IN THE SUPREME COURT OF THE STATE OF NEVADA

HOLGA FLORES-REYES and ANTHONY VERDON Appellants, vs. EDEL RAMIREZ-NAVARETTE, Respondent.	Case No. 82455 District Court Case No. A-19-800500-C

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Respondent is represented by the law firm of Bighorn Law. Respondent is Edel Ramirez-Navarrete.

Dated this 22nd day of September, 2021

/s/ Robert N. Eaton
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF FACTS

This action arises out of an automobile vs. automobile accident that occurred on February 5, 2019, when Respondent Edel Ramirez-Navarrete (hereinafter "Respondent) was rear-ended by Appellant Holga Flores-Reyes. ***See*** Appellant Holga Flores-Reyes's recorded statement with Allura Belcastro as recorded on February 15, 2019 at 4:55 p.m.; page 6, lines 4-7 attached hereto as APP 0051-0058.[1] Respondent was operating his 2011 BMW M3, and he was stopped at a stop sign just ahead of a pedestrian crosswalk on the access road to the Paris Casino employee parking garage. Appellant Flores-Reyes failed to stop at the speed bumps (she had not reached the stop sign), and the Front bumper of her car hit the back of Respondent's car.

After rear ending Respondent in the alley north of the Paris Casino, Appellant drove around Respondent's vehicle and attempted to flee the scene by entering the employee parking garage. Because Respondent is also an employee of the property, Appellant was unable to avoid responsibility for the damages that she caused as Respondent followed her into the garage, then contacted security who notified the police.

Initially, Appellant Flores-Reyes refused to share her driver's license and insurance information with Respondent. However, when the hotel security arrived,

[1] All Appendix Citations are to Appellant's Appendix. As Respondent has no additional documents to file in addition to Appellant's Appendix, Respondent has not filed an Appendix, in compliance with NRAP 30(b)(4).

they interviewed both of the parties involved, and forced Appellant Flores-Reyes to provider her information to Respondent because she had a duty to not follow so closely as to not be able to stop at a speed bump in order to avoid a collision.

Thereafter, Respondent sought conservative medical treatment, incurring $3,200 in treatment expenses with Mehran Soudbaksh, D.C. and $650.00 in radiology expenses with Las Vegas Radiology. Respondent further provided Appellant with his estimated repair costs for his M3 BMW of $3,658.00, and 8 days loss of use expense of $360.00. Thus, unpaid property damage and loss of use was more than 50% of Respondent's damages. Appellants refused to pay property damage, accept liability or responsibility for the crash, and Respondent filed his Complaint with the District Court on August 19, 2019.

Appellants failed to respond to Respondent's Discovery prior to the underlying arbitration, including Requests for Admission (See APP 0060-0063), Interrogatories (See APP 0065-0071), and Requests for Production (See APP 0073-0080), as served upon them on April 28, 2020. Appellants also never took Respondent's deposition. Appellant's recorded statement admitted she caused the collision. Appellants failed to retain an expert to challenge the opinions of Respondent's medical providers, and she has admitted that her negligence proximately caused Respondent Ramirez-Navarrete's injuries, and that she attempted to flee from the Plaintiff after the collision.

As the Appellants' failed to provide a medical expert to counter the causation diagnosis done by Respondent's treating medical experts, pursuant to Williams v. Eight Judicial Dist. Ct., 127 Nev. 518, 530-31, 262 P.3d 360, 368 (2011), Appellants thus cannot challenge Plaintiff's expert opinions regarding causation. Appellants, during arbitration, admitted to negligence, causation, and that Respondent's treatment is related to the subject accident. Because Appellants have failed to participate in the arbitration process in good faith, the District Court found they forfeited their ability to appeal the arbitrator's award and to request trial de novo.

As noted above, in the underlying arbitration case, Appellant Holga Flores-Reyes did not meaningfully participate in the arbitration or the discovery process. Respondent served Appellants with written discovery requests in order to prepare for their arbitration hearing and to develop an understanding of Appellants' arguments. (*See APP 0073-0080)* Respondent's attempts were thwarted by Appellant Holga Flores-Reyes' noncompliance with their discovery obligations. To date, Appellant Holga Flores-Reyes has never provided answers to Respondent's interrogatories, requests for admission or requests for production.

Not only did Appellants Holga Flores-Reyes and Anthony Verdon fail to respond to interrogatories, or to deny any of the allegations against them, Appellants **also failed to appear at the arbitration hearing, and did not produce an arbitration brief until after the arbitration was scheduled to go forward**.

Notably, Appellants Holga Flores-Reyes and Anthony Verdon's counsel did not dispute liability at arbitration. Further, Appellants' Brief claims that they have accepted liability—but this is false. In fact, they have owed Respondent $3,658 in property damage, and eight days of loss of use of a vehicle charged at $45 a day. Appellants have failed to pay this amount to the current time, undercutting any claim that liability was accepted.

