

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

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an Unincorporated  
Association;

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT FOR  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK; THE HONORABLE  
NADIA KRALL, DISTRICT COURT JUDGE,

Respondents,

and

JOHN ROBERTS

Real Party in Interest.

Supreme Court No. \_\_\_\_\_ Electronically Filed  
Aug 11 2021 02:53 p.m.  
District Court Case No. 2021-01208  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION  
OR MANDAMUS**

**Volume I of II**

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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, that, in accordance therewith, I caused a copy of the **APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR MANDAMUS, Volume I of II**, to be delivered by United States Postal Service, First Class mail, in a sealed envelope, on the date and to the addressee(s) shown below:

The Honorable Nadia Krall  
The Eighth Judicial District Court  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101  
Respondent

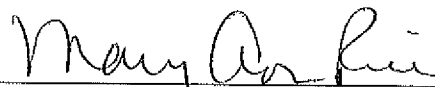
Jordan P. Schnitzer, Esq.  
THE SCHNITZER LAW FIRM  
9205 W. Russell Road, Ste. 240  
Las Vegas, NV 89148  
Attorneys for Plaintiff/Real Party in Interest

Dated this 10th date of August, 2021.

By:           /s/ Anne Cordell            
An employee of  
Lewis Brisbois Bisgaard & Smith LLP

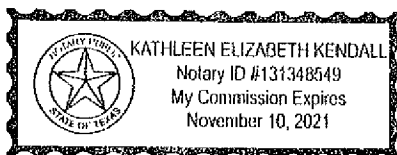
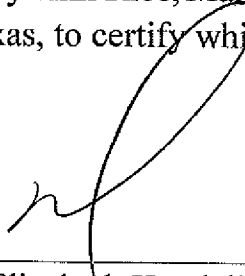
STATE OF TEXAS

Before me, the undersigned notary public for the State of Texas, on this day personally appeared Mary Ann Rice, Manager Operations Support and custodian of records of United Services Automobile Association, and after being by me duly sworn and upon her oath says that an exact duplicate of the United Services Automobile Association, 00562 55 57U 7101 3, including any applicable endorsements and forms, issued to JOHN ROBERTS, effective on May 9, 2014, has been prepared under her direction and is attached hereto.



Mary Ann Rice,  
Manager Operations Support

Subscribed and sworn to before me by said Mary Ann Rice, Manager Operations Support, this 9 day of July, 2019 at San Antonio, Texas, to certify which witness my hand and seal at office.



Kathleen Elizabeth Kendall  
Notary Public  
State of Texas  
My commission expires on November 10, 2021



**UNITED SERVICES AUTOMOBILE ASSOCIATION**

(A RECIPROCAL INTERINSURANCE EXCHANGE)

9800 Fredericksburg Road - San Antonio, Texas 78288

NEVADA AUTO POLICY

## AMENDED DECLARATIONS

(ATTACH TO PREVIOUS POLICY)

**Named Insured and Address**

JOHN ROBERTS  
171 CHANNEL DR  
HENDERSON NV 89002-5124

**Description of Vehicle(s)**

State	01				Veh	POLICY NUMBER				
NV	020				Terr	00562	55	57U	7101	3

POLICY PERIOD: (12:01 A.M. standard time)

EFFECTIVE MAR 05 2014 TO SEP 05 2014

## OPERATORS

01 JOHN ROBERTS

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	SYM	VER	Miles One Way	Days Per Week
01	07	BMW	550I 4D	4 DOOR	10000	WBANB53597CP06636			P	

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. \* W/C=Work/School; B=Business; F=Farm; P=Pleasure

VEH 01 HENDERSON NV 89002-5124

**This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.**

COVERAGES				LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)		VEH 01 6-MONTH D=DED PREMIUM AMOUNT \$		VEH D=DED PREMIUM AMOUNT \$		VEH D=DED PREMIUM AMOUNT \$		VEH D=DED PREMIUM AMOUNT \$	
PART A - LIABILITY													
BODILY INJURY		EA PER	\$	300,000									
		EA ACC	\$	500,000		235.45							
PROPERTY DAMAGE		EA ACC	\$	100,000		54.20							
PART B - MEDICAL PAYMENTS													
		EA PER	\$	10,000		37.06							
PART C - UNINSURED MOTORISTS													
BODILY INJURY		EA PER	\$	300,000									
		EA ACC	\$	500,000		84.88							
PART D - PHYSICAL DAMAGE COVERAGE													
COMPREHENSIVE LOSS		ACV LESS	D 300		62.93								
COLLISION LOSS		ACV LESS	D 300		163.92								
RENTAL REIMBURSEMENT													
\$ 30 A DAY/\$		900 MAXIMUM			11.25								
TOWING AND LABOR					6.00								
VEHICLE TOTAL PREMIUM							655.69						

POLICY ADJUSTMENT		ADJUSTMENT REASON	

TOTAL PREMIUM - SEE FOLLOWING PAGE(S)

ENDORSEMENTS: ADDED 03-05-14 - NONE

REMAIN IN EFFECT(REFER TO PREVIOUS POLICY)- ACCFOR(01) A400CW(03) A401CW(01)  
5100NV(01) A100NV(05) AOASA(01) A099(01)

E4

[illegible]

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date MARCH 12, 2014 *Laura Bishop*

COUNTERSIGNED BY

Beverly G Rodriguez

*Laura Bishop*  
Laura Bishop  
President, USAA Reciprocal Attorney-in-Fact, Inc.

0002

5000 U 07-11

53461-Q7-11

BEVERLY J. RODRIGUEZ

0901119ca48a583f

**USAA Confidential**





## UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)  
 9800 Fredericksburg Road - San Antonio, Texas 78288  
 NEVADA AUTO POLICY  
 AMENDED DECLARATIONS  
 (ATTACH TO PREVIOUS POLICY)

State		Veh	POLICY NUMBER			
NV		Terr	00562 55 57U 7101 3			
POLICY PERIOD: (12:01 A.M. standard time)						
EFFECTIVE MAR 05 2014 TO SEP 05 2014						

## Named Insured and Address

JOHN ROBERTS  
 171 CHANNEL DR  
 HENDERSON NV 89002-5124

## Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE*	WORK SCHOOL Miles One Way	Days Per Week

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. \* W/C=Work/School; B=Business; F=Farm; P=Pleasure

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES ("ACV" MEANS ACTUAL CASH VALUE)	LIMITS OF LIABILITY	VEH		VEH		VEH		VEH	
		D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
REVISED 6 MONTH PREMIUM...		\$	655.69	6 MONTH DECREASE...		\$	22.55		
THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR: VEH 01 - EXTENDED BENEFITS COVERAGE									

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date MARCH 12, 2014.

COUNTERSIGNED BY

*Beverly J. Rodriguez*

BEVERLY J. RODRIGUEZ

USAA Confidential

*Laura Bishop*  
 Laura Bishop  
 President, USAA Reciprocal Attorney-in-Fact, Inc.

0003

5000 U 07-11  
 53461-07-11

0901119ca48a583f

Event Number: 140509-3185 Code Revision:		STATE OF NEVADA TRAFFIC ACCIDENT REPORT SCENE INFORMATION SHEET Revised 1/14/04				Accident Number: LVMPD-140509-3185 <input type="checkbox"/> Property <input checked="" type="checkbox"/> Injury <input type="checkbox"/> Fatal			
<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural	<input type="checkbox"/> Emergency Use <input type="checkbox"/> Office Report	<input type="checkbox"/> Preliminary Report <input checked="" type="checkbox"/> Initial Report	<input type="checkbox"/> Resubmission <input type="checkbox"/> Supplement Report	<input type="checkbox"/> Hit and Run <input type="checkbox"/> Private Property	Agency Name: LAS VEGAS METROPOLITAN PD				
Collision Date 5/9/2014	Time 19:09	Day FRIDAY	Beat / Sector K5	<input checked="" type="checkbox"/> County CLARK	<input type="checkbox"/> City	Surface <input checked="" type="checkbox"/> Asphalt <input type="checkbox"/> Concrete <input type="checkbox"/> Gravel <input type="checkbox"/> Dirt <input type="checkbox"/> Other	Intersection <input type="checkbox"/> Four Way <input type="checkbox"/> > Four Way <input checked="" type="checkbox"/> T <input type="checkbox"/> Y <input type="checkbox"/> Roundabout <input type="checkbox"/> Other	Paddle Markers <input checked="" type="checkbox"/> None <input type="checkbox"/> Left Side <input type="checkbox"/> Right Side <input type="checkbox"/> Both Side <input type="checkbox"/> Unknown	
Mile Marker	# Vehicles 2	# Non Motorists 0	# Occupants 2	# Fatalities 0	# Injured 2	# Restrained 2			
Occurred On: (Highway # or Street Name) <input type="checkbox"/> 1) Parking Lot NELLIS BLVD							Access Control <input checked="" type="checkbox"/> None <input type="checkbox"/> Full <input type="checkbox"/> Partial		
<input checked="" type="checkbox"/> At Intersection With: <input type="checkbox"/> Or <input type="checkbox"/> Feet <input type="checkbox"/> Miles <input type="checkbox"/> Approximate N/A							Of (Cross Street) RUSSELL RD		
Roadway Character <input checked="" type="checkbox"/> Curve & Grade <input type="checkbox"/> Curve & Hillcrest <input type="checkbox"/> Curve & Level <input type="checkbox"/> Straight & Grade <input type="checkbox"/> Straight & Hillcrest <input type="checkbox"/> Straight & Level <input type="checkbox"/> Unknown <input type="checkbox"/> Other		Roadway Conditions <input checked="" type="checkbox"/> Dry <input type="checkbox"/> Slush <input type="checkbox"/> Icy <input type="checkbox"/> Standing Water <input type="checkbox"/> Wet <input type="checkbox"/> Moving Water <input type="checkbox"/> Snow <input type="checkbox"/> Unknown <input type="checkbox"/> Sand / Mud / Oil / Dirt / Gravel <input type="checkbox"/> Other		Total Thru Lanes Main Road <input type="checkbox"/> One <input type="checkbox"/> Two <input type="checkbox"/> Three <input type="checkbox"/> Four <input type="checkbox"/> Five <input type="checkbox"/> > 5 Total All Lanes: 0		Average Roadway Widths Travel Lane 0 Ft Storage / Turn Lane 0 Ft Median 0 Ft Paved Shoulder Inside 0 Outside 0		Roadway Grade <input checked="" type="checkbox"/> Not Determined <input type="checkbox"/> Relatively Level Roadway <input type="checkbox"/> Up Slope (+) <input type="checkbox"/> Down Slope (-) Grade %	
Pavement Markings and Type Centerline, Broken Yellow Centerline, Solid Yellow Centerline, Double Yellow Lane Line, Broken White Lane Line, Solid White Other No Passing, Either Direction Turn Arrow Symbols Center Turn Lane Line Edge Line, Left, Yellow Edge Line, Right, White <input checked="" type="checkbox"/> None <input type="checkbox"/> Unknown				Highway Description <input type="checkbox"/> Two-Way, Not Divided <input checked="" type="checkbox"/> Two-Way, Div., Unpro. Median <input type="checkbox"/> Two-Way, Div., Median Barrier <input type="checkbox"/> One-Way, Not Div. <input type="checkbox"/> Unknown <input type="checkbox"/> Off Road		Weather Conditions <input type="checkbox"/> Clear <input type="checkbox"/> Fog, Smog, Smoke, Ash <input checked="" type="checkbox"/> Cloudy <input type="checkbox"/> Severe Crosswinds <input type="checkbox"/> Snow <input type="checkbox"/> Sleet / Hail <input type="checkbox"/> Rain <input type="checkbox"/> Unknown <input type="checkbox"/> Blowing Sand, Dirt, Soil, Snow <input type="checkbox"/> Other			
Light Conditions <input type="checkbox"/> Dusk <input type="checkbox"/> Dark - No Roadway Lighting <input type="checkbox"/> Dawn <input type="checkbox"/> Dark - Spot Roadway Lighting <input checked="" type="checkbox"/> Daylight <input type="checkbox"/> Dark - Continuous Roadway Lighting <input type="checkbox"/> Unknown <input type="checkbox"/> Dark - Unknown Roadway Lighting <input type="checkbox"/> Other		Vehicle Collision Type <input type="checkbox"/> Head On <input type="checkbox"/> Rear to Rear <input type="checkbox"/> Rear End <input type="checkbox"/> Sideswipe - Meeting <input type="checkbox"/> Backing <input type="checkbox"/> Sideswipe - Overtaking <input checked="" type="checkbox"/> Angle <input type="checkbox"/> Non - Collision <input type="checkbox"/> Unknown			Location of First Event <input type="checkbox"/> Travel Lane <input type="checkbox"/> Outside Shoulder <input type="checkbox"/> Ramp <input type="checkbox"/> Turn Lane <input checked="" type="checkbox"/> Intersection <input type="checkbox"/> Unknown <input type="checkbox"/> Gore <input type="checkbox"/> Private Property <input type="checkbox"/> Median <input type="checkbox"/> Roadside <input type="checkbox"/> Inside Shoulder <input type="checkbox"/> Other				
Highway / Environment Factors <input type="checkbox"/> None <input type="checkbox"/> Shoulders <input type="checkbox"/> Ruts, Holes, Bumps <input type="checkbox"/> Weather <input type="checkbox"/> Road Obstruction <input type="checkbox"/> Active Work Zone <input type="checkbox"/> Debris <input type="checkbox"/> Worn Traffic Surface <input type="checkbox"/> Inactive Work Zone <input checked="" type="checkbox"/> Glare <input type="checkbox"/> Wet, Icy, Snow, Slush <input type="checkbox"/> Animal In Roadway <input type="checkbox"/> Other Highway <input type="checkbox"/> Unknown <input type="checkbox"/> Other Environmental				Property Damage To Other Than Vehicle Describe Property Damage Owner's Name (Last First Middle): <input type="checkbox"/> 1) Owner Notified Owner's Address: (Street Address City, State Zip)					
First Harmful Event Code #: 214 Description: 214 MOTOR VEHICLE IN TRANSPORT									
Description of Accident / Narrative V2 WAS TRAVELING SOUTHBOUND ON NELLIS BLVD IN THE NUMBER 1 LEFT TURN LANE ENTERING THE INTERSECTION OF RUSSELL RD ON A GREEN TRAFFIC SIGNAL. V1 WAS TRAVELING WESTBOUND ON RUSSELL RD IN THE NUMBER 2 TRAVEL LANE APPROACHING THE INTERSECTION OF NELLIS BLVD ON A RED TRAFFIC SIGNAL. ACCORDING TO THE WITNESS V1 FAILED TO STOP AND CONTINUED TRAVELING INTO THE INTERSECTION WHERE THE FRONT OF V1 STRUCK THE LEFT SIDE OF V2 RESULTING IN A TRAFFIC COLLISION. THE DRIVER OF V1 STATES THE SUN WAS IN HIS EYES									
Investigation Complete <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Photos Taken <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Scene Diagram <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Statements# <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date Notified 5/9/2014	Time Notified 19:13	Arrival Date 5/9/2014	Arrival Time 19:36		
Investigator(s) 13234 J. TRAIL		ID Number 13234	Date 5/9/2014	Reviewed By 6796 ROBERT GIBBS	Date Reviewed 5/17/2014	Page 1 of 7			

6/4/2014  
0004

Event Number:  140509-3185	STATE OF NEVADA TRAFFIC ACCIDENT REPORT SCENE INFORMATION SHEET Revised 5/21/03	Accident Number: LVMPD-140509-3185  Agency Name: LAS VEGAS METROPOLITAN PD
----------------------------------	--	--

Description of Accident / Narrative Continuation

CAUSING A GLARE. THE DRIVER OF V1 WAS CITED FOR FAILING TO STOP AT THE RED TRAFFIC SIGNAL.

Indicate North

A.I.C.: 18FT W/E 28FT S/N

Event Number: 140509-3185		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 1/14/04		Accident Number: LVMPD-140509-3185	
Vehicle # 1	# Occupants 1	<input type="checkbox"/> 1) At Fault <input type="checkbox"/> 2) Non Contact		Agency Name: LAS VEGAS METROPOLITAN PD	
Direction of Travel: <input type="checkbox"/> 1) North <input type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 2) South <input checked="" type="checkbox"/> 4) West		Highway / Street Name: RUSSELL			Travel Lane #: 2
Vehicle Action: <input checked="" type="checkbox"/> 1) Straight <input type="checkbox"/> 3) Left Turn <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 7) Wrong Way <input type="checkbox"/> 9) Passing <input type="checkbox"/> 11) Leaving Parked <input type="checkbox"/> 13) Leaving Lane <input type="checkbox"/> 15) Enter Parked (#) <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 19) Unknown <input type="checkbox"/> 2) Backing <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 8) Stopped (Δ) <input type="checkbox"/> 10) Racing <input type="checkbox"/> 12) Entering <input type="checkbox"/> 14) Other Turning <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 18) Other					
Driver: (Last Name, First Name, Middle Name Suffix) ZAZUETAESPINOZA OSCAR			Transported By: <input checked="" type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		
Street Address: 3500 MARLBOROUGH			Transported To:		
City: LAS VEGAS		State / Country: <input checked="" type="checkbox"/> 1) NV	Zip Code: 89110	Person Type: 1	Seating Position: 01 Occupant Restraints: 7
<input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: 9/3/1995	Phone Number: (702)6049243	Injury Severity: B	Injury Location: 7
OLN:		State: <input type="checkbox"/> 1) NV	<input type="checkbox"/> 1) CDL <input type="checkbox"/> 2) DL	License Status: 6	Airbags: 3 Airbag Switch: 1 Ejected: 0 Trapped: 0
Compliance: <input type="checkbox"/> 1) Restrict <input type="checkbox"/> 2) Endorse Alcohol/Drug Involvement: <input checked="" type="checkbox"/> 1) Not Involved <input type="checkbox"/> 2) Suspected Impairment <input type="checkbox"/> 3) Alcohol <input type="checkbox"/> 4) Drugs <input type="checkbox"/> 5) Unknown		Endorsements: Restrictions: Method of Determination (check up to 2): <input type="checkbox"/> 1) Field Sobriety Test <input type="checkbox"/> 4) Urine Test <input type="checkbox"/> 2) Evidentiary Breath <input type="checkbox"/> 5) Blood Test <input type="checkbox"/> 3) Driver Admission <input type="checkbox"/> 6) Preliminary Breath		Driver Factors: <input checked="" type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 6) Driver Ill / Injured <input type="checkbox"/> 2) Had Been Drinking <input type="checkbox"/> 7) Other Improper Driving <input type="checkbox"/> 3) Drug Involvement <input type="checkbox"/> 8) Driver Inattention / Distracted <input type="checkbox"/> 4) Apparently Fatigued / Asleep <input type="checkbox"/> 9) Physical Impairment <input type="checkbox"/> 5) Obstructed View <input type="checkbox"/> 10) Unknown	
Vehicle Year: 2006		Vehicle Make: KIA	Vehicle Model: OPTIMA	Vehicle Type: P4	
Plate / Permit No.: 495YDX		State: <input checked="" type="checkbox"/> 1) NV	Expiration Date: 8/24/2014	Vehicle Color: WHI	
Vehicle Identification Number: KNAME124565025457					
Registered Owner Name: <input type="checkbox"/> 1) Same As Driver ESPINOZA-BENITZ LUZ					
Registered Owner Address: 3500 MARLBOROUGH AVE LAS VEGAS NV 89110					
Insurance Company Name: PRIMERO					
Policy Number: NV0165179		Effective: 4/2/2014	To: 5/10/2014	1st Contact <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 1 — <input type="checkbox"/> 5 <input type="checkbox"/> 8 <input type="checkbox"/> 7 <input type="checkbox"/> 6 <input type="checkbox"/> 1) Override <input type="checkbox"/> 2) Under Ride	
Insurance Company Address or Phone Number: 7025642222		Towed By: EWING BROTHERS TOWING		Damaged Areas <input checked="" type="checkbox"/> 1) Front <input type="checkbox"/> 2) Right Side <input type="checkbox"/> 3) Left Side <input type="checkbox"/> 4) Rear <input type="checkbox"/> 5) Right Front <input type="checkbox"/> 6) Right Rear <input type="checkbox"/> 7) Top <input type="checkbox"/> 8) Under Carriage <input type="checkbox"/> 9) Left Front <input type="checkbox"/> 10) Left Rear <input type="checkbox"/> 11) Unknown <input type="checkbox"/> 12) Other	
<input checked="" type="checkbox"/> 1) Vehicle Towed		Removed To: TOW YARD			
Traffic Control F 1) Speed Zone 11) Stop Sign F 2) Signal Light 12) Yield Sign 3) Flashing Light 13) R. R. Sign 4) School Zone 14) R. R. Gates 5) Ped. Signal 15) R. R. Signal (#) 6) No Passing F 16) Marked Lanes 7) No Controls 17) Tire Chains/Snow Req. 8) Warning Sign 18) Permissive Green 9) Turn Signal <input type="checkbox"/> 19) Unknown 10) Other		Distance Traveled After Impact 3 (1-Feet)	Speed Estimate From To Limit 45		Extent Of Damage <input type="checkbox"/> 1) Minor <input type="checkbox"/> 4) Total <input checked="" type="checkbox"/> 2) Moderate <input type="checkbox"/> 5) None <input type="checkbox"/> 3) Major <input type="checkbox"/> 6) Unknown
Sequence Of Events Code # Description Collision With Fixed Object Most Harmful Event 1st 214 214 MOTOR VEHICLE IN TRANSPORT <input type="checkbox"/> <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> <input type="checkbox"/> 3rd <input type="checkbox"/> <input type="checkbox"/> 4th <input type="checkbox"/> <input type="checkbox"/> 5th <input type="checkbox"/> <input type="checkbox"/>					
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input checked="" type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (1)		Violation (0501) NRS RED TRAFFIC SIGNAL ...		NOC	Citation Number E10427142
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (2)		Violation		NOC	Citation Number
Investigator(s)		ID Number 13234	Date 5/10/2014	Reviewed By 6706 ROBERT GIBBS	Date Reviewed 5/17/2014 Page 2 of 2

6/4/2014  
0006

Event Number: 140509-3185		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 5/21/03		Accident Number: LVMPD-140509-3185	
Agency Name: LAS VEGAS METROPOLITAN PD					
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:				Transported To:	
City:		State / Country <input type="checkbox"/> 1) NV		Zip Code:	Person Type:
Seating Position:		Occupant Restraints:			
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:		Phone Number:	
Injury Severity:		Injury Location:			
Airbags:		Airbag Switch:		Ejected:	
Trapped:					
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:				Transported To:	
City:		State / Country <input type="checkbox"/> 1) NV		Zip Code:	Person Type:
Seating Position:		Occupant Restraints:			
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:		Phone Number:	
Injury Severity:		Injury Location:			
Airbags:		Airbag Switch:		Ejected:	
Trapped:					
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:				Transported To:	
City:		State / Country <input type="checkbox"/> 1) NV		Zip Code:	Person Type:
Seating Position:		Occupant Restraints:			
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:		Phone Number:	
Injury Severity:		Injury Location:			
Airbags:		Airbag Switch:		Ejected:	
Trapped:					
<input type="checkbox"/> 1) Trailing Unit 1 VIN:		Plate:		State: <input type="checkbox"/> 1) NV Type:	
<input type="checkbox"/> 1) Trailing Unit 2 VIN:		Plate:		State: <input type="checkbox"/> 1) NV Type:	
<input type="checkbox"/> 1) Trailing Unit 3 VIN:		Plate:		State: <input type="checkbox"/> 1) NV Type:	
Commercial Vehicle Configuration					
<input type="checkbox"/> 1) Bus, 9 - 15 Occupants <input type="checkbox"/> 2) Bus, > 15 Occupants <input type="checkbox"/> 3) Single 2 Axle and 6 Tire <input type="checkbox"/> 4) Single > 3 Axle <input type="checkbox"/> 5) Any 4 Tire Vehicle			<input type="checkbox"/> 6) Tractor Only <input type="checkbox"/> 7) Tractor / Trailer <input type="checkbox"/> 8) Tractor / Doubles <input type="checkbox"/> 9) Tractor / Triples <input type="checkbox"/> 10) Truck with Trailer		
<input type="checkbox"/> 11) Tractor / Semi Trailer <input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat) <input type="checkbox"/> 13) Light Truck, (Haz-Mat) <input type="checkbox"/> 14) Other Heavy Vehicle			<input type="checkbox"/> 1) Commercial Vehicle <input type="checkbox"/> 2) School Bus		
Source			<input type="checkbox"/> 1) Driver <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 3) Shipping Papers / Trip Manifest		
<input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 5) Side of Vehicle <input type="checkbox"/> 6) Other					
Carrier Name:			Power Unit GVWR		
<input type="checkbox"/> 1) ≤ 10,000 Lbs <input type="checkbox"/> 2) 10,000 - 26,000 Lbs <input type="checkbox"/> 3) ≥ 26,000 Lbs			<input type="checkbox"/> 1) Haz-Mat <input type="checkbox"/> 2) Released		
Carrier Street Address:			City:		
State: <input type="checkbox"/> 1) NV			Zip:		
Cargo Body Type			Haz-Mat ID #:		
<input type="checkbox"/> 1) Pole <input type="checkbox"/> 2) Tank <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 4) Dump <input type="checkbox"/> 5) Unknown			<input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 9) Garbage/Refuse <input type="checkbox"/> 10) Not Applicable		
<input type="checkbox"/> 11) Grain, Gravel Chips <input type="checkbox"/> 12) Bus, 9 - 15 Occupants <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 14) Other			Hazard Classification #:		
Type of Carrier			NAS Safety Report #:		
<input type="checkbox"/> 1) Single State <input type="checkbox"/> 2) USDOT <input type="checkbox"/> 3) Canada <input type="checkbox"/> 4) Mexico <input type="checkbox"/> 5) None			Carrier Number:		

