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 Dist. Court Case No. A-19-796822-C **RESPONDENT'S APPENDIX VOLUME 1**

Respondent PATRICIA SANCHEZ submits the following Respondent's Appendix Volume 1 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.

Brice J. Crafton, Esq.
DEAVER|CRAFTON
810 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 487-6938
Facsimile: (702) 385-6939
Email: brice@deavercrafton.com

Attorney for Respondent
Patricia Sanchez

Respondent PATRICIA SANCHEZ, by and through her counsel of record, DEAVER|CRAFTON, hereby submits Respondent'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 September, 2021.

DEAVER|CRAFTON

By:

/s/ Brice J. Crafton
BRICE J. CRAFTON, ESQ.
Nevada Bar No. 10558
810 E. Charleston Blvd.
Las Vegas, NV 89104
Attorney for Respondent

Exhibit 1

Exhibit 1

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.

5. My business partner, Brice Crafton, Esq., sent a confirming email to Erich Storm, Esq., in-house counsel for Key Insurance, and advised that a settlement was reached and that we were pleased we were able to resolve this case without having to file a de novo request for short trial. Brice Crafton, Esq. asked that Mr. Storm forward the Stipulation and Order for Dismissal. A copy of our firm's W-9 and payment instructions were also provided to Mr. Storm.

6. On or about March 3, 2020, I sent a follow-up email to Ms. Cervantes inquiring when we could expect the settlement release. To my surprise, Ms. Cervantes replied on 3/3/2020 that I should "contact Erich Storm with any questions you may have regarding this matter". I reminded Ms. Cervantes that we had reached an agreement previously and I inquired whether Key Insurance was "now not honoring our settlement agreement". Ms. Cervantes replied, "Again, please contact Erich Storm".

7. On March 5, 2020, I had a telephone call with Camay McClure at Key Insurance/Storm Legal Group and requested to either speak with Mr. Storm or to have someone get back to us regarding the settlement documents. Ms. McClure sent a confirming email asking that someone handle the matter.

8. On March 24, 2020, I attempted three times to reach Mr. Storm at his office phone number. I was unable to reach him and left him a voicemail and sent an email as well. To date, I have not had the courtesy of a returned phone call from Mr. Storm.

9. In my almost ten (10) years of practicing as a plaintiff's lawyer in the Las Vegas community, it has been common practice for myself and other plaintiff's counsel to keep open lines of communication with claims adjuster(s). It is common knowledge and

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

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

11. That I have spent approximately 3.5 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.

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

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 27th day of March, 2020.

NATHAN S. DEAVER, ESQ.

SUBSCRIBED AND SWORN TO before me this 30th day of March, 2020.

NOTARY PUBLIC in and for said

NOTARY PUBLIC
SHANNON SHAFFER
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. SEPT. 5, 2022
No: 14-15083-1

Exhibit 2

Exhibit 2

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*;

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

> 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.

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

> 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 (sic) 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.

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

> 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.

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

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

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

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.

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

NOTARY PUBLIC
SHANNON SHAFFER
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. SEPT. 5, 2022
No: 14-15083-1

DEAVER | CRAFTON
ATTORNEYS AT LAW

Exhibit 3

Exhibit 3

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Claim # KILV131871

Nathan Deaver <nathan@deavercrafton.com> Thu, Feb 20, 2020 at 10:53 AM
To: Erika Cervantes <ecervantes@keyinsco.com>

Erika,

It was a pleasure speaking with you this morning. I am confirming our conversation wherein we have agreed to settle this claim for the full and final sum of $10,000.00. I am pleased we were able to reach this settlement agreement short of further litigation.

Please forward the settlement release at your earliest convenience.

Kind regards,

Nathan S. Deaver, Esq.

--

DEAVER | CRAFTON ATTORNEYS AT LAW

Nathan S. Deaver, Esq.
Senior Partner
810 E. Charleston Blvd., Las Vegas, NV 89104
P: (702) 385-5969
F: (702) 385-6939
www.deavercrafton.com

Gmail by Google

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

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Patricia Sanchez

Cynthia Villanueva <cynthia@deavercrafton.com> Thu, Feb 20, 2020 at 3:44 PM
To: Brice Crafton <brice@deavercrafton.com>
Cc: Erich Storm <EStorm@keyinsco.com>, "Nathan S. Deaver Esq." <nathan@deavercrafton.com>, ecervantes@keyinsco.com

Hello Mr. Storm

I have attached our firms W-9 to this email.

Thank you,

DEAVER | CRAFTON ATTORNEYS AT LAW

Cynthia Villanueva
Litigation Assistant
810 E. Charleston Blvd, Las Vegas, NV 89104
P: (702) 385-5969 F: (702) 385-6939
Direct No: 702-487-6065
#VEGASSTRONG
#8#24#2
www.deavercrafton.com

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W-9 DC 2020.pdf
639K

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Patricia Sanchez

Brice Crafton <brice@deavercrafton.com> Fri, Feb 21, 2020 at 2:07 PM
To: Erich Storm <EStorm@keyinsco.com>
Cc: "Nathan S. Deaver Esq." <nathan@deavercrafton.com>, sylvia mejia <cynthia@deavercrafton.com>

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>

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Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Claim # KILV131871

Nathan Deaver <nathan@deavercrafton.com> Tue, Mar 3, 2020 at 1:10 PM
To: Erika Cervantes <ECervantes@keyinsco.com>
Cc: Brice Crafton <brice@deavercrafton.com>

Erika,

When can we expect the settlement release in the amount of $10,000.00?

Kind regards,

Nathan

Please forgive any errors as this was sent from a mobile device.

--

DEAVER | CRAFTON ATTORNEYS AT LAW

Nathan S. Deaver, Esq.
Partner
810 E. Charleston Blvd., Las Vegas, NV 89104
P: (702) 385-5969
F: (702) 385-6939
www.deavercrafton.com

On Feb 20, 2020, at 10:53 AM, Nathan Deaver <nathan@deavercrafton.com> wrote:

[Quoted text hidden]

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Claim # KILV131871

Nathan Deaver <nathan@deavercrafton.com> Tue, Mar 3, 2020 at 1:37 PM
To: Erika Cervantes <ECervantes@keyinsco.com>
Cc: Brice Crafton <brice@deavercrafton.com>

Patricia Sanchez. You and I spoke on it about 2/20/2020 and agreed to settle this case for the sum of $10,000.00.

- Nathan

Please forgive any errors as this was sent from a mobile device.

--

DEAVER | CRAFTON ATTORNEYS AT LAW

Nathan S. Deaver, Esq.
Partner
810 E. Charleston Blvd., Las Vegas, NV 89104
P: (702) 385-5969
F: (702) 385-6939
www.deavercrafton.com

On Mar 3, 2020, at 1:13 PM, Erika Cervantes <ECervantes@keyinsco.com> wrote:

I think you have the wrong Claim #. Who is your client?

From: Nathan Deaver [mailto:nathan@deavercrafton.com]
Sent: Tuesday, March 03, 2020 3:10 PM
To: Erika Cervantes

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Claim # KILV131871

Erika Cervantes <ECervantes@keyinsco.com> Tue, Mar 3, 2020 at 1:43 PM
To: Nathan Deaver <nathan@deavercrafton.com>
Cc: Brice Crafton <brice@deavercrafton.com>

RE: Patricia Sanchez

Claim # KILV112050

Please contact Erich N Storm with any questions you may have regarding this matter.

Erika Cervantes

From: Nathan Deaver [mailto:nathan@deavercrafton.com]
Sent: Tuesday, March 03, 2020 3:38 PM
To: Erika Cervantes
Cc: Brice Crafton
Subject: Re: Claim # KILV131871

Patricia Sanchez. You and I spoke on it about 2/20/2020 and agreed to settle this case for the sum of $10,000.00.

- Nathan

Please forgive any errors as this was sent from a mobile device.

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[Quoted text hidden]

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Claim # KILV131871

Nathan Deaver <nathan@deavercrafton.com> Tue, Mar 3, 2020 at 1:52 PM
To: Erika Cervantes <ECervantes@keyinsco.com>
Cc: Brice Crafton <brice@deavercrafton.com>

Erika,

Do you not recall us settling this for $10,000? I advised we wanted to try and settle short of filing our request for a short trial. We agreed upon $10,000.00. The other passenger previously settled for $10,000 as well. Is key insurance now not honoring our settlement agreement?

Please advise.

Thanks.

Please forgive any errors as this was sent from a mobile device.

--

DEAVER | CRAFTON ATTORNEYS AT LAW

Nathan S. Deaver, Esq.
Partner
810 E. Charleston Blvd., Las Vegas, NV 89104
P: (702) 385-5969
F: (702) 385-6939
www.deavercrafton.com

On Mar 3, 2020, at 1:43 PM, Erika Cervantes <ECervantes@keyinsco.com> wrote:

RE: Patricia Sanchez

Claim # KILV112050

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Claim # KILV131871

Erika Cervantes <ECervantes@keyinsco.com> Tue, Mar 3, 2020 at 1:53 PM
To: Nathan Deaver <nathan@deavercrafton.com>
Cc: Brice Crafton <brice@deavercrafton.com>, Erich Storm <EStorm@keyinsco.com>

Again, please contact Erich Storm.

From: Nathan Deaver [mailto:nathan@deavercrafton.com]
Sent: Tuesday, March 03, 2020 3:53 PM
To: Erika Cervantes
Cc: Brice Crafton
Subject: Re: Claim # KILV131871

Erika,

Do you not recall us settling this for $10,000? I advised we wanted to try and settle short of filing our request for a short trial. We agreed upon $10,000.00. The other passenger previously settled for $10,000 as well. Is key insurance now not honoring our settlement agreement?

Please advise.

Thanks.

Please forgive any errors as this was sent from a mobile device.

