

Thomas A. Larmore, Esq.
DESERT RIDGE LEGAL GROUP
3037 East Warm Springs Road, Suite 300
Las Vegas, Nevada 89120
Telephone: (702) 765-0976
Facsimile: (702) 765-0981
Email: tlarmore@keyinsco.com
Attorneys for Appellant, Juan Millan Arce

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Aug 23 2021 04:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MILLAN ARCE, AN
INDIVIDUAL,

Appellant,

vs.

PATRICIA SANCHEZ, AN
INDIVIDUAL,

Respondent.

Supreme Court Case No. 81862

District Court Case No.A-19-796822-C

APPELLANT'S APPENDIX
VOLUME 1

Appellant JUAN MILLAN ARCE submits the following Appellant's Appendix in the Appeal from the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, Department 27, the Honorable Nancy Alf.

THOMAS A. LARMORE, ESQ.
Nevada Bar No. 7415
DESERT RIDGE LEGAL GROUP
3037East Warm Springs Road,Ste. 300
Las Vegas, Nevada 89120

Attorney for Appellant
Juan Millan Arce

Appellant JUAN MILLAN ARCE, by and through his counsel of record, Desert Ridge Legal Group, hereby submitits Appellant's Appendix in compliance with Nevada Rules of Appellate Procedure 30(b)(4).

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The Appendix satisfies NRAP 30(c)(3) (2013), with each volume containing no more than 250 pages.

DATED this 23rd day of August 2021.

DESERT RIDGE LEGAL GROUP

By:

/s/ Thomas A. Larmore

THOMAS A. LARMORE, ESQ.

Nevada Bar No. 7415

3037 East Warm Springs Road,

Suite 300

Las Vegas, Nevada 89120

(702) 765-0976 ext 6836

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August 2021, I served a true and complete copy of the foregoing **APPELLANT'S APPENDIX VOLUME 1** **addressed** to the parties below as follows:

☒ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail, enclosed in a sealed envelope upon which first class postage was fully prepaid; and /or

☐ via facsimile; and or

☐ by hand delivery to parties listed below; and or

☒ by electronic service via E Flex through the Supreme Court of the State of Nevada.

NATHAN S. DEAVER, ESQ.

Nevada Bar No. 11947

BRICE J. CRAFTON, ESQ.

Nevada Bar No. 10558

DEAVER I CRAFTON

810 E. Charleston Blvd.

Las Vegas, NV 89104

Telephone (702)385-5969

Facsimile (702)385-6939

Attorneys for Respondent

/s/ Luz T. Macias

Desert Ridge Legal Group

EXHIBIT “A”

EXHIBIT “A”

AA000001

STORM LEGAL GROUP
3057 E. Warm Springs Rd., Ste., 400
Las Vegas, Nevada 89120-3150
Tel. (702) 765-0976 * Fax (702) 765-0981

1 **AFFT**
2 **STORM LEGAL GROUP**
3 **ERICH N. STORM, ESQ.**
4 **Nevada State Bar No.:4480**
5 **estorm@keyinsco.com**
6 **3057 East Warm Springs Road, Suite 400**
7 **Las Vegas, Nevada 89120**
8 **Telephone: (702) 765-0976**
9 **Facsimile: (702) 765-0981**
10 ***Attorneys for Defendant***

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **PATRICIA SANCHEZ, an individual,**

14 **Plaintiff,**

15 **vs.**

16 **JUAN MILLAN ARCE, an Individual; DOES I-X, inclusive; and ROE CORORATIONS I-X, inclusive,**

17 **Defendants.**

CASE NO.: A-19-796822-C

DEPT NO.: 27

18 **AFFIDAVIT OF ERICH STORM**

19 **STATE OF NEVADA)**

20 **)ss.**

21 **COUNTY OF CLARK)**

22 **ERICH N. STORM, being first duly sworn, deposes and state as follows:**

23
24
25 1. I am of the age of majority. The statements in this affidavit are made of my
26 personal knowledge.

27 2. I am an attorney licensed to practice in Nevada since December of 1991.

28 3. I have been employed by Key Insurance Company as an attorney since September

AA000002

1 16, 2019. In the course of this employment, I was at all material times assigned by Key Insurance
2 Company to represent Defendant Juan Millan Arce in the above-entitled matter, and I continue to
3 represent him at the present. Key Insurance Company also assigned the case to claims
4 representative Erika Cervantes and I report to her about it.

5 Since there is no conflict of interest, I also represent Key Insurance Company in the above-
6 entitled matter (*Nevada Yellow Cab Corporation v. Eighth Judicial District Court*, 123 Nev. 44,
7 152 P.3d 737 (Nev. 2007)). I was its attorney at all times relevant to the events that are the
8 subjects of Plaintiff's pending Motion For Relief From Judgment And To Enforce Settlement.

9 4. The above-entitled matter went to arbitration. I appeared for Defendant and
10 attorney Brice Crafton of Deaver|Crafton appeared for Plaintiff. On February 11, 2020, the
11 arbitrator entered and served his Award finding for Defendant and against Plaintiff.

12 5. As of February 20, 2020, I had not informed Ms Cervantes of the outcome of the
13 arbitration proceeding. On February 20, 2020, I received an email from Mr. Crafton informing me
14 that his business partner, attorney Nathan Deaver, had taken it upon himself that day to settle the
15 above-entitled action directly with Ms Cervantes for the sum of \$10,000.00. That email is
16 attached to Plaintiff's Motion For Relief From Judgment And To Enforce Settlement as Exhibit 1.
17 Until I received that email, I was unaware of any communication between Plaintiff's counsel and
18 Ms Cervantes, and I was unaware of any settlement between the parties in any amount.

