> day of April, 2019.

12 WILLIAM R. KENDALL, ESQ.

13  
14   
15

16 137 Mt. Rose Street  
17 Reno, NV 89509  
18 (775) 324-6464  
19 Attorney for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Certificate of Service**

**RE:** CV18-01798

**Judge:** HONORABLE JUDGE EGAN WALKER

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

**Case Title:** Walker v. Michaels

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

**Date Generated:** 04-02-2019.

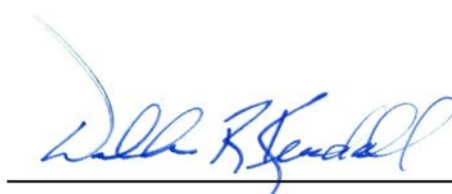
**I hereby certify that on 04-02-2019, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:**

Adam McMillen, Esq.

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

None.

Dated this 2<sup>nd</sup> day of April, 2019.



William R. Kendall

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**AFFIRMATION**

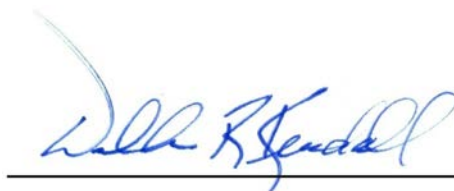
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document  
filed in case number: **CV18-01798**\_\_\_\_\_



Document does not contain the social security number of any person

Date: **4/2/2019**\_\_\_\_\_



\_\_\_\_\_

**EXHIBIT 11**

**EXHIBIT 11**

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

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

9  
10 JOHN S. WALKER,

11 Plaintiffs,

12 vs.

13 SHEILA MICHAELS; DOES I-V, inclusive,

14 Defendants.

Case No.: CV18-01798

DEPT. NO. 7

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

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

20 **I. STATEMENT OF FACTS**

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



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

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

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

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

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

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

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

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

## 11 **II. PROCEDURAL HISTORY**

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

## 20 **III. ARGUMENT**

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

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

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

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

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

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

The Nevada Supreme Court has made clear that “it is the substance of the hearing... that is important in determining the good faith of the participants.”<sup>5</sup>

## ii. Judicial Definition of Meaningful Interpretation

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

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

<sup>2</sup> *Gittings*, 116 Nev. at 390, 996 P.2d at 901 (citation omitted).

<sup>3</sup> *Gittings*, 116 Nev. at 390, 996 P.2d at 901 (citing *Casino Properties, Inc. v. Andrew*, 112 Nev. 1332, 1335, 911 P.2d 1181, 1182–83 (1996) (appellant failed to defend arbitration in good faith by refusing to produce documents during discovery, failing to timely deliver a pre-arbitration statement and failing to produce a key witness at the arbitration) (favorably referencing *Gilling v. Eastern Airlines, Inc.*, 680 F.Supp. 169 (D. N.J. 1988))).

<sup>4</sup> *Chamberland*, 110 Nev. at 705, 877 P.2d at 525 (1994) (citing *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 787 P.2d 777 (1990)).

<sup>5</sup> *Gittings*, 116 Nev. at 393, 996 P.2d at 902.

<sup>6</sup> *Gittings*, 116 Nev. at 393, 996 P.2d at 902.

<sup>7</sup> *Casino Properties, Inc.*, 112 Nev. at 135, 911 P.2d at 1183.

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

<sup>9</sup> *Gittings*, 116 Nev. at 392, 996 P.2d at 902.

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

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

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

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

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

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

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

#### **b. The Record Demonstrates Counsel’s Good Faith**

<sup>13</sup> *Gittings*, 116 Nev. at 393, 996 P.2d at 902. The district court cited the following reasons: (1) *Gittings*’ failure to attend the arbitration hearing, (2) failure to call any witnesses to testify at the hearing, (3) the length of the hearing and the amount of time *Gittings* used to present her issues at the hearing, (4) failure to contest liability, (5) failure to request an independent medical examination or present any countervailing medical evidence, and (6) the high percentage of trial de novo requests filed by *Gittings*’ insurer... *Id.* at 901. The Nevada Supreme Court discussed the district court’s evaluation of the amount of time taken in the arbitration process but dismissed reasons 1, 2, 4, and 5 out of hand. *Id.*, 116 Nev. at 392, 996 P.2d at 902.

<sup>14</sup> *Gittings*, 116 Nev. at 392, 996 P.2d at 902.