--

[Quoted text hidden]
[Quoted text hidden]
[Quoted text hidden]

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Patricia Sanchez

Nathan Deaver <nathan@deavercrafton.com> Tue, Mar 3, 2020 at 2:27 PM
To: Brice Crafton <brice@deavercrafton.com>
Cc: Erich Storm <EStorm@keyinsco.com>, sylvia mejia <cynthia@deavercrafton.com>

Dear Mr. Storm,

We are following up to see when your office is going to provide the settlement documents. Whereas an agreement has been reached to settle Patricia Sanchez' claim for the sum of $10,000.00, we see no reason to delay this matter further.

Please advise.

Kind regards,

Nathan

Please forgive any errors as this was sent from a mobile device.

--

DEAVER | CRAFTON ATTORNEYS AT LAW

Nathan S. Deaver, Esq.
Partner
810 E. Charleston Blvd., Las Vegas, NV 89104
P: (702) 385-5969
F: (702) 385-6939
www.deavercrafton.com

On Feb 21, 2020, at 2:07 PM, Brice Crafton <brice@deavercrafton.com> wrote:

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.

P000022

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Arce adv. Sanchez :: Settlement Documents

1 message

Camay McClure <CMcClure@keyinsco.com> Thu, Mar 5, 2020 at 11:48 AM
To: Star Farrow <SFarrow@keyinsco.com>
Cc: Cindy Ibarra <CIbarra@keyinsco.com>, Travis Akin <TAkin@keyinsco.com>, "nathan@deavercrafton.com" <nathan@deavercrafton.com>

Hi Everyone,

I spoke to Plaintiff's Counsel Nathan Deaver (he is copied on this email) today and he is asking for settlement documents from us on the above referenced case. Can you guys take care of this please?

Ms. Camay McClure

Paralegal

STORM LEGAL GROUP

3057 E Warm Springs Rd Ste 400

Las Vegas NV 89120

Phone: (702) 765-0976 Ext. 6829

Fax: (702) 765-0981

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Sanchez, Patricia

Brice Crafton <brice@deavercrafton.com> Tue, Mar 17, 2020 at 11:15 AM
To: Erich Storm <EStorm@keyinsco.com>, Erika Cervantes <ecervantes@keyinsco.com>, "Nathan S. Deaver Esq." <nathan@deavercrafton.com>

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.

Best,

Brice

Sent from my iPhone

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Patricia Sanchez

Nathan Deaver <nathan@deavercrafton.com> Tue, Mar 24, 2020 at 1:56 PM
To: Brice Crafton <brice@deavercrafton.com>
Cc: Erich Storm <EStorm@keyinsco.com>, sylvia mejia <cynthia@deavercrafton.com>

Dear Mr. Storm,

I have attempted to contact you on numerous occasions regarding the settlement for Patricia Sanchez. I tried to reach you at your office today and left a voicemail. To date, we have not had the courtesy of a response/update regarding the settlement of this matter.

Please advise if we need to move forward with a motion to enforce the settlement agreement.

Kind regards,

Nathan S. Deaver, Esq.
[Quoted text hidden]
[Quoted text hidden]
Senior Partner
[Quoted text hidden]

Gmail by Google

Nathan Deaver <nathan@deavercrafton.com>

Patricia Sanchez

Erich Storm <EStorm@keyinsco.com> Tue, Mar 24, 2020 at 4:48 PM
To: Nathan Deaver <nathan@deavercrafton.com>

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 just let it go.

Thanks,

Erich N. Storm

702-765-0976

From: Nathan Deaver [mailto:nathan@deavercrafton.com]
Sent: Tuesday, March 24, 2020 1:57 PM
To: Brice Crafton
Cc: Erich Storm; sylvia mejia
Subject: Re: Patricia Sanchez

Dear Mr. Storm,

I have attempted to contact you on numerous occasions regarding the settlement for Patricia Sanchez. I tried to reach you at your office today and left a voicemail. To date, we have not had the courtesy of a response/update regarding the settlement of this matter.

Please advise if we need to move forward with a motion to enforce the settlement agreement.

Kind regards,

Gmail by Google

Brice Crafton <brice@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

Gmail by Google

Brice Crafton <brice@deavercrafton.com>

Patricia Sanchez

Erich Storm <EStorm@keyinsco.com> Fri, Feb 21, 2020 at 2:01 PM
To: Brice Crafton <brice@deavercrafton.com>
Cc: "Nathan S. Deaver Esq." <nathan@deavercrafton.com>, sylvia mejia <cynthia@deavercrafton.com>

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

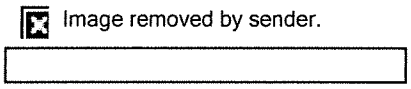
Erich,

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



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Gmail by Google

Brice Crafton <brice@deavercrafton.com>

Patricia Sanchez

Brice Crafton <brice@deavercrafton.com> Fri, Feb 21, 2020 at 2:07 PM
To: Erich Storm <EStorm@keyinsco.com>
Cc: "Nathan S. Deaver Esq." <nathan@deavercrafton.com>, sylvia mejia <cynthia@deavercrafton.com>

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,

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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

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Gmail by Google

Brice Crafton <brice@deavercrafton.com>

Patricia Sanchez

Erich Storm <EStorm@keyinsco.com> Fri, Feb 21, 2020 at 2:09 PM
To: Brice Crafton <brice@deavercrafton.com>

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.

[Quoted text hidden]

Gmail by Google

Brice Crafton <brice@deavercrafton.com>

Patricia Sanchez

Brice Crafton <brice@deavercrafton.com> Fri, Feb 21, 2020 at 2:35 PM
To: Erich Storm <EStorm@keyinsco.com>
Cc: "Nathan S. Deaver" <nathan@deavercrafton.com>

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.

Best,

Brice

Sent from my iPhone

> On Feb 21, 2020, at 2:09 PM, Erich Storm <EStorm@keyinsco.com> wrote:
>
> [Quoted text hidden]

Gmail by Google

Brice Crafton <brice@deavercrafton.com>

Patricia Sanchez

Nathan Deaver <nathan@deavercrafton.com> Wed, Mar 25, 2020 at 5:08 PM
To: Erich Storm <EStorm@keyinsco.com>, Brice Crafton <brice@deavercrafton.com>, Erika Cervantes <ECervantes@keyinsco.com>

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

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

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.

Please advise.

Kind regards,

Nathan S. Deaver, Esq.

On Tue, Mar 24, 2020 at 4:48 PM Erich Storm <EStorm@keyinsco.com> wrote:

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 just let it go.

Thanks,

Erich N. Storm

702-765-0976

From: Nathan Deaver [mailto:nathan@deavercrafton.com]
Sent: Tuesday, March 24, 2020 1:57 PM
To: Brice Crafton
Cc: Erich Storm; sylvia mejia
Subject: Re: Patricia Sanchez

Dear Mr. Storm,

I have attempted to contact you on numerous occasions regarding the settlement for Patricia Sanchez. I tried to reach you at your office today and left a voicemail. To date, we have not had the courtesy of a response/update regarding the settlement of this matter.

Please advise if we need to move forward with a motion to enforce the settlement agreement.

Kind regards,

Nathan S. Deaver, Esq.

On Tue, Mar 3, 2020 at 2:27 PM Nathan Deaver <nathan@deavercrafton.com> wrote:

Dear Mr. Storm,

We are following up to see when your office is going to provide the settlement documents. Whereas an agreement has been reached to settle Patricia Sanchez' claim for the sum of $10,000.00, we see no reason to delay this matter further.

Please advise.

Kind regards,

Nathan

Please forgive any errors as this was sent from a mobile device.

--

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[Quoted text hidden]
[Quoted text hidden]

--

Image removed by sender.

Nathan S. Deaver, Esq.

Senior Partner

810 E. Charleston Blvd., Las Vegas, NV 89104

P: (702) 385-5969

F: (702) 385-6939
www.deavercrafton.com

P000036

be aware that any disclosure, copying, distribution or other use of the contents of this transmission is prohibited. If you received this transmission in error, please notify us by telephone (702) 385-5969 and permanently delete this message without making a copy. Thank you for your assistance in this regard.

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Gmail by Google

Brice Crafton <brice@deavercrafton.com>

Sanchez, Patricia

Brice Crafton <brice@deavercrafton.com> Tue, Mar 17, 2020 at 11:15 AM
To: Erich Storm <EStorm@keyinsco.com>, Erika Cervantes <ecervantes@keyinsco.com>, "Nathan S. Deaver Esq." <nathan@deavercrafton.com>

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.

Best,

Brice

Sent from my iPhone

P000038

EXHIBIT 3

EXHIBIT 3

JDAA
STORM LEGAL GROUP
ERICH N. STORM, ESQ.
Nevada State Bar No.:4480
estorm@keyinsco.com
3057 East Warm Springs Road, Suite 400
Las Vegas, Nevada 89120
Telephone: (702) 765-0976
Facsimile: (702) 765-0981
Attorneys for Defendant

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

DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA SANCHEZ, an individual, Plaintiff, *vs.* JUAN MILLAN ARCE, an Individual; DOES I-X, inclusive; and ROE CORORATIONS I-X, inclusive, Defendants.	CASE NO.: A-19-796822-C DEPT NO.: 27

JUDGMENT ON ARBITRATION AWARD

Pursuant to NAR (1) *et seq.*, this matter came on for hearing on the 7th day of February, 2020, Arbitrator R. Scott Rasmussen, Esq., presiding. The Arbitrator, having filed and served an Award on the 11th day of February, 2020, finding for Defendant and against Plaintiff, and no timely Request For Trial De Novo having been filed, the Court hereby enters judgment on the Arbitration Award in favor of Defendant and against Plaintiff, and that Plaintiff, Patricia

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☐ Voluntary Dismissal ☐ Involuntary Dismissal ☐ Stipulated Dismissal ☐ Motion to Dismiss by Deft(s)	☐ Summary Judgment ☐ Stipulated Judgment ☐ Default Judgment ☒ Judgment of Arbitration

Sanchez, take nothing and that the Complaint on file herein be dismissed, with prejudice.