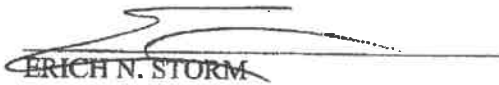
19 6. As of February 20, 2020, no attorney affiliated with Deaver|Crafton had contacted
20 me to discuss his or her desire to speak with Ms Cervantes about settling the above-entitled case,
21 and I at no time gave any attorney associated with Deaver|Crafton my consent to such
22 communications. If Mr. Deaver, Mr. Crafton, or any other attorney associated with
23 Deaver|Crafton had requested my consent to such communications, I would have denied the
24 request.

25 7. Had I known that Mr. Deaver and Mr. Crafton or any other attorney associated
26 with their firm were intending to attempt settlement of this case with Ms Cervantes in the amount
27 of \$10,000.00, I would have advised Ms Cervantes that the case had little to no value and I would
28 have recommended against a settlement anywhere near \$10,000.00.

8. Attached as Exhibit D to Defendant's Opposition To Plaintiff's Motion For Relief

1 From Judgment And To Enforce Settlement is a complete and accurate copy of the recorded
2 conversation between Ms Cervantes and Mr. Deaver that took place on February 20, 2020, as
3 received by me from Ms Cervantes via email on March 26, 2020, and which she describes in her
4 affidavit.

5 9. I have practiced exclusively in Las Vegas, Nevada, since April of 1992. For all but
6 7-1/2 years since April of 1992, I have practiced insurance defense and I also spent several years
7 practicing exclusively in the area of plaintiffs' personal injury. It is my experience in Las Vegas
8 that plaintiffs' counsel in personal injury suits do not solicit communications -- including
9 settlement discussions -- with claims representatives in a litigated matter without first obtaining
10 the permission of the defense attorney appointed by the carrier to represent the insured/defendant.

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12
13 
14 ERICH N. STORM

15 SUBSCRIBED and SWORN to before me
16 this 4th day of April, 2020

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19 NOTARY PUBLIC in and for
20 The State of Nevada

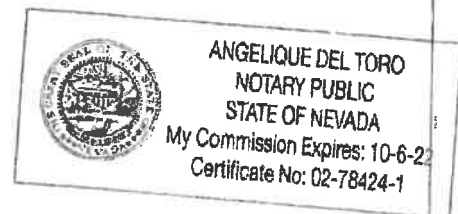


EXHIBIT “B”

EXHIBIT “B”

STORM LEGAL GROUP
3057 E. Warm Springs Rd., Ste., 400
Las Vegas, Nevada 89120-9150
Tel. (702) 765-0976 • Fax (702) 765-0981

1. **AFFT**
2 **STORM LEGAL GROUP**
3 **ERICH N. STORM, ESQ.**
4 **Nevada State Bar No.:4480**
5 **3057 East Warm Springs Road, Suite 400**
6 **Las Vegas, Nevada 89120**
7 **Telephone: (702) 765-0976**
8 **Facsimile: (702) 765-0981**
9 **Attorneys for Defendant**

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **PATRICIA SANCHEZ, an individual,**

CASE NO.: A-19-796822-C

13 **Plaintiff,**

DEPT NO.: 27

14 **vs.**

15 **JUAN MILLAN ARCE, an Individual; DOES I-X,**
16 **inclusive; and ROE CORORATIONS I-X,**
17 **inclusive,**

18 **Defendants.**

19 **AFFIDAVIT OF ERIKA CERVANTES**

20 **STATE OF KANSAS)**
21 **)ss.**

22 **COUNTY OF WYANDOTTE)**

23 **ERIKA CERVANTES, being first duly sworn, states as follows:**

24
25 1. I am of the age of majority. The statements in this affidavit are made of my
26 personal knowledge.

27 2. I am presently employed by Key Insurance Company as a claims representative,
28 and was so employed in February and March of 2020. In the course of this employment, I was

1 and remain assigned by Key Insurance Company to oversee the bodily injury claim of Patricia
2 Sanchez against Key Insurance Company's, insured, Juan Millan Arce. At all times I have had the
3 authority up to certain limits to settle those cases assigned to me on behalf of Key Insurance
4 Company and its insureds. I was not able to resolve the claim with Ms Sanchez' attorney, Nathan
5 Deaver. Therefore, Ms Sanchez filed the above-entitled action against Mr. Arce and I assigned
6 the case to defense counsel, Purdy and Anderson, on June 17, 2019. That firm is now known as
7 Storm Legal Group and it represents Mr. Arce. I understand that Attorney Erich Storm of Storm
8 Legal Group is representing Key Insurance Company and Mr. Arce in this matter.

9 3. On February 20, 2020, I received an unsolicited telephone call from Mr. Deaver
10 regarding the above action. At that time, I was unaware that the case had been through arbitration;
11 I did not know that an arbitration award had been made; and I did not know that the arbitrator
12 found against Ms Sanchez and in favor of Mr. Arce. Furthermore, during our telephone
13 conversation, Mr. Deaver did not mention that the case had been submitted to arbitration; or that
14 an arbitration award had been entered; or that the arbitrator found against Ms Sanchez and found
15 in favor of Mr. Arce.

16 4. If Mr. Deaver had advised me during our telephone conversation of February 20,
17 2020, that the case had been submitted to arbitration and that the arbitrator ruled against Ms
18 Sanchez and in favor of Mr. Arce, I would not have settled the case with him. I would instead
19 have sought the advice of Mr. Storm.

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1 5. The February 20, 2020, telephone call from Mr. Deaver to me was tape-recorded.
2 On March 26, 2020, I emailed to Erich Storm a complete and accurate copy of the recorded
3 conversation.