Event Number: 140509-3185		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 1/14/04		Accident Number: LVMPD-140509-3185																														
Vehicle # 2	# Occupants 1			Agency Name: LAS VEGAS METROPOLITAN PD																														
Direction of Travel: <input type="checkbox"/> 1) North <input type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown <input checked="" type="checkbox"/> 2) South <input type="checkbox"/> 4) West		Highway / Street Name: NELLIS BLVD		Travel Lane #: L1																														
Vehicle Action: <input type="checkbox"/> 1) Straight <input checked="" type="checkbox"/> 3) Left Turn <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 7) Wrong Way <input type="checkbox"/> 9) Passing <input type="checkbox"/> 11) Leaving Parked <input type="checkbox"/> 13) Leaving Lane <input type="checkbox"/> 15) Enter Parked (#) <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 19) Unknown <input type="checkbox"/> 2) Backing <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 8) Stopped ( $\Delta$ ) <input type="checkbox"/> 10) Backing <input type="checkbox"/> 12) Entering <input type="checkbox"/> 14) Other Turning <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 18) Other																																		
Driver: (Last Name, First Name, Middle Name Suffix) ROBERTS JOHN			Transported By: <input type="checkbox"/> 1) Not Transported <input checked="" type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other CCFD																															
Street Address: 171 CHANNEL DR			Transported To: SUNRISE HOSPITAL																															
City: HENDERSON		State / Country: <input checked="" type="checkbox"/> 1) NV NV	Zip Code: 89002	Person Type: 1	Seating Position: 01																													
Occupant Restraints: 7		Injury Severity: C		Injury Location: 6																														
DOB: 12/24/1962		Phone Number: (702)4192860		Airbags: 2																														
CLN: State: <input checked="" type="checkbox"/> 1) NV NV		License Status: <input type="checkbox"/> 1) CDL <input checked="" type="checkbox"/> 2) DL 0		Airbag Switch: 1																														
Ejected: 0		Trapped: 0																																
Compliance: <input type="checkbox"/> 1) Restrict <input type="checkbox"/> 2) Endorse		Endorsements		Restrictions																														
Alcohol/Drug Involvement: <input checked="" type="checkbox"/> 1) Not Involved <input type="checkbox"/> 2) Suspected Impairment <input type="checkbox"/> 3) Alcohol <input type="checkbox"/> 4) Drugs <input type="checkbox"/> 5) Unknown		Method of Determination (check up to 2): <input type="checkbox"/> 1) Field Sobriety Test <input type="checkbox"/> 4) Urine Test <input type="checkbox"/> 2) Evidentiary Breath <input type="checkbox"/> 5) Blood Test <input type="checkbox"/> 3) Driver Admission <input type="checkbox"/> 6) Preliminary Breath		Test Results:																														
Driver Factors: <input checked="" type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 2) Had Been Drinking <input type="checkbox"/> 3) Drug Involvement <input type="checkbox"/> 4) Apparently Fatigued / Asleep <input type="checkbox"/> 5) Obstructed View <input type="checkbox"/> 6) Driver Ill / Injured <input type="checkbox"/> 7) Other Improper Driving <input type="checkbox"/> 8) Driver Inattention / Distracted <input type="checkbox"/> 9) Physical Impairment <input type="checkbox"/> 10) Unknown		Vehicle Factors: <input type="checkbox"/> 1) Failed To Yield Right Of Way <input type="checkbox"/> 2) Disregard Control Device <input type="checkbox"/> 3) Too Fast For Conditions <input type="checkbox"/> 4) Exceeding Speed Limit <input type="checkbox"/> 5) Wrong Way / Direction <input type="checkbox"/> 6) Mechanical Defects <input type="checkbox"/> 7) Drove Left Of Center <input type="checkbox"/> 8) Other <input type="checkbox"/> 9) Failed To Maintain Lane <input type="checkbox"/> 10) Following Too Close <input type="checkbox"/> 11) Unsafe Lane Change <input type="checkbox"/> 12) Made Improper Turn <input type="checkbox"/> 13) Over Correct/Steering <input type="checkbox"/> 14) Other Improper Driving <input type="checkbox"/> 15) Aggressive / Reckless / Careless <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 17) Unsafe Backing <input type="checkbox"/> 18) Ran Off Road <input type="checkbox"/> 19) Hit and Run <input type="checkbox"/> 20) Road Defect ( $\Delta$ ) <input type="checkbox"/> 21) Object Avoidance <input type="checkbox"/> 22) Unknown (#)																																
Vehicle Year: 2014		Vehicle Make: FORD	Vehicle Model: FUSION	Vehicle Type: 4D																														
Plate / Permit No.: 865LTN		State: <input checked="" type="checkbox"/> 1) NV NV	Expiration Date: 4/1/2015	Vehicle Color: WHI																														
Vehicle Identification Number: 3FA6P0H75ER320547																																		
Registered Owner Name: BUDGET RAC - <input type="checkbox"/> 1) Same As Driver																																		
Registered Owner Address: 7135 GILESPIE LAS VEGAS NV 89119																																		
Insurance Company Name: <input type="checkbox"/> 1) Insured																																		
Policy Number: Effective: To:																																		
Insurance Company Address or Phone Number:																																		
<input checked="" type="checkbox"/> 1) Vehicle Towed Towed By: EWING BROTHERS TOWING																																		
Removed To: TOW YARD																																		
Traffic Control: <input type="checkbox"/> 1) Speed Zone <input type="checkbox"/> 11) Stop Sign <input type="checkbox"/> 2) Signal Light <input type="checkbox"/> 12) Yield Sign <input type="checkbox"/> 3) Flashing Light <input type="checkbox"/> 13) R. R. Sign <input type="checkbox"/> 4) School Zone <input type="checkbox"/> 14) R. R. Gates <input type="checkbox"/> 5) Ped. Signal <input type="checkbox"/> 15) R. R. Signal (#) <input type="checkbox"/> 6) No Passing <input type="checkbox"/> 16) Marked Lanes <input type="checkbox"/> 7) No Controls <input type="checkbox"/> 17) Tire Chains/Snow Req. <input type="checkbox"/> 8) Warning Sign <input type="checkbox"/> 18) Permissive Green <input type="checkbox"/> 9) Turn Signal <input type="checkbox"/> 19) Unknown <input type="checkbox"/> 10) Other		Distance Traveled After Impact: 11 (1-Feet)		Speed Estimate: From To Limit 45																														
Extent Of Damage: <input type="checkbox"/> 1) Minor <input checked="" type="checkbox"/> 2) Moderate <input type="checkbox"/> 3) Major <input type="checkbox"/> 4) Total <input type="checkbox"/> 5) None <input type="checkbox"/> 6) Unknown		Sequence Of Events: <table border="1"><thead><tr><th>Code #</th><th>Description</th><th>Collision With Fixed Object</th><th>Most Harmful Event</th></tr></thead><tbody><tr><td>1st</td><td>214</td><td>214 MOTOR VEHICLE IN TRANSPORT</td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td></tr><tr><td>2nd</td><td></td><td></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>3rd</td><td></td><td></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>4th</td><td></td><td></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>5th</td><td></td><td></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr></tbody></table>				Code #	Description	Collision With Fixed Object	Most Harmful Event	1st	214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2nd			<input type="checkbox"/>	<input type="checkbox"/>	3rd			<input type="checkbox"/>	<input type="checkbox"/>	4th			<input type="checkbox"/>	<input type="checkbox"/>	5th			<input type="checkbox"/>	<input type="checkbox"/>
Code #	Description	Collision With Fixed Object	Most Harmful Event																															
1st	214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input checked="" type="checkbox"/>																														
2nd			<input type="checkbox"/>	<input type="checkbox"/>																														
3rd			<input type="checkbox"/>	<input type="checkbox"/>																														
4th			<input type="checkbox"/>	<input type="checkbox"/>																														
5th			<input type="checkbox"/>	<input type="checkbox"/>																														
Violation: <input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (1)		NOC		Citation Number																														
Violation: <input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (2)		NOC		Citation Number																														
Investigator(s)		ID Number	Date	Reviewed By	Date Reviewed																													
					Page																													

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Event Number: 140509-3185		<b>STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET</b> Revised 5/21/03		Accident Number: LVMPD-140509-3185	
Name: (Last Name, First Name, Middle Name Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
			Airbags:	Airbag Switch:	Ejected: Trapped:
Name: (Last Name, First Name, Middle Name Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
			Airbags:	Airbag Switch:	Ejected: Trapped:
Name: (Last Name, First Name, Middle Name Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
			Airbags:	Airbag Switch:	Ejected: Trapped:
<input type="checkbox"/> 1) Trailing Unit 1 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:	
<input type="checkbox"/> 1) Trailing Unit 2 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:	
<input type="checkbox"/> 1) Trailing Unit 3 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:	
<b>Commercial Vehicle Configuration</b>			<input type="checkbox"/> 1) Commercial Vehicle <input type="checkbox"/> 2) School Bus		
<input type="checkbox"/> 1) Bus, 9 - 15 Occupants <input type="checkbox"/> 2) Bus, > 15 Occupants <input type="checkbox"/> 3) Single 2 Axle and 6 Tire <input type="checkbox"/> 4) Single > 3 Axle <input type="checkbox"/> 5) Any 4 Tire Vehicle			<input type="checkbox"/> 1) Driver <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 3) Shipping Papers / Trip Manifest		
<input type="checkbox"/> 6) Tractor Only <input type="checkbox"/> 7) Tractor / Trailer <input type="checkbox"/> 8) Tractor / Doubles <input type="checkbox"/> 9) Tractor / Triples <input type="checkbox"/> 10) Truck with Trailer			<b>Source</b> <input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 5) Side Of Vehicle <input type="checkbox"/> 6) Other		
<input type="checkbox"/> 11) Tractor / Semi Trailer <input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat) <input type="checkbox"/> 13) Light Truck, (Haz-Mat) <input type="checkbox"/> 14) Other Heavy Vehicle					
Carrier Name:		Power Unit GVWR <input type="checkbox"/> 1) ≤ 10,000 Lbs <input type="checkbox"/> 2) 10,000 - 26,000 Lbs <input type="checkbox"/> 3) ≥ 26,000 Lbs		<input type="checkbox"/> 1) Haz-Mat <input type="checkbox"/> 2) Released	
Carrier Street Address:		City:	State: <input type="checkbox"/> 1) NV	Zip:	
<b>Cargo Body Type</b> <input type="checkbox"/> 1) Pole <input type="checkbox"/> 2) Tank <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 4) Dump <input type="checkbox"/> 5) Unknown		Haz-Mat ID #: Hazard Classification #:		Type of Carrier <input type="checkbox"/> 1) Single State <input type="checkbox"/> 2) USDOT <input type="checkbox"/> 3) Canada <input type="checkbox"/> 4) Mexico	
<input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 9) Garbage/Refuse <input type="checkbox"/> 10) Not Applicable		<input type="checkbox"/> 11) Grain, Gravel Chips <input type="checkbox"/> 12) Bus, 9 - 15 Occupants <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 14) Other		NAS Safety Report #: Carrier Number:	

☐ 5) None

0017

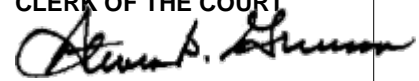
Event Number: 140509-3185		<b>STATE OF NEVADA TRAFFIC ACCIDENT REPORT</b> Occupant / Witness Supplement Revised 1/14/04		Accident Number: LVMPD-140509-3185	
				Agency Name: LAS VEGAS METROPOLITAN PD	
V # Wit	Name: (Last Name, First Name, Middle Name Suffix) HIDALGO KARLA			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address: 4701 E SAHARA AVE APT 112			Transported To:		
City: LAS VEGAS		State / Country <input checked="" type="checkbox"/> 1) NV	Zip Code: 89109	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input checked="" type="checkbox"/> 2) Female		DOB: 09/27/1983	Phone Number: (323)6334485	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
V #	Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:			Transported To:		
City:		State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:	Phone Number:	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
V #	Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:			Transported To:		
City:		State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:	Phone Number:	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
V #	Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:			Transported To:		
City:		State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:	Phone Number:	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
V #	Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:			Transported To:		
City:		State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:	Phone Number:	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
V #	Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:			Transported To:		
City:		State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:	Phone Number:	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
V #	Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:			Transported To:		
City:		State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:	Phone Number:	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
V #	Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:			Transported To:		
City:		State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB:	Phone Number:	Injury Severity:	Injury Location:
			Airbags:	Airbag Switch:	Ejected:
			Trapped:		
Investigator(s)		ID Number	Date	Reviewed By	Date Reviewed
12224 J. TRAIL		12224	5/16/2014	6706 ROBERT CIBBS	5/17/2014

6/4/2014  
0010

USAA Confidential

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CASE NO: A-19-790757-C  
Department 22

JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
THE SCHNITZER LAW FIRM  
9205 W. Russell Road, Suite 240  
Las Vegas, Nevada 89148  
Telephone: 702.960.4050  
Facsimile: 702.960.4092  
[Jordan@TheSchnitzerLawFirm.com](mailto:Jordan@TheSchnitzerLawFirm.com)  
*Attorney for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOHN ROBERTS, an individual,

Case No.:

Plaintiff,

Dept. No.:

v.

**COMPLAINT**

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity and/or  
a reciprocal insurance exchange with members  
residing in the State of Nevada; DOES 1 through  
10; and ROE CORPORATIONS 11 through 25,  
inclusive,

Defendants.

COMES NOW, Plaintiff, JOHN ROBERTS, by and through his attorney of record, THE SCHNITZER LAW FIRM, prays and alleges against Defendant, UNITED SERVICES AUTOMOBILE ASSOCIATION, as follows:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff, JOHN ROBERTS, (hereinafter “Roberts”) is, and at all times mentioned herein, was a resident of the State of Nevada.

2. Defendant, UNITED SERVICES AUTOMOBILE ASSOCIATION, (hereinafter “USAA”) is an unincorporated entity and/or a reciprocal insurance exchange, with citizenship based upon the citizenship of each of its members, including having members residing in Nevada, pursuant to *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, and at all relevant times, was licensed and doing business in the State of Nevada.



3. Defendants DOE 1 THROUGH 10 and ROE CORPORATIONS 11 THROUGH 25, are individuals, associations, corporations, partnerships or other entities which are employees, employers, agents, servants, masters, owners, controllers, partners, or in association with Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION and/or have in some way caused or contributed to Plaintiff's damages as herein alleged. The true names or capacities, whether individual, corporate, associate or otherwise, are unknown to Plaintiff. Plaintiff alleges that each Defendant designated herein as a DOE and/or ROE is responsible in some manner for the events and happenings referred to in this Complaint and negligently caused injury and damages to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true names and capacities of DOES 1 THROUGH 10 and ROE CORPORATIONS 11 THROUGH 25 to include those true names and charging allegations when they are ascertained.

4. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), and NRS 13.040 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds \$15,000.00.

#### **GENERAL ALLEGATIONS**

5. Roberts repeats and realleges each and every allegation contained in Paragraph 1 through 4 and incorporates herein by reference as fully set forth herein.

6. At all relevant times, Roberts was driving a 2014 Ford Fusion.

7. At all relevant times, Roberts maintained an automobile insurance policy from USAA. Said insurance policy number is 00508 42 50U 7108 9.

8. The insurance policy covered Roberts in the event he was injured by any uninsured or underinsured motorist.

9. The insurance policy contained an Uninsured/Underinsured Motorist provision.

10. On or about May 9, 2014, Roberts was driving his vehicle southbound on Nellis Blvd entering the intersection of Russell Road on a green traffic signal.

11. At the same time and place, Zazueta-Espinosa, was driving westbound on Russell Road approaching the intersection of Nellis Blvd on a red traffic signal.

12. Zazueta-Espinosa negligently failed to stop and continued traveling into the intersection striking Roberts.

13. Roberts was not at fault for causing the subject accident.

14. Roberts suffered severe bodily injury and extensive property damage to the Ford Fusion.

15. Zazueta-Espinosa did not have sufficient insurance to cover Roberts's damages.

16. After the accident, Roberts submitted the claim to USAA.

17. Roberts served a demand letter, with proof of loss, upon USAA.

18. USAA eventually evaluated Roberts's claim for damages at \$46,000.00.

19. USAA delayed paying the undisputed portion of the claim.

20. The amount offered by USAA is an unreasonable evaluation of his claim.

21. USAA did not provide timely responses or communications with Roberts.

22. USAA has not paid Roberts for his full damages and, therefore, has not fulfilled its contractual obligations under the Uninsured/Underinsured Motorist provision of the Roberts automobile insurance policy.

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract - Against USAA)**

23. Roberts repeats and realleges each and every allegation contained in paragraphs 1 through 22 and incorporates herein by reference as though fully set forth herein.

24. Roberts entered into a valid and existing contract with USAA, namely the automobile insurance policy.

25. Roberts made a valid covered claim under his USAA insurance policy.

26. USAA refused to pay monies owed under the policy.

27. Roberts sustained damages as a result of USAA's refusal to pay monies owed under the policy.

28. It has become necessary for Roberts to engage the services of an attorney to commence this action and therefore the Roberts is entitled to reasonable attorneys' fees, costs and interest as damage in this action pursuant to Nevada law.

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**SECOND CLAIM FOR RELIEF**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing - Tortious)**

29. Roberts repeats and realleges each and every allegation contained in paragraphs 1 through 28 and incorporates herein by reference as though fully set forth herein.

30. Roberts entered into a contract for automobile insurance with USAA.

31. Roberts is a beneficiary of the automobile insurance contract.

32. USAA owes Roberts a duty of good faith and fair dealing arising from their relationship as insurer and beneficiary.

33. A special element of reliance existed between Roberts and USAA where USAA was in a superior and/or entrusted position.

34. Defendant breached the duties owed by engaging in misconduct.

35. USAA failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under Roberts's insurance policy in violation of N.R.S. § 686A.310(1)(b).

36. USAA failed to affirm or deny coverage of claims within a reasonable time after Roberts completed and submitted proof of loss requirements, a violation of N.R.S. § 686A.310(1)(d).

37. USAA failed to effectuate prompt, fair and equitable settlement of claims in which liability of USAA became reasonably clear, a violation of N.R.S. § 686A.310(1)(e).

38. USAA failed to settle Roberts's claims promptly, where liability has become clear, under Roberts's portion of the insurance policy coverage in order to influence settlement under his portion of the insurance policy coverage, a violation of N.R.S. 686A.310.

39. Because of these actions, USAA has acted in bad faith with regards to Roberts's settlement claims; thus, breaching its duty of good faith and fair dealing.

40. By reason of the aforementioned facts, Plaintiff's justified expectations that USAA would act in good faith and deal fairly with Plaintiff was denied.

41. Roberts has suffered damages as a result of USAA's bad faith breach of its duty of good faith and fair dealing.

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42. It has become necessary for Roberts to engage the services of an attorney to commence this action and therefore Roberts entitled to reasonable attorneys' fees, costs and interest as damage in this action pursuant to Nevada law.

**THIRD CLAIM FOR RELIEF**

**(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)**

43. Roberts repeats and realleges each and every allegation contained in paragraphs 1 through 42 and incorporates herein by reference as though fully set forth herein.

44. Roberts entered into a contract for automobile insurance with USAA.

45. Roberts is a beneficiary of the automobile insurance contract.

46. USAA owes Roberts a duty of good faith and fair dealing arising from their relationship as insurer and beneficiary.

47. Every contract in Nevada imposes upon the contracting parties, including USAA, a duty of good faith and fair dealing.

48. Defendant breached the duties owed by performing in a manner that was unfaithful to the purpose of the contract.

49. Roberts's justified expectations that USAA would be faithful to the contract, and not act in an arbitrary and unfair way that disadvantaged Roberts was denied.

50. USAA failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under Roberts's insurance policy in violation of N.R.S. § 686A.310(1)(b).

51. USAA failed to affirm or deny coverage of claims within a reasonable time after Roberts completed and submitted proof of loss requirements, a violation of N.R.S. § 686A.310(1)(d).

52. USAA failed to effectuate prompt, fair and equitable settlement of claims in which liability of USAA became reasonably clear, a violation of N.R.S. § 686A.310(1)(e).

53. USAA failed to settle Roberts's claims promptly, where liability has become clear, under Roberts's portion of the insurance policy coverage in order to influence settlement under his portion of the insurance policy coverage, a violation of N.R.S. 686A.310.

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54. Because of these actions, USAA has acted in bad faith with regards to Roberts's settlement claims; thus, breaching its duty of good faith and fair dealing.

55. Roberts has suffered damages as a result of USAA's bad faith breach of its duty of good faith and fair dealing.

56. It has become necessary for Roberts to engage the services of an attorney to commence this action and therefore Roberts entitled to reasonable attorneys' fees, costs and interest as damage in this action pursuant to Nevada law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, prays for judgment against Defendants, as follows:

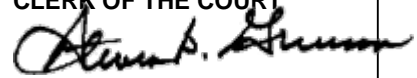
1. General and special damages in an amount in excess of \$15,000.00;
2. For reasonable attorneys' fees and costs of suit;
3. For prejudgment and post-judgment interest, and
4. For such other and further relief as this Court may deem just and proper under the circumstances.

DATED this 7<sup>th</sup> day of March 2019.

THE SCHNITZER LAW FIRM



By: \_\_\_\_\_  
JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
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702.893.3383  
FAX: 702.893.3789  
*Attorneys for Defendant United Services  
Automobile Association*

DISTRICT COURT  
CLARK COUNTY, NEVADA

JOHN ROBERTS, an individual,  
  
Plaintiff,  
  
vs.

CASE NO. A-19-790757-C  
Dept. No.: XXII

**UNITED SERVICES AUTOMOBILE  
ASSOCIATION'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
  
Defendants.

COMES NOW Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION,  
("USAA"), by and through its attorneys, Lewis Brisbois Bisgaard & Smith LLP, and hereby  
answers Plaintiff JOHN ROBERTS' ("Plaintiff") Complaint (filed on March 8, 2019) as follows:

I.

**JURISDICTIONAL ALLEGATIONS**

1. Answering Paragraph 1 of Plaintiff's March 8, 2019 Complaint, USAA admits the  
allegations contained therein upon information and belief.

2. Answering Paragraph 2 of Plaintiff's March 8, 2019 Complaint, USAA admits the  
allegations contained therein.

///

3. Answering Paragraph 3 of Plaintiff's March 8, 2019 Complaint, the allegations contained therein are so vague and ambiguous that USAA can neither admit nor deny them and on that basis denies them.

4. Answering Paragraph 4 of Plaintiff's March 8, 2019 Complaint, USAA admits only that this court has jurisdiction over this matter and venue is proper. Except as expressly admitted, USAA denies the allegations contained therein.

## II.

## GENERAL ALLEGATIONS

5. Answering Paragraph 5 of Plaintiff's March 8, 2019 Complaint, USAA incorporates by reference its responses to each and every allegation set forth in this Answer as though fully set forth herein.

6. Answering Paragraph 6 of Plaintiff's March 8, 2019 Complaint, USAA admits the allegations contained therein.

7. Answering Paragraphs 7, 8 and 9 of Plaintiff's March 8, 2019 Complaint, USAA admits that it issued a Nevada Auto Policy to Plaintiff which was in effect from 12:01 a.m. March 5, 2014 to 12:01 a.m. on September 5, 2014, which provided uninsured/underinsured motorist coverage to Plaintiff subject to the terms, conditions, provisions, limitations and exclusions of the policy which speak for themselves. Except as expressly admitted, USAA denies the allegations contained therein.

8. Answering Paragraphs 10, 11, 12 and 13 of Plaintiff's March 8, 2019 Complaint, USAA admits the allegations contained therein upon information and belief.

9. Answering Paragraph 14 of Plaintiff's March 8, 2019 Complaint, USAA admits that Plaintiff claimed injuries as a result of the accident. USAA also admits that Plaintiff's vehicle sustained property damage. Except as expressly admitted, USAA denies the allegations contained therein.

10. Answering Paragraph 15 of Plaintiff's March 8, 2019 Complaint, USAA admits the allegations contained therein upon information and belief. However, the nature, extent, and value

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1 of Plaintiff's damages are at issue in this litigation and will be determined by the finder of fact.  
2 Except as expressly admitted, USAA denies the allegations contained therein.

3 11. Answering Paragraphs 16 and 17 of Plaintiff's March 8, 2019 Complaint, USAA  
4 admits that Plaintiff reported the accident, advised of a claim, and sent a demand letter along with  
5 various medical records. Except as expressly admitted, USAA denies the allegations contained  
6 therein.

7 12. Answering Paragraph 18 of Plaintiff's March 8, 2019 Complaint, USAA admits  
8 that it investigated Roberts' claim, placed a value range on the claim based on the information  
9 known to it, and made an initial offer of \$46,000. Except as expressly admitted, USAA denies the  
10 allegations contained therein.

11 13. Answering Paragraph 19 of Plaintiff's March 8, 2019 Complaint, USAA denies  
12 that the claim has an "undisputed portion" and therefore, denies the allegations contained therein.

13 14. Answering Paragraphs 20, 21, and 22 of Plaintiff's March 8, 2019 Complaint,  
14 USAA denies the allegations contained therein.

15 III.

16 **FIRST CLAIM FOR RELIEF**

17 **(Breach of Contract – Against USAA)**

18 15. Answering Paragraph 23 of Plaintiff's March 8, 2019 Complaint, USAA  
19 incorporates by reference its responses to each and every allegation set forth in this Answer as  
20 though fully set forth herein.

21 16. Answering Paragraph 24 of Plaintiff's March 8, 2019 Complaint, USAA admits  
22 that it issued a Nevada Auto Policy to Plaintiff which was in effect from 12:01 a.m. March 5, 2014  
23 to 12:01 a.m. on September 5, 2014. Except as expressly admitted, USAA denies the allegations  
24 contained therein.

25 17. Answering Paragraph 25 of Plaintiff's March 8, 2019 Complaint, USAA admits  
26 only that Plaintiff made a claim under the policy. Except as expressly admitted, USAA denies the  
27 allegations contained therein.

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1 18. Answering Paragraphs 26, 27, and 28 of Plaintiff's March 8, 2019 Complaint,  
2 USAA denies the allegations contained therein.

3 IV.

4 **SECOND CLAIM FOR RELIEF**

5 **(Breach of the Implied Covenant of Good Faith and Fair Dealing – Tortious)**

6 19. Answering Paragraph 29 of Plaintiff's March 8, 2019 Complaint, USAA  
7 incorporates by reference its responses to each and every allegation set forth in this Answer as  
8 though fully set forth herein.

9 20. Answering Paragraphs 30 and 31 of Plaintiff's March 8, 2019 Complaint, USAA  
10 admits that it issued a Nevada Auto Policy to Plaintiff which was in effect from 12:01 a.m. March  
11 5, 2014 to 12:01 a.m. on September 5, 2014. Except as expressly admitted, USAA denies the  
12 allegations contained therein.

13 21. Answering Paragraph 32 of Plaintiff's March 8, 2019 Complaint, USAA asserts it  
14 is not required to respond to this paragraph which asserts a proposition of law. Notwithstanding  
15 the above, USAA admits that Nevada case law recognizes an implied covenant of good faith and  
16 fair dealing between the parties of insurance contracts. Except as expressly admitted, USAA  
17 denies the allegations contained therein.

18 22. Answering Paragraph 33 of Plaintiff's March 8, 2019 Complaint, USAA is not  
19 required to respond because these paragraphs contain only legal assertion and/or conclusions. To  
20 the extent that said paragraph contains factual allegations, USAA lacks sufficient facts from which  
21 to base a belief as to the truth or falsity of the allegations contained therein and upon this basis,  
22 denies them.

23 23. Answering Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, and 42, USAA denies the  
24 allegations contained therein.

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V.

**THIRD CLAIM FOR RELIEF**

**(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)**

24. Answering Paragraph 43 of Plaintiff's March 8, 2019 Complaint, USAA incorporates by reference its responses to each and every allegation set forth in this Answer as though fully set forth herein.

25. Answering Paragraphs 44 and 45 of Plaintiff's March 8, 2019 Complaint, USAA admits that it issued a Nevada Auto Policy to Plaintiff which was in effect from 12:01 a.m. March 5, 2014 to 12:01 a.m. on September 5, 2014. Except as expressly admitted, USAA denies the allegations contained therein.

26. Answering Paragraphs 46 and 47 of Plaintiff's March 8, 2019 Complaint, USAA asserts it is not required to respond to these paragraphs which assert propositions of law. Notwithstanding the above, USAA admits that Nevada case law recognizes an implied covenant of good faith and fair dealing between the parties of insurance contracts. Except as expressly admitted, USAA denies the allegations contained therein.

27. Answering Paragraphs 48, 49, 50, 51, 52, 53, 54, 55, and 56, USAA denies the allegations contained therein.

VI.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint, and each and every cause of action contained therein, fails to allege facts sufficient to constitute a valid cause of action.

**SECOND AFFIRMATIVE DEFENSE**

Coverage under the subject USAA policy of insurance is subject to all terms, conditions, provisions, definitions, limitations, exclusions, and endorsements of such policy. Plaintiff's claims are barred, restricted, and/or limited accordingly.

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**THIRD AFFIRMATIVE DEFENSE**

USAA is entitled to assert any applicable offsets permitted by contract or law, including an offset for the amount of the bodily injury liability insurance limits of the at fault party, against the total amount of damages awarded to Plaintiff by a jury for damages allegedly sustained in this action.

**FOURTH AFFIRMATIVE DEFENSE**

USAA is entitled to assert any applicable offsets permitted by contract or law, including an offset for the amount USAA paid to Plaintiff under the medical payment provision of the subject insurance policy, if any, against the total amount of damages awarded to Plaintiff by a jury for damages allegedly sustained in this action.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff failed to take reasonable efforts to mitigate his damages, if any, and Plaintiff is therefore barred from recovering damages from Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff’s alleged damages were caused in part or in whole by injuries/physical conditions which either pre-dated the accident of May 9, 2014, or were incurred subsequent to the accident and thus unrelated to injuries sustained as a result of the May 9, 2014 accident. Plaintiff’s claims are barred or limited accordingly.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff lacks legal entitlement to recover his claims as contemplated by the Nevada Supreme Court in *Pemberton v. Farmers Ins. Exchange*, 109 Nev. 789, 8 P.2d 380 (1993).