DATED this 25th day of March, 2020

Nancy L Allf

JUDGE, DISTRICT COURT

Submitted by:
STORM LEGAL GROUP

ERICH N. STORM, ESQ.
Nevada State Bar No.:4480
3057 East Warm Springs Road, Suite 400
Las Vegas, Nevada 89120
Telephone: (702) 765-0976
Attorney for Defendant

Exhibit 4

Exhibit 4

Electronically Filed
8/12/2020 2:15 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA SANCHEZ, Plaintiff(s), vs. JUAN MILLAN ARCE, Defendant(s).	CASE NO: A-19-796822-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

THURSDAY, JUNE 11, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS (VIA BLUE JEANS)
RE: MOTIONS HEARING

APPEARANCES (Via Blue Jeans):

For the Plaintiff: BRICE J. CRAFTON, ESQ.

For the Defendant: ERICH STORM, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

LAS VEGAS, NEVADA, THURSDAY, JUNE 11, 2020

[Proceeding commenced at 3:40 p.m.]

THE COURT: All right. I'm going to call the case, Sanchez versus Arce A-796822. Appearances, please, starting first with the plaintiff.

MR. CRAFTON: Good afternoon, Your Honor. Brice Crafton for the plaintiff, Patricia Sanchez.

MR. STORM: Erich Storm for defendant.

THE COURT: Thank you both.

Let me just go over a couple of ground rules for you. I don't have a camera on my desktop, and our system's voice-activated, so I try to look at the podium. You guys will appear on the screen next to me, over by my hand here, this hand. So when I'm looking over here, I'm looking, if you're on video, to look into your eyes during the argument. I'm not ignoring you.

Try to keep yourself on mute when you're not speaking and watch the background noise.

And I know, Mr. Storm, you had a hearing with us earlier today. But just a general update for everyone. Jury letters went out last week. It will take us six to seven to eight weeks before we can seat juries. When we can have jury trials, then there are cases that will take precedence in setting, which include the in-custody people who've invoked speedy trial rights and five-year rules.

We don't think we can impanel more than one venire per

day. There are no in-person settlement conferences in June. If you find you want one in a case, if you contact an individual judge, you can agree to do it out on Blue Jeans. There will be no short trials until we can have juries.

At this point we're granting continuances liberally and entering no defaults. And so that's kind of the lay of the land.

Now, this is, I believe, the Plaintiff's Motion for Relief From Judgment and to Enforce Settlement.

Mr. Crafton.

MR. CRAFTON: Thank you, Your Honor.

You've gone through the briefs. I think that our arguments are spelled out (indiscernible) quickly, so I don't have much to add. But just to recap, you know, this case went to arbitration. It was a defense award that was handed down by Arbitrator Rasmussen about nine days or, you know, a week and a half or so after the arbitration hearing or after we got the award.

My partner spoke with Key Insurance adjuster, Ms. Erika Cervantes, who was informed that we were planning on proceeding to a short trial if the case doesn't resolve. They had previously -- Nathan and Ms. Cervantes had previously negotiated and settled the co-claimant, who was a passenger in Ms. Sanchez's car at the time of the collision, for $10,000.

Ms. Sanchez's case, as I spoke or as I said earlier, proceeded to short trial, as opposed to being settled, because she was the driver. Long story short, that conversation between

Ms. Cervantes and Mr. Deaver resulted in a settlement of $10,000, the same as the co-claimant prior to when the litigation was filed. And that's, you know, where this dispute starts.

Our position is the case has settled. There has been no dispute that the case was settled on that date, February 20th of 2020. And the only dispute is whether or not -- well, Mr. Storm's opposition doesn't state that the case wasn't settled. It doesn't look like that is being contested.

What is contested is whether or not the settlement is against public policy or should be void based upon Mr. Deaver negotiating with the adjuster, as opposed to Mr. Storm personally.

In my 15 years of handling exclusive personal injury cases, it is not only common practice to continue negotiations with the adjuster during cases, but it is expected and encouraged so that we can try to keep the court docket as uncongested as possible and obviously promote settlement.

It wasn't until after the case settled that we found out that, you know, this was something that Mr. Storm didn't take kindly to, which was a surprise to us, considering that it was, you know, common place in our practice and claimants' practices across this community.

None of Mr. Storm's arguments about public policy or the settlement being void seems to have any support. Nothing that was cited shows that a settlement should be reversed simply because, you know, (indiscernible) but who should have been contacted and

communicated with for the settlement. And that's, you know, that's where we're at.

So as of February 20 of 2020, the case was resolved. The only thing that should have been filed with the Court after were -- would have been maybe a Stipulation Order for Dismissal, but certainly not a judgment against Ms. Sanchez, which was an errant document. And that is why we're asking relief of that judgment.

THE COURT: And explain to me. You knew Mr. Storm was involved because he was at the arbitration. And it's still commonplace to talk to the adjuster after you know the lawyer's involved?

MR. CRAFTON: Yes, Your Honor. Especially when there's in-house counsel involved, such as Mr. -- an office like Mr. Storm's, you know, who's in-house counsel for Key Insurance. Allstate has one. GEICO has one. And we are -- it is commonplace for us to continue communications with the adjusters. And in fact, many times the attorneys who will communicate with will say, you know, talk to my adjuster, in an effort to fast track negotiations because the attorney has to get authority from the adjuster anyway.

THE COURT: Okay. And you made no effort to contact him first?

MR. CRAFTON: I made -- I personally made no effort to contact him first. Nathan, my -- Mr. Deaver, my partner, he had already had communications with Ms. Cervantes with the co-claimant who resolved, and also regarded Ms. Sanchez's claim.

And so when we were discussing the results of the arbitration, the communication was, well, you know, call Ms. Cervantes -- call Erica and see if she wants to get this done before we have to file a Short Trial Request.

THE COURT: Thank you.

Mr. Storm.

MR. STORM: Thank you.

I can say that in the 36 years I've been an attorney, most of which has been in the PI realm, including I've handled many, many plaintiff's cases, as well as defendant, it is not the practice in the community for plaintiff's attorneys to solicit settlement discussions with a claims representative when the matter is in litigation, without first contacting the attorney.

Now, the Deaver/Crafton Firm may have their own standards, but they're inappropriate. And in fact, when I would get a call periodically representing a plaintiff from a claims representative, I'd say, Have you talked to defense counsel and let them know that you intend to talk to me?

And then I'll follow up with a call to the defense attorney and say, Hey, I just want you to know what's going on, and I don't want to do anything that is not kosher.

And the reason is, is because for many years, basically as long as Mr. Crafton has been practicing law, we have had the Nevada Yellow Cab Case that I cite in my brief and which plaintiff's counsel omitted from their motion. We have very clear law. And I

think it's important just to keep our eye on the ball here.

Nevada Yellow Cab Corporation states, without any kind of exceptions, that the attorney for the insured is the attorney for the insurer, period. That's what it says. There are no exceptions.

My suggestion would be that if counsel and his client believe that Nevada Yellow Cab should have some exception carved out of it to address the situation today, then they can go up to the Nevada Supreme Court and argue that to the Nevada Supreme Court and ask them to reverse a part of their ruling in that very clear case.

Number two, again, keeping our eye on the ball, our Rules of Professional Conduct, in particular Rule 4.2, is explicit that before counsel was to contact Ms. Cervantes to discuss settling the case, counsel was required to contact me and required to get my permission. They did not do that. You did not get a straight yes or no answer to the question whether counsel attempted to communicate with me before making the call to the claims representative. They did not. And that was deliberate.

Also keeping our eye on the ball, that same rule says that a reason why they were required to contact me and get my permission is because for them to do what they did would undermine the goal of the proper functioning of the legal system by avoiding overreaching by attorneys.

That's what they did in this case. They overreached by contacting Ms. Cervantes, suggesting settlement, not telling her the case had been to arbitration -- and she did not know that at that

point, and not telling her that their client had been (indiscernible) because the arbitrator found her to be a liar, in writing. They did not do that. They overreached.

Another reason why we have the rule -- that we have Rule 4.2 is because the judiciary and the bar want to eliminate, as much as possible, an attorney's interference with another party's attorney/client relationship. And that is exactly what happened in this instance.

I was not able to brief my client, Key Insurance Company, about the outcome of the arbitration and the value of the case. We were deprived of that opportunity by the improper communication with my client by plaintiff's counsel.

The Rule 4.2 is also explicit in the comments that the rule applies to communications with, quote, any person who is represented by counsel, end quote. So the rule makes this an improper communication when read in conjunction with Nevada Yellow Cab.

And in fact, there is a case I cited. I think it's called Illuzzi, out of Vermont, where they had a very similar rule prohibiting contact between a personal injury lawyer and a claims representative who is represented by counsel. Identical facts, basically. And they suspended him, the Court there, from practice, apparently because he'd done it before and might have also done other unsavory things.

So we have a very clear case law. We have a very clear

ethical rule. And we have -- hang on a second -- and we have very clear law in Nevada about the lack of enforceability of contracts that are in violation of public policy.

Clearly, the Rule 4.2 is a statement of Nevada public policy that these communications are improper. And Nevada case authority, again cited in my brief, is very clear that, in Nevada, contracts where the purpose is to create a situation that tends to operate to the detriment of the public interest or against public policy -- they are void. And we don't have to prove fraud, for example. It's simply a void contract based upon the improper conduct that we have.

So bottom line is, on the law, there's a clear violation of case law. There's a clear violation of the rules of ethics.

And again, my suggestion is that the Court should deny the motion and uphold the judgment.

And if counsel wants to go to the Nevada Supreme Court and say that what they did was not in violation of the rules of ethics, and that what they did was not in violation of the very clear-cut Yellow Cab Case, they can do so. And I would enjoy watching it, frankly, because I've never seen anything like this.

I was very disturbed when I found out that this case had settled behind my back. And we just can't allow that.

THE COURT: All right.

MR. STORM: It's like things are pushing the envelope more and more and more over the years. And at some point, you

have to look at the rules and the case law and enforce them. And this is an example of that.

There's the other argument I've made that I'm not quite sure what the legal basis is for this motion.