4 *Erika Cervantes*
5 ERIKA CERVANTES

6
7
8 SUBSCRIBED and SWORN to before me
9 this 2 day of April, 2020

10
11 *Mary C. Bergstrom*
12 NOTARY PUBLIC in and for
13 The State of Kansas

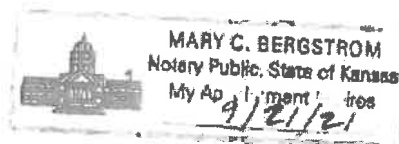


EXHIBIT “C”

EXHIBIT “C”



1 **MOTION**
NATHAN S. DEEVER, ESQ.
2 Nevada Bar No. 11947
BRICE J. CRAFTON, ESQ.
3 Nevada Bar No. 10558
DEEVER | CRAFTON
4 810 E. Charleston Blvd.
Las Vegas, NV 89104
5 brice@deevercrafton.com
shannon@deevercrafton.com
6 Tel. (702)385-5969
Fax. (702)385-6939
7 *Attorneys for Plaintiff*

8 **DISTRICT COURT**
9 **COUNTY OF CLARK, NEVADA**

10 PATRICIA SANCHEZ, an individual;

11 **Plaintiff,**

12 vs.

13 JUAN MILLAN ARCE, an individual; DOES
14 I-X, inclusive; and ROE CORPORATIONS I-
X, inclusive;

15 **Defendants.**

Case No. A- 19-796822-C

Dept. No. XXVII

HEARING REQUESTED


16 **PLAINTIFF'S MOTION FOR RELIEF FROM**
17 **JUDGMENT AND TO ENFORCE SETTLEMENT**

18 COME NOW Plaintiff, PATRICIA SANCHEZ, by and through her attorneys NATHAN
19 S. DEEVER, ESQ., and BRICE J. CRAFTON, ESQ., of the law office of DEEVER | CRAFTON,
20 hereby moves this honorable court to 1) grant relief from the judgment entered by the defense, and
21 2) enforce the agreed to settlement.
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1 This motion is made and based upon the records and pleadings on file herein,
2 together with the Points and Authorities attached hereto and such argument of counsel as
3 may be entertained at the time and place scheduled for the hearing of this Motion.

4 DATED this 27 day of Mar, 2020.

5 **DEAVER | CRAFTON**

6 
7 BRICE J. CRAFTON, ESQ.
8 NEVADA Bar No. 10558
9 810 E. Charleston Blvd.
10 Las Vegas, NV 89104
11 *Attorneys for Plaintiff*
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STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

AFFIDAVIT OF NATHAN S. DEAVER, ESQ. IN
SUPPORT OF MOTION

Nathan S. Deaver, Esq., being first duly sworn, deposes and says:

1. That I am an attorney duly licensed to practice law in the State of Nevada and currently practice law under the Law Office of Deaver | Crafton located at 810 E. Charleston Blvd., Las Vegas, NV 89104. The facts set forth in this declaration are known to me personally, or are based upon my information and belief, and if called to do so, I would competently testify under oath regarding the same.
2. I am the attorney of record for the Plaintiff Patricia Sanchez in CASE NO.: A-19-796822-C filed in the Eighth Judicial District in Clark County, Nevada.
3. On February 20, 2020, I telephoned Erika Cervantes, the claims adjuster on file with Key Insurance. I advised that we were preparing to file our request for a Short Trial and wanted to see if settlement was possible to avoid further litigation. During our conversation, Ms. Cervantes made me an offer to settle for the sum of \$10,000.00 which we accepted. Ms. Cervantes instructed that she would send the release for the sum of \$10,000.00. Ms. Cervantes did not indicate to me that any other authority was needed at the time to approve the settlement.
4. Following our conversation, I sent a confirming email to Ms. Cervantes that I was pleased we were able to reach a settlement agreement in the amount of \$10,000.00, and that we were able to avoid further litigation. I also requested that she forward the settlement release at her earliest convenience.

- 1 5. My business partner, Brice Crafton, Esq., sent a confirming email to Erich Storm, Esq.,
2 in-house counsel for Key Insurance, and advised that a settlement was reached and that
3 we were pleased we were able to resolve this case without having to file a de novo request
4 for short trial. Brice Crafton, Esq. asked that Mr. Storm forward the Stipulation and Order
5 for Dismissal. A copy of our firm's W-9 and payment instructions were also provided to
6 Mr. Storm.
- 7 6. On or about March 3, 2020, I sent a follow-up email to Ms. Cervantes inquiring when we
8 could expect the settlement release. To my surprise, Ms. Cervantes replied on 3/3/2020
9 that I should "contact Erich Storm with any questions you may have regarding this
10 matter". I reminded Ms. Cervantes that we had reached an agreement previously and I
11 inquired whether Key Insurance was "now not honoring our settlement agreement". Ms.
12 Cervantes replied, "Again, please contact Erich Storm".
- 13 7. On March 3, 2020, I had a telephone call with Camay McClure at Key Insurance/Storm
14 Legal Group and requested to either speak with Mr. Storm or to have someone get back
15 to us regarding the settlement documents. Ms. McClure sent a confirming email asking
16 that someone handle the matter.
- 17 8. On March 24, 2020, I attempted three times to reach Mr. Storm at his office phone number.
18 I was unable to reach him and left him a voicemail and sent an email as well. To date, I
19 have not had the courtesy of a returned phone call from Mr. Storm.
- 20 9. In my almost ten (10) years of practicing as a plaintiff's lawyer in the Las Vegas
21 community, it has been common practice for myself and other plaintiff's counsel to keep
22 open lines of communication with claims adjuster(s). It is common knowledge and
23 24

1 experience that settlement numbers and settlement authority are within the purview of the
2 claim's adjuster, regardless of whether suit has been filed.