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs claims are barred by the doctrines of waiver, estoppel and laches.

**NINTH AFFIRMATIVE DEFENSE**

The damages allegedly sustained by Plaintiff, if any, were not caused by any breach of contract or duty by Defendant, but rather by the acts or omissions of third persons who were not acting on behalf of Defendant.

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**TENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to satisfy one or more conditions to coverage and the claim is therefore barred.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which attorney’s fees can be awarded.

**TWELFTH AFFIRMATIVE DEFENSE**

Coverage under the applicable policy of insurance is subject to all terms, conditions, provisions, definitions, limitations, exclusions and endorsements of such policy. Plaintiff’s claim is barred, excluded, restricted, and/or limited accordingly.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The facts as alleged by Plaintiff are insufficient to state a cause of action for punitive damages.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff’s claims for punitive damages are limited or prohibited by Nevada statute and by the Constitution of the United States.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Defendant has acted reasonably and in good faith under the circumstances known to Defendant and continues to do so.

**SIXTEENTH AFFIRMATIVE DEFENSE**

USAA hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. USAA reserves the right to amend this answer to specifically assert any such defense(s) in the event further investigation or discovery reveals the applicability of any such defenses. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

WHEREFORE, USAA prays for judgment as follows:

- 1. That with the exception of a determination of any benefits owed by USAA under the UIM provision of the subject insurance policy as a result of Plaintiff’s May 9, 2014 motor

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1 vehicle accident, the entirety of this action be dismissed with prejudice, and Plaintiff takes nothing  
2 by reason of his Complaint;

3 2. That judgment be entered in USAA's favor;

4 3. That USAA be awarded all recoverable costs and attorney's fees incurred in the  
5 defense of this action; and,

6 4. For such other and further relief as the Court may deem just and proper.

7 DATED this 31st day of July, 2019.

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9  
10 By /s/ Priscilla L. O'Briant

11 ROBERT W. FREEMAN

Nevada Bar No. 3062

PRISCILLA L. O'BRIANT

12 Nevada Bar No. 010171

6385 S. Rainbow Boulevard, Suite 600

13 Las Vegas, Nevada 89118

14 Telephone: 702.893.3383

15 Fax: 702.893.3789

*Attorneys for Defendant United Services*

*Automobile Association*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 31st day of July, 2019, I did cause a true and correct copy of **UNITED SERVICES AUTOMOBILE ASSOCIATION'S ANSWER TO PLAINTIFF'S COMPLAINT** in Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

Jordan P. Schnitzer, Esq. [Jordan@theschnitzerlawfirm.com](mailto:Jordan@theschnitzerlawfirm.com)  
THE SCHNITZER LAW FIRM  
9205 W. Russell Road, Ste. 240  
Las Vegas, NV 89148  
Tel: (702) 960-4050  
Fax: (702) 960-4092  
*Attorney for Plaintiff*

By /s/ Tiffany Dube

Tiffany Dube, an Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
Email: [Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)

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6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*Attorneys for Defendant United Services*  
7 *Automobile Association*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

11 JOHN ROBERTS, an individual,  
12 Plaintiff,  
13 vs.

CASE NO. A-19-790757-C  
Dept. No.: IV

**DEFENDANT UNITED SERVICES  
AUTOMOBILE ASSOCIATION'S  
ANSWERS TO PLAINTIFF'S FIRST SET  
OF INTERROGATORIES**

14 UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
15 and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
16 DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
17 Defendants.  
18

19 COMES NOW Defendant, UNITED SERVICES AUTOMOBILE ASSOCIATION  
20 (hereinafter "Defendant"), by and through its counsel of record, the law firm LEWIS BRISBOIS  
21 BISGAARD & SMITH, LLP, and hereby Answers Plaintiff's First Set of Interrogatories to  
22 Defendant United Services Automobile Association as follows:

23 **GENERAL INFORMATION**

24 These answers are made solely for the purpose of, and in relation to, this action. Each  
25 answer is given subject to all appropriate objections (including, but not limited to, objections  
26 concerning competency, relevancy, materiality, propriety, and admissibility) which would require  
27 the exclusion herein if made by a witness present and testifying in court. All such objections and  
28 grounds, therefore, are reserved and may be interposed at time of trial.



1 Except for the facts expressly admitted herein, no admission of any nature whatsoever is to  
2 be implied or inferred. The fact that an interrogatory herein has been answered should not be  
3 taken as an admission, or a confession of the existence of, any facts set forth or assumed by such  
4 interrogatory or that such an answer constitutes evidence of any fact thus far set forth or assumed.  
5 All answers must be constructed as given on the basis of present recollection.

6 The party on whose behalf these answers are given has not yet completed its investigation  
7 of the facts relating to this case, has not fully completed its discovery in this action, and has not  
8 yet completed its preparation for trial. All of the answers contained herein and documents  
9 identified are based upon such information and documents that are presently available or  
10 specifically known to the responding party. It is anticipated that further discovery, independent  
11 investigation, legal research, and analysis will supply additional facts and meaning to the known  
12 facts, as well as establish entirely new factual conclusions and legal contentions of and documents  
13 supporting said contentions. The following answers are given, without prejudice, to the answering  
14 party's right to produce evidence of any subsequently discovered facts or documents which  
15 answering party may later recall. This answering party reserves the right to change any and all  
16 answers as additional facts are ascertained, analysis is made, and documents are identified. The  
17 answers contained herein and the documents identified are made in a good faith effort to supply as  
18 much factual information and documentation identification as is presently known, but should in no  
19 way be to the prejudice of the answering party in relation to further discovery, research, or  
20 analysis.

21 **INTERROGATORY NO. 1:**

22 State the explanation of the basis in the insurance policy, with respect to the facts of  
23 Plaintiff's claim and the applicable law, for the offer of \$46,000 or denial of claim made on the  
24 subject claim.

25 **ANSWER TO INTERROGATORY NO. 1:**

26 Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
27 inappropriately for Defendant to supply a narrative account for the "basis" of Defendant's  
28 decisions with respect to the subject claim. Defendant also objects that this Interrogatory is overly

1 unduly burdensome and beyond the scope of the duties required of Defendant in responding to  
2 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
3 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
4 previously produced in this case. As such, because the answer to this Interrogatory may be  
5 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
6 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
7 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
8 those documents.

9       Subject to and without waiving these objections, Defendant responds as follows: USAA's  
10 offer to settle the claim for \$46,000 considered Plaintiff's complaints, diagnoses, treatment, and  
11 prognosis for future treatment. USAA also considered Plaintiff's prior injuries and pre-existing  
12 conditions, including multiple surgeries before the loss, a failed knee replacement, and the fact  
13 that prior to the subject accident, Plaintiff was planning a cervical fusion. After review of all  
14 records, it concluded that this loss aggravated pre-existing conditions but did not appear to have  
15 caused any new pathology or surgical recommendations.

16       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
17 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
18 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
19 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
20 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
21 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
22 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
23 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
24 duplicate payments under the UM coverage for the same elements of loss which were paid under  
25 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
26 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
27 this response as appropriate.

28 ///

1 **INTERROGATORY NO. 2:**

2 State the name, position, employer, last known address, social security number and date of  
3 birth, of every person known by you or any third-party administrator who either reviewed,  
4 investigated, or made any decision to accept, deny or pay any portion of the subject claim.

5 **ANSWER TO INTERROGATORY NO. 2:**

6 Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
7 that its scope is not narrowly tailored to the claims and defenses in this matter and is not  
8 proportional to the needs of the case. Defendant objects to the extent that the interrogatory calls  
9 for information protected by the attorney-client and/or work product privileges and also calls for  
10 sensitive, personal information. Defendant further objects that the term "...reviewed, investigated,  
11 or made any decision", is vague and overbroad. Subject to and without waiving these objections,  
12 Defendant responds as follows: Steven Lucent and Deborah Springer reviewed and evaluated  
13 Plaintiff's claim and participated in recommending the actions taken by Defendant with respect to  
14 Plaintiff's claim. Discovery continues and Defendant reserves the right to supplement this  
15 response as appropriate.

16 **INTERROGATORY NO. 3:**

17 Please state the date that you began reviewing the subject claim and the date that you came  
18 to determination of its merits. This included a detailed explanation on how you believe you  
19 complied with NRS 686A.670.

20 **ANSWER TO INTERROGATORY NO. 3:**

21 Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
22 inappropriately for Defendant to supply a narrative account for its investigation and evaluation of  
23 Plaintiff's claim. Defendant further objects that the term "determination on its merits" is vague  
24 and overbroad. Defendant objects to the phrase "a detailed explanation of how you believe you  
25 complied with NRS 686A670" as vague and ambiguous, and not proportional to the needs of the  
26 case. Further, it is an improper attempt to shift Plaintiff's burden in this lawsuit. Further,  
27 Defendant objects that this Interrogatory calls for opinions or mental impressions of the answering  
28 party and the extent the information sought would invade the attorney-client privilege and/or the

1 work product privilege. Defendant also objects that this Interrogatory is overly broad and unduly  
2 burdensome and beyond the scope of the duties required of Defendant in responding to  
3 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
4 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
5 previously produced in this case. As such, because the answer to this Interrogatory may be  
6 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
7 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
8 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
9 those documents.

10 Without waiving these objections, Defendant responds as follows: Defendant first  
11 received notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
12 examined medical records and other documents related to the subject accident. He communicated  
13 with Plaintiff's attorney regarding the claim. He reviewed Plaintiff's demand for benefits under  
14 the policy, investigated Plaintiff's damages to determine whether the claimed injuries and  
15 associated medical treatment and expenses incurred were related to the subject accident and  
16 requested information to assist Defendant in making this determination. He then made offers  
17 based on the information reasonably known to Defendant at that time. Defendant was unable to  
18 come to a final "determination on the merits" due to Plaintiff's refusal to provide requested  
19 documents. Defendant continued to diligently review the claim and attempted to obtain necessary  
20 information to facilitate its review of Plaintiff's claim up until the date Defendant was notified of  
21 Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will continue its investigation  
22 and evaluation during discovery in this litigation. Discovery continues, as such, Defendant  
23 reserves the right to supplement this response as appropriate.

24 **INTERROGATORY NO. 4:**

25 Please list all entities with which you had a contract to administer claims for Plaintiff's  
26 policies at issue and the dates those contracts were effective.

27 ///

28 ///

**ANSWER TO INTERROGATORY NO. 4:**

Defendant objects to this Interrogatory in that it assumes facts, is vague and ambiguous as drafted, and that the information sought is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case. Subject to and without waiving these objections, Defendant has no contract “to administer claims for Plaintiff’s policies at issue.”

**INTERROGATORY NO. 5:**

Please state all facts that support your contention that the subject claim was valued at \$46,000 specifically explaining in detail how you arrived at your valuation of the subject claim.

**ANSWER TO INTERROGATORY NO. 5:**

Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling inappropriately for Defendant to supply a narrative account for the “basis” of Defendant’s decisions with respect to the subject claim. Defendant also objects that this Interrogatory is overly unduly burdensome and beyond the scope of the duties required of Defendant in responding to interrogatories in that it purports to require Defendant to compile a summary of its own claim file. The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file, previously produced in this case. As such, because the answer to this Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

Subject to and without waiving these objections, Defendant responds as follows: USAA does not “value” Plaintiff’s claim at \$46,000, but based on the information available to USAA, USAA made an offer of \$46,000 to settle Plaintiff’s claim. USAA’s offer to settle the claim for \$46,000 considered Plaintiff’s complaints, diagnoses, treatment, and prognosis for future treatment. USAA also considered Plaintiff’s prior injuries and pre-existing conditions, including multiple surgeries before the loss, a failed knee replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical fusion. After review of all records, it concluded that

///

1 this loss aggravated pre-existing conditions but did not appear to have caused any new pathology  
2 or surgical recommendations.

3       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
4 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
5 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
6 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
7 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
8 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
9 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
10 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
11 duplicate payments under the UM coverage for the same elements of loss which were paid under  
12 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
13 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
14 this response as appropriate.

15 **INTERROGATORY NO. 6:**

16       Please explain in detail every step you took to gather evidence in support of subject claim.  
17 state all facts that support your contention that the subject claim was valued at \$46,000 specifically  
18 explaining in detail how you arrived at your valuation of the subject claim.

19 **ANSWER TO INTERROGATORY NO. 6:**

20       Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
21 inappropriately for Defendant to supply a narrative account for the basis of Defendant's decisions  
22 with respect to the subject claim. Defendant also objects that this Interrogatory is overly unduly  
23 burdensome and beyond the scope of the duties required of Defendant in responding to  
24 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
25 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
26 previously produced in this case. As such, because the answer to this Interrogatory may be  
27 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
28 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the

1 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
2 those documents.

3 Subject to and without waiving these objections, Defendant responds as follows: USAA  
4 does not contend that Plaintiff's claim is valued at \$46,000, but based on the information available  
5 to USAA, USAA made an offer of \$46,000 to settle Plaintiff's claim. This offer was based on the  
6 information available to USAA at the time, and included consideration of Plaintiff's complaints,  
7 diagnoses, treatment, and prognosis for future treatment. USAA also considered Plaintiff's prior  
8 injuries and pre-existing conditions, including multiple surgeries before the loss, a failed knee  
9 replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical fusion.  
10 After review of all records, it concluded that this loss aggravated pre-existing conditions but did  
11 not appear to have caused any new pathology or surgical recommendations. USAA made multiple  
12 requests to Plaintiff for additional information and repeatedly requested a medical authorization to  
13 obtain additional information to complete its evaluation.

14 USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
15 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
16 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
17 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
18 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
19 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
20 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
21 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
22 duplicate payments under the UM coverage for the same elements of loss which were paid under  
23 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
24 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
25 this response as appropriate.

26 **INTERROGATORY NO. 7:**

27 Please state the names of all persons who were contacted to during the investigation of the  
28 subject claim.

1 **ANSWER TO INTERROGATORY NO. 7:**

2       Objection. This interrogatory is overbroad, vague and ambiguous as to the phrase “all  
3 persons who were contacted to” and unduly burdensome in that it is not proportional to the needs  
4 of the case. Defendant also objects that this interrogatory inappropriately requests Defendant to  
5 supply a narrative account for its investigation of Plaintiff’s claim. Defendant further objects to  
6 the extent that the interrogatory calls for information protected by the attorney-client and/or work  
7 product privileges. Defendant also objects that this Interrogatory is overly broad and unduly  
8 burdensome and beyond the scope of the duties required of Defendant in responding to  
9 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
10 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,  
11 previously produced in this case. As such, because the answer to this Interrogatory may be  
12 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims  
13 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
14 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
15 those documents. Subject to and without waiving these objections, Defendant responds as follows:  
16 Defendant contacted Plaintiff’s counsel on numerous occasions to request additional information.

17 **INTERROGATORY NO. 8:**

18       Explain in detail, how you arrived at your valuation of the subject claim.

19 **ANSWER TO INTERROGATORY NO. 8:**

20       Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
21 inappropriately for Defendant to supply a narrative account for the basis of Defendant’s decisions  
22 with respect to the subject claim. Defendant also objects that this Interrogatory is overly unduly  
23 burdensome and beyond the scope of the duties required of Defendant in responding to  
24 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
25 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,  
26 previously produced in this case. As such, because the answer to this Interrogatory may be  
27 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims  
28 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the



1 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
2 those documents.

3       Subject to and without waiving these objections, Defendant responds as follows: USAA  
4 contends that the \$46,000 offer to Plaintiff is not its “valuation” of the subject claim, but was an  
5 offer to settle the claim based on the information available to USAA at that time. This offer was  
6 based on the information available to USAA at the time, and included consideration of Plaintiff’s  
7 complaints, diagnoses, treatment, and prognosis for future treatment. USAA also considered  
8 Plaintiff’s prior injuries and pre-existing conditions, including multiple surgeries before the loss, a  
9 failed knee replacement, and the fact that prior to the subject accident, Plaintiff was planning a  
10 cervical fusion. After review of all records, it concluded that this loss aggravated pre-existing  
11 conditions but did not appear to have caused any new pathology or surgical recommendations.  
12 USAA made multiple requests to Plaintiff for additional information and repeatedly requested a  
13 medical authorization to obtain additional information to complete its evaluation.

14       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
15 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
16 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
17 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
18 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
19 on behalf of persons who may be legally responsible or the persons’ BI Coverage limits; in this  
20 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
21 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
22 duplicate payments under the UM coverage for the same elements of loss which were paid under  
23 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
24 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
25 this response as appropriate.

26 **INTERROGATORY NO. 9:**

27       If you are using the “advice of counsel” defense in this action, please explain the factual  
28 basis of the defense.

1 **ANSWER TO INTERROGATORY NO. 9:**

2       Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
3 that its scope is not narrowly tailored to the claims and defenses in this matter and is not  
4 proportional to the needs of the case. Defendant further objects that the terms “advice of counsel  
5 defense” is vague, overbroad and are not reasonably tailored to include only matters relevant to the  
6 issues involved in this lawsuit. Defendant further objects to the extent this request seeks materials  
7 which are confidential, proprietary business information and/or trade secrets and/or matters  
8 protected by attorney-client and/or work product privileges. Subject to and without waiving these  
9 objections, Defendant responds as follows: Defendant is not asserting an advice of counsel  
10 defense at this time. Discovery continues, as such, Defendant reserves the right to supplement this  
11 response as appropriate.

12 **INTERROGATORY NO. 10:**

13       For each policy of automobile liability insurance issued to Plaintiff by you, please state the  
14 following:

- 15       (a) the policy number assigned to each policy;
- 16       (b) the effective dates of each policy;
- 17       (c) the amount of the policy limits provided by each policy;
- 18       (d) the total limits of all policies aggregated; for instance, if Plaintiff has a \$100,000  
19       policy that can be aggregated with another policy which has limits of \$1,000,000, then  
20       Plaintiff would have total policy limits of \$1,100,000.

21 **ANSWER TO INTERROGATORY NO. 10:**

22       Objection. Defendant objects to this interrogatory on the grounds that it is overly broad in  
23 both time and scope. Defendant further objects the Request is unduly burdensome as it seeks  
24 information concerning Plaintiff’s own policy for which Plaintiff has equal access to information.  
25 Defendant further objects that the Request improperly poses a hypothetical which is not  
26 reasonably tailored to include only matters relevant to the issues involved in this lawsuit and for  
27 which Defendant has no obligation to respond. Finally, the information sought is contained within  
28 Plaintiff’s policy, previously produced in this case. As such, because the answer to this

1 Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing,  
2 Plaintiff's policy, Bates USAA000001POL to USAA000042POL, and because the burden to  
3 derive or ascertain the answer is substantially the same for Plaintiff as it is for Defendant,  
4 Defendant refers Plaintiff to those documents.

5 Subject to and without waiving these objections, Defendant responds as follows: USAA  
6 issued was insured Nevada Auto Policy, Policy No. 00562 55 57U 7101 3 to Plaintiff, effective  
7 March 5, 2014 to September 5, 2014. The policy includes UM coverage with limits of \$300,000  
8 each person/\$500,000 each occurrence and medical payments coverage of \$10,000 each person.  
9 USAA issued no other auto policies to Plaintiff. The limits stated above are the only applicable  
10 limits for Plaintiff's claim.

11 **INTERROGATORY NO. 11:**

12 Please identify each expert the Defendant expects to call as an expert witness:

13 (a) Identify the name, address and telephone number for each such expert;

14 (b) State the substance of the facts and opinions on which the expert is to testify;

15 (c) The basis for each such opinion and/or conclusion held by each expert; and

16 (d) Identify any and all documents relied upon by each expert in forming their opinions  
17 and/or conclusions.

18 **ANSWER TO INTERROGATORY NO. 11:**

19 Objection. This interrogatory is premature and seeks information that will be disclosed in  
20 accordance with the timeframes set forth in the operative Scheduling Order concerning expert  
21 designations. Defendant also objects to this interrogatory to the extent it seeks to increase  
22 Defendant's obligations under Nevada Rules of Civil Procedure. Subject to and without waiving  
23 its objection, Defendant responds as follows: Once Defendant designates its expert witnesses, if  
24 any, it will produce its expert(s)' reports containing the information required under NRCP 26.

25 **INTERROGATORY NO. 12:**

26 For each person **within** the past ten years, who contended that you had violated the Unfair  
27 Claims Practices Act, please state the following:

28 (a) The name and last known address of the person;

1 (b) Date the claim or lawsuit was made against you;

2 (c) Court jurisdiction and case number of the litigation;

3 **ANSWER TO INTERROGATORY NO. 12:**

4 Defendant objects to this Interrogatory on the grounds that it is overly broad in both time  
5 and location and burdensome. The existence of other contentions or legal proceedings will neither  
6 prove nor disprove the amount owed on this claim or the existence of any mishandling of this  
7 claim. Any such matter, with no nexus to the harm claimed to have been sustained by the plaintiff  
8 herein with regard to his claim under the subject policy, is irrelevant and the Interrogatory is not  
9 reasonably calculated to lead to the discovery of admissible evidence. See *State Farm Mutual*  
10 *Auto Ins. Co. v. Campbell*, 538 US 4087 (2003). As such, the request is not proportional to the  
11 needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly  
12 burdensome. Additionally, the interrogatory is vague as to the term “who contended”. In  
13 addition, pending litigation matters are not probative of any issue in this case. Additionally,  
14 Defendant objects to this request to the extent it seeks the private and personal information of  
15 other insureds of Defendant or the confidential information of Defendant. Further, Defendant  
16 objects to the extent that this inquiry seeks information protected by the attorney-client privilege  
17 and the work product doctrine. Finally, this Request seeks information which is a matter of public  
18 record and can be independently obtained by Plaintiff without requiring Defendant to compile the  
19 information. No further response will be provided.

20 **INTERROGATORY NO. 13:**

21 For each person within the past ten years, who contended that you had acted in bad faith,  
22 please state the following:

23 (a) The name and last known address of the person;

24 (b) Date the claim or lawsuit was made against you;

25 (c) Court jurisdiction and case number of the litigation;

26 **ANSWER TO INTERROGATORY NO. 13:**

27 Objection. Defendant objects that this request seeks information which is not relevant to  
28 the claims or defenses of any party to this litigation. As such, the request is not proportional to the

1 needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly  
2 burdensome. Additionally, the interrogatory is vague as to the term “who contended”. Defendant  
3 objects to the extent that the interrogatory calls for information protected by the attorney-client  
4 and/or work product privileges. Defendant further objects as the existence of other contentions or  
5 legal proceedings will neither prove nor disprove any of the issues involved in this case, the value  
6 of Plaintiff’s claim or the existence of any mishandling of this claim. Any such matter, with no  
7 nexus to the harm claimed to have been sustained by the plaintiff herein with regard to her claim  
8 under the subject policy, is irrelevant and the interrogatory is not reasonably calculated to lead to  
9 the discovery of admissible evidence. See *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 US  
10 4087 (2003).

11 **INTERROGAOTRY NO. 14:**

12 For each person within the past ten years, who contended that you violated the covenant of  
13 good faith and fair dealing, please state the following:

- 14 (a) The name and last known address of the person;  
15 (b) Date the claim or lawsuit was made against you;  
16 (c) Court jurisdiction and case number of the litigation;

17 **ANSWER TO INTERROGATORY NO. 14:**

18 Objection. Defendant objects that this request seeks information which is not relevant to  
19 the claims or defenses of any party to this litigation. As such, the request is not proportional to the  
20 needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly  
21 burdensome. Additionally, the interrogatory is vague as to the term “who contended”. Defendant  
22 objects to the extent that the interrogatory calls for information protected by the attorney-client  
23 and/or work product privileges. Defendant further objects as the existence of other contentions or  
24 legal proceedings will neither prove nor disprove any of the issues involved in this case, the value  
25 of Plaintiff’s claim or the existence of any mishandling of this claim. Any such matter, with no  
26 nexus to the harm claimed to have been sustained by the plaintiff herein with regard to her claim  
27 under the subject policy, is irrelevant and the interrogatory is not reasonably calculated to lead to

28 ///

1 the discovery of admissible evidence. See *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 US  
2 4087 (2003).

3 **INTERROGATORY NO. 15:**

4 State the name, residence and business address, employer and position held of any person  
5 who provided any opinion, information, or facts used in preparing each answer to these  
6 interrogatories.

7 **ANSWER TO INTERROGATORY NO. 15:**

8 Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
9 that it is not narrowly tailored to the claims and defenses in this matter, is not proportional to the  
10 needs of the case and calls for information protected by the attorney-client and/or work product  
11 privileges. Defendant further objects that the term "...provided any opinion, information or facts"  
12 is vague, ambiguous, unduly burdensome, calls for speculation and is not proportional to the needs  
13 of the case and calls for information protected by the attorney-client and/or work product  
14 privileges. Subject to and without waiving these objections, Defendant responds as follows:  
15 These interrogatories are being answered by Steven Lucent with the assistance of counsel, Lewis  
16 Brisbois Bisgaard & Smith. Discovery continues and Defendant reserves the right to supplement  
17 this response as appropriate.

18 **INTERROGATORY NO. 16:**

19 State the total amount at which you have valued the claim before any offsets. Divide your  
20 evaluation into past medical expenses, future medical expenses, past lost wages, future lost wages,  
21 past pain and suffering, and future pain and suffering, State all amounts you applied as an offset  
22 and explain what each offset was for when you determined the amount owed to the insured.

23 **ANSWER TO INTERROGATORY NO. 16:**

24 Objection. This interrogatory is assumes and misstates facts, is compound, overbroad,  
25 duplicative, vague and unduly burdensome in that it is not proportional to the needs of the case.  
26 Defendant responds as follows calling inappropriately for Defendant to supply a narrative account  
27 for the basis of Defendant's decisions with respect to the subject claim. Defendant also objects  
28 that this Interrogatory is overly unduly burdensome and beyond the scope of the duties required of

1 Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
2 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim  
3 are set forth in the claim file, previously produced in this case. As such, because the answer to this  
4 Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing,  
5 Defendant's claims file, Bates USAA000001 to USAA004785, and because the burden to derive or  
6 ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers  
7 Plaintiff to those documents.

8         Subject to and without waiving these objections, Defendant responds as follows: USAA  
9 does not contend that Plaintiff's claim is valued at \$46,000, but based on the information available  
10 to USAA, USAA made an offer of \$46,000 to settle Plaintiff's claim. This offer was based on the  
11 information available to USAA at the time, and included consideration of Plaintiff's complaints,  
12 diagnoses, treatment, and prognosis for future treatment. USAA also considered Plaintiff's prior  
13 injuries and pre-existing conditions, including multiple surgeries before the loss, a failed knee  
14 replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical fusion.  
15 After review of all records, it concluded that this loss aggravated pre-existing conditions but did  
16 not appear to have caused any new pathology or surgical recommendations. USAA made multiple  
17 requests to Plaintiff for additional information and repeatedly requested a medical authorization to  
18 obtain additional information to complete its evaluation.

19         USAA considered past medicals specials of \$32,760 as related to the aggravation of pre-  
20 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
21 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
22 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
23 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
24 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
25 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
26 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
27 duplicate payments under the UM coverage for the same elements of loss which were paid under  
28 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments

1 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
2 this response as appropriate.

3 **INTERROGATORY NO. 17:**

4 Please state in detail each and every reason and basis on why you did not immediately pay  
5 the amount to which you valued the subject claim once that valuation was completed.