We don't have any compliance with the local Rule of Practice, which is 7.50, because there's no minutes incorporating the settlement as an order nor is there a written settlement.

And we have a trial de novo issue which is jurisdictional. They never filed one, for reasons I don't understand. They should have. They could have preserved their rights to make this argument, but they didn't. And the rules and the statutes are very clear. If they don't de novo timely, then they are subject to an adverse judgment, which by law I'm required to file. It's not even optional not to.

And if there's any lingering question in the Court's mind whether the Deaver/Crafton firm is somehow lulled into not filing a de novo by my conduct, my affidavit clearly shows that when they had about 20 days left to file a de novo, when I found out about this alleged settlement, I e-mailed them twice in one day and said, This is reprehensible, basically. This is unethical. And you better calendar your de novo deadline because we're looking at our options. So they knew that we were contesting that this is the settlement from the get-go, as soon as we learned about it.

So in summary, Your Honor, I think the law is clear. I think the Court should enforce the law, deny the motion. And if counsel is adamant that they're right, and the Nevada Supreme Court case that

I cite and the Rule and Ethics are inapplicable, they can go up to the Supreme Court and tell them that they need to change the law to satisfy their desires in this case.

Thank you.

THE COURT: Mr. Storm, I have a question for you. You know, they performed. They thought they had a contract. They performed, and then they relied on that settlement in not requesting a short trial.

Do you have a response to that.

MR. STORM: I don't -- well, sorry. Go ahead. Okay. I thought I interrupted you.

THE COURT: No.

MR. STORM: Well, they hadn't really performed anything. I mean -- and even if there is a valid contract, executory or partly performed or whatever the case may be, they are voidable under these circumstances at the discretion or choice of the offended party.

So partial performance is not an issue. And I don't know what they did to perform. Frankly, I'm a little bit -- I -- what was that --

THE COURT: The motion said that they forwarded release.

MR. STORM: Oh, they may have forwarded a release.

THE COURT: Right.

MR. STORM: But I don't think -- I think that that's beside the point. The question is not whether they performed the contract, but whether the contract is enforceable. And we're saying it is not.

And that, again, is pretty well stated in Nevada case law. It is against public policy what counsel did. I don't think there's any question about that. And under these circumstances, at the choice of Key, they can void the contract. And that's what we are asking to do.

THE COURT: Thank you.

And the reply, please.

MR. CRAFTON: Yes, Your Honor.

I'll be as brief as possible. I just want to touch upon a couple points. It's still undisputed that settlement was reached on February 20, 2020. Mr. Deaver spoke with Ms. Cervantes. There was an offer; there was an acceptance. And as you just pointed out, there was performance and there was reliance.

So as far as the settlement, it was set; the case was set. And that is exactly why we did not file a trial de novo on this case, because the case was settled. A contract was formed.

Just to correct the -- something that may be a little confused. We actually never did get a release from Ms. Cervantes. So I just wanted to clear that up with the Court in case there was a question about that. Ms. Cervantes said, in the audio recording that you, Your Honor, were given and that we transcribed for you in our reply, that she would be sending the release.

Before that occurred, I e-mailed Mr. Storm, which I also cited to in my affidavit and in my motion and said, Hey, I'm glad that we were able to get this done without having to file de novo. And that's, I assume, you know, what started this ball rolling with

whether or not the case was resolved.

And on February 20, 2020, it absolutely was resolved. It was absolutely settled. And now the question is whether or not that settlement should stick. And that's why our motion is titled a Motion to -- you know -- for Relief From Judgment and to Enforce the Settlement.

Mr. Storm, in his arguments, still hasn't denied that the case wasn't settled. He's trying to argue that the settlement shouldn't be enforceable, because it, you know, goes against public policy or should be void based upon 4.2.

I adamantly disagree that we have done anything in violation of 4.2. I adamantly disagree that Yellow Cab controls this situation. Yellow Cab, specifically -- and I addressed it in my reply. Yellow Cab is a completely set of facts -- a different set of facts that involves an attorney who represented an insurance company and then went over to another firm that actually was going to sue that very insurance company for bad faith.

The Court found in that situation, in that specific situation, there was a conflict with that attorney. It has nothing to do with negotiations with adjusters during a personal injury action.

And I'll tell you, it is commonplace. And you know, Mr. Storm says in his 36 years of practice it's not. I'll tell you in my 15 years of practice, that's all we've done. And this is the second firm that I've worked at. I've worked with my partner for seven years. And it is something that has never been questioned before

this case.

In fact, speaking with other attorneys in preparing this motion and preparing arguments and trying to figure out what the best course of action is, it's been a no-brainer with everybody that I've spoken to.

You know, and so I adamantly disagree that we've done anything, you know, improper in this case. And so if we do have to get clarification from the Supreme Court, you know, that's what we're prepared to do, because we do feel strongly that there is a settlement, and it should be enforced based upon the circumstances of this case.

4.2 specifically -- and Mr. Storm said something that I found -- that I agree with -- that you have to read 4.2 in conjunction, I guess, with Yellow Cab. Yellow Cab, one, doesn't state that, in our fact pattern, that the insurer is the client.

4.2 specifically speaks to represented parties. Key Insurance is not a party. Key Insurance was never a party -- not named as a party in this lawsuit.

4.2, we have done nothing to violate 4.2, because of that, and that is addressed on page 8 of my -- on my briefs.

The only case -- Mr. Storm brought up the Vermont case which is a disciplinary decision. It has nothing to do -- it doesn't speak to whether or not that settlement that was at issue in that case was enforced or not enforced. That only states the conduct that that attorney did, coupled with a plethora of other and different types of

misconduct, they found that the attorney should be disciplined. So Vermont is an opposite to our facts.

The New York decision or the New York opinion that I cited, I think is persuasive here, where the -- where that -- I believe it was also a committee with the State Bar of New York. They stated, We see nothing improper in an attorney or a claimant entering into negotiations with the adjuster, even where the negotiations include discussion of legal aspects of liability. We carry this conclusion, which is consistent with our many subsequent opinions on the ethically complex tripartite relationship that exists among insurance company, assigned counsel, and the policyholder in holding that contact with the adjuster is not contact with the policyholder.

Here, the policyholder, AKA the defendant, Mr. Arce, is represented by Mr. Storm.

Following the New York guidance in conjunction with what, you know, the arguments that we have set forth in our reply, there is still absolutely nothing wrong with us contacting Ms. Cervantes to get this case resolved prior to sending it up the line to a short trial.

With regard to the language and the communication Mr. Deaver had with Ms. Cervantes, if Ms. Cervantes needed clarification about what a short trial means, she had every opportunity to ask for it in that moment. She is not a, you know, a rookie adjuster; she is not a green adjuster. If she had any questions with regard to whether or not the case was ripe to be negotiated and

settled; knowing that the case had already been assigned to counsel, which she eludes to in her -- in the recording; knowing that it had been in litigation; she could have said, Hey, let's pump the brakes. Let's talk to Mr. Storm. And I'll call you back.

Instead, the case was resolved right then and there. And there's nothing that is in -- put in in Mr. Storm's opposition or his arguments today which would prevent this court to enforce the settlement.

THE COURT: Thank you both. The matter is submitted.

MR. STORM: Your Honor, could I have two minutes?

THE COURT: I was supposed to have another hearing to start at 4:00. But, yes, you may have two minutes.

And Brynn, can you notify the other parties that we'll need about 4:15, 4:20.

Mr. Storm.

MR. STORM: Okay. Rule 4.2 comments -- Comment 3 says that it is irrelevant that Ms. Cervantes consented and continued with the communication rather than stop, pump the brakes, and say, Well, let's talk to Mr. Storm. That's not an excuse.

The purpose of the rule is to prevent the conduct that we see going on here. Whether she consented to this discussion or not is a clear terms of Rule 4.2 beside the point.

Also, the Yellow Cab case here -- we're getting a little bit of an inaccurate picture of it again. Counsel wants to carve out an exception that says, Oh, but plaintiff's attorneys, or whatever, can

contact the defendant's insurance company, even though the insured and the insurer are both represented by the same counsel. It does not stand for that proposition.

In fact, if you look at the decision, the Court says, under the section where they discuss this subject, that in the past they had recognized an attorney/client relationship exists -- and they gave a couple of different examples from prior cases. And they said there is an attorney/client relationship between a medical malpractice insurer and the lawyer it retained to defend its insured doctor.

In that case, the insurance company was unhappy with the performance of the malpractice defense lawyer and sued him for malpractice. In that case, the insurer was not a party to the lawsuit.

But it just goes to show to the Court that the holding in Yellow Cab was not limited to the peculiarities of that case. In fact, the Court said, directly, that they were adopting the majority rule around the country, that the -- if they had a specific conflict between them, the insured and the insurance company are equally represented by the retaining lawyer in this case -- me.

So nothing has changed. The law is very clear. It doesn't have exceptions. And I would ask the Court to deny the motion.

THE COURT: Mr. Crafton, it was your motion. You get the last word.

MR. CRAFTON: Thank you, Your Honor. I appreciate that, Your Honor.

I don't know if I can add anything that's not already been

stated or cited in the briefs. I don't want to beat a dead horse, so to speak. I just -- you know, we're going back to the Yellow Cab -- it is a question of disqualification of conflict of interest. It wasn't -- it didn't have to do with the facts or the circumstances of our case here.

And, you know, the Footnote No. 3, or whatever Mr. Storm just cited to with regard to 4.2, Key Insurance isn't a represented party. They're not a party to this lawsuit on any party. And we've done nothing to violate them.

THE COURT: Thank you both.

This is the Plaintiff's Motion for Relief and to Enforce Settlement. It comes after the plaintiff lost at arbitration. Plaintiff's counsel contacted the insurance adjuster without contacting Mr. Storm and settled the case.

I do find that a valid contract was entered and that the plaintiff forwarded a release to the adjuster and also relied on that settlement by not seeking a short trial.

In contacting the adjuster -- in the text of the reply it says, To avoid a short trial, they wanted to settle.