3 10. There is nothing untoward or extraordinary with the way this settlement and
4 communications were handled. Again, this was ordinary and common with regards to
5 settling claims.

6 11. That I have spent approximately 3.5 hours in efforts to communicate with Mr. Storm and
7 Ms. Cervantes, gathering the communication efforts made, preparing this affidavit, and
8 assisting in drafting this motion and that my usual and customary rate of time for this work
9 is \$450.00 per hour.

10 12. I sign this affidavit and declaration in accordance with NRS 53.045 and under penalty of
11 perjury.

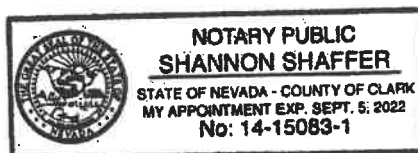
12 FURTHER AFFIANT SAYETH NAUGHT.

13 Dated this 27th day of March, 2020.

14 
NATHAN S. DEAVER, ESQ.

15 SUBSCRIBED AND SWORN TO before me
16 this 27th day of March, 2020.

17 
18 NOTARY PUBLIC in and for said



AFFIDAVIT OF BRICE J. CRAFTON, ESQ.
IN SUPPORT OF MOTION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

BRICE J. CRAFTON, ESQ, being first duly sworn, deposes and says:

1. That I am a duly licensed practicing attorney in Clark County, Nevada, maintaining an office at Deaver | Crafton, 810 E. Charleston Blvd, Las Vegas, Nevada 89104, and am an attorney of record for Plaintiff, PATRICIA SANCHEZ, in the above entitled matter.
2. That on February 7, 2020, this matter was heard by Arbitrator Scott Rasmussen and was attended by Plaintiff Sanchez, counsel for Plaintiff Sanchez, Brice J. Crafton, Esq. and counsel for Defendant Arce, Erich Storm, Esq.;
3. That on February 11, 2020, an arbitration decision and award was submitted by Mr. Rasmussen, finding in favor of the Defendant and against the Plaintiff;
4. That on or around February 20, 2020, I spoke to my business partner, Nathan Deaver, Esq. regarding the arbitration decision and award, who informed me that prior negotiations had occurred between him and the assigned adjuster at Key Insurance regarding resolving this claim (who later I learned to be Ms. Erika Cervantes), and that he would reach out to her to discuss resolution in *lieu* of us filing a request for trial *de novo*;
5. That on February 20, 2020, I was informed by Mr. Deaver that he and Ms. Cervantes spoke on the phone and were able to resolve this matter for the amount of \$10,000.00 in *lieu* of our request for a trial *de novo*;

- 1 6. That on February 20, 2020, I wrote the following to defense counsel Storm, copying Ms.
2 Erika Cervantes and Mr. Deaver on the email, regarding the resolution of this matter:

3 Erich,
4 Please let this email confirm that today my partner, Nathan Deaver, had
5 a conversation with your adjuster, Erika Cervantes, cc'd hereto, and they
6 reached a settlement agreement for the amount of \$10,000.00 to resolve
7 this action. My assistant Cynthia, also cc'd to this email, will provide
8 you a W-9 ASAP. Please have the check made out to Patricia Sanchez,
9 and her counsel of record, Deaver | Crafton. I'm glad we could get this
10 one done without having to file a de novo request for short trial. Please
11 forward your release and stipulation and order for dismissal as soon as
12 practicable.

- 13 7. That on February 21, 2020, Mr. Storm responding instructing me to calendar the de novo
14 date while they decide what their best course of action is, to which I responded as follows:

15 Erich, an agreement was reached with your adjuster who was informed
16 beforehand that we were preparing to file our short trial request. As far
17 as we are concerned, this matter is resolved per (sic) the settlement value
18 of \$10,000.00 in lieu of continuing to a short trial. Please forward the
19 closing documents as requested at your earliest convenience.

- 20 8. That on February 21, 2020 Mr. Storm responded to the above as follows:

21 It is disconcerting to me that your office would go behind my back and
22 settle with the adjuster who advises your office did not inform her of the
23 arbitration or its outcome. Under Nevada law, I have two clients in this
24 case, and one of them is Key Insurance. I would expect at a
minimum that you would notify me of your intentions to speak with an
adjuster on one of my files.

9. That on February 21, 2020, I responded to the above as follows:

As you know, it is commonplace for communication to continue with an
adjuster throughout the claim irrespective of litigation. There was no
"going behind your back" as continued conversations with adjusters are
routine and expected considering they are tasked with making the
claim's decisions, including settlement. Nathan DID inform Erika that
we were prepared to file our short trial request, which, obviously, always
comes post arbitration. Your disconcertion is misplaced as no
impropriety occurred in negotiating this resolution.

Please advise at your earliest convenience if it is your intent to honor the settlement agreement reached or if it will be necessary to file a Motion to Enforce Settlement.

10. That I did not receive a response to the above but sent the following on March 17, 2020 to Mr. Storm, copying Mr. Deaver and Ms. Cervantes:

Good Morning,
Please forward the release and SAO to Dismiss on this matter ASAP. If we are forced to file a motion to enforce settlement we will be asking for fees and costs in addition to the \$10,000.00 settlement amount.

11. That no response was provided to me, but finally, Mr. Deaver heard back from Mr. Storm as follows on March 24, 2020 after multiple attempts by Mr. Deaver to communicate with him:

Mr. Deaver, Key is not going to pay the alleged settlement amount voluntarily. Your dealings with the claims representative were in direct violation of the rules of professional responsibility. What you did was egregious. You handled this poorly, there were much better ways for you to go about resolving things. Since nothing good will come of it if you push things, I suggest you let it go.

12. That on March 25, 2020, Mr. Storm filed a Judgment on Arbitration Award despite his knowledge that the case had been resolved with Key's representative, Erika Cervantes.