<sup>15</sup> *Id.* at note 6.

<sup>16</sup> *Id.*, 116 Nev. at 394, 996 P.2d at 903 (“competent statistical information that demonstrates that an insurance company has routinely filed trial de novo requests **without regard to the facts and circumstances of each individual case** may be used to support a claim of bad faith. However, the statistics in this case are incomplete. While a comparatively high percentage of de novo requests are filed by Allstate, **there is no analysis accompanying the statistics to support a conclusion that the statistics prove that Allstate automatically requests a trial de novo regardless of the arbitration process.** For example, **no correlation has been shown between requests for trial de novo and verdicts for or against the party who filed the request.** Without an evidentiary hearing or a more comprehensive qualitative and quantitative statistical analysis, the statistics cited by Hartz to the district court were not sufficient to justify termination of proceedings in Hartz’ favor.”) (emphasis added).

<sup>17</sup> *Gittings*, 116 Nev. at 393, 996 P.2d at 902.

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

#### i. The Defendant Did Participate in Good Faith

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

#### c. The Plaintiff’s Bare Statistics

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

<sup>18</sup> *Gittings*, 116 Nev. at 392, 996 P.2d at 902.

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

<sup>20</sup> See Exhibit 4, Defendant’s Offer of Judgment.

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

<sup>22</sup> See Exhibit 8, Defendant’s Arbitration Brief.

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

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

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

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

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

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

**1. Examples<sup>29</sup>:**

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

This case stemmed from an auto accident on June 4, 2015.<sup>30</sup> Plaintiff slowed abruptly and tried to turn right into a private parking-lot from lane 1 and across lane 2.<sup>31</sup> Defendant, driving in lane 1, did not anticipate the abrupt turn and rear-ended the Plaintiff.<sup>32</sup> On December 30, 2016, Defendant served an offer of judgment for \$15,000.<sup>33</sup> On December 15, 2017, the arbitration hearing was held.<sup>34</sup> On December 26, 2017, the arbitrator filed his decision and found Plaintiff and Defendant 50/50 liable for the accident and an ultimate award to Plaintiff of \$21,992.50.<sup>35</sup> On January 5, 2018, the Defendant filed a request for trial de novo and demand for jury trial.<sup>36</sup> On January 24, 2018, Plaintiff signed a release for \$15,000.<sup>37</sup> On February 5, 2018, a stipulation and order of dismissal with prejudice was filed.<sup>38</sup> This case was litigated in good faith based upon the facts and circumstances of this case.<sup>39</sup> There is nothing in the record to demonstrate otherwise.

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

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

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

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

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

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

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at ¶ 11.

1 arbitrator provided an award in favor of Hakansson in the amount of \$11,942.00.<sup>42</sup> On June 18, 2018,  
 2 Sloan filed a request for trial de novo.<sup>43</sup> On December 10, 2018, after the short trial, the jury returned a  
 3 verdict in the amount of \$8,000.00.<sup>44</sup> On December 5, 2019, a notice of satisfaction of verdict was  
 4 filed.<sup>45</sup> This case was also litigated in good faith based upon the facts and circumstances of this case.<sup>46</sup>  
 5 There is nothing in the record to demonstrate otherwise.

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

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

13 **IV. CONCLUSION**

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

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

21 DATED: April 12, 2019

THE LAW OFFICES OF S. DENISE MCCURRY  
 - RENO

22 BY: 

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

25 <sup>41</sup> *Id.*

26 <sup>42</sup> *Id.*

27 <sup>43</sup> *Id.*

28 <sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

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

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

**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 12<sup>th</sup> day of April, 2019, I served a true and correct copy of the above and foregoing **OPPOSITION TO MOTION TO STRIKE** on the parties addressed as shown below:

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

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

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



# INDEX OF EXHIBITS

CV18-01798

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

EXHIBIT 12

EXHIBIT 12

ADAM P. MCMILLEN, ESQ.

State Bar No. 10678

**THE LAW OFFICES OF S. DENISE MCCURRY - RENO**

50 West Liberty Street, Suite 303

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

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

I, ADAM MCMILLEN, declare as follows:

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

**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 \_\_\_\_\_ day of April, 2019, I served a true and correct copy of the above and foregoing **DECLARATION OF ADAM MCMILLEN** on the parties addressed as shown below:

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

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

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

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

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

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