Now, I don't find that that communication was in violation of Rule 4.2 because that is a communication with a person represented by counsel.

The plaintiff's counsel made no effort to contact Mr. Arce, the defendant. And I do find that there's a distinction between a lawyer in-house for an insurance company, because their client is the insurance company, and any contact between 4.2. So I do find

that there's a distinction there with regard to representation of an entity.

I was concerned. And, Mr. Storm, I read your brief really carefully and I've read the cases, because I was concerned about that. But given the fact that plaintiff's counsel admitted that they wanted to avoid a short trial, you represent an entity, I find that the settlement that was -- a contract was made, that there was reliance and performance. I do not find that it was void.

And for those reasons I'm going to grant the motion.

So Mr. Crafton to prepare the order.

Mr. Storm, do you wish to review and approve the form of that order?

MR. STORM: Yes, please.

THE COURT: All right. So make sure that Mr. Storm has the ability to review and approve before it's submitted to me for signature. Make sure you follow the new administrative order with regard to e-mailing, to our inbox, the order. And you may include findings -- in fact, you should include findings of fact and conclusions of law, Mr. Crafton, in that order, because in the event that it goes up on appeal, I want to make sure the ruling is clear.

Were there any other questions?

MR. CRAFTON: Yes, Your Honor.

THE COURT: Mr. Storm, any questions?

MR. STORM: No, Your Honor.

THE COURT: All right. Thank you both. Stay safe and

stay healthy until I see you again.

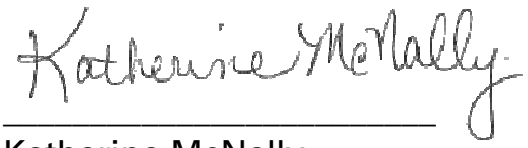
MR. CRAFTON: Likewise, Your Honor.

MR. STORM: Thank you.

[Proceeding concluded at 4:12 p.m.]

* * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Katherine McNally
Independent Transcriber CERT**D-323
AZ-Accurate Transcription Service, LLC

Exhibit 5

Exhibit 5

MOTION

NATHAN S. DEAVER, ESQ.
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BRICE J. CRAFTON, ESQ.
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Attorneys for Plaintiff

DISTRICT COURT

COUNTY OF CLARK, NEVADA

PATRICIA SANCHEZ, an individual; Plaintiff, vs. JUAN MILLAN ARCE, an individual; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive; Defendants.	Case No. A- 19-796822-C Dept. No. XXVII **HEARING REQUESTED**

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

COME NOW Plaintiff, PATRICIA SANCHEZ, by and through her attorneys NATHAN S. DEAVER, ESQ., and BRICE J. CRAFTON, ESQ., of the law office of DEAVER | CRAFTON, hereby moves this honorable court to 1) grant relief from the judgment entered by the defense, and 2) enforce the agreed to settlement.

This motion is made and based upon the records and pleadings on file herein, together with the Points and Authorities attached hereto and such argument of counsel as may be entertained at the time and place scheduled for the hearing of this Motion.

DATED this 27 day of Mar, 2020.

DEAVER | CRAFTON

BRICE J. CRAFTON, ESQ.
NEVADA Bar No. 10558
810 E. Charleston Blvd.
Las Vegas, NV 89104
Attorneys for Plaintiff

DEAVER | CRAFTON ATTORNEYS AT LAW

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.

5. My business partner, Brice Crafton, Esq., sent a confirming email to Erich Storm, Esq., in-house counsel for Key Insurance, and advised that a settlement was reached and that we were pleased we were able to resolve this case without having to file a de novo request for short trial. Brice Crafton, Esq. asked that Mr. Storm forward the Stipulation and Order for Dismissal. A copy of our firm's W-9 and payment instructions were also provided to Mr. Storm.

6. On or about March 3, 2020, I sent a follow-up email to Ms. Cervantes inquiring when we could expect the settlement release. To my surprise, Ms. Cervantes replied on 3/3/2020 that I should "contact Erich Storm with any questions you may have regarding this matter". I reminded Ms. Cervantes that we had reached an agreement previously and I inquired whether Key Insurance was "now not honoring our settlement agreement". Ms. Cervantes replied, "Again, please contact Erich Storm".

7. On March 5, 2020, I had a telephone call with Camay McClure at Key Insurance/Storm Legal Group and requested to either speak with Mr. Storm or to have someone get back to us regarding the settlement documents. Ms. McClure sent a confirming email asking that someone handle the matter.

8. On March 24, 2020, I attempted three times to reach Mr. Storm at his office phone number. I was unable to reach him and left him a voicemail and sent an email as well. To date, I have not had the courtesy of a returned phone call from Mr. Storm.

9. In my almost ten (10) years of practicing as a plaintiff's lawyer in the Las Vegas community, it has been common practice for myself and other plaintiff's counsel to keep open lines of communication with claims adjuster(s). It is common knowledge and

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

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

11. That I have spent approximately 3.5 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.

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

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 27th day of March, 2020.

NATHAN S. DEAVER, ESQ.

SUBSCRIBED AND SWORN TO before me this 30th day of March, 2020.

NOTARY PUBLIC in and for said

NOTARY PUBLIC
SHANNON SHAFFER
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. SEPT. 5, 2022
No: 14-15083-1

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*;

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

> 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.

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

> 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 (sic) 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.

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

> 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.

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

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

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

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.

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

NOTARY PUBLIC
SHANNON SHAFFER
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. SEPT. 5, 2022
No: 14-15083-1

DEAVER | CRAFTON
ATTORNEYS AT LAW

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, the 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

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

III.

THE SETTLEMENT REACHED ON FEBRUARY 20, 2020 SHOULD BE ENFORCED

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

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

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

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

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

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

> 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.

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

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

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

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

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

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

IV.

REQUEST FOR FEES AND COSTS

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

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

V.

CONCLUSION

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

DATED this 27 day of May, 2020.

DEAVER | CRAFTON

BRICE J. CRAFTON, ESQ.
NEVADA Bar No. 10558
810 E. Charleston Blvd.
Las Vegas, NV 89104
Attorneys for Plaintiff

DEAVER | CRAFTON
ATTORNEYS AT LAW

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 6

Exhibit 6

OPPS
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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA SANCHEZ, an individual, Plaintiff, *vs.* JUAN MILLAN ARCE, an Individual; DOES I-X, inclusive; and ROE CORORATIONS I-X, inclusive, Defendants.	CASE NO.: A-19-796822-C DEPT NO.: 27

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AND TO ENFORCE SETTLEMENT

Defendant, through his undersigned counsel Erich N. Storm, hereby submits the following Opposition To Plaintiff's Motion For Relief From Judgment And To Enforce Settlement:

POINTS AND AUTHORITIES

A. SUMMARY OF THE OPPOSITION

1. The Settlement Is Against Public Policy.

Attached as Exhibit A is the Affidavit of the undersigned, Erich Storm. The undersigned represents Defendant Juan Millan Arce ("Defendant") in this bodily injury case. He was insured by Key Insurance Company ("Key") which had issued him an automobile liability policy that was in force at the time of the accident in question. Pursuant to *Nevada Yellow Cab Corporation v. Eighth Judicial District Court*, 123 Nev. 44, 152 P.3d 737 (Nev. 2007), the undersigned also

represents Key in this matter. Erika Cervantes is and was the Key claims representative assigned to this case.

In February of 2020, the case was arbitrated and an Award was entered. The Arbitrator's written findings state that he found Plaintiff to be unbelievable and so he awarded her nothing. Before the undersigned notified Ms Cervantes that the defense had won at arbitration, Plaintiff's counsel, Nathan Deaver, went behind the undersigned's back, telephoned Ms Cervantes, and verbally settled the case for $10,000.00. He did not tell Ms Cervantes that the case had been arbitrated, much less that his client lost because she has no credibility.

Mr. Deaver made absolutely no attempt to notify the undersigned before-hand that he intended to communicate with the undersigned's client, and he did not have the undersigned's consent to speak with his client. That was an ethical violation. Nevada Rule of Professional Conduct (NRPC) 4.2 unambiguously states that an attorney shall not communicate with a represented person without first obtaining the consent of the represented person's lawyer.[1]

The specifically-stated public policy behind NRPC 4.2 is to, among other things, promote the integrity of the judiciary by protecting non-lawyers from overreaching attorneys, and to protect the attorney-client relationship. *See*, Comment [1] to ABA Model Rule 4.2. Mr. Deaver's conduct plainly undermined this public policy. In fact, attorneys have been suspended for doing *exactly* what Mr. Deaver did. *See*, *In re Illuzzi*, 160 Vt. 474, 632 A.2d 346 (Vt. 1993).

Plaintiff now asks this Court to reward her attorney's violation of NRPC 4.2 by entering an order enforcing the settlement and setting aside the judgment. The Court must deny the Motion because the settlement is void as against public policy.

2. The Court Lacks Authority To Enforce The Settlement

Plaintiff cites no legal authority by which the Court may enforce the settlement. First, EDCR 7.50 is inapplicable as Plaintiff has not met either of its conditions (i.e., that the settlement be entered in the minutes as an order, or that there be a *written* settlement agreement signed by Key).

Second, NAR 18(B) states that an untimely request for trial de novo is jurisdictional.

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[1] Ms Cervantes, as Key's employee authorized to bind Key to settlement agreements, is also the undersigned's client for purposes of NRPC 4.2. See, Comment [7] to ABA Model Rule 4.2 (lending guidance to the interpretation of NRPC 4.2 pursuant to N.R.P.C. 1.0A).

Plaintiff did not file a request for trial de novo. Defendant submits that, since NAR 18(B) states that the case is now resolved, the Court cannot adjudicate the Motion.

Third, if no party has filed a request for trial de novo, NAR 19(A) *requires* that the prevailing party see to it that judgment is entered within 30 days of the Court's filing and serving notice that judgment may be entered. The undersigned complied with that rule. The Court's jurisdiction to adjudicate the pending Motion is now quite uncertain.