6 **ANSWER TO INTERROGATORY NO. 17:**

7 Objection. This interrogatory assumes and misstates facts, is arguments, overbroad, vague  
8 and unduly burdensome in that it is not proportional to the needs of the case. Defendant further  
9 objects to the extent that the interrogatory calls for information protected by the attorney-client  
10 and/or work product privileges. Subject to and without waiving these objections, Defendant  
11 responds as follows: USAA does not contend that Plaintiff's claim is valued at \$46,000, but based  
12 on the information available to USAA, USAA made an offer of \$46,000 to settle Plaintiff's claim.  
13 This offer was based on the information available to USAA at the time, and included  
14 consideration of Plaintiff's complaints, diagnoses, treatment, and prognosis for future treatment.  
15 USAA also considered Plaintiff's prior injuries and pre-existing conditions, including multiple  
16 surgeries before the loss, a failed knee replacement, and the fact that prior to the subject accident,  
17 Plaintiff was planning a cervical fusion. After review of all records, it concluded that this loss  
18 aggravated pre-existing conditions but did not appear to have caused any new pathology or  
19 surgical recommendations. USAA made multiple requests to Plaintiff for additional information  
20 and repeatedly requested a medical authorization to obtain additional information to complete its  
21 evaluation. Without this information, USAA could not finalize an evaluation of Plaintiff's claim.

22 **INTERROGATORY NO. 18:**

23 Identify all manuals, including, but not limited to, training manuals, procedural manuals,  
24 and instruction manuals, used for the evaluation of claims, including any software used by you for  
25 evaluating claims.

26 **ANSWER TO INTERROGATORY NO. 18:**

27 Defendant objects to this request as it is overly broad as to time and scope, vague and/or  
28 ambiguous as to the terms "policies, practices, and procedures." Further, to the extent the



1 Interrogatory seeks information regarding general “procedures or methods,” Defendant objects on  
2 the grounds that the Interrogatory is overly broad in time (not limited by the period of time when  
3 this claim was handled) and geographic area (not limited to Nevada) and because it is not  
4 reasonably tailored to include only matters relevant to the issues involved in this lawsuit, as  
5 Defendant’s procedures are intended to provide guidance but each claim is handled on its own  
6 merits. Defendant further objects on the grounds that it seeks information that is neither relevant  
7 to the claims or defenses of a party nor proportional to the needs of the case. Defendant further  
8 objects in that this request may cover materials which are confidential, proprietary business  
9 information and/or trade secret.

10 Subject to and without waiving any objections, Defendant does not have claims “manuals”  
11 but rather provides online guidance to claims handlers through its “Knowledge Delivery” online  
12 search tool.

13 **INTERROGATORY NO. 19:**

14 If you contend that you did not violate the Unfair Claims Practices Act in the handling of  
15 the subject claim, please state each and every fact that tends to support or negate your assertion  
16 and identify each witness who has knowledge of the those facts by name, employer and last  
17 known address.

18 **ANSWER TO INTERROGATORY NO. 19:**

19 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
20 “each and every fact that tends to support or negate your assertion” and calling inappropriately for  
21 Defendant to supply a narrative account for its investigation and evaluation of Plaintiff’s claim.  
22 Further, Defendant objects that this Interrogatory calls for opinions or mental impressions of the  
23 answering party and the extent the information sought would invade the attorney-client privilege  
24 and/or the work product privilege. Further it is an improper attempt to shift Plaintiff’s burden on  
25 to Defendant. Defendant also objects that this Interrogatory is overly broad and unduly  
26 burdensome and beyond the scope of the duties required of Defendant in responding to  
27 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
28 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,

1 previously produced in this case. As such, because the answer to this Interrogatory may be  
2 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
3 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
4 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
5 those documents.

6 Without waiving these objections, Defendant responds as follows: Defendant first  
7 received notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
8 examined medical records and other documents related to the subject accident as they were  
9 presented. He regularly communicated with Plaintiff's attorney regarding the claim. He reviewed  
10 Plaintiff's demand for benefits under the policy, investigated Plaintiff's damages to determine  
11 whether the claimed injuries and associated medical treatment and expenses incurred were related  
12 to the subject accident and requested information to assist Defendant in making this determination.  
13 He then made offers based on the information reasonably known to Defendant at that time.  
14 Defendant was unable to come to a final "determination on the merits" due to Plaintiff's refusal to  
15 provide requested documents. Defendant continued to diligently review the claim and attempted  
16 to obtain necessary information to facilitate its review of Plaintiff's claim up until the date  
17 Defendant was notified of Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will  
18 continue its investigation and evaluation during discovery in this litigation. Discovery continues,  
19 as such, Defendant reserves the right to supplement this response as appropriate.

20 **INTERROGATORY NO. 20:**

21 If you contend that you did not breach the covenant of good faith and fair dealing in the  
22 handling of the subject claim, please state each and every fact that tends to support or negate yours  
23 assertion and identify each witness who has knowledge of those facts by name, employer and last  
24 known address.

25 **ANSWER TO INTERROGATORY NO. 20:**

26 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
27 "each and every fact that tends to support or negate your assertion" and calling inappropriately for  
28 Defendant to supply a narrative account for its investigation and evaluation of Plaintiff's claim.

1 Further, Defendant objects that this Interrogatory calls for opinions or mental impressions of the  
2 answering party and the extent the information sought would invade the attorney-client privilege  
3 and/or the work product privilege. Further, it is an improper attempt to shift Plaintiff's burden on  
4 to Defendant. Defendant also objects that this Interrogatory is overly broad and unduly  
5 burdensome and beyond the scope of the duties required of Defendant in responding to  
6 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
7 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
8 previously produced in this case. As such, because the answer to this Interrogatory may be  
9 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant's claims  
10 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
11 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
12 those documents.

13 Without waiving these objections, Defendant responds as follows: Defendant first  
14 received notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
15 examined medical records and other documents related to the subject accident as they were  
16 presented. He regularly communicated with Plaintiff's attorney regarding the claim. He reviewed  
17 Plaintiff's demand for benefits under the policy, investigated Plaintiff's damages to determine  
18 whether the claimed injuries and associated medical treatment and expenses incurred were related  
19 to the subject accident and requested information to assist Defendant in making this determination.  
20 He then made offers based on the information reasonably known to Defendant at that time.  
21 Defendant was unable to come to a final "determination on the merits" due to Plaintiff's refusal to  
22 provide requested documents. Defendant continued to diligently review the claim and attempted  
23 to obtain necessary information to facilitate its review of Plaintiff's claim up until the date  
24 Defendant was notified of Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will  
25 continue its investigation and evaluation during discovery in this litigation. Discovery continues,  
26 as such, Defendant reserves the right to supplement this response as appropriate.

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1 **INTERROGATORY NO. 21:**

2 If you contend that you did not breach the insurance contract/policy regarding the subject  
3 claim, please state each and every fact that tends to support or negate your assertion and identify  
4 each witness who has knowledge of those facts by name, employer and last known address.

5 **ANSWER TO INTERROGATORY NO. 21:**

6 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
7 “each and every fact that tends to support or negate your assertion” and calling inappropriately for  
8 Defendant to supply a narrative account for its investigation and evaluation of Plaintiff’s claim.  
9 Further, Defendant objects that this Interrogatory calls for opinions or mental impressions of the  
10 answering party and the extent the information sought would invade the attorney-client privilege  
11 and/or the work product privilege. Further, it is an improper attempt to shift Plaintiff’s burden on  
12 to Defendant. Defendant also objects that this Interrogatory is overly broad and unduly  
13 burdensome and beyond the scope of the duties required of Defendant in responding to  
14 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
15 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,  
16 previously produced in this case. As such, because the answer to this Interrogatory may be  
17 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims  
18 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
19 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
20 those documents.

21 Without waiving these objections, Defendant responds as follows: Defendant is required  
22 to pay amounts under the policy which Plaintiff is legally entitled to recover from an uninsured  
23 driver. Therefore, under the policy, Defendant will pay to Plaintiff the value of the claim for  
24 which he has not been otherwise compensated, up to the limits of the policy. Nevada courts  
25 recognize that bodily injury claims are “wholly subjective” and that determination of the amount  
26 of these damages (for which the law provides no legal rule of measurement) is within the special  
27 province of the jury. See, *Canterino v. Mirage Casino-Hotel*, 117 Nev. 19 (Nev. 2001). Although  
28 USAA conducted an investigation into Plaintiff’s claim and made a compromise offer in an

1 attempt to settle claims prior to litigation in exchange for a release, Plaintiff disputed that USAA's  
2 offer constitutes the value of his claim. Accordingly, once the value of Plaintiff's claim is  
3 determined by a jury, or through additional discovery undertaken in this litigation, USAA will pay  
4 the value of the claim in conformance with the provisions of the policy. Discovery continues, as  
5 such, Defendant reserves the right to supplement this response as appropriate

6 **INTERROGATORY NO. 22:**

7 Please state any and all pre-existing illness, injuries, diseases and/or conditions of Plaintiff  
8 which were considered by you in evaluating the value of their claim.

9 **ANSWER TO INTERROGATORY NO. 22:**

10 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
11 "any and all pre-existing illness, injuries, diseases and/or conditions of Plaintiff" and calling  
12 inappropriately for Defendant to supply a narrative account for its investigation and evaluation of  
13 Plaintiff's claim. Further, Defendant objects that this Interrogatory calls for opinions or mental  
14 impressions of the answering party and the extent the information sought would invade the  
15 attorney-client privilege and/or the work product privilege. Defendant also objects that this  
16 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
17 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
18 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
19 including its evaluation, are set forth in the claim file, previously produced in this case. As such,  
20 because the answer to this Interrogatory may be determined by examining, auditing, compiling,  
21 abstracting, or summarizing, Defendant's claims file, Bates USAA000001 to USAA004785, and  
22 because the burden to derive or ascertain the answer is substantially the same for Plaintiff as it is  
23 for Defendant, Defendant refers Plaintiff to those documents. Without waiving these objections,  
24 Defendant responds as follows: USAA also considered Plaintiff's prior injuries and pre-existing  
25 conditions, as set forth in his medical records, including multiple surgeries before the loss, a failed  
26 knee replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical  
27 fusion. Defendant could not determine the full extent of Plaintiff's prior medical condition as

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1 Plaintiff refused to provide requested records and/or a medical authorization. Discovery  
2 continues, as such, Defendant reserves the right to supplement this response as appropriate

3 **INTERROGATORY NO. 23:**

4 State the date and amount of each offer made to Plaintiff, or their counsel, in an attempt to  
5 settle the subject claim, and state the method the offer was made (i.e., written, oral, etc.).

6 **ANSWERTO INTERROGATORY NO. 23:**

7 Objection. This interrogatory is compound, inappropriately calls for Defendant to supply a  
8 narrative account for its investigation and evaluation of Plaintiff's claim and is burdensome in that  
9 it seeks information equally within Plaintiff's knowledge. Defendant also objects that this  
10 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
11 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
12 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
13 including all settlement offers, are set forth in the claim file, previously produced in this case. As  
14 such, because the answer to this Interrogatory may be determined by examining, auditing,  
15 compiling, abstracting, or summarizing, Defendant' claims file, Bates USAA000001 to  
16 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
17 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents. Without waiving  
18 these objections, Defendant responds as follows: On March 15, 2018, Steven Lucent extended an  
19 offer of \$46,000 to fully and finally compromise Plaintiff's claim. Steven Lucent confirmed the  
20 offer in writing that same day. Mr. Lucent followed up with Plaintiff's counsel regarding the offer  
21 and on April 3, April 30, May 9, June 8, July 7, August 1, August 6, September 5, September 11,  
22 October 3, November 5, and December 3, 2018 in writing. On December 14, 2018, Mr. Lucent  
23 discussed the claim with Plaintiff's counsel. On February 1, 2019, Mr. Lucent wrote the law firm  
24 and advised of the basis for the offer. Mr. Lucent followed up with Plaintiff's counsel regarding  
25 the offer and on February 28, March 5, April 1, April 18, April 30, May 29, 2019 in writing. On  
26 June 11, 2019, Lucent called the law firm and requested a call to discuss the offer. On July 2,  
27 2019, Lucent again wrote the law firm and asked the attorney to contact him to discuss the offer.

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1 **INTERROGATORY NO. 24:**

2 For each amount stated in the preceding interrogatory, state the total amount at which you  
3 had valued the subject claim before any offsets and divide your evaluation into past medical  
4 expenses, future medical expenses, past lost wages, future lost wages, past pain and suffering, and  
5 future pain and suffering; and state all amounts you applied as an offset and explain what each  
6 offset was for when you determined the amount owed to the insured.

7 **ANSWER TO INTERROGATORY NO. 24:**

8 Objection. This interrogatory is assumes and misstates facts, is compound, duplicative,  
9 and inappropriately calls for Defendant to supply a narrative account for its evaluation of  
10 Plaintiff's claim. Further, Defendant objects that this Interrogatory calls for opinions or mental  
11 impressions of the answering party and the extent the information sought would invade the  
12 attorney-client privilege and/or the work product privilege. Defendant also objects that this  
13 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
14 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
15 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
16 including its evaluation, are set forth in the claim file, previously produced in this case. As such,  
17 because the answer to this Interrogatory may be determined by examining, auditing, compiling,  
18 abstracting, or summarizing, Defendant' claims file, Bates USAA000001 to USAA004785, and  
19 because the burden to derive or ascertain the answer is substantially the same for Plaintiff as it is  
20 for Defendant, Defendant refers Plaintiff to those documents.

21 Subject to and without waiving these objections, Defendant responds as follows: USAA  
22 does not "value" Plaintiff's claim at \$46,000, but based on the information available to USAA,  
23 USAA made an offer of \$46,000 to settle Plaintiff's claim. USAA's offer to settle the claim for  
24 \$46,000 considered Plaintiff's complaints, diagnoses, treatment, and prognosis for future  
25 treatment. USAA also considered Plaintiff's prior injuries and pre-existing conditions, including  
26 multiple surgeries before the loss, a failed knee replacement, and the fact that prior to the subject  
27 accident, Plaintiff was planning a cervical fusion. After review of all records, it concluded that

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1 this loss aggravated pre-existing conditions but did not appear to have caused any new pathology  
2 or surgical recommendations.

3       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
4 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
5 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
6 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
7 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
8 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
9 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
10 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
11 duplicate payments under the UM coverage for the same elements of loss which were paid under  
12 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
13 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
14 this response as appropriate.

15 **INTERROGATORY NO. 25:**

16       Describe each and every conversation you had with Plaintiff in reference to their policy  
17 and/or claims, after the evaluation of their claims.

18 **ANSWER TO INTERROGATORY NO. 25:**

19       Objection. This interrogatory is compound, inappropriately calls for Defendant to supply a  
20 narrative account for its investigation and evaluation of Plaintiff's claim and is burdensome in that  
21 it seeks information equally within Plaintiff's knowledge. Defendant also objects that this  
22 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
23 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
24 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
25 including all conversations with Plaintiff, are set forth in the claim file, previously produced in this  
26 case. As such, because the answer to this Interrogatory may be determined by examining,  
27 auditing, compiling, abstracting, or summarizing, Defendant' claims file, Bates USAA000001 to

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1 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
2 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

3 **INTERROGATORY NO. 26:**

4 Describe each and every conversation you had with Plaintiff in reference to their policy  
5 and/or claims, prior the evaluation of their claims.

6 **ANSWER TO INTERROGATORY NO. 26:**

7 Objection. This interrogatory is compound, inappropriately calls for Defendant to supply a  
8 narrative account for its investigation and evaluation of Plaintiff's claim and is burdensome in that  
9 it seeks information equally within Plaintiff's knowledge. Defendant also objects that this  
10 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
11 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
12 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
13 including all conversations with Plaintiff, are set forth in the claim file, previously produced in this  
14 case. As such, because the answer to this Interrogatory may be determined by examining,  
15 auditing, compiling, abstracting, or summarizing, Defendant's claims file, Bates USAA000001 to  
16 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
17 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

18 **INTERROGATORY NO. 27:**

19 Please state in detail every step you took in assisting Plaintiff in making their claim. In  
20 responding, please identify each witness who has knowledge of those facts by name, employer and  
21 last known address.

22 **ANSWER TO INTERROGATORY NO. 27:**

23 Objection. This interrogatory is assumes and misstates facts, is compound, duplicative,  
24 and inappropriately calls for Defendant to supply a narrative account for its investigation and  
25 evaluation of Plaintiff's claim. Further, Defendant objects that this Interrogatory calls for opinions  
26 or mental impressions of the answering party and the extent the information sought would invade  
27 the attorney-client privilege and/or the work product privilege. Defendant also objects that this  
28 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required

1 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
2 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim  
3 are set forth in the claim file, previously produced in this case. As such, because the answer to this  
4 Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing,  
5 Defendant's claims file, Bates USAA000001 to USAA004785, and because the burden to derive or  
6 ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers  
7 Plaintiff to those documents.

8         Subject to and without waiving these objections, Defendant responds as follows: Plaintiff  
9 retained counsel to assist in submitting his claim to USAA. USAA promptly responded to all  
10 communications from Plaintiff's counsel, regularly reviewed the claim, considered all information  
11 submitted by Plaintiff, requested necessary information to facilitate its review of Plaintiff's claim  
12 and provided an authorization to allow USAA to collect the records on behalf of Plaintiff.  
13 Plaintiff refused to provide the requested information or an authorization to allow USAA to collect  
14 the records on his behalf. Thereafter, USAA made an offer based on the information it had  
15 available. Defendant continued to diligently review the claim and attempted to obtain necessary  
16 information to facilitate its review of Plaintiff's claim up until the date Defendant was notified of  
17 Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will continue its investigation  
18 and evaluation during discovery in this litigation. Discovery continues, as such, Defendant  
19 reserves the right to supplement this response as appropriate.

20 **INTERROGATORY NO. 28:**

21         State the net worth of UNITED SERVICES AUTOMOBILE ASSOCIATION for each of  
22 the last five (5) fiscal years according to GENERAL ACCEPTED ACCOUNTING PRINCIPLES  
23 (GAAP).

24 **ANSWER TO INTERROGATORY NO. 28:**

25         This Interrogatory is overly broad, unduly burdensome, and seeks information that is not  
26 relevant to the claims or defenses of either party. USAA further objects on the basis that this  
27 Interrogatory is not proportional to the needs of this case. This Interrogatory is not limited to the  
28 present claim, is not limited in scope or time, and is otherwise irrelevant to the issues presented in

1 the present matter. Additionally this request is premature. The Nevada Supreme Court has held  
2 that “before tax returns or financial records are discoverable on the issue of punitive damages, the  
3 plaintiff must demonstrate some factual basis for its punitive damage claim.” *Hetter v. District*  
4 *Court*, 110 Nev. 513, 520, 874 P.2d 762, 766, 1994 Nev. LEXIS 65, \*13-14 (emphasis added).

5 **INTERROGATORY NO. 29:**

6 Please identify with particularity each and every action taken by you in evaluating the  
7 subject claim.

8 **ANSWER TO INTERROGATORY NO. 29:**

9 Objection. This interrogatory is duplicative, compound, vague, ambiguous, overbroad as  
10 to “each and every action”, and inappropriately calls for Defendant to supply a narrative account  
11 for its investigation and evaluation of Plaintiff’s claim. Further, Defendant objects that this  
12 Interrogatory calls for opinions or mental impressions of the answering party and the extent the  
13 information sought would invade the attorney-client privilege and/or the work product privilege.  
14 Defendant also objects that this Interrogatory is overly broad and unduly burdensome and beyond  
15 the scope of the duties required of Defendant in responding to interrogatories in that it purports to  
16 require Defendant to compile a summary of its own claim file. The actions Defendant took with  
17 regard to Plaintiff’s UM claim are set forth in the claim file, previously produced in this case. As  
18 such, because the answer to this Interrogatory may be determined by examining, auditing,  
19 compiling, abstracting, or summarizing, Defendant’ claims file, Bates USAA000001 to  
20 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
21 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

22 Without waiving these objections, Defendant responds as follows: Defendant first received  
23 notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
24 examined medical records and other documents related to the subject accident. He communicated  
25 with Plaintiff’s attorney regarding the claim. He reviewed Plaintiff’s demand for benefits under  
26 the policy, investigated Plaintiff’s damages to determine whether the claimed injuries and  
27 associated medical treatment and expenses incurred were related to the subject accident and  
28 requested information to assist Defendant in making this determination. He then made offers

1 based on the information reasonably known to Defendant at that time. Defendant was unable to  
2 come to a final “determination on the merits” due to Plaintiff’s refusal to provide requested  
3 documents. Defendant continued to diligently review the claim and attempted to obtain necessary  
4 information to facilitate its review of Plaintiff’s claim up until the date Defendant was notified of  
5 Plaintiff’s filing the instant lawsuit on or around July 8, 2019 and will continue its investigation  
6 and evaluation during discovery in this litigation. Discovery continues, as such, Defendant  
7 reserves the right to supplement this response as appropriate.

8 **INTERROGATORY NO. 30:**

9 Please identify with particularity each and every document or thing upon which you relied  
10 upon in answering any of these interrogatories.

11 **ANSWER TO INTERROGATORY NO. 30:**

12 Objection. Defendant objects that the term “which you relied upon” is vague, ambiguous,  
13 unduly burdensome, calls for speculation and is not proportional to the needs of the case and calls  
14 for information protected by the attorney-client and/or work product privileges. Subject to and  
15 without waiving these objections, Defendant responds as follows: Defendant utilized its claim file  
16 Bates, USAA000001 to USAA004785, in responding to these requests. Discovery continues, as  
17 such, Defendant reserves the right to supplement this response as appropriate.

18 **INTERROGATORY NO. 31:**

19 Please state the amount You have set as reserves for the Plaintiff’s 1<sup>st</sup> party claim.

20 **ANSWER TO INTERROGATORY NO. 31:**

21 Objection. Defendant also objects to this interrogatory on the grounds that reserve  
22 information is irrelevant and not reasonably calculated to lead to the discovery of admissible  
23 evidence as this litigation concerns only Plaintiff’s entitlement to benefits under the policy of  
24 insurance issued to Plaintiff and Defendant’s handling of the claim submitted thereunder, and is  
25 therefore not proportional to the needs of the case. Defendant further objects to the extent the  
26 interrogatory seeks confidential and proprietary business information. Subject to and without  
27 waiving these objections, Defendant responds as follows: Discovery continues, as such,  
28 Defendant reserves the right to supplement this response as appropriate.

1 **INTERROGATORY NO. 32:**

2 Please state the formula used by You in determining the reserves for the Plaintiff's 1<sup>st</sup> party  
3 claim.

4 **ANSWER TO INTERROGATORY NO. 32:**

5 Objection. Defendant objects that this interrogatory seeks information which is not  
6 relevant to the claims or defenses of any party to this litigation. As such, the request is not  
7 proportional to the needs of this litigation as it is unlikely to resolve the issues presented.  
8 Defendant further objects to the extent the interrogatory seeks confidential and proprietary  
9 business information. Subject to and without waiving these objections, Defendant responds as  
10 follows: Defendant does not have a "formula" for determining reserves. Discovery continues, as  
11 such, Defendant reserves the right to supplement this response as appropriate.

12 **INTERROGATORY NO. 33:**

13 Please state each and every fact considered by You in determining the amount set as  
14 reserves for the Plaintiff's claim.

15 **ANSWER TO INTERROGATORY NO. 33:**

16 Objection. Defendant objects that this interrogatory seeks information which is not  
17 relevant to the claims or defenses of any party to this litigation. As such, the request is not  
18 proportional to the needs of this litigation as it is unlikely to resolve the issues presented.  
19 Defendant further objects to the extent the interrogatory seeks confidential and proprietary  
20 business information. Subject to and without waiving these objections, Defendant responds as  
21 follows: The actions Defendant took with regard to Plaintiff's UM claim, including all facts  
22 known to it at the time it took all actions on Plaintiff's claim, are set forth in the claim file,  
23 previously produced in this case. As such, because the answer to this Interrogatory may be  
24 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant's claims  
25 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
26 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
27 those documents.

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1 **INTERROGATORY NO. 34:**

2 Please identify any reason you believe the Plaintiff has not complied or cooperated with  
3 the policy.

4 **ANSWER TO INTERROGATORY NO. 34:**

5 Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
6 that it is not proportional to the needs of the case. As drafted, this interrogatory calls for  
7 Defendant to speculate as to why Plaintiff has not complied or cooperated with “the policy”.  
8 Subject to and without waiving these objections, Defendant responds as follows: Defendant does  
9 not purport to know Plaintiff’s motivations with respect to his non-compliance and/or non-  
10 cooperation, or lack thereof, as it relates to Defendant’s investigation and evaluation of Plaintiff’s  
11 claim.

12 **INTERROGATORY NO. 35:**

13 During your evaluation of the claim, please set forth any treatment, diagnosis, or expense  
14 that you determined to be unrelated, unnecessary or unreasonable, along with any basis for such  
15 determination.

16 **ANSWER TO INTERROGATORY NO. 35:**

17 Objection. Defendant objects that this interrogatory is compound, vague, overbroad and  
18 unduly burdensome. Subject to and without waiving these objections, Defendant responds as  
19 follows: USAA considered Plaintiff’s prior injuries and pre-existing conditions, including multiple  
20 surgeries before the loss, a failed knee replacement, and the fact that prior to the subject accident,  
21 Plaintiff was planning a cervical fusion. Throughout the entirety of Defendant’s evaluation it  
22 requested additional information and medical records from Plaintiff in order to assist in  
23 Defendant’s evaluation of what was unrelated, unnecessary or unreasonable. Plaintiff refused to  
24 timely provide requested information and medical records, as such, Defendant’s evaluation of  
25 Plaintiff’s claim, including the reasonableness of each diagnosis, treatment or expense, was never  
26 completed. Defendant’s evaluation will continue in this litigation, as such, Defendant reserves the  
27 right to supplement this response as appropriate.

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1 **INTERROGATORY NO. 36:**

2 During your evaluation, if you apportioned any prior or subsequent injury or diagnosis,  
3 please set forth any such apportionment and the complete basis for the amount of the  
4 apportionment.

5 **ANSWER TO INTERROGATORY NO. 36:**

6 Objection. Defendant objects that this interrogatory is compound, vague, overbroad and  
7 unduly burdensome. Subject to and without waiving these objections, Defendant responds as  
8 follows: Throughout the entirety of Defendant's evaluation it requested additional information and  
9 medical records from Plaintiff in order to assist in Defendant's evaluation of what medical  
10 treatment was apportionable to Plaintiff's documented prior medical conditions. Plaintiff refused  
11 to timely provide requested information and medical records, as such, Defendant's evaluation of  
12 Plaintiff's claim, including the reasonableness of each diagnosis, treatment or expense, was never  
13 completed. However, after review of all records, it concluded that this loss aggravated pre-  
14 existing conditions but did not appear to have caused any new pathology or surgical  
15 recommendations, as such USAA considered medicals specials of \$32,760 as related to the  
16 aggravation of pre-existing conditions. Defendant's evaluation will continue in this litigation, as  
17 such, Defendant reserves the right to supplement this response as appropriate.

18 DATED this 7<sup>th</sup> day of August, 2020.

19 LEWIS BRISBOIS BISGAARD & SMITH LLP

20  
21 By /s/ Priscilla L. O'Briant

22 ROBERT W. FREEMAN

Nevada Bar No. 3062

PRISCILLA L. O'BRIANT

Nevada Bar No. 010171

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*Attorneys for Defendant United Services*

*Automobile Association*

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**VERIFICATION**

I, Steven Lucent, hereby declare as follows:

I am an Auto Examiner and on behalf of United Services Automobile Association, have read the above and foregoing, **DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** and know the contents thereof, that the same are true and correct of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 06 day of August, 2020 at Colorado Springs, Colorado.