13. That on March 25, 2020, Mr. Deaver sent the following to Mr. Storm, copying me, in response to the above:

Dear Mr. Storm,
Respectfully, I disagree with your position. I have heard that Joe Purdy and Mark Anderson have recently left Key Insurance, and as such are no longer employees of Key Insurance. As I understand it, you are now the in-house Key Insurance attorney. To the extent that you want to manage files differently, we will work with you on that in the future. That said, we can show that in the past Key adjusters have communicated with us directly, and other plaintiff attorneys, even after suit was filed. This is not an unusual practice, and certainly was not unusual while Joe Purdy and Mark Anderson were handling cases. Typically, they deferred to the adjusters whenever we discussed any settlement numbers and

1 authority. It is also typical that the claims adjusters are the ones with
2 authority to settle/resolve these claims. Since Key Insurance adjusters
3 have a pattern and practice of communicating directly with plaintiff's
4 attorneys, and my understanding is that you are a Key
5 Insurance employee, I do not believe there was any professional
6 misconduct as you suggest in your meritless accusations.

7 Here, Erika Cervantes was still in communication with me
8 directly, **made me an offer of \$10,000 to settle, which we**
9 **accepted.** Erika did not indicate to me that any other authority was
10 needed at the time to approve the settlement. It was because of this offer
11 and acceptance that the time to file a trial de novo lapsed. We sent you
12 multiple messages prior to that deadline and have not had the courtesy
13 of a response since February 21, 2020. Now that the time for de novo
14 has expired, you have provided a response last night indicating your
15 intent to NOT settle as previously agreed upon with Erika
16 Cervantes. Further, today you have filed a judgment on the arbitration
17 award, which we believe is in direct violation of Rule 11. Thereby
18 potentially opening you up to sanctions considering your knowledge of
19 this case having been resolved with Erika Cervantes. Now we will be
20 forced to file a motion to set aside the judgment and to enforce
21 settlement. We ask that you voluntarily withdraw the judgment and
22 honor the settlement agreement that was reached in order to avoid the
23 described motion practice.

24 To reiterate, it is our position that Erika Cervantes has authority to bind
Key Insurance, and that the claim is settled. If you are not going to honor
the settlement agreement, then we will have to file a motion to enforce
the settlement with my affidavit and all of the documented
communications between our offices.

14. That I have spent approximately 5 hours in efforts to communicate with Mr. Storm and
Ms. Cervantes, gathering the communication efforts made, preparing this affidavit, and
assisting in drafting this motion and that my usual and customary rate of time for this work
is \$450.00 per hour.
15. That the following Motion to for Relief From Judgement and to Enforce Settlement has
been necessitated due to the above.

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16. I sign this affidavit and declaration in accordance with NRS 53.045 and under penalty of perjury.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 27 day of Mar, 2020.


BRICE J. CRAFTON, ESQ.

SUBSCRIBED AND SWORN TO before me
this 27th day of March, 2020.


NOTARY PUBLIC in and for said



MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTS

This case arises out of an automobile accident in which the parties agreed to settle Plaintiff, PATRICIA SANCHEZ'S, claims against Defendants for \$10,000.00. The specific factual history of the settlement is set forth above in the Affidavits of Nathan S. Deaver, Esq. and Brice J. Crafton, Esq. and forth the sake of brevity will not be reiterated here. However, there is no doubt that Key Insurance offered to settle this matter for \$10,000.00 on behalf of its insured, Defendant Arce, instead of being faced with a Request for Trial *De Novo*, which would have prolonged this litigated matter for an additional 6-9 months. Plaintiff Sanchez, accepted the terms of the agreement to resolve this matter for \$10,000.00 and thus the parties entered into an enforceable settlement on February 20, 2020. As proof of this agreement, please see Exhibit 1, which contains the email communications from Mr. Deaver to both Ms. Erika Cervantes, Key Insurance's assigned claims representative, as well as with Mr. Erich Storm, whom Key Insurance assigned to represent Defendant Arce. These email exchanges are also referenced in Mr. Deaver's affidavit above. See also Exhibit 2, which are the email exchanges between Mr. Crafton and Mr. Storm following the settlement of this matter and which are referenced in the Affidavit of Mr. Crafton, above.

II.

MOTION FOR RELIEF FROM JUDGMENT

On February 25, 2020, Mr. Storm, counsel for Defendant Arce, filed a Judgment on Arbitration Award despite knowing that this case resolved through negotiations with Key Insurance, the insurer of Defendant Arce, on February 20, 2020. See Judgment at Exhibit 3. The

filing of the Judgment was therefore improper and Plaintiff must be granted relief therefrom by having it vacated. NRCP 60(b) states in pertinent part as follows:

(b) *Grounds From Relief From a Final Judgment, Order, or Proceeding.* On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(3) ...misrepresentation,;

...

(5) ... applying it prospectively is no longer equitable; or

(6) and other reason that justifies relief.