B. FACTS

Mr. Deaver's partner, Brice Crafton, represented Plaintiff during the litigation phase of the case. The action was referred to the Court-Annexed Arbitration Program. Mr. Crafton and the undersigned appeared at the arbitration hearing.

The Arbitrator filed and served an Award on February 11, 2020. *See*, Exhibit B. The Award's final sentence sums up the merits of Plaintiff's case: "The Arbitrator finds that the Plaintiff lacked credibility from her own testimony in pursuing these claims." The Arbitrator accordingly found for Defendant and awarded Plaintiff nothing.

Rather than attempt resolution of the matter with the undersigned, and without advising the undersigned of his intentions, Mr. Deaver instead initiated a call to Ms Cervantes on February 20, 2020. Her affidavit is attached as Exhibit C. The call was recorded. A copy of the audio is attached as Exhibit D.[2]

When Mr. Deaver made the call, Ms Cervantes was unaware that the matter had been arbitrated and that an award had been entered against Plaintiff and in favor of Defendant. Mr. Deaver, for his part, did not mention the word "arbitration," or that there had been a hearing of any kind, or that an award had been entered, or that the Arbitrator found against his client, or that he would file a request for trial de novo if he and Ms Cervantes could not reach a settlement.

In fact, the only statement made that touched upon the status of the case was Mr. Deaver's idle remark that he was planning to file a "request for short trial," but first wanted to attempt settlement. Of course, there is no such thing as a "request for short trial," as Mr. Deaver well knows. One can only speculate about why he chose to invent that expression rather than simply

[2] The audio is contained on a "thumb drive" that the defense mailed to both the Court and to Plaintiff's counsel as an attachment to a file-stamped copy of this Opposition.

use the correct and well-understood term of art, "request for trial de novo."[3]

If Mr. Deaver had been candid with Ms Cervantes by revealing that his client lost at arbitration, Ms Cervantes would not have settled[4] but would have spoken with the undersigned. In that case, the undersigned would have advised her that the case had virtually no value, and certainly nothing approaching $10,000.00.

After the improper communication that Mr. Deaver initiated with Ms Cervantes, Mr. Crafton emailed the undersigned on February 20, 2020. In it, he explained that Mr. Deaver had settled for $10,000.00 and cordially thanked the defense for avoiding the need for Plaintiff to file a "request for de novo short trial."

On February 21, 2020 – a full 20 days before the time to file a request for trial de novo expired -- the undersigned *specifically* told Plaintiff's counsel in two emails that the defense did not consider the case settled. *See*, Exhibit E. The first e-mail stated, "***I suggest that you calendar the de novo date while we decide on this end what the best course of action is.***" The second e-mail to Plaintiff's counsel that day said,

> 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.***[5]

From the outset, then, Plaintiff's counsel knew that Key considered the settlement discussions unethical; they knew that Key was determining its rights concerning the settlement; and they knew that they should be prepared to file a request for trial de novo to preserve their

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[3] Mr. Crafton's affidavit advises the Court several times that Mr. Deaver told Ms Cervantes that Plaintiff was intending to file a "request for trial de novo." This is inaccurate. Those words were never used in the conversation between Ms Cervantes and Mr. Deaver. *See*, Exhibit D.

[4] The settlement discussions between Mr. Deaver and Ms Cervantes were not quite as simple as Mr. Deaver's affidavit suggests. There was back and forth, then Mr. Deaver told Ms Cervantes that if Key would offer to settle for $10,000.00, he would recommend to his client that she accept. It was he, not Ms Cervantes, who first brought up that settlement number. *See*, Exhibit D.

[5] Astoundingly, after the undersigned sent this email to Plaintiff's counsel, Mr. Deaver contacted Ms Cervantes two more times by email, both on March 3, 2020, regarding the alleged settlement, without the undersigned's knowledge or consent. *See*, Affidavit of Nathan Deaver, paragraph 6; Exhibit 1 to the Motion.

client's rights. Despite knowing these things, Plaintiff did not file a request for trial de novo. That failure set in motion court rules mandating that the defense file a judgment.

NAR 19(A) reads:

> Rule 19. Judgment on award.
>
> (A) Upon notification to the prevailing party by the commissioner that no party has filed a written request for trial de novo within 30 days after service of the award on the parties, *the prevailing party **shall** submit to the commissioner a form of final judgment in accordance with the arbitration award, including any grant of fees, costs and/or interest, which judgment **shall** then be submitted for signature to the district judge to whom the case was assigned; the judgment **must** then be filed with the clerk.* [Emphasis added]

On March 25, 2020, the undersigned complied with the dictates of NAR 19 and filed the required judgment. It is disingenuous for Plaintiff to now argue that the undersigned "misrepresented" to the Court that the parties had not settled.

C. THE SETTLEMENT IS VOID

The settlement is the offspring of counsel's violation of N.R.P.C. 4.2. That rule, which is from ABA Model Rule of Professional Conduct 4.2, states:

> **Rule 4.2. Communication With Person Represented by Counsel.**
>
> In representing a client, a lawyer *shall not* communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, ***unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order***. [Emphasis added].

Comment [1] to the Model Rules states:

> [1] This Rule contributes to the ***proper functioning of the legal system*** by protecting a person who has chosen to be represented by a lawyer in a matter against ***possible overreaching by other lawyers*** who are participating in the matter, ***interference by those lawyers with the client-lawyer relationship*** and the uncounseled disclosure of information relating to the representation. [Emphasis added].

Mr. Deaver violated these policy considerations. His decision to settle without disclosing to Ms Cervantes that his client had lost at arbitration and that he was facing the prospect of filing a request for trial de novo was overreaching. Second, Mr. Deaver's conduct was an obvious interference in the attorney-client relationship between the undersigned and Key.

Comment [2] to Model Rule 4.2 makes clear that the rule is not somehow inapplicable to represented insurance companies, but it applies to everybody who is represented:

> [2] This Rule applies to communications with ***any person who is represented by counsel*** concerning the matter to which the communication relates. [Emphasis added].

Comment [3] states that it is irrelevant that Ms Cervantes consented to the communication:

> [3] ***The Rule applies even though the represented person initiates or consents to the communication***. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule. [Emphasis added].

Also respecting Comment [3], Mr. Deaver's incorrect statement in his affidavit that Ms Cervantes offered to settle the case for $10,000.00 is nothing more than a repudiation of Comment [3]. Sophistry aside, however, whether Mr. Deaver or Ms Cervantes made the offer is immaterial. Mr. Deaver was absolutely barred from discussing the case with Ms Cervantes without the undersigned's prior consent.

Last, NRPC 4.2, pursuant to Comment [7], includes as a represented person Ms Cervantes since she has the authority to bind Key to settlements:

> [7] In the case of a ***represented organization***, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter ***or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability***. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4. [Emphasis added].

The Motion's contention that counsel's misconduct is justified because "everybody does it" and that it is par for the course in the Las Vegas legal community is both wrong and beside the point. *See*, *Cronin v. Eighth Judicial Dist. Court ex rel. County of Clark*, 105 Nev. 635, 781 P.2d 1150 (1989). There, the Nevada Supreme Court held that neither a lawyer's negligence nor ignorance of the rule that a lawyer cannot communicate with a represented person without first obtaining the consent of the person's lawyer can excuse the ethical breach.

See also, *In re Illuzzi*, *supra*. There, as here, a personal injury attorney improperly contacted the defendant's insurance company's claims representative without obtaining the prior consent of defendant's counsel who had been hired by the insurance company to defend its insured.[6] The attorney was suspended by the relevant disciplinary body and he appealed to the Vermont Supreme Court. He made the same argument that counsel makes here: "Everybody does it." In rejecting that excuse, the Vermont Supreme Court held:

> Respondent contends that the Board should have considered as a mitigating factor that direct contact between attorneys and adjusters, even if unethical, is the standard custom and practice in the insurance business in Vermont. Respondent points out that in its first report, the hearing panel stated that "there is a clear practice in the Plaintiff's and defense bar in Vermont of allowing such contact," and that in its second report, the panel again acknowledged that the practice occurs in Vermont, stating that there was "considerable evidence" of its existence. We find little merit to this argument. As we stated in the previous appeal:
>
> > "***Given the absence of ambiguity in the rule, we find irrelevant respondent's contention that it is the common and accepted practice for Vermont attorneys to have direct contact with insurance companies whose defense counsel have not consented to such contact.*** Moreover, we note that the testimony on the practice of insurance attorneys in Vermont is in conflict. [Citation omitted].)

632 A.2d at 353.

[6] In Vermont, as in Nevada, there was in force a rule of ethics prohibiting an attorney from contacting a represented party without the prior consent of the represented party's lawyer.

The settlement is void and unenforceable. In Nevada, all contracts where the purpose is to create situations that tend to operate to the detriment of public interest are against public policy and are void. *See, Western Cab Co. v. Kellar*, 90 Nev. 240, 523 P.2d 842, appeal dismissed, cert. denied. 420 U.S. 914 (1974).

Whether fraud is committed to secure a contract is not a relevant inquiry when a court determines if an agreement is void as against public policy. *See*, *King v. Randall*, 44 Nev. 118, 190 P. 979, 980-981 (1920). There, the Nevada Supreme Court held a contract void as against public policy. The court cited with approval the following passage from *Elkhart Lodge v. Crary*, 98 Ind. 238, 49 Am. Rep. 746:

> ***It is not necessary that actual fraud should be shown; for a contract which tends to the injury of the public service is void***, although the parties entered into it honestly and proceeded under it in good faith. ***The courts do not inquire into the motives of the parties in the particular case to ascertain whether they were corrupt or not, but stop when it is ascertained that the contract is one which is opposed to public policy.*** Nor is it necessary to show that any evil was in fact done by or through the contract. ***The purpose of the rule is to prevent persons from assuming a position where selfish motives may impel them to sacrifice the public good to private benefit.*** [Emphasis added].