Steven Lucent



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 7<sup>th</sup> day of August, 2020, I did cause a true and correct copy of DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES in Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

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By /s/ Anne Cordell

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7 *Automobile Association*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

11 JOHN ROBERTS, an individual,  
12 Plaintiff,  
13 vs.

CASE NO. A-19-790757-C  
Dept. No.: IV

**DEFENDANT UNITED SERVICES  
AUTOMOBILE ASSOCIATION'S  
RESPONSES TO PLAINTIFF'S FIRST  
SET OF REQUESTS FOR PRODUCTION**

14 UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
15 and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
16 DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
17 Defendants.  
18

19 COMES NOW Defendant, UNITED SERVICES AUTOMOBILE ASSOCIATION  
20 (hereinafter "Defendant"), by and through its counsel of record, the law firm LEWIS BRISBOIS  
21 BISGAARD & SMITH, LLP, and hereby Responds to Plaintiff's First Set of Requests for  
22 Production to Defendant United Services Automobile Association as follows:

23 **DEFINITIONS**

24 A. "Non-discoverable/Irrelevant." The request in question concerns a matter that is  
25 not relevant to the subject matter and the matters that remain at issue in this litigation and is not  
26 reasonably calculated to lead to the discovery of admissible evidence.

27 B. "Unduly burdensome." The request in question seeks discovery which is unduly  
28 burdensome or expensive, taking into account the needs of the case, the amount in controversy,

1 limitations on the parties' resources, and the importance of the issues at stake in the litigation.

2 C. "Vague." The request in question contains a word or phrase which is not  
3 adequately defined, or the overall request is confusing, and Defendant is unable to reasonably  
4 ascertain what information or documents are sought in the request.

5 D. "Overly broad." The request seeks information beyond the scope of, or beyond the  
6 time period relevant to, the subject matter of this litigation and, accordingly, seeks information  
7 which is non-discoverable/irrelevant and is unduly burdensome.

### 8 **GENERAL OBJECTIONS**

9 1. Defendant objects to the requests to the extent that they seek documents that are  
10 protected by any absolute or qualified privilege or exemption, including, but not limited to, the  
11 attorney-client privilege, the attorney work-product exemption, and the consulting-expert  
12 exemption. Specifically, Defendant objects to these requests on the following grounds:

13 a. Defendant objects to these requests to the extent they seek documents that  
14 are protected from disclosure by the attorney-client privilege in accordance with Rule 26 of the  
15 Nevada Rules of Civil Procedure and NRS 89.095;

16 b. Defendant objects to these requests to the extent they seek documents that  
17 are protected from disclosure by the work-product exemption in accordance with Rule 26(b)(1)(3)  
18 and (4) of the Nevada Rules of Civil Procedure and applicable case law.

19 c. Defendant objects to these requests to the extent they seek documents that  
20 are protected from disclosure pursuant to the consultant/expert exemption in accordance with Rule  
21 26(b)(3) and (4) of the Nevada Rules of Civil Procedure and applicable case law.

22 d. Defendant objects to these requests to the extent they seek trade secrets,  
23 commercially sensitive information, or confidential proprietary data entitled to protection under  
24 Rule 26(c)(7) of the Nevada Rules of Civil Procedure.

25 2. This response is made on the basis of information and writings available to and  
26 located by Defendant upon reasonable investigation of Defendant's records. There may be other  
27 and further information respecting the requests propounded by Plaintiff of which Defendant,  
28 despite its reasonable investigation and inquiry, is presently unaware. Defendant reserves the right

1 to modify or enlarge any responses with such pertinent additional information as Defendant may  
2 subsequently discover.

3 3. No incidental or implied admissions will be made by the responses to these  
4 requests. The fact that Defendant may respond or object to any request or any part thereof shall  
5 not be deemed an admission that Defendant accepts or admits the existence of any fact set forth or  
6 assumed by such request, or that such response constitutes admissible evidence. The fact that  
7 Defendant responds to a part of any request is not to be deemed a waiver by Defendant of its  
8 objections, including privilege, to other parts to such request.

9 4. Defendant objects to any instruction to the extent that it would impose upon  
10 Defendant greater duties than are set forth under the Nevada Rules of Civil Procedure. Defendant  
11 will supplement responses to the requests as required by the Nevada Rules of Civil Procedure.

12 5. All responses will be made solely for the purpose of this action. Each response will  
13 be subject to all objections as to competence, relevance, materiality, propriety and admissibility,  
14 and to any and all other objections on any ground which would require the exclusion from  
15 evidence of any statement herein if any such statements were made by a witness present and  
16 testifying at trial, all of which objections and grounds are expressly reserved and may be  
17 interposed at such hearings.

18 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

19 **REQUEST FOR PRODUCTION NO. 1:**

20 Please produce any and all documents, writings, and communications that were produced  
21 as a result of or related to any of Plaintiff's applications for insurance with you. These documents  
22 should include, but not be limited to, the entire underwriting file, printouts from all computer  
23 communications and electronic databases and logs, all electronically imaged documents, and all  
24 reports and investigations.

25 ///

26 ///

27

28

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Objection. Defendant objects that the request is compound, overbroad and burdensome to the extent it seeks “the entire underwriting file”. Defendant objects to this Request as overbroad as it is not limited in time or scope (the underwriting file for the policy at issue in this litigation), and seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the request is not reasonably tailored to include only those underwriting matters relevant to the insurance claim made the basis of this suit and there is no dispute that the applicable policy was in effect on the date of loss. Underwriting information is stored electronically in multiple locations. Responding party further objects to the term “underwriting file” because it assumes a physical file folder exists and because the request is vague, ambiguous and overbroad as to what is meant by an underwriting file. Responding party does not maintain a physical file folder with respect to most insurance policies issued. In addition, this request has the potential to be unduly burdensome. Subject to and without waiving the stated objections: Defendant has requested the underwriting documents related to Plaintiff’s auto policy and will produce these upon receipt. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 2:**

Please produce all documents, writings, and communications that are used by field, regional, and home office underwriters for reference, training, and guidelines for the underwriting of your policies.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Objection. Defendant objects that the request is compound, overbroad and burdensome to the extent it seeks information related to its “reference, training, and guidelines” related to underwriting, as Defendant’s underwriting is not at issue in this case. As such, this request seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the request is not reasonably tailored to include only those matters relevant to the insurance claim made the basis of this suit and there is no dispute that the applicable policy was in effect on the date of loss. Responding party further objects to the term

1 “underwriting file” because it assumes a physical file folder exists and because the request is  
2 vague, ambiguous and overbroad as to what is meant by an underwriting file. Finally, this request  
3 seeks documents “reference, training, and guidelines” that are confidential, proprietary, and trade  
4 secret. In addition, this request has the potential to be unduly burdensome.

5 **REQUEST FOR PRODUCTION NO. 3:**

6 Please produce all documents, writings, and communications that were produced as a  
7 result of or are related to Plaintiff’s claim and the Plaintiff’s claim for coverage. These documents  
8 should include, but not be limited to, the entire claim file, printouts from all computer  
9 communications and electronic databases and logs, all electronically imaged documents and all  
10 reports and investigations.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

12 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
13 and ambiguous as to the terms “all documents, writings, and communications” and “related to  
14 Plaintiff’s claim” and “the Plaintiff’s claim for coverage”. Defendant objects to this Request to  
15 the extent that it seeks an un-redacted copy of the claim file which contains documents protected  
16 by the attorney/client privilege and/or work product doctrine. Defendant further objects to  
17 production of a “electronic databases and logs” as based on the nature of Defendant’s claim file  
18 structure and the system which houses the same, Defendant cannot produce a standalone live or  
19 interactive claims file on a separate portable medium. Defendant further objects in that its Claim  
20 Loss Report Systems which is the system in which Defendant maintains its electronic claims file is  
21 proprietary and created solely for Defendant’s own use and has great economic value to  
22 Defendant. Subject to and without waiving the stated objections: Responsive and non-privileged  
23 documents responsive to this request were produced in *Defendant United Services Automobile*  
24 *Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
25 *16.1* as documents Bates stamped USAA000001 to USAA004785. Discovery continues and  
26 Defendant reserves the right to supplement this response as appropriate.

27 ///

28 **REQUEST FOR PRODUCTION NO. 4:**

1 Please produce any and all documents, writings, and communications between Plaintiff  
2 and you, including all proof of loss forms.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

4 Objection. USAA objects to this request as overbroad as it is unlimited in time and scope.  
5 Subject to and without waiving the stated objections, USAA responds as follows: All non-  
6 privileged communications related to Plaintiff's claim are contained within the claims file. USAA  
7 has produced the non-privileged portions of its claim file. Responsive and non-privileged claims  
8 documents relating to Plaintiffs' claim were produced in *Defendant United Services Automobile*  
9 *Association's Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
10 *16.1* as documents Bates stamped USAA000001 to USAA004785. USAA withheld portions of its  
11 claim file that contain information protected by the attorney client privilege, the work product  
12 doctrine, the litigation privilege, and portions that contain confidential and/or proprietary  
13 information. Discovery continues and Defendant reserves the right to supplement this response as  
14 appropriate.

15 **REQUEST FOR PRODUCTION NO. 5:**

16 Please produce any and all documents, writings, and communications between you and any  
17 third party or third party's attorney concerning the subject claim.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

19 Objection. Defendant objects that the request assumes and misstates facts, is compound,  
20 overbroad, burdensome, vague and ambiguous as to the terms "all documents, writings, and  
21 communications". Defendant objects as this Request seeks documents protected by the  
22 attorney/client privilege and/or the work product doctrine. Defendant further objects this request  
23 seeks information that it is neither relevant to the claims or defenses of any party, nor proportional  
24 to the needs of the case, as the request is not reasonably tailored to include only those matters  
25 relevant to this suit.

26 Subject to and without waiving the stated objections: Responsive and non-privileged  
27 documents responsive to this request were produced in *Defendant United Services Automobile*  
28 *Association's Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*

1 16.1 as documents Bates stamped USAA000001 to USAA004785. Discovery continues and  
2 Defendant reserves the right to supplement this response as appropriate.

3 **REQUEST FOR PRODUCTION NO. 6:**

4 Please produce any and all documents, writings, and communications between you and any  
5 third party concerning the processing, acceptance, or denial of the subject claim.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

7 Objection. Defendant objects that the request Defendant objects that the request assumes  
8 and misstates facts, is compound, overbroad, burdensome, vague and ambiguous as to the terms  
9 “all documents, writings, and communications”. Defendant objects as this Request seeks  
10 documents protected by the attorney/client privilege and/or the work product doctrine. Defendant  
11 further objects this request seeks information that it is neither relevant to the claims or defenses of  
12 any party, nor proportional to the needs of the case, as the request is not reasonably tailored to  
13 include only those matters relevant to this suit.

14 Subject to and without waiving the stated objections: Responsive and non-privileged  
15 documents responsive to this request were produced in *Defendant United Services Automobile*  
16 *Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
17 16.1 as documents Bates stamped USAA000001 to USAA004785. Discovery continues and  
18 Defendant reserves the right to supplement this response as appropriate.

19 **REQUEST FOR PRODUCTION NO. 7:**

20 Please produce any and all documents, writings, and communications that are used by your  
21 claims personnel for reference, training, and guidelines for the adjusting of claims. These items  
22 should include, but not be limited to, all claims manuals, all information and guidelines for the  
23 adjudication of claims and all other resources used by your personnel for the adjudication of  
24 claims.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

26 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
27 and ambiguous as to the terms “all documents, writings, and communications,” “reference,  
28 training, and guidelines” and “adjudication of claims”. As presently worded, the information



1 sought by this Request is not relevant to the claims or defenses of any party, nor proportional to  
2 the needs of the case, as Defendant’s “reference, training and guidelines” are intended to provide  
3 guidance but each claim is handled on its own merits. Defendant further objects on the grounds  
4 that the request seeks information that is confidential, sensitive, proprietary business information  
5 and/or trade secrets. Subject to and without waiving the stated objections, Defendant responds as  
6 follows: Defendant does not have claims “manuals” but rather provides online guidance to claims  
7 handlers through its “Knowledge Delivery” online search tool. Defendant will produce, only upon  
8 execution of a Confidentiality and Protective Order executed by all parties and entered by the  
9 Court (see proposed Order, attached hereto), the KD materials relating to the handling of UM  
10 claims for the state of Nevada, for the applicable time period. Discovery continues and Defendant  
11 reserves the right to supplement this response as appropriate.

12 **REQUEST FOR PRODUCTION NO. 8:**

13 Please produce all documents, writings, and communications, and any drafts or revisions  
14 thereof, which contain explanations of the basis in the insurance policy, with respect to the facts of  
15 the Plaintiff’s claim and the applicable law, for the determination of the subject claim.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

17 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
18 and ambiguous as to the terms “all documents, writings, and communications”. Defendant objects  
19 as this Request seeks documents protected by the attorney/client privilege and/or the work product  
20 doctrine. Defendant further objects this request seeks information that it is neither relevant to the  
21 claims or defenses of any party, nor proportional to the needs of the case, as the request is not  
22 reasonably tailored to include only those matters relevant to this suit.

23 Subject to and without waiving the stated objections: Responsive and non-privileged  
24 documents responsive to this request were produced in *Defendant United Services Automobile*  
25 *Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
26 *16.1* as documents Bates stamped USAA000001 to USAA004785. Discovery continues and  
27 Defendant reserves the right to supplement this response as appropriate.

28 **REQUEST FOR PRODUCTION NO. 9:**

1 Please produce any and all documents, writings, and communications, and amendments  
2 thereto, for the contracting of third-party administration and outsourcing of any operations related  
3 to new business processing, policy issue, policyholder services, claims processing, billing,  
4 collection, and payment receipt.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

6 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
7 and ambiguous as to the terms “all documents, writings, and communications”. Defendant objects  
8 as this Request seeks documents protected by the attorney/client privilege and/or the work product  
9 doctrine. Defendant further objects this request seeks information that it is neither relevant to the  
10 claims or defenses of any party, nor proportional to the needs of the case, as the request is not  
11 reasonably tailored to include only those matters relevant to this suit, specifically new business  
12 processing, policy issue, policyholder services, billing, collection and payment receipt have no  
13 bearing on the issues in this case – the value of Plaintiff’s claim and whether Defendant’s handling  
14 of that claim was proper. Defendant further objects on the grounds that the request seeks  
15 information that is sensitive, confidential, proprietary business information and/or trade secrets.

16 **REQUEST FOR PRODUCTION NO. 10:**

17 Please produce any and all documents, writings, communications, financial statements,  
18 both audited and unaudited, and amendments thereto, which state your net income or loss for the  
19 last five (5) years according to GENERAL ACCEPTED ACCOUNTING PRINCIPLES (GAAP).

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

21 Objection. Defendant objects that the request is compound, overbroad as it purports to  
22 require “all documents, writings, and communications”, unduly burdensome, and seeks  
23 information that is not relevant to the claims or defenses of either party. USAA further objects on  
24 the basis that this request is not proportional to the needs of this case. This request is not limited to  
25 the present claim, is not limited in scope or time, and is otherwise irrelevant to the issues presented  
26 in the present matter. Additionally, this request is premature. The Nevada Supreme Court has held  
27 that “before tax returns or financial records are discoverable on the issue of punitive damages, the  
28 plaintiff must demonstrate some factual basis for its punitive damage claim.” *Hetter v. District*

1 *Court*, 110 Nev. 513, 520, 874 P.2d 762, 766, 1994 Nev. LEXIS 65, \*13-14 (emphasis added).  
2 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

3 **REQUEST FOR PRODUCTION NO. 11:**

4 Please produce any and all insurance policies and declaration pages that were in effect at  
5 the time of the subject claim.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

7 Objection. Defendant objects that the request is compound, overbroad and burdensome as  
8 it seeks all policies in effect at the time of the claim, without limit, and is vague and ambiguous as  
9 to the terms “all insurance policies” and “in effect at the time of the subject claim” and seems to  
10 require USAA to obtain “any and all” insurance policies issued to Plaintiff, regardless of insurer  
11 or type of policy. Subject to and without waiving the stated objections: The auto policy issued by  
12 Defendant to Plaintiff and responsive to this request was produced in *Defendant United Services*  
13 *Automobile Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant*  
14 *to NRCP 16.1* as documents Bates stamped USAA000001POL to USAA000042POL.

15 **REQUEST FOR PRODUCTION NO. 12:**

16 Please produce any and all documents, writings, and communications including, but not  
17 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
18 statements, provided to any private investigators regarding Plaintiff.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

20 Objection. Defendant objects that the request assumes and misstated facts, is compound,  
21 overbroad, burdensome, vague and ambiguous as to the terms “all documents, writings, and  
22 communications” and the term “private investigators.” Defendant further objects this request  
23 seeks information that it is neither relevant to the claims or defenses of any party, nor proportional  
24 to the needs of the case, as the request is not reasonably tailored to include only those matters  
25 relevant to this suit. Subject to and without waiving the stated objections: Defendant has no  
26 documents responsive to this request. Discovery is continuing and Defendant reserves the right to  
27 supplement this response.

28 **REQUEST FOR PRODUCTION NO. 13:**

1 Please produce any and all documents, writings, and communications including, but not  
2 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
3 statements, received from any private investigators regarding Plaintiff.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

5 Objection. Defendant objects that the request assumes and misstated facts, is compound,  
6 overbroad, burdensome, vague and ambiguous as to the terms “all documents, writings, and  
7 communications” and the term “private investigators.” Defendant further objects this request  
8 seeks information that it is neither relevant to the claims or defenses of any party, nor proportional  
9 to the needs of the case, as the request is not reasonably tailored to include only those matters  
10 relevant to this suit. Subject to and without waiving the stated objections: Defendant has no  
11 documents responsive to this request. Discovery is continuing and Defendant reserves the right to  
12 supplement this response.

13 **REQUEST FOR PRODUCTION NO. 14:**

14 Please produce any and all photographs, motion pictures, videotapes, tape recordings (or  
15 transcripts of tape recordings), documents, writings, communications or investigative reports  
16 concerning taken by or on behalf of you, relating to the processing or denial of any portion of the  
17 subject claim.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

19 Defendant objects that the request assumes and misstated facts, is compound, overbroad,  
20 burdensome, and vague and ambiguous as to the term “concerning taken by or on behalf of you.”  
21 Subject to and without waiving the stated objections: Responsive and non-privileged documents  
22 responsive to this request were produced in *Defendant United Services Automobile Association’s*  
23 *Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as  
24 documents Bates stamped USAA000001 to USAA004785. Discovery is continuing and  
25 Defendant reserves the right to supplement this response.

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28 **REQUEST FOR PRODUCTION NO. 15:**

1 Please produce any and all files containing information regarding the processing of any  
2 insurance applications made to you by Plaintiff or any policies issued to Plaintiff.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

4 Objection. Defendant objects that the request assumes and misstates facts, is compound,  
5 overbroad and burdensome. Defendant further objects this request seeks information that it is  
6 neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
7 the request is not reasonably tailored to include only those matters relevant to this suit; specifically  
8 the processing of any insurance applications made to you by Plaintiff is not at issue in this  
9 litigation, as USAA does not dispute that it issued a policy to Plaintiff and that the policy was in  
10 effect on the date of the subject accident. The requested documents have no bearing on the issues  
11 in this case – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was  
12 proper. Subject to and without waiving the stated objections: Defendant has requested the  
13 underwriting documents related to Plaintiff’s policy and will produce these upon receipt.  
14 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

15 **REQUEST FOR PRODUCTION NO. 16:**

16 Please produce any and all processing manuals and other materials available to your  
17 personnel for reference or training in their duties of processing applications or issuing policies.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

19 Objection. Defendant objects that the request assumes and misstates facts, is compound,  
20 overbroad and burdensome. Defendant further objects this request seeks information that it is  
21 neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
22 the request is not reasonably tailored to include only those matters relevant to this suit; specifically  
23 the processing of insurance applications and issuance of policies are not at issue in this litigation,  
24 as USAA does not dispute that it issued a policy to Plaintiff and that the policy was in effect on  
25 the date of the subject accident. The requested documents have no bearing on the issues in this  
26 case – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was proper.

27 ///

28 **REQUEST FOR PRODUCTION NO. 17:**

1 Please produce any and all documents and writings you have pertaining to agent Steve  
2 Lucent. These documents should include, but not be limited to, the agent application, the  
3 appointment of agency, all other contracts between you and Steve Lucent, all approved sales  
4 materials used by Steve Lucent, the commission schedule for Steve Lucent, all correspondence  
5 between you and Steve Lucent, all investigative and other reports on Steve Lucent, records of all  
6 disciplinary information for Steve Lucent, and any other documents and writings kept on Steve  
7 Lucent.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

9 Objection. Defendant objects that the request is compound, overbroad as it requires  
10 production of any and all documents pertaining to Steven Lucent, is burdensome, vague and  
11 ambiguous as to the terms “any and all documents and writings” and “pertaining to agent Steve  
12 Lucent”, and harassing. The request is also argumentative and assumes facts not on the record.  
13 Defendant further objects this request seeks information that it is neither relevant to the claims or  
14 defenses of any party, nor proportional to the needs of the case, as the request is not reasonably  
15 tailored to include only those matters relevant to this suit.

16 **REQUEST FOR PRODUCTION NO. 18:**

17 Please produce any and all documents and writings given to your agents by you, for  
18 training, reference, use in the sale of insurance, or otherwise. These documents should include, but  
19 not be limited to, rate books, product guides, field underwriting manuals, a blank application and  
20 other forms used by your agents, advertising materials, instructions for the completion of  
21 applications for insurance, instructions for completion of conditional receipts, policies and  
22 guidelines, ethical standards, and the like.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

24 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
25 and ambiguous as to the terms “any and all documents and writings” and “use in the sale of  
26 insurance, or otherwise”. As presently worded, the information sought by this Request is not  
27 relevant to the claims or defenses of any party, nor proportional to the needs of the case, as there  
28 are no allegations with regard to USAA’s issuance of the subject policy to Plaintiff and USAA

1 does not dispute that the policy was issued to Plaintiff and in effect on the date of the subject  
2 accident.

3 **REQUEST FOR PRODUCTION NO. 19:**

4 Produce any and all documents, writings, and communications which were obtained from  
5 Steve Lucent, which contain notes of conversations with Steve Lucent, which contain statements  
6 of Steve Lucent, and which contain information on the responsibilities and duties of Steve Lucent  
7 when filling out an application.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

9 Objection. Defendant objects that the request assumes and mistakes facts, is compound,  
10 overbroad, burdensome, vague and ambiguous as to the terms “any and all documents, writings,  
11 and communications” and “which contain information on the responsibilities and duties of Steve  
12 Lucent when filling out an application”. Defendant further objects this request seeks information  
13 that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the  
14 case, as the request is not reasonably tailored to include only those matters relevant to this suit.  
15 Moreover the request is patently overbroad as it is not narrowed in scope in any way to be relevant  
16 to the claim made basis of this suit.

17 Subject to and without waiving the stated objections: All communications of Steven  
18 Lucent relating to Plaintiff’s claim were produced in *Defendant United Services Automobile*  
19 *Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
20 *16.1* as documents Bates stamped USAA000001 to USAA004785. Discovery continues and  
21 Defendant reserves the right to supplement this response as appropriate.

22 **REQUEST FOR PRODUCTION NO. 20:**

23 Please produce any and all documents and writings constituting a liability guarantee given  
24 to you by Steve Lucent.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

26 Objection. Defendant objects that the request assumes and misstates facts, is vague and  
27 ambiguous as to the terms “liability guarantee” and “given to you by Steve Lucent”. Defendant  
28 further objects this request seeks information that it is neither relevant to the claims or defenses of

1 any party, nor proportional to the needs of the case, as the request is not reasonably tailored to  
2 include only those matters relevant to this suit.

3 Subject to and without waiving the stated objections: Defendant has no “liability  
4 guarantee” documents responsive to this request. Discovery continues and Defendant reserves the  
5 right to supplement this response as appropriate.

6 **REQUEST FOR PRODUCTION NO. 21:**

7 Please produce a copy of any and all standards implemented by you for the prompt  
8 investigation of claims.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

10 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
11 and ambiguous as to the terms “any and all standards”. As presently worded, the information  
12 sought by this Request is not relevant to the claims or defenses of any party, nor proportional to  
13 the needs of the case, as Defendant’s “standards” are intended to provide guidance but each claim  
14 is handled on its own merits. Defendant further objects on the grounds that the documents sought  
15 are confidential, sensitive, proprietary business information and/or trade secrets.

16 Subject to and without waiving the stated objections, Defendant responds as follows:  
17 Defendant provides online guidance to claims handlers through its “Knowledge Delivery” online  
18 search tool. Defendant will produce, upon execution of a Confidentiality and Protective Order  
19 executed by all parties and entered by the Court (see proposed Order, attached hereto), the KD  
20 materials relating to the handling of UIM claims for the state of Nevada, for the subject time  
21 period. Discovery continues and Defendant reserves the right to supplement this response as  
22 appropriate.

23 **REQUEST FOR PRODUCTION NO. 22:**

24 Please produce a copy of any and all standards implemented by you referring or relating to  
25 the provisions of the Nevada Unfair Claims Practices Act, NRS 686A.310, including, but not  
26 limited to, standards relating to:

27 ///

28 (a) Representing to insureds or claimants pertinent facts of insurance policy provisions



- 1 relating to any coverage at issue.
- 2 (b) Acknowledging and acting reasonably promptly upon communications with respect to
- 3 claims arising under insurance policies.
- 4 (c) Adopting and implementing reasonable standards for the prompt investigation and
- 5 processing of claims arising under insurance policies.
- 6 (d) Affirming or denying coverage of claims within a reasonable time after proof of loss
- 7 requirements have been completed and submitted by the insured.
- 8 (e) Effectuating prompt, fair and equitable settlements of claims in which liability of the
- 9 insurer has become reasonably clear.
- 10 (f) Not compelling insureds to institute litigation to recover amounts due under an
- 11 insurance policy by offering substantially less than the amounts ultimately recovered in
- 12 actions brought by such insureds, when the insureds have made claims for amounts
- 13 reasonably similar to the amounts ultimately recovered.
- 14 (g) Attempting to settle a claim by an insured for an amount to which a reasonable person
- 15 would have believed he was entitled by reference to written or printed advertising
- 16 material accompanying or made part of an application.
- 17 (h) Not attempting to settle claims on the basis of an application which was altered without
- 18 notice to, or knowledge or consent of, the insured, their representative, agent or broker.
- 19 (i) Informing insured or beneficiaries, upon payment of a claim, of the coverage under
- 20 which payment is made.
- 21 (j) Not informing insureds or claimants a practice of the insurer of appealing from
- 22 arbitration awards in favor of insureds or claimants for the purpose of compelling them
- 23 to accept settlements or compromises less than the amount awarded in arbitration.
- 24 (k) Not delaying the investigation or payment of claims by requiring an insured or a
- 25 claimant, or the physician of either, to submit a preliminary claim report, and then
- 26 requiring the subsequent submission of formal proof of loss forms, both of which
- 27 submissions contain substantially the same information.
- 28 (l) Not settling claims promptly, where liability has become reasonably clear, under one

1 portion of the insurance policy coverage in order to influence settlements under other  
2 portions of the insurance policy coverage.

3 (m) Compliance with the provisions of NRS 687B.310 to 687B.390, inclusive, or  
4 687B.410.

5 (n) Providing promptly to an insured a reasonable explanation of the basis in the insurance  
6 policy, with respect to the facts of the insured's claim and the applicable law, for the  
7 denial of their claim or for an offer to settle or compromise their claim.

8 (o) Not advising an insured or claimant not to seek legal counsel.

9 (p) Not misleading an insured or claimant concerning any applicable statute of limitations.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

11 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
12 and ambiguous as to the terms "any and all standards". Defendant further objects on the grounds  
13 that the request seeks information that is confidential, sensitive, proprietary business information  
14 and/or trade secrets.

15 Subject to and without waiving the stated objections, Defendant responds as follows:  
16 Defendant provides online guidance to claims handlers through its "Knowledge Delivery" online  
17 search tool. Defendant will produce, only upon execution of a Confidentiality and Protective  
18 Order executed by all parties and entered by the Court (see proposed Order, attached hereto), the  
19 KD materials relating to the handling of UM claims, for the state of Nevada, for the subject time  
20 period. Discovery continues and Defendant reserves the right to supplement this response as  
21 appropriate.