At no time has Appellants' counsel explained why Holga Flores-Reyes had not ever responded to Discovery and why she was not present at the arbitration. If Appellants did not dispute liability or causation during the arbitration, Appellants have no good faith basis to seek trial de novo. Assuredly, this appeal is just another avenue to delay payment for the damages she caused to Respondent. Additionally, and worth noting, Anthony Verdon also did not appear and has not made any showing in defense of the negligent entrustment claims.

Appellants Holga Flores-Reyes and Anthony Verdon failed to appear for arbitration. Counsel for Appellants submitted a brief **after** the scheduled start time of the arbitration and delayed the start time of the arbitration by two hours as she was two hours late in joining the arbitration. Arbitrator Lyn McNabb rejected Appellants' stance and granted an arbitration award to Respondent Edel Ramirez-Navarette in the amount of $13,500.00, including Respondent's medical expenses, property damage,

loss of use expenses, and pain and suffering, for a total award of $13,500.00. (*See **APP 0093-0094**, Arbitration Award*).

Accordingly, Respondent filed an award for costs, interest, and attorneys' fees, **which was not opposed by Appellants.** (*See **APP 0096-0104**, Plaintiffs' Memo for Attorney Fees, Costs and Interest filed on 9/26/2020; see also, **APP 106-107**,* Arbitrator's Decision on Requests for Fees and Interest Pursuant to NAR 17(B).

Appellants' failure to oppose Respondent's motion for attorney fees, costs and interest should be deemed as acceptance of the award, yet please note that the arbitrator awarded only $1,000.00 in attorney's fees, when it would have been permissible to have awarded up to $3,000.00 in attorney's fees.

In total, the Arbitrator has ordered Appellants including Holga Flores-Reyes and Anthony Verdon, to pay $16,600.54 *See Id*. Respondents Holga Flores-Reyes and Anthony Verdon's failed to participate in this litigation and have not opposed an Arbitration Award of fees and costs in Respondents' favor. Appellants are not entitled to Trial De Novo, as they failed to participate in the arbitration process.

SUMMARY OF ARGUMENT

The District Court properly concluded that Appellants had waived their opportunity to have a trial on the merits. Appellants have failed to demonstrate why they can waste the Arbitrator's time, and waste the time and money of Respondents in failing to respond or participate in any meaningful way in arbitration, sit back

and take stock of the evidence which Respondents have in favor of their claims, fail to even file an arbitration brief prior to the scheduled arbitration hearing, and then ask for trial de novo.

Appellants have abused the arbitration process. Appellants' actions have harmed Respondent and ignored the purpose of the arbitration program. If Appellants are allowed to game the arbitration system in this way—it defeats the entire purpose in the Legislature's creation of mandatory arbitration.

NAR 22 demands that non-participatory parties not be given an opportunity to request trial de novo. The District Court properly took stock of the egregious lack of participation by Appellants, and complied with NAR 22. As such, Appellants' appeal is a further attempt to delay remunerating Respondent for Appellants' negligence and it must be swiftly rejected.

ARGUMENT

A. Appellants Holga Flores-Reyes and Anthony Verdon Are Not Entitled To A Trial De Novo Because They Failed To Meaningfully Participate In Critical Stages Of Litigation, Including Discovery And The Court Annexed Arbitration.

Appellants Holga Flores-Reyes and Anthony Verdon have waived their right to receive a trial de novo due to their failure to participate in good faith in the discovery process and at the Arbitration Hearing. Accordingly, the Court should deny Appellants Holga Flores-Reyes and Anthony Verdon's Appeal. The purpose of Nevada's Court Annexed Arbitration Program "is to provide a simplified

procedure for obtaining a prompt and equitable resolution of certain civil matters." NAR 2(A) (emphasis added). When participating in the arbitration, each party must participate in good faith. Nevada Arbitration Rule 22 reads:

> (A) ***The failure of a party or an attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo.***
>
> (B) If, during the proceedings in the trial de novo, the district court determines that a party or attorney engaged in conduct designed to obstruct, delay or otherwise adversely affect the arbitration proceedings, it may impose, in its discretion, any sanction authorized by N.R.C.P. 11 or N.R.C.P. 37.

For purposes of requesting a trial de novo, the Nevada Supreme Court has defined "good faith" as "***meaningful participation***" in the arbitration proceedings. Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135, 911 P.2d 1181, 1182-83 (1996) (citing Gilling v. Eastern Airlines, Inc., 680 F. Supp. 169 (D.N.J.1988)) (emphasis added). The Nevada Supreme Court determined that if the parties did not participate in a meaningful manner, the purpose of mandatory arbitration would be compromised. Id.