In *King, supra*, the plaintiff, as does Plaintiff in this case, argued that a "deal is a deal," and that he should not be deprived of the benefits of his bargain. The Nevada Supreme Court disagreed:

> The courts cannot draw the line and say that up to a certain point a contract which is made to influence the creation of a situation repugnant to the interest of the public is not against public policy, and hence is valid, but beyond that point it is void; and ***therefore it must be asserted that all contracts the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public policy and void,*** whether in a particular case the purpose of the contract is effectuated.

Id. at 981-982 (emphasis added).

In sum, N.R.P.C. 4.2 is not a joke. Mr. Deaver's failure to comply with this rule of ethics constitutes a blatant violation of a clearly announced public policy directed specifically at the type of conduct in which he engaged. Defendant submits that the Court must hold the settlement agreement void as against policy.

D. THE COURT LACKS JURISDICTION TO ENFORCE SETTLEMENT

EDCR 7.01 states that "PART VII. GENERAL PROVISIONS," applies to actions commenced in the Eighth Judicial District Courts, actions such as the present matter. EDCR 7.50 requires that, for the alleged settlement to be enforceable, it must be entered into the court minutes as an order and with the consent of all parties; *or*, it must be in writing and signed by the party against whom enforcement is sought. Neither condition of EDCR 7.50 is met. Therefore, EDCR 7.50 is inapplicable.

Second, the ADRs deprive the Court of jurisdiction to rule on the Motion. First is NAR 18 (B), which deals with the filing of trial de novo requests. It states, "The 30-day filing requirement is jurisdictional; an untimely request for trial de novo shall not be considered by the district court." This provision terminates any proceedings other than the court's entry of judgment. Entry of judgment is governed by NAR 19. Defendant submits that Plaintiff's decision to forego filing a request for trial de novo terminates her ability to see her Motion adjudicated.

NAR 19(A) and (B) require that, where no trial de novo is requested, judgment ***must*** be entered on an arbitration award within 30 days of entry of notice from the courts to do so. A judgment so entered is not appealable except in narrow circumstances that do not apply here:

> Rule 19. Judgment on award.
>
> (A) Upon notification to the prevailing party by the commissioner that no party has filed a written request for trial de novo within 30 days after service of the award on the parties, the prevailing party ***shall*** submit to the commissioner a form of final judgment in accordance with the arbitration award, including any grant of fees, costs and/or interest, which judgment ***shall*** then be submitted for signature to the district judge to whom the case was assigned; the judgment ***must*** then be filed with the clerk.
>
> (B) A judgment entered pursuant to this rule shall have the same force and effect as a final judgment of the court in a civil action, but may not be appealed. Except that an appeal may be taken from the judgment if the district court entered a written interlocutory order disposing of a portion of the action. Review on appeal, however, is limited to the interlocutory order and no issues determined by the arbitration will be considered. [Emphasis added]

Defendant submits that the Court does not presently have the authority to adjudicate the

Motion.

D. CONCLUSION

For the aforesaid reasons, Defendant respectfully requests that Plaintiff's Motion be denied.

DATED this 6th day of April, 2020

STORM LEGAL GROUP

By: _____

ERICH N. STORM, ESQ.
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 6th day of April, 2020, I served a true and complete copy of the foregoing OPPOSITION TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AND TO ENFORCE SETTLEMENT 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

[x] by electronic service via ODYSSEY through the District Court.

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/s/ Star Farrow
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Exhibit 7

Exhibit 7

REPLY
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DISTRICT COURT

COUNTY OF CLARK, NEVADA

PATRICIA SANCHEZ, an individual; Plaintiff, vs. JUAN MILLAN ARCE, an individual; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive; Defendants.	Case No. A- 19-796822-C Dept. No. XXVII

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR RELIEF FROM JUDGMENT AND TO ENFORCE SETTLEMENT

COME NOW Plaintiff, PATRICIA SANCHEZ, by and through her attorneys NATHAN S. DEAVER, ESQ., and BRICE J. CRAFTON, ESQ., of the law office of DEAVER | CRAFTON, and hereby Replies to Defendant's Opposition to Motion for Relief from Judgment and to Enforce Settlement.

This Reply Brief is made and based upon the records and pleadings on file herein, together with the Points and Authorities attached hereto and such argument of counsel as may be entertained at the time and place scheduled for the hearing of this Motion.

DATED this 22nd day of April, 2020.

DEAVER | CRAFTON

/s/ BRICE J. CRAFTON, ESQ.

_____

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT IN REPLY

The Defendant's Opposition raises several points that are inapposite, unrelated and otherwise irrelevant to the subject at hand and are addressed as follows:

A. All Agree that a Settlement was Reached on February 20, 2020

First and foremost, in no part of the Opposition does Mr. Storm deny that a settlement was reached on February 20, 2020, with Key Insurance agreeing to pay $10,000.00 on behalf of its insured, Defendant Arce, to Plaintiff Sanchez for the subject date of loss. There is also no denial that Mr. Deaver informed Ms. Cervantes that a short trial request was to be filed unless the case were to resolve. Aside from semantics argued by Mr. Storm, there is clear dialogue that absent a settlement, the case would continue towards a short trial. There is no question that Ms. Cervantes was made aware that the case would proceed to a short trial, which axiomatically comes after an arbitration, and that Mr. Deaver was calling to avoid this by attempting to settle the case. For convenience sake, the audio recording of the settlement agreement, attached to Mr. Storm's Opposition at Exhibit D, is transcribed below:

> Erika Cervantes: This is Erika on a recorded line. How can I help you?
>
> Nathan Deaver: Good morning Erika this is attorney Nathan Deaver in Las Vegas, NV. How are you doing today?
>
> Erika Cervantes: Good.
>
> Nathan Deaver: Do you need a claim number?
>
> Erika Cervantes: Give me a quick second. Ok. Go ahead with the Claim Number.

Nathan Deaver: KILV112050

Erika Cervantes: OK. Patricia Sanchez. Ok how can I help you?

Nathan Deaver: We demanded this pre-litigation and your last offer was like $7,000.00. We had like $9,000.00 something in meds. **We're getting ready to file for a Request for Short Trial with the Judge trying to see if we can get this done before we move any further on this one** (emphasis added).

Erika Cervantes: OK. Let's see.

Nathan Deaver: She's got $9,301.00 in meds with a cost letter of $15,000.00. We never even gave you a counteroffer because the client said to file on it, and she would get the injections but she did not.

Erika Cervantes: Sorry I just want to take a look at my initial evaluation and the letter we sent it's been a while since I have seen this.

Nathan Deaver: It's been a long time since we have spoken. No problem.

Erika Cervantes: We sent it out for peer review. Why, why why…she was in a 2018 Nissan SUV $1,269.00 in damages we were in a pick-up truck. No Police Report. Prior MVA in 2015.So I have looked at my notes and I see the top evaluation on this one and I will give you that number and then I will give you that number and then you can ya know.

Nathan Deaver: Mull it over.

Erika Cervantes: So, $6,500 is what we offered right?

Nathan Deaver: On 04/10/19 you offered $7,000.00.

Erika Cervantes: $9,000.00 would be that number.

Nathan Deaver: I have permission for $15,000.00 is there any way you can get me into the double-digit numbers? I can get this done today. In fact, she is coming in today if you could send me a release.

Erika Cervantes: So, your telling me that $10,000.00 can do it.

Nathan Deaver: If you could meet me in the middle at $12,500 ish which is not even quite the middle. Yeah, the $12,000.00 would be good enough.

Erika Cervantes: Yeah, with, I can't, I might be able to swing $10,000.00 after reviewing all the notes and multiple conversations with my supervisors we won't go for the $12,000.00.

Nathan Deaver: I'll tell you what if you give $10,000.00 I will get it done at least I can tell her that I pushed for the $15,000.00 and the $12,000.00.

Erika Cervantes: O.K.

Nathan Deaver: Will you send me the release?

Erika Cervantes: Yes.

Nathan Deaver: O.K. thanks Erika.

Erika Cervantes: Thank you for your time.

Nathan Deaver: Bye.

Erika Cervantes: Bye

According to this agreement, this case was resolved on February 20, 2020 for $10,000.00. Notably, the arbitration award was entered on February 11, 2020, which was exactly nine (9) days before Mr. Deaver and Ms. Cervantes spoke and agreed to settle this matter for $10,000.00. Mr. Storm, however, alleges that Mr. Deaver "went behind has back… and verbally settled the case," but, astonishingly,, during the nine days following the arbitration award he apparently never spoke to Ms. Cervantes, who he "reports to", to advise that an arbitration award was submitted. (Affidavit of Eric Storm). In Mr. Storm's Opposition, he incorrectly alleges that Mr. Deaver did not advise Ms. Cervantes that "he would file a request for trial de novo if he and Ms. Cervantes could not reach a settlement" (page 3, lines 21-22). A review of the audio recording and transcript make it clear that such was not the case, and that, instead, Mr. Storm is attempting to twist the facts. Mr. Storm seems to admit that his statement was incorrect by contradicting himself when he writes in his Opposition, "the only statement made that touched upon the status of the case was

Mr. Deaver's idle remark that he was planning to file a "request for short trial" but first wanted to attempt settlement" (Opposition at page 3, lines 23-25). Despite Mr. Storms contradicting remarks, Mr. Deaver effectively communicated an intent to settle/resolve the case short of further litigation, specifically a short trial.