22 **REQUEST FOR PRODUCTION NO. 23:**

23 To the extent you are asserting "advice of counsel" as a defense to the allegations  
24 contained in Plaintiff's complaint, please produce any and all documents referring to, evidencing,  
25 or constituting coverage opinions, legal research, and/or legal advice that you received from an  
26 attorney concerning any aspect of the subject claim.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

28 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague

1 and ambiguous as to the terms “advice of counsel as a defense”. Defendant objects as this Request  
2 seeks documents protected by the attorney/client privilege and/or the work product doctrine.

3 Subject to and without waiving the stated objections, Defendant responds as follows:  
4 Defendant is not currently asserting “advice of counsel” as a defense to any claim. Discovery  
5 continues and Defendant reserves the right to supplement this response as appropriate.

6 **REQUEST FOR PRODUCTION NO. 24:**

7 Please produce any and all documents, writings, and communications concerning,  
8 reflecting, evidencing, or constituting payments received by you from Plaintiff for insurance  
9 policy premiums.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

11 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
12 and ambiguous as to the terms “documents, writings, and communications”. Defendant further  
13 objects this request seeks information that it is neither relevant to the claims or defenses of any  
14 party, nor proportional to the needs of the case, as the request is not reasonably tailored to include  
15 only those matters relevant to this suit, and his intended only to harass as Defendant is not  
16 disputing that Plaintiff paid premiums or that the policy was in effect on the date of the subject  
17 accident.

18 **REQUEST FOR PRODUCTION NO. 25:**

19 Please produce any and all documents, writings, and communications concerning,  
20 reflecting, evidencing, or constituting settlement negotiations regarding Plaintiff’s claims.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

22 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
23 and ambiguous as to the terms “documents, writings, and communications”. Subject to and  
24 without waiving the stated objections: Responsive and non-privileged documents responsive to  
25 this request were produced in *Defendant United Services Automobile Association’s Initial*  
26 *Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as documents

27 ///

28 Bates stamped USAA000001 to USAA004785. Discovery continues and Defendant reserves the

1 right to supplement this response as appropriate.

2 **REQUEST FOR PRODUCTION NO. 26:**

3 In regard to Defendant's handling of the subject incident/claim, produce the adjusting  
4 claims file(s) with any and all contents herein to include, but not limited to, recorded and/or  
5 written statements, notes by adjusters/processors and/or investigators, photographs and videotapes  
6 (in color if available), index bureau information regarding claims made or believed to have been  
7 made by Plaintiff, medical records, documentation between agents and claims department, and  
8 computer print-outs of incident information stored on computer data base(s), including any and all  
9 computer claims log(s) and notes.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

11 Objection. Defendant objects that the request is compound, vague and ambiguous to the  
12 extent it seeks "the adjusting claims file(s)", and overbroad to the extent it seeks any information  
13 unrelated to Defendant's handling of Plaintiff's claim. To the extent it seeks information  
14 unrelated to Defendant's handling of Plaintiff's claim, Defendant objects to this Request as the  
15 requested documents have no bearing on the issues in this case – the value of Plaintiff's claim and  
16 whether Defendant's handling of that claim was proper. As such, this request seeks information  
17 that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the  
18 case. Subject to and without waiving the stated objections: Responsive and non-privileged  
19 documents responsive to this request were produced in *Defendant United Services Automobile*  
20 *Association's Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
21 *16.1* as documents Bates stamped USAA000001 to USAA004785. Discovery continues and  
22 Defendant reserves the right to supplement this response as appropriate.

23 **REQUEST FOR PRODUCTION NO. 27:**

24 Please produce any and all documents, writings, and communications that are used by your  
25 personnel for reference, training, and guidelines for solicitation of underinsured motorist policies  
26 from customers.

27 ///

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

1           Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
2 and ambiguous as to the terms “all documents, writings, and communications” and “solicitation of  
3 underinsured motorist policies”. As presently worded, the information sought by this Request is  
4 not relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
5 these documents do not relate in any way to the issues in this litigation – the value of Plaintiff’s  
6 claim and whether Defendant’s handling of that claim was proper. As such, this request seeks  
7 information that it is neither relevant to the claims or defenses of any party, nor proportional to the  
8 needs of the case.

9 **REQUEST FOR PRODUCTION NO. 28:**

10           Please produce Defendant’s policies, procedures, manuals or other training for evaluating  
11 claims including but not limited to any and all training courses given or required for Defendant’s  
12 Claims Adjusters that were taken within 5 years prior to the claim in question through the present  
13 time.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

15           Objection. Defendant objects that the request assumes and misstates facts, is compound,  
16 overbroad in scope, burdensome, vague and ambiguous as to the terms “policies, procedures,  
17 manuals or other training”. As presently worded, the information sought by this Request is not  
18 relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
19 materials related to Defendant’s “policies, procedures, manuals or other training” are intended to  
20 provide guidance but each claim is handled on its own merits. Defendant further objects on the  
21 grounds that the request seeks information that is confidential, sensitive, proprietary business  
22 information and/or trade secrets.

23           Subject to and without waiving the stated objections, Defendant responds as follows:  
24 Defendant does not have claims “manuals” but rather provides online guidance to claims handlers  
25 through its “Knowledge Delivery” online search tool. Defendant will produce only upon  
26 execution of a Confidentiality and Protective Order executed by all parties and entered by the  
27 Court (see proposed Order, attached hereto), the KD materials relating to evaluation of UM claims  
28 in Nevada for the subject time period. Defendant objects to producing “any and all training

1 courses given or required” as patently overbroad and unduly burdensome.

2 **REQUEST FOR PRODUCTION NO. 29:**

3 Please produce any and all documents and items relied upon by Defendant in evaluating  
4 the claim.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

6 Objection. Defendant objects that the request is vague and overbroad to the extent it seeks  
7 “all documents” relied upon by Defendant in “evaluating the claim”. Subject to and without  
8 waiving the stated objections: Responsive and non-privileged documents responsive to this request  
9 were produced in *Defendant United Services Automobile Association’s Initial Disclosure of*  
10 *Witnesses and Production of Documents Pursuant to NRCP 16.1* as documents Bates stamped  
11 USAA000001 to USAA004785. Discovery continues and Defendant reserves the right to  
12 supplement this response as appropriate.

13 **REQUEST FOR PRODUCTION NO. 30:**

14 Please produce any and all documents, writings, and communications including, but not  
15 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
16 statements, provided to any person or entity related to medical opinions concerning Plaintiff  
17 including, but not limited to, regarding record reviews.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

19 Objection. Defendant objects that the request is vague and overbroad to the extent it seeks  
20 “any and all documents provided to any person or entity”, and is not limited in scope in any way.  
21 Defendant also objects to this request to the extent it seeks documents protected by the attorney-  
22 client privilege and work product doctrine. Subject to and without waiving the stated objections:  
23 With regard to the claim made basis of this suit, responsive and non-privileged documents  
24 responsive to this request were produced in *Defendant United Services Automobile Association’s*  
25 *Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as  
26 documents Bates stamped USAA000001 to USAA004785. Discovery continues and Defendant  
27 reserves the right to supplement this response as appropriate.

28 **REQUEST FOR PRODUCTION NO. 31:**

1 Please produce any and all documents, writings, and communications including, but not  
2 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
3 statements, received from to any person or entity related to medical opinions concerning Plaintiff  
4 including, but not limited to, regarding record reviews.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

6 Objection. Defendant objects that the request is vague and overbroad to the extent it seeks  
7 “any and all documents provided to any person or entity”, and is not limited in scope in any way.  
8 Defendant also objects to this request to the extent it seeks documents protected by the attorney-  
9 client privilege and work product doctrine. Subject to and without waiving the stated objections:  
10 With regard to the claim made basis of this suit, responsive and non-privileged documents  
11 responsive to this request were produced in *Defendant United Services Automobile Association’s*  
12 *Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as  
13 documents Bates stamped USAA000001 to USAA004785. Discovery continues and Defendant  
14 reserves the right to supplement this response as appropriate.

15 **REQUEST FOR PRODUCTION NO. 32:**

16 With respect to any vendor or medical provider providing an opinion concerning Plaintiff’s  
17 injuries, treatment or medical costs, please provide a copy of reports and invoices generated by  
18 that vendor or medical provider for you in the five (5) years preceding your use of such vendor or  
19 medical provider on Plaintiff’s claim.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

21 Objection. Defendant objects that the request is overbroad and burdensome to the extent it  
22 seeks “reports” and “invoices” for matters completely unrelated to the instant suit, and which  
23 relate solely to the claims of other non-party insureds. Defendant will not produce such  
24 documents. Defendant also objects to this Request as overbroad as it seeks information that it is  
25 neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
26 the request is not reasonably tailored to include only those matters bearing on the issues in this  
27 case – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was proper.  
28 Subject to and without waiving the stated objections: with regards to Plaintiff’s claim made basis

1 of this suit, documents responsive to this request were produced in *Defendant United Services*  
2 *Automobile Association's Initial Disclosure of Witnesses and Production of Documents Pursuant*  
3 *to NRCP 16.1* as documents Bates stamped USAA000001 to USAA004785. Discovery continues,  
4 as such, Defendant reserves the right to supplement this response as appropriate.

5 **REQUEST FOR PRODUCTION NO. 33:**

6 Please produce any and all documents informing the Plaintiff that he has not complied or  
7 cooperated with any provision of the policy.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

9 Objection. Defendant objects that the request is overbroad and burdensome to the extent it  
10 seeks "all documents". Subject to and without waiving the stated objections: Responsive and non-  
11 privileged documents responsive to this request were produced in *Defendant United Services*  
12 *Automobile Association's Initial Disclosure of Witnesses and Production of Documents Pursuant*  
13 *to NRCP 16.1* as documents Bates stamped USAA000001 to USAA004785. Discovery continues,  
14 as such, Defendant reserves the right to supplement this response as appropriate.

15 **REQUEST FOR PRODUCTION NO. 34:**

16 Please produce the personnel files of each employee, manager, supervisor or other agent  
17 who was involved, had supervisory capacity over the Plaintiff's claim or audited the Plaintiff's  
18 claim.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

20 Objection. Defendant objects that the request is overbroad in scope and time, burdensome  
21 to the extent it seeks "personnel files" of employees "involved" with "Plaintiff's claim" without  
22 any limitation as to time or scope, and vague and/or ambiguous as to the terms "personnel file".  
23 Defendant objects to this request in that it seeks information that it is neither relevant to Plaintiffs'  
24 claims for breach of contract or tortious bad faith claims handling, nor proportional to the needs of  
25 the case, as the requested information does not, generally, speak to whether Plaintiffs' claim was  
26 properly handled. Moreover, this request explicitly seeks confidential and sensitive information of  
27 ///

28 USAA's employees. USAA further objects to the extent this request seeks business information



1 that is confidential and/or proprietary.

2 **REQUEST FOR PRODUCTION NO. 35:**

3 Please produce any and all quality assurance audits in the five (5) years prior to the claim  
4 through the present, relating to any of the personnel involved in handling, taking action, or  
5 reviewing of the Plaintiff's claim. For the purpose of this request, quality assurance audit means  
6 any review of claims files to assess the quality of work done by claims handlers or adjusters.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

8 USAA objects to this request on the grounds that it assumes and misstates facts, is vague  
9 and ambiguous as to the term "quality insurance audits ...relating to . . .personnel", is overly  
10 broad, burdensome, oppressive and intended only to harass. Defendant objects to this request in  
11 that it seeks information that it is neither relevant to Plaintiffs' claims for breach of contract or bad  
12 faith claims handling, nor proportional to the needs of the case as any action by USAA on any  
13 other claims does not generally speak to whether Plaintiffs' claim was properly handled or  
14 whether the insurance policy was breached by Defendant. Any such matter, with no nexus to the  
15 harm alleged by Plaintiffs with regard to their claims under the subject policy, is irrelevant and the  
16 request is not reasonably calculated to lead to the discovery of admissible evidence. See *State*  
17 *Farm Mutual Auto Ins. Co. v. Campbell*, 538 US 4087 (2003). USAA objects to the extent that  
18 this request seeks information protected by the attorney-client privilege and the work product  
19 doctrine.

20 **REQUEST FOR PRODUCTION NO. 36:**

21 Please produce any and all copies of documents that reference bonus programs or  
22 employee award programs applicable to any and all departments or sections involved in the  
23 handling of the Plaintiff's claim for five (5) years prior to the claim through the present.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

25 USAA objects to this request as it assumes and misstates facts, is overbroad in scope and  
26 time, and is vague and/or ambiguous as to the terms "bonus and/or incentive programs".  
27 Defendant objects to this request in that it seeks information that it is neither relevant to Plaintiffs'  
28 claims for breach of contract or tortious bad faith claims handling, nor proportional to the needs of

1 the case, as the requested information does not, generally, speak to whether Plaintiffs' claim was  
2 properly handled.

3 Subject to the forgoing objections, USAA has a company wide incentive program not  
4 specifically tied to payment or non-payment of claims. Since at least 2014, Defendant's Board of  
5 Directors has approved a holiday bonus that is paid to all employees in December of each year.  
6 Employees who are actively employed at the end of November receive an amount equal to their  
7 then-current bi-weekly base pay, prorated for any partial period of employment. Employees who are  
8 actively employed for less than the entire preceding year receive a pro rata amount, based upon the  
9 number of months they have been employed. Additionally, since at least 2014, Defendant's Board of  
10 Directors has awarded an enterprise-wide performance bonus paid in February of the following year.  
11 In order to be eligible for the bonus, employees must have been hired prior to October and still  
12 employed as of February (or retired from USAA on or after January) of the payment year. With  
13 limited exceptions noted below, every employee working with USAA, regardless of job title, job  
14 duties, or job location, received a bonus equal to a percentage of their eligible earnings. Employees  
15 whose individual performance required a form of corrective action during the year may have  
16 received a reduced bonus or no bonus at all.

17 **REQUEST FOR PRODUCTION NO. 37:**

18 Please produce any and all copies of documents referring to goals, targets or objectives  
19 established for claim payments, loss ratios, combined loss ratios, settlement goals, timing of  
20 settlements, percentage of cases to resolve prelitigation or percentage of cases to take to trial.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

22 Objection. Defendant objects that the request assumes and misstates facts, is overbroad  
23 and burdensome to the extent it seeks documents related to "goals", "targets" or "objectives"  
24 related to "claim payments", "loss ratios", "combined loss ratios", "settlement goals", "timing of  
25 settlements", "percentages of cases to resolve prelitigation" and "percentage of cases to take to  
26 trial" without any limitation as to time or scope. Defendant objects to this Request as overbroad  
27 as it seeks information that it is neither relevant to the claims or defenses of any party, nor  
28 proportional to the needs of the case, as the request is not reasonably tailored to include only those

1 matters relevant to the insurance claim made the basis of this suit.

2 **REQUEST FOR PRODUCTION NO. 38:**

3 Please produce any and all documents referencing, discussing or analyzing settlement  
4 offers and/or reserves compared to verdicts and/or judgements for five (5) years prior to the  
5 Plaintiff's claim.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

7 Objection. Defendant objects that the request is overbroad and burdensome to the extent it  
8 seeks documents related to "settlement offers" and/or "reserves" for matters unrelated to the  
9 instant suit without any limitation as to time or scope. Defendant objects to this Request as  
10 overbroad as it seeks information that it is neither relevant to the claims or defenses of any party,  
11 nor proportional to the needs of the case, as the request is not reasonably tailored to include only  
12 those matters relevant to the insurance claim made the basis of this suit. Finally, Defendant  
13 objects to this request to the extent it seeks document protected by the attorney/client privilege  
14 and/or work product doctrines.

15 **REQUEST FOR PRODUCTION NO. 39:**

16 Please produce any and all deposition transcripts or trial testimony transcripts of any of the  
17 Defendant's officers or personnel, since January 1, 2010, in any suit relating to bad faith claims  
18 handling of uninsured or underinsured claim(s).

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

20 Objection. This request is unduly burdensome and overly broad in time and scope. This  
21 request seeks information that is not narrowly tailored to the claims and defenses in this matter  
22 and is disproportional to the needs of the case. The request is also overbroad as to geography, and  
23 to the extent it seeks information regarding claims and non-parties other than the claim at issue in  
24 this litigation. As presently worded, the information sought by the Request is not relevant to the  
25 claims or defenses of any party, nor proportional to the needs of the case. The existence of  
26 unrelated "bad faith suits" against Defendant and Defendant's testimony regarding the same, will

27 ///

28 neither prove nor disprove any alleged improper actions of Defendant in the handling of Plaintiff's

1 claim. Defendant will not produce these documents.

2 **REQUEST FOR PRODUCTION NO. 40:**

3 Please produce any and all copies of any regulatory actions, including but not limited to  
4 suspension or revocation proceedings, Market Conduct Examinations, Cease and Desist Orders,  
5 Consent Orders, Reports of Examinations, Corrective Orders or Corrective Action Plans relating  
6 to Defendant's uninsured or underinsured insurance coverage, from January 1, 2010 to present.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

8 Defendant objects to this request on the grounds that it assumes facts, is overbroad and  
9 unduly burdensome in that it seeks information that is not narrowly tailored to the claims and  
10 defenses in this matter and is disproportional to the needs of the case. Defendant further objects to  
11 this request on the grounds that it is overly broad in time, scope and geography, and because it is  
12 not reasonably tailored to include only matters relevant to the handling of the claims which form  
13 the basis of this suit. Any such matter, with no nexus to the harm claimed to have been sustained  
14 by Plaintiff herein with regard to its claims under the subject policies, is irrelevant and the request  
15 is not reasonably calculated to lead to the discovery of admissible evidence. See *State Farm*  
16 *Mutual Auto Ins. Co. v. Campbell*, 538 US 4087 (2003). In addition, regulatory matters are not  
17 probative of any issue in this case. Additionally, Defendant objects to this request to the extent it  
18 seeks the private and personal information of other insureds of Defendant or the confidential  
19 information of Defendant. Further, Defendant objects to the extent that this inquiry seeks  
20 information protected by the attorney-client privilege and the work product doctrine. Finally, this  
21 request seeks information which is a matter of public record and can be independently obtained by  
22 Plaintiff without requiring Defendant to compile the information. Based on all of the above, no  
23 further response will be provided.

24 **REQUEST FOR PRODUCTION NO. 41:**

25 Please produce any and all company newsletters designed to inform employees of industry  
26 or company news or developments related to uninsured or underinsured motorist coverage or  
27 policies in Nevada since January 1, 2001.

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

1           Objection. This request assumes facts, is vague and ambiguous as to the term  
2 “newsletters”, and is unduly burdensome and overly broad in that it seeks information that is not  
3 narrowly tailored to the claims and defenses in this matter and is disproportional to the needs of  
4 the case. The request is also overbroad to the extent it seeks the production of internal newsletters,  
5 unrelated to this litigation, for a period of almost 20 years; i.e., January 1, 2001 to present. As  
6 presently worded, the information sought by the Request is not relevant to the claims or defenses  
7 of any party, nor proportional to the needs of the case.

8 **REQUEST FOR PRODUCTION NO. 42:**

9           Please produce any and all transcripts and recordings of speeches or presentations in any  
10 form whatsoever, including Power Point presentation materials, overheads, slides, on the subject  
11 of uninsured or underinsured motorist coverage in since January 1, 2010.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

13           Objection. This request is unduly burdensome and overly broad in that it seeks  
14 information that is not narrowly tailored to the claims and defenses in this matter and is  
15 disproportional to the needs of the case. The request is also overbroad and unduly burdensome to  
16 the extent it seeks the production of “transcripts” and “recordings” of “speeches or presentations”  
17 for a period of almost 10 years; i.e., January 1, 2010 to present and is patently overbroad and  
18 harassing.

19 **REQUEST FOR PRODUCTION NO. 43:**

20           Please produce any and all advertisements or other marketing materials (including but not  
21 limited to brochures and/or video) issued by Defendant in Nevada or available on any website and  
22 pertaining to uninsured or underinsured motorist coverage, since January 1, 2010.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

24           Objection. Defendant objects to this request as it is neither relevant to the claims or  
25 defenses of any party, nor proportional to the needs of the case. There are no allegations within  
26 the Plaintiff’s complaint regarding advertisements, nor did the Plaintiff allege any reliance upon

27 ///

28 such advertisements. Additionally, this request is overly broad in scope and time, and responding

1 would be unduly burdensome. No documents will be produced.

2 **REQUEST FOR PRODUCTION NO. 44:**

3 Please produce any and all copies of any reinsurance or co-insurance agreements, and all  
4 the terms and conditions thereof, between Defendant and any other entity, relating to the  
5 policy(ies) at issue.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

7 Defendant objects to this Request in that it is overbroad and neither relevant to the claims  
8 or defenses of any party, nor proportional to the needs of the case.

9 DATED this 7<sup>th</sup> day of August, 2020.

10 LEWIS BRISBOIS BISGAARD & SMITH LLP

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By /s/ Priscilla L. O'Briant

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ROBERT W. FREEMAN

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14

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*Attorneys for Defendant United Services*

*Automobile Association*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 7<sup>th</sup> day of August, 2020, I did cause a true and correct copy of **DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION’S RESPONSES TO PLAINTIFF’S FIRST SET OF REQUESTS FOR PRODUCTION** in Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

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By /s/ Anne Cordell

Anne Cordell, an Employee of  
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7 *Automobile Association*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

11 JOHN ROBERTS, an individual,  
12 Plaintiff,  
13 vs.

CASE NO. A-19-790757-C  
Dept. No.: IV

**STIPULATED CONFIDENTIALITY  
AGREEMENT AND PROTECTIVE  
ORDER**

14 UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
15 and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
16 DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
17 Defendants.  
18

19  
20 In order to protect the confidentiality of certain information obtained by the parties herein,  
21 Plaintiff JOHN ROBERTS ("Plaintiff") and Defendant UNITED SERVICES AUTOMOBILE  
22 ASSOCIATION ("USAA" or "Defendant"), hereby enter the following Stipulated Confidentiality  
23 Agreement and Protective Order ("Protective Order"):

24 1. This Stipulated Confidentiality Agreement and Protective Order ("Protective  
25 Order") shall govern the use and treatment of information, documents, testimony or other tangible  
26 things produced in this action by any party hereto, as well as discovery and document production  
27 from third parties, in the above-referenced action. The nature of this Protective Order is to protect  
28 Defendant's respective member and business interests in its own intellectual property,



1 information, and processes. The insurance, banking, and investment industries are highly  
2 competitive markets, and disclosure of Defendant's trade secrets, confidential or proprietary  
3 information could cause irreparable and significant harm to the Defendant and its members. This  
4 Protective Order is intended to prevent this foreseeable harm and any related unforeseeable harm.

5         2. As used in this Protective Order, the terms "Party" or "Parties" shall include the  
6 Plaintiff and the Defendant, and each of their employees, agents, representatives, and attorneys  
7 (including both outside counsel and inside counsel).

8         3. As used in this Protective Order, the term "Person(s)" shall include any "Party" or  
9 non-party to this action, whether an individual, corporation, partnership, company, unincorporated  
10 association, governmental agency, or other business or governmental entity.

11         4. As used in this Protective Order, the term "Confidential Material" or "Confidential  
12 Document" shall refer to any and all documents or other materials produced in response to  
13 Requests for Production of Documents as well as any confidential or proprietary documents, data,  
14 or any information or documents provided in response to other written discovery requests,  
15 interrogatory answers or deposition testimony, that contains: (1) information which any party or  
16 non-party believes in good faith to be a trade secret, proprietary information or confidential  
17 research, development, commercial, or other proprietary business information within the meaning  
18 of Fed. R. Civ. P. 26(c)(1)(G); and (2) documents and/or testimony that may reveal confidential,  
19 proprietary, personal, or commercially sensitive information. Such Confidential Material may be  
20 contained in any written, printed, recorded, or graphic matter of any kind and shall retain its  
21 confidential designation regardless of the medium on which it is produced, reproduced, or stored.  
22 Confidential Material includes all documents or information derived from Confidential Material,  
23 including excerpts, copies or summaries of Confidential Material. Any party or non-party may  
24 designate as Confidential Material (including interrogatory answers) any information or document  
25 or other items with a watermark or legend as indicated in paragraphs 8 or 9 below.

26         5. As used in this Protective Order, the term "Discovering Party" shall mean the Party  
27 who has requested the production of documents, information, testimony or other material  
28 designated as Confidential Material under this Protective Order.

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2 6. As used in this Protective Order, the term “Producing Party” shall mean the Party  
3 who has produced documents designated as Confidential Material under this Protective Order.

4 7. It is the purpose of this Protective Order that Defendant will be provided reasonable  
5 assurance that:

6 (a) The documents produced by the Defendant, whether jointly or individually,  
7 will be used solely and exclusively for the purpose of this specific litigation only and for no other  
8 purpose;

9 (b) The documents produce by the Defendant, whether jointly or individually,  
10 will not be used for commercial purposes, including but without limitation, any business,  
11 competitive or educational purpose;

12 (c) The documents produced by the Defendant, whether jointly or individually,  
13 will not be used for any non-litigation purposes; and

14 (d) Such information shall not be disclosed or disseminated to any person,  
15 organization, business, governmental body or administrative agency unless ordered by the Court.

16 Defendant is relying on this Protective Order, and would not have produced the documents  
17 and information otherwise. Defendant’s production under this Protective Order does not admit or  
18 concede the documents or information are relevant or admissible in this litigation.

19 8. Any party or non-party may designate information contained in a document as  
20 Confidential Material, the designating party shall mark each page of the document with the word  
21 “CONFIDENTIAL” and identify such Confidential Material at the time of production.  
22 Confidential Information may be used in the course of depositions in accordance with this  
23 Protective Order. Where a document or response consists of more than one page, the first page  
24 and each page on which Confidential Material appears shall be so designated.

25 9. Defendant may designate any information, document, testimony or other tangible  
26 thing disclosed during a deposition, in response to written discovery, or otherwise in connection  
27 with this litigation as Confidential Material by so indicating in said response, or on the record at  
28 the deposition and requesting the preparation of a separate transcript of such material. Documents

1 may be designated Confidential Material by affixing the legend "CONFIDENTIAL" to each item  
2 or document page. Deposition testimony and/or exhibits may be designated Confidential Material  
3 either by: (a) stating on the record of the deposition that such deposition, or portion thereof, or  
4 exhibit is confidential; or (b) stating in writing served upon counsel of record within thirty (30)  
5 days after receipt of the deposition transcript and exhibits that such deposition, or portion thereof,  
6 or exhibit is confidential. Transcripts and exhibits from any deposition or hearing shall be  
7 temporarily designated as Confidential Material and be treated as subject to the terms of this  
8 Protective Order, until counsel for Defendant notifies all other parties of the pages of the  
9 transcripts or exhibits which shall remain designated as Confidential Material. If no designation is  
10 made within thirty (30) days, the entire transcript and all exhibits will be deemed not confidential.  
11 Any other party may object to such proposal, in writing or on the record. Upon such objection, the  
12 parties shall follow the procedures described in paragraph 10 below. After any designation made  
13 according to the procedure set forth in this paragraph, the designated documents or information  
14 shall be treated according to the Confidential designation until the matter is resolved according to  
15 the procedures described in paragraph 10 below, and counsel for all parties shall be responsible for  
16 making all previously unmarked copies of the designated material in their possession or control  
17 with the specified designation.