Here, as set forth in the affidavits of Nathan S. Deaver, Esq. and Brice J. Crafton, Esq., a settlement was reached in this matter on February 20, 2020 after Mr. Deaver and Ms. Cervantes, Key's assigned claim's adjuster to this matter, spoke on the phone. During that conversation, Ms. Cervantes agreed to pay the sum of \$10,000.00 and was to send Mr. Deaver a release regarding the same. This settlement was reached specifically in order to avoid the need for Plaintiff to file a request for short trial after the arbitration. Ms. Cervantes was informed that should we not settle, a request for short trial would be filed immediately. Importantly, at the time of the collision, Plaintiff Sanchez had with her a passenger whose case resolved short of litigation, with Mr. Deaver and Ms. Cervantes negotiating and settling that claim. In similar fashion, albeit after having been litigated through arbitration and on the brink of heading to Short Trial, Ms. Sanchez's claim was negotiated and settled and was done in order to avoid a Request for Trial *De Novo*. As this claim was resolved on February 20, 2020, the Defendant's filing of a Judgment on Arbitration Award was unnecessary and improper. More so, it was a misrepresentation by Mr. Storm to the court to file a Judgment on a matter he 1) knew was resolved on February 20, 2020 and 2) even

1 if the resolution was disputed, he should have waited until the dispute was resolved prior to filing
2 a Judgment that was intended to communicate finality of a matter. To allow the Judgment to
3 stand considering the settlement agreement reached by the parties would be wholly inequitable.
4 Thus, based upon NRCP 60 (b) (3)(5) and (6), it is respectfully request that the Judgment be
5 vacated.

6 III.

7 THE SETTLEMENT REACHED ON FEBRUARY 20, 2020 SHOULD BE ENFORCED

8 The Court should enforce the parties' settlement agreement as the material terms of the
9 agreement are not ambiguous. "Because a settlement is a contract, its construction and
10 enforcement are governed by principles of contract law. (citing *May v. Anderson*, 119 P.3d 1254,
11 1257 (Nev. 2005) (citing *Reichelt v. Urban Inv. & Dev. Co.*, 611 F.Supp. 952, 954 (N.D.Ill.
12 1985)).

13 "Basic contract principles require, for an enforceable contract, an offer and acceptance,
14 meeting of the minds, and consideration. (citing *Keddie v. Beneficial Insurance, Inc.*, 580 P.2d
15 955, 956 (Nev. 1978)).

16 Release terms are "generally thought to be material to any settlement agreement. (citing *Inamed*
17 *Corp. v. Kuzmak*, 275 F.Supp.2d 1100, 1125 (C.D.Cal. 2002)).

18 Oral settlement agreements are enforceable. Both written and oral contracts are
19 enforceable so long as the terms are unambiguous. (citing *The Power Co. v. Henry*, 321 P.3d 858,
20 863 (Nev. 2014)).

1 Here, the parties reached a settlement on February 20, 2020 when Ms. Cervantes offered
2 to settle this claim in the amount of \$10,000.00 on behalf of Defendant Arce and Mr. Deaver, on
3 behalf of Plaintiff Sanchez, accepted said offer. (See Email exchange at Exhibit 1).

4 Notably, the email responses by Mr. Storm and Mr. Cevantes, at no point, deny that a
5 settlement agreement was reached. Mr. Storm, instead accuses Deaver|Crafton of acting
6 "egregious[ly]" and in "going behind his back" to get this matter resolved. Mr. Storm, however,
7 acknowledges that his adjuster settled this matter with Mr. Deaver specially writing:

8 It is disconcerting to me that your office would go behind my back and settle with the
9 adjuster who advises your office did not inform her of the arbitration or its outcome.

10 See Email exchange of February 21, 2020 at Exhibit 2.

11 Despite Mr. Storm's displeasure, there is no doubt that he agrees that a settlement was
12 reached during Ms. Cervantes and Mr. Deaver's conversations the day prior. Moreover, Mr.
13 Storm's personal attacks on my law firm are unfounded.

14 First, as to the allegation regarding "the arbitration or its outcome," the entire reason for
15 calling was to inform Ms. Cervantes that we were preparing to file a request for short trial but
16 were willing to forgo the same assuming resolution could be reached. Resolution was specially
17 reached in order to avoid further and prolonged litigation

18 Second, as was communicated by both Mr. Crafton and Mr. Deaver to Mr. Storm, there is
19 nothing egregious about continuing communications with a claims adjuster and it is a common
20 practice to do so. Mr. Crafton has been licensed to practice law since 2007; Mr. Deaver has been
21 licensed to practice law since 2010. Both of us have worked exclusively as plaintiff's lawyers,
22 dedicating our practice to personal injury victims. This dispute with Mr. Storm is the very first
23 that either Mr. Deaver or Mr. Crafton has been encountered with accusations of an impropriety
24

1 in communicating with a claim's adjuster. It is not only commonplace but is encouraged
2 considering that it is the claims adjusters and not the attorneys who make the decision to settle
3 and how much to settle for. The defense attorney is the representative of the Defendant, not the
4 insurance company and the insurance company, as the insured of the Defendant, is not a party but
5 rather also acts as a representative to its insured and is the ultimate decisionmaker on any given
6 case, acting in the best interests of its insured and axiomatically have the ultimate authority to
7 enter into and make agreements binding regarding settlement.

8 Here, under basic contract principles, there was an offer and there was acceptance.
9 Defendants offered \$10,000.00 in exchange for a signed release agreement releasing Plaintiff,
10 Sanchez's, claims against Defendant Arce. Plaintiff Sanchez accepted these terms choosing to
11 settle as opposed to filing for a short trial. There was consideration in the form of Plaintiff and
12 Defendant both forgoing a Short Trial due to a looming Trial *De Novo* request by Plaintiff, which
13 would have occurred absent the settlement agreement. Moreover, there was a meeting of the
14 minds in that Ms. Cervantes was informed that short of resolution the Request for Trial *De Novo*
15 would be filed and that both parties decided instead to resolve this litigated matter for the sum of
16 \$10,000.00. At the end of the conversation between Ms. Cervantes and Mr. Deaver on February
17 20, 2020, there existed an agreement to settle which now should be enforced.

18 IV.

19 REQUEST FOR FEES AND COSTS

20 The subject Motion was necessitated due to Defendant's counsel and his adjuster refuses
21 to honor an enforceable agreement to settle. Thus, Plaintiff and her counsel were forced to ask
22 the Court to issue a ruling on this matter, wasting the time, energy and resources of the Court, as
23 well as the authoring counsel and his partner.