In Casino Properties, the respondents delivered their pre-arbitration statement in a timely fashion, but the appellant delivered their pre-arbitration statement the day before the arbitration. Additionally, the appellant failed to produce a key witness at the arbitration, and failed to provide requested information. When the arbitrator found for the respondent, appellant filed a request for trial de

novo, which the district court denied, and the appellant filed an appeal. The Nevada Supreme Court held that "appellant impeded the arbitration proceedings" by their own actions. Id. Due to this, the Nevada Supreme Court concluded that the appellant did not defend the arbitration proceedings in good faith and the district court's refusal to grant a trial de novo was proper.

Similar to the facts of Casino Properties, here, Appellants Holga Flores-Reyes and Anthony Verdon did not provide the information requested by Plaintiffs (i.e., response to Discovery, including Admissions, Request for Production, and Interrogatories); **filed their arbitration brief twenty minutes after the arbitration was set to begin**; Appellants failed to appear at the arbitration hearing, and did not object to Respondent's Motion for Fees, Costs, and Interest on the award. In the simplest of terms, Appellants Holga Flores-Reyes and Anthony Verdon failed to participate or to defend this suit or exercise any diligence in defense of themselves. They have thus forfeited their right to appeal.

Respondent propounded written discovery upon all three Defendants on April 28, 2020. *(See (See APP 0060-0063;See APP 0065-0071 and APP 0073-0080Plaintiffs' Written Discovery to Defendants)*. However, no response from Holga Flores-Reyes and Anthony Verdon were ever provided. Thus, all Requests were deemed to have been admitted, and Appellants admitted liability and causation. *See APP 0062*, responses 4, 5, 6, 8 and 10. Further, Appellants cannot

state that they admitted liability, as they have failed and refused to pay Respondent's property damage, and have never challenged Respondent's estimated cost of repair.

NRCP 33 notes that certain activities are the sole province of the party, such as, notably, ***responding to interrogatories or other discovery requests requiring the party's personal knowledge or authority***. NRCP 33(b)(1)-(2) ("Each interrogatory shall be answered ... in writing under oath ... [and] [t]he answers shall first set forth each interrogatory asked, followed by the answer or response of the party.... The answers are to be signed by the person making them, and the objections signed by the attorney making them." (emphasis added)

Here, Counsel was not even able to attempt to provide responses to interrogatories for Holga Flores-Reyes and Anthony Verdon, likely because there was no communication with Appellants. Thus, Appellants Holga Flores-Reyes and Anthony Verdon's failure to provide their personal knowledge in response to interrogatories is crucial when she has denied liability for the claims against her in her answer, and therefore she has not meaningfully participated in the arbitration process.

In the same vein, Appellants Holga Flores-Reyes and Anthony Verdon did not appear at the Arbitration hearing to provide support for their defense and the reasoning behind their denial of Respondents' allegations against them, and his

demand for payment of his property damage and loss of use. Instead Appellants Holga Flores-Reyes and Anthony Verdon had their attorney appear and argue that Respondent's injuries were not possibly caused by the collision based on the property damages, but without any support, expert or otherwise, for this argument. This argument is not consistent with Appellants' responses to request for admissions wherein they admitted that Respondent's treatment was necessary *See APP 0062, Responses No. 10* and admitted Plaintiffs' medical bills were reasonable (*Id., Responses No. 10*) Holga Flores-Reyes and Anthony Verdon admitted these requests and will not have an opportunity to deny them at trial.

Further, at no time did Appellants retain an expert to provide expert opinions on the property damages, or the forces involved in the collision, or regarding Respondent's medical treatment. Appellants Holga Flores-Reyes and Anthony Verdon's lack of responses to interrogatories and admission at any point prior to the arbitration hearing and not appearing at the arbitration was more egregious that the Respondent's conduct in Casino Properties, and therefore, their participation cannot be considered "meaningful," thus their request for trial de novo should be denied. See Casino Properties, 112 Nev. 132, 911 P.2d 1181, (1996).

Regardless, it appears the Arbitrator considered the evidence against Appellants Holga Flores-Reyes and Anthony Verdon's, along with their lack of cooperation in providing Discovery responses, and their lack of appearing at the

Arbitration hearing when arriving at the Award against Appellants. In a case where the circumstances surrounding allegations that the Appellants attempted to flee an accident scene are the central contested issue, it is imperative that the Arbitrator have all the evidence at hand to make an informed decision, and that the Appellants provide some type of evidence to support their position, i.e., retain experts to support his Defense, appear and provide testimony during the arbitration, or at least provide verified responses to written discovery. Here, Appellants Holga Flores-Reyes and Anthony Verdon's refusal to participate in the process precluded their ability to make an argument contrary to liability and causation before the Arbitrator, resulting in an award against them and for Respondent, a decision they should not be permitted a second chance to offer arguments never presented during the arbitration process.