18 10. Except with the prior written consent of other parties, or upon prior order of this  
19 Court obtained upon notice to opposing counsel, Confidential Material may only be copied,  
20 disclosed, discussed, or inspected, in whole or in part, only for the purposes of this litigation only  
21 by the following persons and shall not be disclosed to any person other than:

22 (a) counsel of record for the respective parties to this litigation, in-house  
23 counsel and co-counsel retained for this litigation;

24 (b) personnel who are directly employed or contracted by the attorneys in (a)  
25 above or their respective firms and who are assisting the attorneys working on this action;

26 (c) any officer or employee of a party, to the extent deemed necessary by  
27 Counsel for the prosecution or defense of this litigation;

28 (d) consultants or expert witnesses retained for the prosecution or defense of

1 this litigation, provided that each such person is provided with a copy of this Protective Order and  
2 shall agree in writing to be bound thereto by executing a copy of the Acknowledgement annexed  
3 to this Order as Exhibit “A” (which shall be retained by counsel to the party so disclosing the  
4 Confidential Material and made available for inspection by opposing counsel during the pendency  
5 or after the termination of the action only upon good cause shown and upon order of the Court)  
6 before being shown or given any Confidential Material;

7 (e) any authors or recipients of the Confidential Material;

8 (f) any person who is expected to testify as a witness either at a deposition or  
9 court proceeding in this action for the purpose of assisting in his/her preparation therefore, and any  
10 other person to whom the dissemination of the document is deemed necessary by any party in  
11 preparation for trial (other than persons described in paragraph 4(e)). A witness shall be provided  
12 with a copy of this Protective Order to review and shall sign the Acknowledgement annexed  
13 hereto before being shown or given access to Confidential Material. Confidential Material may be  
14 disclosed to a witness who will not sign the Acknowledgement only in a deposition at which the  
15 party who designated the Confidential Material is represented or has been given notice that  
16 Confidential Material shall be designated “Confidential” pursuant to paragraph 2 above.  
17 Witnesses shown Confidential Material shall not be allowed to retain copies in any form;

18 (g) Court personnel, including court reporters engaged in such proceedings as  
19 are necessarily incidental to the preparation or trial of this lawsuit;

20 (h) any mediator or arbitrator selected with the consent of all parties or by the  
21 Court.

22 11. Any persons receiving Confidential Material shall not reveal or discuss such  
23 information to or with any person who is not entitled to receive such information, except as set  
24 forth herein.

25 12. Any designating party may elect to designate certain Confidential Material of a  
26 highly confidential and/or proprietary nature as “HIGHLY CONFIDENTIAL-ATTORNEYS  
27 EYES ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in  
28 paragraphs 8 and 9 above. Attorney’s Eyes Only Material, and the information contained therein,

1 may be disclosed to only those persons described in subparagraphs 10(a), (d), and (g)-(h) above,  
2 and shall not be disclosed to a party, or to an officer, director or employee of a party, unless  
3 otherwise agreed or ordered. If disclosure of Attorney's Eyes Only Material is made pursuant to  
4 this paragraph, all other provisions in this order with respect to confidentiality shall also apply. If  
5 a party objects to materials designated "Highly Confidential-Attorneys & Experts Only," the  
6 objecting party may follow the procedure set forth in paragraph 16 herein to remove such  
7 designation.

8         13. Prior to filing any document identified as Confidential Material, the party that  
9 intends to file with the Court pleadings or other papers containing or referring to Confidential  
10 Material shall notify the designating party at least ten (10) days prior to filing the designated  
11 document. The designating party will then make a good faith determination whether the  
12 document(s) meet the standard for sealing as set forth in the Ninth Circuit's directives in  
13 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). To the extent the  
14 designating party does not believe the relevant standard for sealing can be met, it shall indicate  
15 that the document may be filed publicly no later than seven (7) days after receiving notice of the  
16 intended filing. To the extent the designating party believes the relevant standard for sealing can  
17 be met, it shall provide a declaration supporting that assertion no later than seven (7) days after  
18 receiving notice of the intended filing. The filing party shall take all reasonable steps to file  
19 documents as "Confidential" under seal and attach the declaration of the designating party to its  
20 motion to seal the designated material. If the designating party fails to provide such a declaration in  
21 support of the motion to seal, the filing party shall file a motion to seal so indicating and the Court  
22 may order the document filed in the public record.

23         In the event of an emergency motion, the above procedures shall not apply. Instead, the  
24 movant shall file a motion to seal and the designating party shall file a declaration in support of  
25 that motion to seal within three (3) days of its filing. If the designating party fails to timely file  
26 such a declaration, the Court may order the document filed in the public record.

27         14. Any party filing Confidential Material or motions to seal shall comply with this  
28 Protective Order and LR 10-5.

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2 15. A party may designate as Confidential Material documents or discovery materials  
3 produced by a non-party by providing written notice to all parties of the relevant document  
4 numbers or other identification within thirty (30) days after receiving such documents or discovery  
5 materials. Any party or non-party may voluntarily disclose to others without restriction any  
6 information designated by that party or non-party as Confidential Material, although a document  
7 may lose its protected status if it is made public.

8 16. If any Party disagrees with the designation of materials marked “Confidential” or  
9 “Highly Confidential-Attorneys Eyes Only”, the objecting party shall within five (5) days of  
10 receipt of the materials, provide written notice of the disagreement to the Defendant, requesting a  
11 meeting to confer with counsel for Defendant to resolve the dispute over the designation. If the  
12 dispute over the designation is not resolved informally between the parties, Defendant will file a  
13 motion with the Court to resolve the dispute regarding the “Confidential” or “Highly Confidential-  
14 Attorneys Eyes Only” designation. Defendant will have 30 days from the date in which the parties  
15 meet and confer regarding the dispute over the designation, in which to file a motion with the  
16 court regarding the designation. In any event, unless and until a Court ruling is obtained changing  
17 a designation, or the designating party agrees otherwise in writing, the material involved shall be  
18 treated according to the existing Confidential Material designation.

19 17. Notwithstanding any challenge to the designation of material as Confidential  
20 Material, all documents shall be treated as Confidential and shall be subject to the provisions  
21 hereof unless and until one of the following occurs:

22 (a) the party or non-party claims that the material is Confidential Material  
23 withdraws such designation in writing; or

24 (b) the party or non-party who claims that the material is Confidential Material  
25 fails to apply to the Court for an order designating the material confidential within the time period  
26 specified in paragraph 10 after receipt of a written challenge to such designation; or

27 (c) the Court rules the material is not confidential.

28 18. This Protective Order survives the end of the above-styled litigation. All

1 provisions of this Protective Order restricting the communication or use of Confidential Material  
2 shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered.  
3 Upon final settlement or conclusion of this action, a party in the possession of Confidential  
4 Material, other than that which is contained in pleadings, correspondence, and deposition  
5 transcripts (with the exception of exhibits therein), shall either:

6 (a) return such documents no later than thirty (30) days after the final  
7 settlement or termination of this action to counsel for the party or non-party who provided such  
8 information, or

9 (b) destroy such documents within the time period upon consent of the  
10 producing party and certify in writing within thirty (30) days that the documents have been  
11 destroyed.

12 The party in possession of Confidential Material shall return or destroy all Confidential  
13 Material as specified above, including all copies, notes, tapes, papers and any other medium  
14 containing, summarizing, excerpting, or otherwise embodying any Confidential Material. The  
15 party shall be entitled to destroy, rather than return (a) any Confidential Material stored in or by  
16 data processing equipment, and (b) work-product memoranda embodying Confidential Material,  
17 subject to privilege under State Bar rules, and confirm in writing to the producing party its  
18 compliance with this section.

19 19. The Confidential Material shall not be published or reproduced in any manner on  
20 the internet, blogs, bulletin boards, email, newspapers, magazines, bulletins, or other media  
21 available publicly or privately. Likewise, persons may not verbally share the Confidential  
22 Material to any persons or entities not listed in subsections 10(a)-(h).

23 20. The parties agree to limit dissemination of any Confidential Material as set forth in  
24 this Protective Order and are materially relying on the representations and covenants contained  
25 herein.

26 21. In the event that Confidential Material is inadvertently produced without  
27 designating such documents or information as “Confidential” or “Highly Confidential-Attorneys  
28 Eyes Only” within the time periods established in this Protective Order, any party or nonparty

1 shall properly designate such documents or information as “Confidential” or “Highly  
2 Confidential-Attorneys Eyes Only,” and the parties shall be bound by such designations pursuant  
3 to the terms of this Protective Order, but shall not be deemed to be in breach of this Protective  
4 Order by reason of any use or disclosure of such Confidential Material that occurred prior to  
5 notification of the correct designation. Inadvertent production of such documents or information  
6 in this case without designation as “Confidential” or “Highly Confidential–Attorneys Eyes Only”  
7 shall not be deemed a waiver, in whole or in part, of any party’s claim to confidentiality of such  
8 documents or information, either as to the specific information disclosed or as to any other  
9 information relating to the subject matter of the information disclosed.

10         22. Confidential Material designated by Defendant shall be used only for the purposes  
11 of prosecuting or defending this action. Under no circumstances shall information or materials  
12 covered by this Protective Order be disclosed to or discussed with anyone other than the  
13 individuals designated in paragraph 10.

14         23. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the use  
15 of documents at trial.

16         24. Nothing herein shall be deemed to waive any applicable privilege or work-product  
17 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material  
18 protected by privilege or work product protection.

19         25. If any party receives a subpoena from a nonparty to this Protective Order seeking  
20 production or other disclosure of Confidential Material, it shall refuse to produce any Confidential  
21 Material under the authority of this Protective Order and shall immediately give written notice to  
22 counsel for the designating party, identifying the Confidential Material sought and enclosing a  
23 copy of the subpoena.

24         26. Any witness or other person, firm or entity from which discovery is sought may be  
25 informed of and may obtain the protection of this Order by written advice to the parties; respective  
26 counsel or by oral advice at the time of any deposition or similar proceeding.

27         27. The parties stipulate that this Court shall retain jurisdiction over them and any  
28 person to whom Confidential Material is disclosed to the extent necessary to enforce the terms of



1 this Protective Order. Any party, including attorneys of record, and outside consultants and  
2 experts retained in this action, who violates this Order, including but not limited to unauthorized  
3 disclosure of Confidential Material or Confidential Documents, is subject to sanctions, including  
4 but not limited to, dismissal of claims or defenses, civil contempt, damages, assessment of  
5 reasonable expenses, including attorneys' fees incurred by the person whose Confidential Material  
6 was disclosed in violation of this Order, and/or any other sanction deemed appropriate by the  
7 Court. Disclosure of confidential material in violation of this order will also entitle a party to  
8 recover all damages proximately flowing from the violation, including attorneys' fees expended in  
9 the enforcement of this order. Upon an alleged violation of this Protective Order, the Court on its  
10 own motion or on the motion of any party may grant relief as it deems appropriate in law or  
11 equity.

12         28.     Should any provision of this Stipulation be struck or held invalid by a court of  
13 competent jurisdiction, all remaining provisions shall remain in full force and effect.

14         29.     The documents and information at issue do not involve the public health and safety,  
15 a public entity, or issues important to the general public.

16         30.     The terms of this Protective Order are subject to modification, extension or  
17 limitation as may be hereinafter agreed to by the parties in writing or as ordered by the Court.  
18 Any modifications, extensions or limitations agreed to in writing by the parties shall be deemed  
19 effective pending approval by the Court.

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31. No modifications of this Protective Order or waiver of its provisions will be binding upon the parties, unless made in writing by the parties.

Dated this \_\_\_\_ day of August, 2020

Dated this \_\_\_\_ day of August, 2020

Attorneys for Plaintiff

Attorneys for Defendant:

Jordan P. Schnitzer  
State Bar No. 10744  
The Schnitzer Law Firm  
9205 W. Russell Rd., Suite 240  
Las Vegas, Nevada 89148

Robert W. Freeman  
State Bar No. 3062  
Priscilla L. O'Briant  
State Bar No. 10171  
Lewis Brisbois Bisgaard & Smith, LLP  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118

## ORDER

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

DISCOVERY COMMISSIONER  
DISTRICT COURT JUDGE

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**EXHIBIT A**

**ACKNOWLEDGMENT OF RECEIPT AND AGREEMENT TO  
COMPLY WITH STIPULATED CONFIDENTIALITY AGREEMENT AND  
PROTECTIVE ORDER**

I, \_\_\_\_\_, have reviewed carefully the Stipulated Confidentiality Agreement And Protective Order (“Protective Order”) concerning the treatment of confidential or proprietary information, or other commercially sensitive or personally sensitive information of a non-public nature (“Confidential Material”) executed by the parties in the above-captioned case, and its significance has been explained to me by counsel. I agree to be bound by the terms of the Protective Order, and to treat as confidential and not to disclose Confidential Material to any person who is not authorized to receive that information under the Protected Order. I hereby consent to the jurisdiction of that Court for the purposes of enforcing that Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER

1 ROBERT W. FREEMAN  
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*Attorneys for Defendant United Services*  
7 *Automobile Association*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

11 JOHN ROBERTS, an individual,  
12 Plaintiff,  
13 vs.

CASE NO. A-19-790757-C  
Dept. No.: IV

**DEFENDANT UNITED SERVICES  
AUTOMOBILE ASSOCIATION'S  
RESPONSES TO PLAINTIFF'S FIRST  
SET OF REQUESTS FOR ADMISSION**

14 UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
15 and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
16 DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
17 Defendants.  
18

19 COMES NOW Defendant, UNITED SERVICES AUTOMOBILE ASSOCIATION  
20 (hereinafter "Defendant"), by and through its counsel of record, the law firm LEWIS BRISBOIS  
21 BISGAARD & SMITH, LLP, and hereby Responds to Plaintiff's First Set of Requests for  
22 Admission to Defendant United Services Automobile Association as follows:

23 **PRELIMINARY OBJECTIONS**

24 The following general objections are incorporated into each response below as if set forth  
25 therein in full:

26 1. Defendant objects to the requests to the extent that they seek information which  
27 contains or relates to confidential communications between attorney and client on the ground of  
28

1 attorney-client privilege. To the extent the requests are so vague and ambiguous that they can be  
2 interpreted to call for privileged or protected information, Defendant interprets these requests so as  
3 not to call for any privileged or protected information. In the event any privileged information is  
4 inadvertently provided, that shall not be construed as a waiver of the applicable privilege(s).

5 2. Defendant objects to the requests to the extent they seek information which  
6 contains or relates to research, investigation, or analysis under the supervision and direction of its  
7 attorneys, or was made in anticipation of or preparation for litigation, on the grounds that such  
8 information is protected by the work product doctrine.

9 3. Defendant objects to these requests to the extent that they seek information which  
10 is neither relevant nor likely to lead to the discovery of admissible evidence.

11 4. Defendant objects to these requests to the extent they are premature, unduly  
12 burdensome, ambiguous, vague, overly broad in scope and time, oppressive or harassing at this  
13 stage of the litigation. Discovery may supply additional facts which may lead to substantial  
14 additions to, changes in, and variations from the responses set forth herein.

15 5. Defendant objects to these requests to the extent they call for any confidential  
16 and/or proprietary information.

17 6. Defendant does not concede the relevance or materiality of any information  
18 requested or provided or of the subject matter to which such information refers. Defendant's  
19 responses are provided subject to and without waiving any objections as to the competence,  
20 relevance, materiality or admissibility as evidence or for any other purpose, of any of the  
21 information referred to in these responses, or of the subject matter covered by these responses, in  
22 any subsequent proceeding including the trial of this action or of any other action.

23 Subject to the general objections made above, Defendant responds to each Request as  
24 follows:

25 **REQUEST FOR ADMISSION NO. 1:**

26 Admit that you issued a policy of insurance identified by policy no. 00562 55 57U 7101 3  
27 to JOHN ROBERTS.

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**RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Admit.

**REQUEST FOR ADMISSION NO. 2:**

Admit that the above identified policy was in full force and effect on May 9, 2014.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Admit.

**REQUEST FOR ADMISSION NO. 3:**

Admit that JOHN ROBERTS timely paid the premiums for the above identified policy.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Defendant admits that premiums for USAA policy number 00562 55 57U 7101 3 had been paid and the policy was in force and valid on the day of the subject accident.

**REQUEST FOR ADMISSION NO. 4:**

Admit that \$46,000.00 was an undisputed amount owed to Plaintiff on May 9, 2014.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Deny.

**REQUEST FOR ADMISSION NO. 5:**

Admit that you did not complete an evaluation of Plaintiff's claim within thirty (30) days of receiving the subject claim.

**RESPONSE TO REQUEST NO. 5:**

Objection. This Request is vague, argumentative, lacks context and mischaracterizes facts. Subject to and without waiving the objection, Defendant responds as follows: Defendant admits that it received notice of Plaintiff's claim arising from the subject accident on May 10, 2014. Defendant further admits it conducted a reasonable and thorough investigation of the claim and that due in part to Plaintiff's counsel's refusal to timely provide information; including medical records for Plaintiff's multiple prior motor vehicle accidents, evaluation of Plaintiff's claim continued up until the time Defendant was placed on notice that Plaintiff had filed suit against Defendant; and continues as the parties litigate this matter.

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**REQUEST FOR ADMISSION NO. 6.**

Admit that you have a duty to fully, fairly and promptly evaluate claims.

**RESPONSE TO REQUEST NO. 6:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCF Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 7:**

Admit that you have a duty to pay all claim amounts not in dispute.

**RESPONSE TO REQUEST NO 7:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCF Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 8:**

Admit an insurance company should pay a claim where its liability under the policy is reasonably clear.

**RESPONSE TO REQUEST NO. 8:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCF Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 9:**

Admit an insurance company should reasonably assist the insured in presenting the claim.

**RESPONSE TO REQUEST NO. 9:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 10:**

Admit an insurance company should pay a first party claim where its liability under the policy is reasonably clear.

**RESPONSE TO ADMISSION NO. 10:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 11:**

Admit an insurance company should pay a claim where its liability under the policy is reasonably clear.

**RESPONSE TO ADMISSION NO. 11:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in

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1 evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this  
2 Request is denied.

3 **REQUEST FOR ADMISSION NO. 12:**

4 Admit an insurance company should conduct a prompt, fair and thorough investigation.

5 **RESPONSE TO ADMISSION NO. 12:**

6 Objection. This Request improperly seeks an admission as to a pure conclusion of law.  
7 NRCF Rule 36 does not authorize a request that requires a pure legal conclusion without  
8 application to the facts of the case. Thus Defendant is not required to admit or deny this Request.  
9 Subject to and without waiving the objection, Defendant responds as follows: This Request is  
10 vague, argumentative, lacks context and mischaracterizes facts. To the extent this Request  
11 contains any purported factual inference that Defendant actions in evaluating or adjusting  
12 Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

13 **REQUEST FOR ADMISSION NO. 13:**

14 Admit an insurance company must search for and consider evidence that supports payment  
15 of benefits in a first party claim.

16 **RESPONSE TO ADMISSION NO. 13:**

17 Objection. This Request improperly seeks an admission as to a pure conclusion of law.  
18 NRCF Rule 36 does not authorize a request that requires a pure legal conclusion without  
19 application to the facts of the case. Thus Defendant is not required to admit or deny this Request.  
20 To the extent this Request contains any purported factual inference that Defendant actions in  
21 evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this  
22 Request is denied.

23 **REQUEST FOR ADMISSION NO. 14:**

24 Admit an insurance company may not withhold insurance benefits in a first party claim  
25 based upon speculation.

26 **RESPONSE TO ADMISSION NO. 14:**

27 Objection. This Request improperly seeks an admission as to a pure conclusion of law.  
28 NRCF Rule 36 does not authorize a request that requires a pure legal conclusion without

1 application to the facts of the case. Thus Defendant is not required to admit or deny this Request.  
2 Subject to and without waiving the objection, Defendant responds as follows: This Request is  
3 vague, argumentative, lacks context and mischaracterizes facts. To the extent this Request  
4 contains any purported factual inference that Defendant actions in evaluating or adjusting  
5 Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

6 **REQUEST FOR ADMISSION NO. 15:**

7 Admit interest accrues pursuant to NRS 99.040 beginning 30 days after the claim should  
8 have been paid. (See NAC 686A.665).

9 **RESPONSE TO ADMISSION NO. 15:**

10 Objection. This Request improperly seeks an admission as to a pure conclusion of law.  
11 NRCF Rule 36 does not authorize a request that requires a pure legal conclusion without  
12 application to the facts of the case. Thus Defendant is not required to admit or deny this Request.  
13 Subject to and without waiving the objection, Defendant responds as follows: This Request is  
14 vague, argumentative, lacks context and mischaracterizes facts. To the extent this Request  
15 contains any purported factual inference that Defendant actions in evaluating or adjusting  
16 Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

17 **REQUEST FOR ADMISSION NO. 16:**

18 Admit Plaintiff has cooperated and complied with all terms of the policy.

19 **RESPONSE TO ADMISSION NO. 16:**

20 Objection. This Request is vague, argumentative, lacks context and mischaracterizes facts.  
21 Finally, this request seeks admissions central to the lawsuit and/or legal concessions which are  
22 improper. See e.g. *Wilson v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 15640 (D. Nev. Feb.  
23 8, 2016). Subject to and without waiving the objection, Defendant responds as follows: To the  
24 extent this Request contains any purported factual inference that Plaintiff cooperated and complied  
25 with all terms of the policy, this Request is denied, as Plaintiff repeatedly failed to provide  
26 requested information including medical records necessary to fully evaluate Plaintiff's claim.

27 ///

28 ///

1 **REQUEST FOR ADMISSION NO. 17:**

2 Admit you have not denied coverage because of non-compliance or non-cooperation with  
3 the policy.

4 **RESPONSE TO ADMISSION NO. 17:**

5 Objection. This Request is vague, argumentative, lacks context and mischaracterizes facts.  
6 Subject to and without waiving the objection, Defendant responds as follows: Defendant has not  
7 “denied coverage” to Plaintiff. To the extent this Request contains any purported factual inference  
8 that Plaintiff cooperated and complied with all terms of the policy, this Request is denied, as  
9 Plaintiff repeatedly failed to provide requested information including medical records necessary to  
10 fully evaluate Plaintiff’s claim.

11 DATED this 7<sup>th</sup> day of August, 2020.

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13  
14 By /s/ Priscilla L. O’Briant

15 ROBERT W. FREEMAN

Nevada Bar No. 3062

PRISCILLA L. O’BRIANT

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Attorneys for Defendant United Services

Automobile Association

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 7<sup>th</sup> day of August, 2020, I did cause a true and correct copy of **DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION** in Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

Jordan P. Schnitzer, Esq.  
THE SCHNITZER LAW FIRM  
9205 W. Russell Road, Ste. 240  
Las Vegas, NV 89148  
Tel: (702) 960-4050  
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*Attorney for Plaintiff*

[Jordan@theschnitzerlawfirm.com](mailto:Jordan@theschnitzerlawfirm.com)

By /s/ Anne Cordell

Anne Cordell, an Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
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*Attorneys for Defendant United Services*  
7 *Automobile Association*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

11 JOHN ROBERTS, an individual,  
12 Plaintiff,  
13 vs.

CASE NO. A-19-790757-C  
Dept. No.: IV

**DEFENDANT UNITED SERVICES  
AUTOMOBILE ASSOCIATION'S  
SUPPLEMENTAL ANSWERS TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES**

14 UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
15 and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
16 DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
17 Defendants.  
18

19 COMES NOW Defendant, UNITED SERVICES AUTOMOBILE ASSOCIATION  
20 (hereinafter "Defendant"), by and through its counsel of record, the law firm LEWIS BRISBOIS  
21 BISGAARD & SMITH, LLP, and hereby Answers Plaintiff's First Set of Interrogatories to  
22 Defendant United Services Automobile Association as follows:

23 **GENERAL INFORMATION**

24 These answers are made solely for the purpose of, and in relation to, this action. Each  
25 answer is given subject to all appropriate objections (including, but not limited to, objections  
26 concerning competency, relevancy, materiality, propriety, and admissibility) which would require  
27 the exclusion herein if made by a witness present and testifying in court. All such objections and  
28 grounds, therefore, are reserved and may be interposed at time of trial.

1 Except for the facts expressly admitted herein, no admission of any nature whatsoever is to  
2 be implied or inferred. The fact that an interrogatory herein has been answered should not be  
3 taken as an admission, or a confession of the existence of, any facts set forth or assumed by such  
4 interrogatory or that such an answer constitutes evidence of any fact thus far set forth or assumed.  
5 All answers must be constructed as given on the basis of present recollection.

6 The party on whose behalf these answers are given has not yet completed its investigation  
7 of the facts relating to this case, has not fully completed its discovery in this action, and has not  
8 yet completed its preparation for trial. All of the answers contained herein and documents  
9 identified are based upon such information and documents that are presently available or  
10 specifically known to the responding party. It is anticipated that further discovery, independent  
11 investigation, legal research, and analysis will supply additional facts and meaning to the known  
12 facts, as well as establish entirely new factual conclusions and legal contentions of and documents  
13 supporting said contentions. The following answers are given, without prejudice, to the answering  
14 party's right to produce evidence of any subsequently discovered facts or documents which  
15 answering party may later recall. This answering party reserves the right to change any and all  
16 answers as additional facts are ascertained, analysis is made, and documents are identified. The  
17 answers contained herein and the documents identified are made in a good faith effort to supply as  
18 much factual information and documentation identification as is presently known, but should in no  
19 way be to the prejudice of the answering party in relation to further discovery, research, or  
20 analysis.

21 **INTERROGATORY NO. 1:**

22 State the explanation of the basis in the insurance policy, with respect to the facts of  
23 Plaintiff's claim and the applicable law, for the offer of \$46,000 or denial of claim made on the  
24 subject claim.

25 **ANSWER TO INTERROGATORY NO. 1:**

26 Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
27 inappropriately for Defendant to supply a narrative account for the "basis" of Defendant's  
28 decisions with respect to the subject claim. Defendant also objects that this Interrogatory is overly

1 unduly burdensome and beyond the scope of the duties required of Defendant in responding to  
2 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
3 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
4 previously produced in this case. As such, because the answer to this Interrogatory may be  
5 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
6 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
7 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
8 those documents.

9       Subject to and without waiving these objections, Defendant responds as follows: USAA's  
10 offer to settle the claim for \$46,000 considered Plaintiff's complaints, diagnoses, treatment, and  
11 prognosis for future treatment. USAA also considered Plaintiff's prior injuries and pre-existing  
12 conditions, including multiple surgeries before the loss, a failed knee replacement, and the fact  
13 that prior to the subject accident, Plaintiff was planning a cervical fusion. After review of all  
14 records, it concluded that this loss aggravated pre-existing conditions but did not appear to have  
15 caused any new pathology or surgical recommendations.

16       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
17 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
18 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
19 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
20 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
21 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
22 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
23 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
24 duplicate payments under the UM coverage for the same elements of loss which were paid under  
25 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
26 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
27 this response as appropriate.

28 ///

1 **INTERROGATORY NO. 2:**

2 State the name, position, employer, last known address, social security number and date of  
3 birth, of every person known by you or any third-party administrator who either reviewed,  
4 investigated, or made any decision to accept, deny or pay any portion of the subject claim.

5 **ANSWER TO INTERROGATORY NO. 2:**

6 Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
7 that its scope is not narrowly tailored to the claims and defenses in this matter and is not  
8 proportional to the needs of the case. Defendant objects to the extent that the interrogatory calls  
9 for information protected by the attorney-client and/or work product privileges and also calls for  
10 sensitive, personal information. Defendant further objects that the term "...reviewed, investigated,  
11 or made any decision"," is vague and overbroad. Subject to and without waiving these objections,  
12 Defendant responds as follows: The persons who reviewed and evaluated Plaintiff's claim and  
13 participated in recommending the actions taken by Defendant with respect to Plaintiff's claim are  
14 Steven Lucent, Auto Examiner, and Deborah Springer, Manager, Claims Operations. both are  
15 employed by Defendant. . Discovery continues and Defendant reserves the right to supplement  
16 this response as appropriate.

17 **INTERROGATORY NO. 3:**

18 Please state the date that you began reviewing the subject claim and the date that you came  
19 to determination of its merits. This included a detailed explanation on how you believe you  
20 complied with NRS 686A.670.