Further, contrary to Mr. Storm's assertions on page 4 (footnote 4) and based upon the audio and transcript which the court now possesses, it was in fact Ms. Cervantes who first proposed the settlement number of $10,000.00 that was agreed upon. While Mr. Storm raises arguments that the words "trial de novo" were not used and that the subject of the arbitration results was not discussed, these arguments have nothing to do with the settlement that was reached and the validity of the same and are simply red herrings. Mr. Storm's arguments that the term "trial de novo" was never used or that the arbitration results were never discussed would only be remotely relevant if Ms. Cervantes was unaware of what a short trial was or how one gets to the point of requesting one. Ms. Cervantes acknowledges that she was aware the current lawsuit was filed on behalf of the Plaintiff on or about June 2019 (Ms. Cervantes' Affidavit page 2, lines 5-6). Further, Ms. Cervantes' "file review" prior to the settlement agreement on February 20, 2020, would have revealed that the case had been in litigation for approximately eight (8) months. It is not a stretch to conclude that Ms. Cervantes, an adjuster handling litigated claims, **and to whom Mr. Storm reports to**, knows very well what procedural steps have to be taken in order to arrive at a short trial and that she understood all of this at the time she negotiated and settled this matter with Mr. Deaver. This is why she did not ask any follow up questions to Mr. Deaver when he explained to her we were preparing our request for short trial. Thankfully, we do have the audio recording which unequivocally shows that Ms. Cervantes agreed to pay Ms. Sanchez $10,000.00, and that she did so for the matter to not proceed to short trial. If Ms. Cervantes was at all confused

by what a request for short trial was, she should have asked for clarification from Mr. Deaver, **or conferred with Mr. Storm prior to agreeing to settle the case for the sum of $10,000.00**. Moreover, there is a significant portion of the conversation where Ms. Cervantes was reviewing her claims notes and still chose to negotiate and settle the claim without so much as a question regarding the status of the case in litigation or even a thought to consult with her in-house counsel prior to agreeing to pay the sum of $10,000.00. This tells us a couple of things, 1) that Mr. Cervantes understood what a short trial request was/is; and, 2) that she has/had total control over the settlement of a claim on behalf of one of Key Insurance's insureds. In fact, in Ms. Cervantes' Affidavit she states, "At all times I have had the authority to up to certain limits to settles those cases assigned to me on behalf of Key Insurance Company and its insureds" (Affidavit page 2, lines 2-4). Further, Mr. Storm has confirmed that it was in fact Ms. Cervantes who had the authority to settle the case, and not him. According to Mr. Storm's Affidavit, "I would have advised Ms. Cervantes that the case had little to no value, and I would have recommended against a settlement anywhere near $10,000.00" (*See* Affidavit of Mr. Storm at page 2, lines 26-27, attached to his Opposition at Exhibit A). While we disagree with Mr. Storm that the case had "little to no value" (Ms. Sanchez was rear-ended and presented with $9,301.00 in medical specials), we do agree, as does Mr. Storm and Ms. Cervantes, that a settlement was reached which was in the best interest of all the parties.

It is also worth noting that Ms. Sanchez had a passenger in her vehicle who presented a claim to Key Insurance with medical specials of $7,121.00, which was also settled between Ms. Cervantes and Mr. Deaver for the sum of $10,000.00**.**

In sum, the settlement agreement reached was not against public policy nor was it a violation of any ethical rule and **should** be enforced by this court.

B. NRPC 4.2 was Not Violated and is Inapplicable

One of Mr. Storm's main arguments asserts that he represents both Defendant Arce AND Key Insurance and cites *Nevada Yellow Cab v. Eighth Judicial District Court*, 123 Nev. 44, (Nev. 2007) as authority for this assertion. The problem with this, as is likely known by Mr. Storm considering that there is no case analysis or discussion following his blanket assertion, is that, factually, *Nevada Yellow Cab* has absolutely nothing to do with our matter at hand and does not stand for the proposition alleged. *Nevada Yellow Cab* involves a question of disqualification and conflict of interest where a lawyer's prior law firm represented an insurance company (ICW) and subsequently that lawyer was hired by ICW's insured, Nevada Yellow Cab, to file a bad faith action against ICW. ICW argued that since the lawyer's prior law firm was routinely hired by ICW to represent its insureds, and that they were now being sued as a party by said lawyer, that a conflict of interest existed which required disqualification. *Id.* at 52. *Nevada Yellow Cab*, therefore, is inapposite to the facts of this case and does not speak to whether an attorney can continue settlement negotiations with a claims adjuster after the matter is litigated. In fact, a long line of cases and a series of Ethics Opinions have established that although the lawyer representing the defendant-insured in a personal injury matter may be retained and paid by the insurer, the client is nevertheless the insured, not the insurer. [N.Y. State 721 (1999); N.Y. State 716 (1999); *American Employers Ins. Co. v. Goble Aircraft Specialties, Inc.*, 205 Misc. 1066, 131 N.Y.S.2d 393 (Sup. Ct. 1954).].

New York has a similar rule as NRPC 4.2, which is cited by Mr. Storm at page 5 of his Opposition, and has stated the following regarding their rule and the continued communication with an insurance adjuster:

> The question brings into play DR 7-104(A)(1) of the New York Code, usually referred to as the "no-contact" rule:
>
> A. During the course of the representation of a client a lawyer shall not:
>
> 1. Communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by a lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so."
>
> Is the adjuster for the carrier a represented party who may not be contacted by plaintiff's attorney? In other words, does the lawyer assigned by the insurer to represent the policy holder represent the adjuster?
>
> The Committee answered this question "No." The Committee said:
>
> 40 years ago in N.Y. State 4 (1964), we stated that: "[W]e see nothing improper in an attorney for a claimant entering into negotiations with the adjuster, even where the negotiations include discussion of the legal aspects of liability." We adhere to this conclusion, which is consistent with our many subsequent opinions on the ethically complex tripartite relationship that exists among an insurance company, assigned counsel and a policyholder, in holding that contact with the adjuster is not contact with the policyholder.

NYSBA's Committee on Professional Ethics in Opinion 785 (2/1/05).

While New York's stance on these matters are not binding to this Court, they are persuasive and are directly in line with the common practice of this jurisdiction. Moreover, continued communication with an adjuster, in an effort to resolve matters which would otherwise drag on to congest the court's docket and thereby result in the unnecessary expenditure of taxpayer resources, should not be stonewalled because an insurer assigns counsel to its insured. This has never been a reason to cease settlement negotiations, as settlement of litigated claims are, and always have been, encouraged.

None of Mr. Storm's accusations regarding a Rule 4.2 violation are valid considering that Ms. Cervantes/Key Insurance is not a represented party. Even Comment [7] to NRPC 4.2 is inapplicable because Key Insurance is not a party to this lawsuit and is not a represented organization. Notably, *Nevada Yellow Cab* exists because, there, ICW **was** a party to the bad faith

action brought by the attorney who used to be a member of a firm that ICW contracted with for representation. In short, Comment [7] only applies to represented organizations who are parties to a lawsuit and has nothing to do with, and is inapplicable to, the facts of the instant matter.

C. EDCR 7.50 is Inapplicable

Inexplicably, Mr. Storm asserts that EDCR 7.50 precludes enforcement of this settlement because it was neither entered into the minutes of the court nor submitted in writing. This Rule, however, governs stipulations and orders, not settlement agreements or any other type of contract for that matter. This citation to EDCR 7.50 by Mr. Storm is a misapplication of the rule entirely.

D. NAR 19 does not Apply as a Settlement was Reached prior to Judgment

Despite the settlement of this matter on February 20, 2020, Mr. Storm filed a judgment on the arbitration award, we believe in violation of NRCP 11. Mr. Storm, knowing full well that a trial *de novo* request was not necessary considering the settlement of this claim, still decided to enter judgment on the arbitration award. This was improper and was done to the detriment of Ms. Sanchez. The settlement made a trial *de novo* request unnecessary and especially made a judgment on the arbitration award inappropriate considering that the settlement rendered the arbitration award moot. At the very least, Mr. Storm should have waited until the issue of the settlement was resolved prior to acting against Ms. Sanchez in such a deliberate and inappropriate manner.

The judgment is a fugitive document that was filed contrary to the circumstances involved in this case. Even though NAR 19 states the judgment is "final" and "may not be appealed", this rule assumes it was entered appropriately according to the facts and circumstances of the case. Here, it was not, and judgment should never have been entered considering the settlement that was reached on February 20, 2020. The judgment, therefore, should be void *ab initio* as it does not comport with the history of the case and was filed inconsistent to the settlement reached. This Court has

inherent authority to right this type of deliberate wrong as it has long since been established that "every court of record has inherent authority to amend its records so as to make them speak the truth." *Brockman v. Ullom*, 52 Nev. 267, 268 (Nev. 1930).

As to Mr. Storm's probable violation, NRCP 11 (b)(1) states in pertinent part:

> (b) **Representation to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; …

Here, Mr. Storm knew that was a settlement reached, albeit one that he was unhappy with. Even now he does not dispute that a settlement was reached. Instead of communicating with counsel for over a month, Mr. Storm waited until the day before he filed judgment (see Affidavit of Brice J. Crafton at page 8 of Motion), to inform Plaintiff's counsel that Key was not going to pay the settlement amount voluntarily. Threateningly, Mr. Storm stated "[s]ince nothing good will come of it if you push things, I suggest you let it go." *Id.* Mr. Storm then filed a judgment on the arbitration award. Mr. Storms actions in filing an errant judgment on a case that was resolved is a deliberate violation of NRCP 11(b)(1), which precludes the filing of any document for an improper purpose.

II.

CONCLUSION

Based upon the foregoing, Plaintiff requests that the settlement reached on February 20, 2020 be enforced and that Defendant be ordered to tender the $10,000.00 to Ms. Patricia Sanchez and her counsel of record, Deaver | Crafton. It is also requested that Defendant be ordered to pay

Plaintiff's counsels' fees associated with the preparation and arguing of this motion, as set forth in the Affidavits of Counsel, at a minimum amount of $3,825.00.

DATED this 22nd day of April, 2020.

DEAVER | CRAFTON

/s/ BRICE J. CRAFTON, ESQ.

_____

BRICE J. CRAFTON, ESQ.
NEVADA Bar No. 10558
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Las Vegas, NV 89104
Attorneys for Plaintiff

DEAVER | CRAFTON
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

I certify that I am an employee of DEAVER | CRAFTON, and that on the 22nd day of April, 2020, pursuant to NRCP 5(b), I am serving the attached copy of **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO 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:

Erik Storm, Esq.
Storm Legal Group
3057 East Warm Springs Road, Suite 400
Las Vegas, NV 89120
Attorney for Defendant

/s/ SHANNON SHAFFER
_____
An employee of DEAVER | CRAFTON