Based on Appellants Holga Flores-Reyes and Anthony Verdon's refusal to meaningfully participate during discovery, despite their denials to the allegations against driver Flores-Reyes, and lacking a supported and reasonable defense, Appellants should not be granted the privilege of a new trial because they failed to "meaningfully participate" in the arbitration program. Casino Properties. Inc., 112 Nev. at 135–36, 911 P.2d at 1182–83 (1996) (equating "good faith" with "meaningful participation" and concluding that the district court did not abuse its discretion by refusing to grant a trial de novo on the basis that appellant had not

meaningfully participated in arbitration proceedings because appellant failed to timely provide material information to respondents)

NAR 22(A) mandates that when a party fails to participate in good faith, any request for a trial de novo by that party shall—not may—be waived. The usage of the ward "shall" infers that parties who do not participate in good faith cannot have their actions rewarded with the chance to set things right through a trial de novo. The instant case is not one where Appellants Holga Flores-Reyes and Anthony Verdon merely failed at one stage to defend the claims against him. This is a case where Appellants Holga Flores-Reyes and Anthony Verdon failed at every possible opportunity to provide information necessary to defend their case. In not meaningfully participating, Defendant Holga Flores-Reyes and Anthony Verdon negatively impacted Respondent's ability to plead their case. This behavior is exactly the type the legislature envisioned when crafting NAR 22(A). As such, Appellants Holga Flores-Reyes and Anthony Verdon's appeal must be denied, and the arbitration award against them enforced and reduced to judgment.

B. Appellants Holga Flores-Reyes and Anthony Verdon is Not Entitled to a Trial De Novo There Was A Consistent Lack of Diligence in This Suit.

Appellants Holga Flores-Reyes and Anthony Verdon did not provide responses to requests for admission, to interrogatories, or to requests for production and both failed to appear at the arbitration hearing. Appellants Holga Flores-Reyes

and Anthony Verdon also failed to timely oppose Respondent's Motion for Attorney Fees, Costs and Interest, and failed to pay Respondent's property damage, undercutting a claim of admission of liability. This dilatory behavior further demonstrates the overall pattern of Appellants Holga Flores-Reyes and Anthony Verdon's failure to act with diligence and good faith during the course of this case.

C. Appellants Holga Flores-Reyes and Anthony Verdon's Failure To Participate In The Arbitration Frustrates The Intended Purpose Of The Court Annexed Arbitration Program.

Pursuant to NAR 2(A), the intended purpose of the court annexed arbitration program is to "provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." It is undisputed that this particular matter is one that was intended to be resolved in the arbitration program (***as neither party attempted to exempt this matter from arbitration***). But the intended purpose is only satisfied when both parties participate in good faith so the Arbitrator can craft a meaningful Decision and Award. If Appellants Holga Flores-Reyes and Anthony Verdon is allowed to proceed with a Trial De Novo, he would obviously have the opportunity to have discovery reopened and present evidence (including responding to Plaintiff's original written discovery requests, specifically interrogatories that he never responded to) and information that should have originally been provided to the Arbitrator. Such behavior should not be rewarded. If parties are allowed to sit idly on their hands and only engage in meaningful litigation after failing to

participate in good faith through arbitration, it renders the arbitration process moot. Appellants in this case literally did nothing and have paid nothing in this case. Thus, Appellants Holga Flores-Reyes and Anthony Verdon should not be rewarded with a new trial after demonstrating complete noncompliance with the rules of this Court. Overall, Appellants Holga Flores-Reyes and Anthony Verdon took no meaningful actions and compromised the purpose of the arbitration program. Therefore, Respondent requests that Appellants Holga Flores-Reyes and Anthony Verdon's request for trial de novo be stricken pursuant to NAR 18 and NAR 22 due to his lack of defense and participation in good faith.

CONCLUSION

Appellants failed to make any good faith effort to participate in Arbitration. This is not a case where a party simply failed to attend an Arbitration Hearing OR to call a witness, this is a case where Appellants refused to pay property damage based upon a denial of liability, and then reversed themselves in a brief filed after the scheduled arbitration start time. Appellants failed to engage in discovery or in the Arbitration process at all. They have waived the ability to request trial de novo.

DATED this 22nd day of September, 2021.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface us Times New Romans in 14-size font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(B), it is proportionately spaced, has a typeface of 14 points or more and contains 2,894 words.

3. I further hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous, or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Date: September 22, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of **BIGHORN LAW** and that I served the foregoing ***RESPONDENT'S ANSWERING BRIEF*** on the parties listed below by causing a full, true, and correct copy to be served in the matter identified.

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