1 Based upon the Affidavits of Nathan S. Deaver Esq. and Brice J. Crafton, Esq., a total
2 amount of eight and a half (8.5) hours have been spent in drafting emails and other forms of
3 communication in an effort to avoid the subject motion, as well as the time spent in drafting the
4 subject motion. It is our firm's practice to charge \$450.00 and hour. Accordingly, we ask this
5 Court to award a total of \$3,825 in attorneys' fees for having to file this Motion.

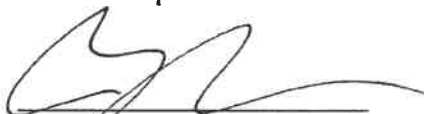
6 V.

7 CONCLUSION

8 For the foregoing reasons, Plaintiff requests the Court enter an Order Vacating the
9 Judgment and enforcing the parties' settlement agreement.

10 DATED this 27 day of Mar, 2020.

11 DEAVER | CRAFTON

12 

13 BRICE J. CRAFTON, ESQ.
14 NEVADA Bar No. 10558
15 810 E. Charleston Blvd.
16 Las Vegas, NV 89104
17 *Attorneys for Plaintiff*
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

I certify that I am an employee of DEAVER | CRAFTON, and that on the 2nd day of MARCH, 2020, pursuant to NRCP 5(b), I am serving the attached copy of **PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AND TO ENFORCE SETTLEMENT** on the party(s) set forth below by:

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

____ Via Facsimile (Fax)

X Electronically served through the Eighth Judicial District Court's Electronic filing system:

Mark R. Anderson, Esq.
PURDY & ANDERSON
3057 East Warm Springs Road, Suite 400
Las Vegas, NV 89120
Attorney for Defendant


An employee of DEAVER | CRAFTON

EXHIBIT "D"

EXHIBIT "D"



1 **ARBA**
2 R. Scott Rasmussen, Esq.
3 Nevada Bar No. 6100
4 COOPER LEVENSON, P.A.
5 3016 W. Charleston Blvd., Suite 195
6 Las Vegas, NV 89102
7 T: (702) 366-1125
8 srasmussen@cooperlevenson.com
9 *Arbitrator*

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

9 PATRICIA SANCHEZ, an individual,)	CASE NO.: A-19-796822-C
)	
10 Plaintiff,)	DEPT NO.: XXVII
)	
11 vs.)	
)	
12 JUAN MILLAN ARCE, an individual; DOES I-)	
13 X, inclusive; and ROE CORPORATIONS I-X,)	
14 inclusive,)	
)	
15 Defendants.)	

16 **ARBITRATION AWARD**

17 COMES NOW, the Arbitrator, having reviewed the evidence presented at the arbitration
18 hearing held on February 7, 2020 with Brice Crafton, Esq. appearing on behalf of Plaintiff and Eric
19 Storm, Esq. appearing on behalf of the Defendant, the arbitrator having reviewed the Plaintiffs' and
20 Defendants' Arbitration Briefs and having heard the testimony of the parties at the time of hearing,
21 in consideration of the evidence presented, the arbitrator hereby rules as follows:
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1 At the time of the hearing Plaintiff's counsel informed the Arbitrator that the plaintiff, based
2 upon her testimony at the arbitration hearing, conceded her moving forward in seeking damages for
3 future treatment. This arbitration award will therefore deny any award for future damages.
4

5 Having stated as such, the Arbitrator finds in favor of the Defendant and awards the Plaintiff
6 nothing for her claims of damages from this accident. The photographs of the damage to the
7 plaintiff's vehicles, did not display significant damage. Although the Plaintiff's counsel argued that
8 the Plaintiff's physical condition at the time of the accident was less than that of a normal
9 person. However, the Plaintiff testified she was with a patient that she was transporting to his
10 doctor's appointment. After the accident, the Plaintiff took this patient to her attorney's office
11 instead of the doctor. The patient missed his doctor's appointment according the Plaintiff. If the
12 Plaintiff and/or the patient had been injured in this accident then they should have seen a doctor and
13 missed out on that opportunity in order to see an attorney. The Arbitrator finds that the Plaintiff
14 lacked credibility from her own testimony in pursuing these claims.
15

16 DATED this ____ day of February, 2020.
17

18 

19 R. SCOTT RASMUSSEN, ESQ.
20 Nevada Bar No. 6100
21 3016 W. Charleston Blvd., Suite 195
22 Las Vegas, Nevada 89102
23 Arbitrator
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this __ day of February, 2020, I did cause a true copy of the ARBITRATION AWARD to be served upon each of the parties listed via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

/s/ Lisa C. McMillan

Employee of Cooper Levenson P.C.

EXHIBIT "E"

EXHIBIT "E"

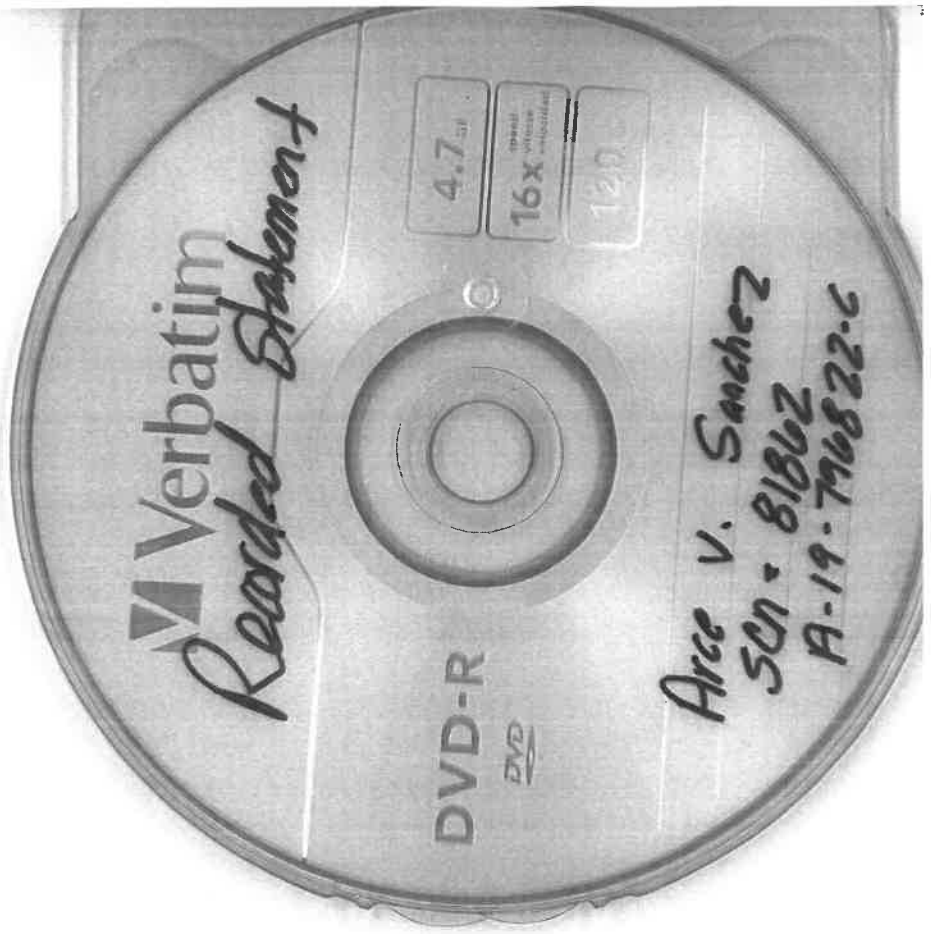


EXHIBIT "F"

EXHIBIT "F"



Nathan Deaver <nathan@deavercrafton.com>

Patricia Sanchez**Brice Crafton** <brice@deavercrafton.com>

Thu, Feb 20, 2020 at 3:37 PM

To: Erich Storm <EStorm@keyinsco.com>

Cc: "Nathan S. Deaver Esq." <nathan@deavercrafton.com>, sylvia mejia <cynthia@deavercrafton.com>, ecervantes@keyinsco.com

Erich,

Please let this email confirm that today my partner, Nathan Deaver, had a conversation with your adjuster, Erika Cervantes, cc'd hereto, and they reached a settlement agreement for the amount of \$10,000.00 to resolve this action. My assistant Cynthia, also cc'd to this email, will provide you a W-9 ASAP. Please have the check made out to Patricia Sanchez, and her counsel of record, Deaver | Crafton. I'm glad we could get this one done without having to file a de novo request for short trial. Please forward your release and stipulation and order for dismissal as soon as practicable.

Best Regards,

Brice J. Crafton, Esq.
Partner**DEAVER | CRAFTON** ATTORNEYS AT LAW

810 E. Charleston Blvd.
Las Vegas, NV 89104
Tel. (702) 385-5969
Fax (702) 385-6939

EXHIBIT "G"

EXHIBIT "G"

Erich Storm

From: Erich Storm
Sent: Friday, February 21, 2020 2:10 PM
To: 'Brice Crafton'
Subject: RE: Patricia Sanchez

It is disconcerting to me that your office would go behind my back and settle with the adjuster who advises your office did not inform her of the arbitration or its outcome. Under Nevada law, I have two clients in this case, and one of them is Key Insurance. I would expect at a minimum that you would notify me of your intentions to speak with an adjuster on one of my files.

Thanks,

Erich N. Storm
Purdy Anderson Storm
702-765-0976

From: Brice Crafton [mailto:brice@deavercrafton.com]
Sent: Friday, February 21, 2020 2:07 PM
To: Erich Storm
Cc: Nathan S. Deaver Esq.; sylvia mejia
Subject: Re: Patricia Sanchez

Erich, an agreement was reached with your adjuster who was informed beforehand that we were preparing to file our short trial request. As far as we are concerned, this matter is resolved per the settlement value of \$10,000.00 in lieu of continuing to a short trial. Please forward the closing documents as requested at your earliest convenience.

Sent from my iPhone

On Feb 21, 2020, at 2:01 PM, Erich Storm <EStorm@keyinsco.com> wrote:

Brice,

I suggest that you calendar the de novo date while we decide on this end what the best course of action is.

Thanks,

Erich N. Storm
Purdy Anderson Storm
702-765-0976

From: Brice Crafton [mailto:brice@deavercrafton.com]
Sent: Thursday, February 20, 2020 3:37 PM
To: Erich Storm
Cc: Nathan S. Deaver Esq.; sylvia mejia; Erika Cervantes
Subject: Patricia Sanchez

Erich,

Please let this email confirm that today my partner, Nathan Deaver, had a conversation with your adjuster, Erika Cervantes, cc'd hereto, and they reached a settlement agreement for the amount of \$10,000.00 to resolve this action. My assistant Cynthia, also cc'd to this email, will provide you a W-9 ASAP. Please have the check made out to Patricia Sanchez, and her counsel of record, Deaver | Crafton. I'm glad we could get this one done without having to file a de novo request for short trial. Please forward your release and stipulation and order for dismissal as soon as practicable.

Best Regards,

Brice J. Crafton, Esq.
Partner

<image001.jpg>

810 E. Charleston Blvd.
Las Vegas, NV 89104
Tel. (702) 385-5969
Fax (702) 385-6939