21 **ANSWER TO INTERROGATORY NO. 3:**

22 Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
23 inappropriately for Defendant to supply a narrative account for its investigation and evaluation of  
24 Plaintiff's claim. Defendant further objects that the term "determination on its merits" is vague  
25 and overbroad. Defendant objects to the phrase "a detailed explanation of how you believe you  
26 complied with NRS 686A670" as vague and ambiguous, and not proportional to the needs of the  
27 case. Further, it is an improper attempt to shift Plaintiff's burden in this lawsuit. Further,  
28 Defendant objects that this Interrogatory calls for opinions or mental impressions of the answering



1 party and the extent the information sought would invade the attorney-client privilege and/or the  
2 work product privilege. Defendant also objects that this Interrogatory is overly broad and unduly  
3 burdensome and beyond the scope of the duties required of Defendant in responding to  
4 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
5 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
6 previously produced in this case. As such, because the answer to this Interrogatory may be  
7 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
8 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
9 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
10 those documents.

11 Without waiving these objections, Defendant responds as follows: Defendant first  
12 received notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
13 examined medical records and other documents related to the subject accident. He communicated  
14 with Plaintiff's attorney regarding the claim. He reviewed Plaintiff's demand for benefits under  
15 the policy, investigated Plaintiff's damages to determine whether the claimed injuries and  
16 associated medical treatment and expenses incurred were related to the subject accident and  
17 requested information to assist Defendant in making this determination. He then made offers  
18 based on the information reasonably known to Defendant at that time. Defendant was unable to  
19 come to a final "determination on the merits" due to Plaintiff's refusal to provide requested  
20 documents. Defendant continued to diligently review the claim and attempted to obtain necessary  
21 information to facilitate its review of Plaintiff's claim up until the date Defendant was notified of  
22 Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will continue its investigation  
23 and evaluation during discovery in this litigation. Discovery continues, as such, Defendant  
24 reserves the right to supplement this response as appropriate.

25 **INTERROGATORY NO. 4:**

26 Please list all entities with which you had a contract to administer claims for Plaintiff's  
27 policies at issue and the dates those contracts were effective.

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1 **ANSWER TO INTERROGATORY NO. 4:**

2 Defendant objects to this Interrogatory in that it assumes facts, is vague and ambiguous as  
3 drafted, and that the information sought is neither relevant to the claims or defenses of any party,  
4 nor proportional to the needs of the case. Subject to and without waiving these objections,  
5 Defendant has no contract “to administer claims for Plaintiff’s policies at issue.”

6 **INTERROGATORY NO. 5:**

7 Please state all facts that support your contention that the subject claim was valued at  
8 \$46,000 specifically explaining in detail how you arrived at your valuation of the subject claim.

9 **ANSWER TO INTERROGATORY NO. 5:**

10 Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
11 inappropriately for Defendant to supply a narrative account for the “basis” of Defendant’s  
12 decisions with respect to the subject claim. Defendant also objects that this Interrogatory is overly  
13 unduly burdensome and beyond the scope of the duties required of Defendant in responding to  
14 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
15 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,  
16 previously produced in this case. As such, because the answer to this Interrogatory may be  
17 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims  
18 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
19 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
20 those documents.

21 Subject to and without waiving these objections, Defendant responds as follows: USAA  
22 does not “value” Plaintiff’s claim at \$46,000, but based on the information available to USAA,  
23 USAA made an offer of \$46,000 to settle Plaintiff’s claim. USAA’s offer to settle the claim for  
24 \$46,000 considered Plaintiff’s complaints, diagnoses, treatment, and prognosis for future  
25 treatment. USAA also considered Plaintiff’s prior injuries and pre-existing conditions, including  
26 multiple surgeries before the loss, a failed knee replacement, and the fact that prior to the subject  
27 accident, Plaintiff was planning a cervical fusion. After review of all records, it concluded that

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1 this loss aggravated pre-existing conditions but did not appear to have caused any new pathology  
2 or surgical recommendations.

3       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
4 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
5 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
6 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
7 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
8 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
9 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
10 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
11 duplicate payments under the UM coverage for the same elements of loss which were paid under  
12 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
13 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
14 this response as appropriate.

15 **INTERROGATORY NO. 6:**

16       Please explain in detail every step you took to gather evidence in support of subject claim.  
17 state all facts that support your contention that the subject claim was valued at \$46,000 specifically  
18 explaining in detail how you arrived at your valuation of the subject claim.

19 **ANSWER TO INTERROGATORY NO. 6:**

20       Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
21 inappropriately for Defendant to supply a narrative account for the basis of Defendant's decisions  
22 with respect to the subject claim. Defendant also objects that this Interrogatory is overly unduly  
23 burdensome and beyond the scope of the duties required of Defendant in responding to  
24 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
25 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
26 previously produced in this case. As such, because the answer to this Interrogatory may be  
27 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
28 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the

1 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
2 those documents.

3 Subject to and without waiving these objections, Defendant responds as follows: USAA  
4 does not contend that Plaintiff's claim is valued at \$46,000, but based on the information available  
5 to USAA, USAA made an offer of \$46,000 to settle Plaintiff's claim. This offer was based on the  
6 information available to USAA at the time, and included consideration of Plaintiff's complaints,  
7 diagnoses, treatment, and prognosis for future treatment. USAA also considered Plaintiff's prior  
8 injuries and pre-existing conditions, including multiple surgeries before the loss, a failed knee  
9 replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical fusion.  
10 After review of all records, it concluded that this loss aggravated pre-existing conditions but did  
11 not appear to have caused any new pathology or surgical recommendations. USAA made multiple  
12 requests to Plaintiff for additional information and repeatedly requested a medical authorization to  
13 obtain additional information to complete its evaluation.

14 USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
15 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
16 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
17 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
18 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
19 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
20 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
21 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
22 duplicate payments under the UM coverage for the same elements of loss which were paid under  
23 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
24 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
25 this response as appropriate.

26 **INTERROGATORY NO. 7:**

27 Please state the names of all persons who were contacted to during the investigation of the  
28 subject claim.

1 **ANSWER TO INTERROGATORY NO. 7:**

2       Objection. This interrogatory is overbroad, vague and ambiguous as to the phrase “all  
3 persons who were contacted to” and unduly burdensome in that it is not proportional to the needs  
4 of the case. Defendant also objects that this interrogatory inappropriately requests Defendant to  
5 supply a narrative account for its investigation of Plaintiff’s claim. Defendant further objects to  
6 the extent that the interrogatory calls for information protected by the attorney-client and/or work  
7 product privileges. Defendant also objects that this Interrogatory is overly broad and unduly  
8 burdensome and beyond the scope of the duties required of Defendant in responding to  
9 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
10 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,  
11 previously produced in this case. As such, because the answer to this Interrogatory may be  
12 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims  
13 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
14 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
15 those documents. Subject to and without waiving these objections, Defendant responds as follows:  
16 Defendant contacted Plaintiff’s counsel on numerous occasions to request additional information.

17 **INTERROGATORY NO. 8:**

18       Explain in detail, how you arrived at your valuation of the subject claim.

19 **ANSWER TO INTERROGATORY NO. 8:**

20       Objection. This interrogatory is compound, vague, ambiguous and overbroad, calling  
21 inappropriately for Defendant to supply a narrative account for the basis of Defendant’s decisions  
22 with respect to the subject claim. Defendant also objects that this Interrogatory is overly unduly  
23 burdensome and beyond the scope of the duties required of Defendant in responding to  
24 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
25 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,  
26 previously produced in this case. As such, because the answer to this Interrogatory may be  
27 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims  
28 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the

1 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
2 those documents.

3       Subject to and without waiving these objections, Defendant responds as follows: USAA  
4 contends that the \$46,000 offer to Plaintiff is not its “valuation” of the subject claim, but was an  
5 offer to settle the claim based on the information available to USAA at that time. This offer was  
6 based on the information available to USAA at the time, and included consideration of Plaintiff’s  
7 complaints, diagnoses, treatment, and prognosis for future treatment. USAA also considered  
8 Plaintiff’s prior injuries and pre-existing conditions, including multiple surgeries before the loss, a  
9 failed knee replacement, and the fact that prior to the subject accident, Plaintiff was planning a  
10 cervical fusion. After review of all records, it concluded that this loss aggravated pre-existing  
11 conditions but did not appear to have caused any new pathology or surgical recommendations.  
12 USAA made multiple requests to Plaintiff for additional information and repeatedly requested a  
13 medical authorization to obtain additional information to complete its evaluation.

14       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
15 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
16 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
17 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
18 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
19 on behalf of persons who may be legally responsible or the persons’ BI Coverage limits; in this  
20 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
21 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
22 duplicate payments under the UM coverage for the same elements of loss which were paid under  
23 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
24 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
25 this response as appropriate.

26 **INTERROGATORY NO. 9:**

27       If you are using the “advice of counsel” defense in this action, please explain the factual  
28 basis of the defense.

1 **ANSWER TO INTERROGATORY NO. 9:**

2       Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
3 that its scope is not narrowly tailored to the claims and defenses in this matter and is not  
4 proportional to the needs of the case. Defendant further objects that the terms “advice of counsel  
5 defense” is vague, overbroad and are not reasonably tailored to include only matters relevant to the  
6 issues involved in this lawsuit. Defendant further objects to the extent this request seeks materials  
7 which are confidential, proprietary business information and/or trade secrets and/or matters  
8 protected by attorney-client and/or work product privileges. Subject to and without waiving these  
9 objections, Defendant responds as follows: Defendant is not asserting an advice of counsel  
10 defense at this time. Discovery continues, as such, Defendant reserves the right to supplement this  
11 response as appropriate.

12 **INTERROGATORY NO. 10:**

13       For each policy of automobile liability insurance issued to Plaintiff by you, please state the  
14 following:

- 15       (a) the policy number assigned to each policy;
- 16       (b) the effective dates of each policy;
- 17       (c) the amount of the policy limits provided by each policy;
- 18       (d) the total limits of all policies aggregated; for instance, if Plaintiff has a \$100,000  
19       policy that can be aggregated with another policy which has limits of \$1,000,000, then  
20       Plaintiff would have total policy limits of \$1,100,000.

21 **ANSWER TO INTERROGATORY NO. 10:**

22       Objection. Defendant objects to this interrogatory on the grounds that it is overly broad in  
23 both time and scope. Defendant further objects the Request is unduly burdensome as it seeks  
24 information concerning Plaintiff’s own policy for which Plaintiff has equal access to information.  
25 Defendant further objects that the Request improperly poses a hypothetical which is not  
26 reasonably tailored to include only matters relevant to the issues involved in this lawsuit and for  
27 which Defendant has no obligation to respond. Finally, the information sought is contained within  
28 Plaintiff’s policy, previously produced in this case. As such, because the answer to this

1 Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing,  
2 Plaintiff's policy, Bates USAA000001POL to USAA000042POL, and because the burden to  
3 derive or ascertain the answer is substantially the same for Plaintiff as it is for Defendant,  
4 Defendant refers Plaintiff to those documents.

5 Subject to and without waiving these objections, Defendant responds as follows: USAA  
6 issued was insured Nevada Auto Policy, Policy No. 00562 55 57U 7101 3 to Plaintiff, effective  
7 March 5, 2014 to September 5, 2014. The policy includes UM coverage with limits of \$300,000  
8 each person/\$500,000 each occurrence and medical payments coverage of \$10,000 each person.  
9 USAA issued no other auto policies to Plaintiff. The limits stated above are the only applicable  
10 limits for Plaintiff's claim.

11 **INTERROGATORY NO. 11:**

12 Please identify each expert the Defendant expects to call as an expert witness:

13 (a) Identify the name, address and telephone number for each such expert;

14 (b) State the substance of the facts and opinions on which the expert is to testify;

15 (c) The basis for each such opinion and/or conclusion held by each expert; and

16 (d) Identify any and all documents relied upon by each expert in forming their opinions  
17 and/or conclusions.

18 **ANSWER TO INTERROGATORY NO. 11:**

19 Objection. This interrogatory is premature and seeks information that will be disclosed in  
20 accordance with the timeframes set forth in the operative Scheduling Order concerning expert  
21 designations. Defendant also objects to this interrogatory to the extent it seeks to increase  
22 Defendant's obligations under Nevada Rules of Civil Procedure. Subject to and without waiving  
23 its objection, Defendant responds as follows: Once Defendant designates its expert witnesses, if  
24 any, it will produce its expert(s)' reports containing the information required under NRCP 26.

25 **INTERROGATORY NO. 12:**

26 For each person **within** the past ten years, who contended that you had violated the Unfair  
27 Claims Practices Act, please state the following:

28 (a) The name and last known address of the person;



1 (b) Date the claim or lawsuit was made against you;

2 (c) Court jurisdiction and case number of the litigation;

3 **ANSWER TO INTERROGATORY NO. 12:**

4 Defendant objects to this Interrogatory on the grounds that it is overly broad in both time  
5 and location and burdensome. The existence of other contentions or legal proceedings will neither  
6 prove nor disprove the amount owed on this claim or the existence of any mishandling of this  
7 claim. Any such matter, with no nexus to the harm claimed to have been sustained by the plaintiff  
8 herein with regard to his claim under the subject policy, is irrelevant and the Interrogatory is not  
9 reasonably calculated to lead to the discovery of admissible evidence. See *State Farm Mutual*  
10 *Auto Ins. Co. v. Campbell*, 538 US 4087 (2003). As such, the request is not proportional to the  
11 needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly  
12 burdensome. Additionally, the interrogatory is vague as to the term “who contended”. In  
13 addition, pending litigation matters are not probative of any issue in this case. Additionally,  
14 Defendant objects to this request to the extent it seeks the private and personal information of  
15 other insureds of Defendant or the confidential information of Defendant. Further, Defendant  
16 objects to the extent that this inquiry seeks information protected by the attorney-client privilege  
17 and the work product doctrine. Finally, this Request seeks information which is a matter of public  
18 record and can be independently obtained by Plaintiff without requiring Defendant to compile the  
19 information. No further response will be provided.

20 **INTERROGATORY NO. 13:**

21 For each person within the past ten years, who contended that you had acted in bad faith,  
22 please state the following:

23 (a) The name and last known address of the person;

24 (b) Date the claim or lawsuit was made against you;

25 (c) Court jurisdiction and case number of the litigation;

26 **ANSWER TO INTERROGATORY NO. 13:**

27 Objection. Defendant objects that this request seeks information which is not relevant to  
28 the claims or defenses of any party to this litigation. As such, the request is not proportional to the

1 needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly  
2 burdensome. Additionally, the interrogatory is vague as to the term “who contended”. Defendant  
3 objects to the extent that the interrogatory calls for information protected by the attorney-client  
4 and/or work product privileges. Defendant further objects as the existence of other contentions or  
5 legal proceedings will neither prove nor disprove any of the issues involved in this case, the value  
6 of Plaintiff’s claim or the existence of any mishandling of this claim. Any such matter, with no  
7 nexus to the harm claimed to have been sustained by the plaintiff herein with regard to her claim  
8 under the subject policy, is irrelevant and the interrogatory is not reasonably calculated to lead to  
9 the discovery of admissible evidence. See *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 US  
10 4087 (2003).

11 **INTERROGAOTRY NO. 14:**

12 For each person within the past ten years, who contended that you violated the covenant of  
13 good faith and fair dealing, please state the following:

- 14 (a) The name and last known address of the person;  
15 (b) Date the claim or lawsuit was made against you;  
16 (c) Court jurisdiction and case number of the litigation;

17 **ANSWER TO INTERROGATORY NO. 14:**

18 Objection. Defendant objects that this request seeks information which is not relevant to  
19 the claims or defenses of any party to this litigation. As such, the request is not proportional to the  
20 needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly  
21 burdensome. Additionally, the interrogatory is vague as to the term “who contended”. Defendant  
22 objects to the extent that the interrogatory calls for information protected by the attorney-client  
23 and/or work product privileges. Defendant further objects as the existence of other contentions or  
24 legal proceedings will neither prove nor disprove any of the issues involved in this case, the value  
25 of Plaintiff’s claim or the existence of any mishandling of this claim. Any such matter, with no  
26 nexus to the harm claimed to have been sustained by the plaintiff herein with regard to her claim  
27 under the subject policy, is irrelevant and the interrogatory is not reasonably calculated to lead to

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1 the discovery of admissible evidence. See *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 US  
2 4087 (2003).

3 **INTERROGATORY NO. 15:**

4 State the name, residence and business address, employer and position held of any person  
5 who provided any opinion, information, or facts used in preparing each answer to these  
6 interrogatories.

7 **ANSWER TO INTERROGATORY NO. 15:**

8 Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
9 that it is not narrowly tailored to the claims and defenses in this matter, is not proportional to the  
10 needs of the case and calls for information protected by the attorney-client and/or work product  
11 privileges. Defendant further objects that the term "...provided any opinion, information or facts"  
12 is vague, ambiguous, unduly burdensome, calls for speculation and is not proportional to the needs  
13 of the case and calls for information protected by the attorney-client and/or work product  
14 privileges. Subject to and without waiving these objections, Defendant responds as follows:  
15 These interrogatories are being answered by Steven Lucent with the assistance of counsel, Lewis  
16 Brisbois Bisgaard & Smith. Discovery continues and Defendant reserves the right to supplement  
17 this response as appropriate.

18 **INTERROGATORY NO. 16:**

19 State the total amount at which you have valued the claim before any offsets. Divide your  
20 evaluation into past medical expenses, future medical expenses, past lost wages, future lost wages,  
21 past pain and suffering, and future pain and suffering, State all amounts you applied as an offset  
22 and explain what each offset was for when you determined the amount owed to the insured.

23 **ANSWER TO INTERROGATORY NO. 16:**

24 Objection. This interrogatory is assumes and misstates facts, is compound, overbroad,  
25 duplicative, vague and unduly burdensome in that it is not proportional to the needs of the case.  
26 Defendant responds as follows calling inappropriately for Defendant to supply a narrative account  
27 for the basis of Defendant's decisions with respect to the subject claim. Defendant also objects  
28 that this Interrogatory is overly unduly burdensome and beyond the scope of the duties required of

1 Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
2 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim  
3 are set forth in the claim file, previously produced in this case. As such, because the answer to this  
4 Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing,  
5 Defendant's claims file, Bates USAA000001 to USAA004785, and because the burden to derive or  
6 ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers  
7 Plaintiff to those documents.

8         Subject to and without waiving these objections, Defendant responds as follows: USAA  
9 does not contend that Plaintiff's claim is valued at \$46,000, but based on the information available  
10 to USAA, USAA made an offer of \$46,000 to settle Plaintiff's claim. This offer was based on the  
11 information available to USAA at the time, and included consideration of Plaintiff's complaints,  
12 diagnoses, treatment, and prognosis for future treatment. USAA also considered Plaintiff's prior  
13 injuries and pre-existing conditions, including multiple surgeries before the loss, a failed knee  
14 replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical fusion.  
15 After review of all records, it concluded that this loss aggravated pre-existing conditions but did  
16 not appear to have caused any new pathology or surgical recommendations. USAA made multiple  
17 requests to Plaintiff for additional information and repeatedly requested a medical authorization to  
18 obtain additional information to complete its evaluation.

19         USAA considered past medicals specials of \$32,760 as related to the aggravation of pre-  
20 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
21 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
22 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
23 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
24 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
25 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
26 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
27 duplicate payments under the UM coverage for the same elements of loss which were paid under  
28 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments

1 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
2 this response as appropriate.

3 **INTERROGATORY NO. 17:**

4 Please state in detail each and every reason and basis on why you did not immediately pay  
5 the amount to which you valued the subject claim once that valuation was completed.

6 **ANSWER TO INTERROGATORY NO. 17:**

7 Objection. This interrogatory assumes and misstates facts, is arguments, overbroad, vague  
8 and unduly burdensome in that it is not proportional to the needs of the case. Defendant further  
9 objects to the extent that the interrogatory calls for information protected by the attorney-client  
10 and/or work product privileges. Subject to and without waiving these objections, Defendant  
11 responds as follows: USAA does not contend that Plaintiff's claim is valued at \$46,000, but based  
12 on the information available to USAA, USAA made an offer of \$46,000 to settle Plaintiff's claim.  
13 This offer was based on the information available to USAA at the time, and included  
14 consideration of Plaintiff's complaints, diagnoses, treatment, and prognosis for future treatment.  
15 USAA also considered Plaintiff's prior injuries and pre-existing conditions, including multiple  
16 surgeries before the loss, a failed knee replacement, and the fact that prior to the subject accident,  
17 Plaintiff was planning a cervical fusion. After review of all records, it concluded that this loss  
18 aggravated pre-existing conditions but did not appear to have caused any new pathology or  
19 surgical recommendations. USAA made multiple requests to Plaintiff for additional information  
20 and repeatedly requested a medical authorization to obtain additional information to complete its  
21 evaluation. Without this information, USAA could not finalize an evaluation of Plaintiff's claim.

22 **INTERROGATORY NO. 18:**

23 Identify all manuals, including, but not limited to, training manuals, procedural manuals,  
24 and instruction manuals, used for the evaluation of claims, including any software used by you for  
25 evaluating claims.

26 **ANSWER TO INTERROGATORY NO. 18:**

27 Defendant objects to this request as it is overly broad as to time and scope, vague and/or  
28 ambiguous as to the terms "policies, practices, and procedures." Further, to the extent the

1 Interrogatory seeks information regarding general “procedures or methods,” Defendant objects on  
2 the grounds that the Interrogatory is overly broad in time (not limited by the period of time when  
3 this claim was handled) and geographic area (not limited to Nevada) and because it is not  
4 reasonably tailored to include only matters relevant to the issues involved in this lawsuit, as  
5 Defendant’s procedures are intended to provide guidance but each claim is handled on its own  
6 merits. Defendant further objects on the grounds that it seeks information that is neither relevant  
7 to the claims or defenses of a party nor proportional to the needs of the case. Defendant further  
8 objects in that this request may cover materials which are confidential, proprietary business  
9 information and/or trade secret.

10 Subject to and without waiving any objections, Defendant does not have claims “manuals”  
11 but rather provides online guidance to claims handlers through its “Knowledge Delivery” online  
12 search tool.

13 **INTERROGATORY NO. 19:**

14 If you contend that you did not violate the Unfair Claims Practices Act in the handling of  
15 the subject claim, please state each and every fact that tends to support or negate your assertion  
16 and identify each witness who has knowledge of the those facts by name, employer and last  
17 known address.

18 **ANSWER TO INTERROGATORY NO. 19:**

19 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
20 “each and every fact that tends to support or negate your assertion” and calling inappropriately for  
21 Defendant to supply a narrative account for its investigation and evaluation of Plaintiff’s claim.  
22 Further, Defendant objects that this Interrogatory calls for opinions or mental impressions of the  
23 answering party and the extent the information sought would invade the attorney-client privilege  
24 and/or the work product privilege. Further it is an improper attempt to shift Plaintiff’s burden on  
25 to Defendant. Defendant also objects that this Interrogatory is overly broad and unduly  
26 burdensome and beyond the scope of the duties required of Defendant in responding to  
27 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
28 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,

1 previously produced in this case. As such, because the answer to this Interrogatory may be  
2 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant' claims  
3 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
4 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
5 those documents.

6 Without waiving these objections, Defendant responds as follows: Defendant first  
7 received notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
8 examined medical records and other documents related to the subject accident as they were  
9 presented. He regularly communicated with Plaintiff's attorney regarding the claim. He reviewed  
10 Plaintiff's demand for benefits under the policy, investigated Plaintiff's damages to determine  
11 whether the claimed injuries and associated medical treatment and expenses incurred were related  
12 to the subject accident and requested information to assist Defendant in making this determination.  
13 He then made offers based on the information reasonably known to Defendant at that time.  
14 Defendant was unable to come to a final "determination on the merits" due to Plaintiff's refusal to  
15 provide requested documents. Defendant continued to diligently review the claim and attempted  
16 to obtain necessary information to facilitate its review of Plaintiff's claim up until the date  
17 Defendant was notified of Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will  
18 continue its investigation and evaluation during discovery in this litigation. Discovery continues,  
19 as such, Defendant reserves the right to supplement this response as appropriate.

20 **INTERROGATORY NO. 20:**

21 If you contend that you did not breach the covenant of good faith and fair dealing in the  
22 handling of the subject claim, please state each and every fact that tends to support or negate yours  
23 assertion and identify each witness who has knowledge of those facts by name, employer and last  
24 known address.

25 **ANSWER TO INTERROGATORY NO. 20:**

26 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
27 "each and every fact that tends to support or negate your assertion" and calling inappropriately for  
28 Defendant to supply a narrative account for its investigation and evaluation of Plaintiff's claim.

1 Further, Defendant objects that this Interrogatory calls for opinions or mental impressions of the  
2 answering party and the extent the information sought would invade the attorney-client privilege  
3 and/or the work product privilege. Further, it is an improper attempt to shift Plaintiff's burden on  
4 to Defendant. Defendant also objects that this Interrogatory is overly broad and unduly  
5 burdensome and beyond the scope of the duties required of Defendant in responding to  
6 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
7 The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file,  
8 previously produced in this case. As such, because the answer to this Interrogatory may be  
9 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant's claims  
10 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
11 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
12 those documents.

13 Without waiving these objections, Defendant responds as follows: Defendant first  
14 received notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
15 examined medical records and other documents related to the subject accident as they were  
16 presented. He regularly communicated with Plaintiff's attorney regarding the claim. He reviewed  
17 Plaintiff's demand for benefits under the policy, investigated Plaintiff's damages to determine  
18 whether the claimed injuries and associated medical treatment and expenses incurred were related  
19 to the subject accident and requested information to assist Defendant in making this determination.  
20 He then made offers based on the information reasonably known to Defendant at that time.  
21 Defendant was unable to come to a final "determination on the merits" due to Plaintiff's refusal to  
22 provide requested documents. Defendant continued to diligently review the claim and attempted  
23 to obtain necessary information to facilitate its review of Plaintiff's claim up until the date  
24 Defendant was notified of Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will  
25 continue its investigation and evaluation during discovery in this litigation. Discovery continues,  
26 as such, Defendant reserves the right to supplement this response as appropriate.

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1 **INTERROGATORY NO. 21:**

2 If you contend that you did not breach the insurance contract/policy regarding the subject  
3 claim, please state each and every fact that tends to support or negate your assertion and identify  
4 each witness who has knowledge of those facts by name, employer and last known address.

5 **ANSWER TO INTERROGATORY NO. 21:**

6 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
7 “each and every fact that tends to support or negate your assertion” and calling inappropriately for  
8 Defendant to supply a narrative account for its investigation and evaluation of Plaintiff’s claim.  
9 Further, Defendant objects that this Interrogatory calls for opinions or mental impressions of the  
10 answering party and the extent the information sought would invade the attorney-client privilege  
11 and/or the work product privilege. Further, it is an improper attempt to shift Plaintiff’s burden on  
12 to Defendant. Defendant also objects that this Interrogatory is overly broad and unduly  
13 burdensome and beyond the scope of the duties required of Defendant in responding to  
14 interrogatories in that it purports to require Defendant to compile a summary of its own claim file.  
15 The actions Defendant took with regard to Plaintiff’s UM claim are set forth in the claim file,  
16 previously produced in this case. As such, because the answer to this Interrogatory may be  
17 determined by examining, auditing, compiling, abstracting, or summarizing, Defendant’ claims  
18 file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the  
19 answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to  
20 those documents.

21 Without waiving these objections, Defendant responds as follows: Defendant is required  
22 to pay amounts under the policy which Plaintiff is legally entitled to recover from an uninsured  
23 driver. Therefore, under the policy, Defendant will pay to Plaintiff the value of the claim for  
24 which he has not been otherwise compensated, up to the limits of the policy. Nevada courts  
25 recognize that bodily injury claims are “wholly subjective” and that determination of the amount  
26 of these damages (for which the law provides no legal rule of measurement) is within the special  
27 province of the jury. See, *Canterino v. Mirage Casino-Hotel*, 117 Nev. 19 (Nev. 2001). Although  
28 USAA conducted an investigation into Plaintiff’s claim and made a compromise offer in an

1 attempt to settle claims prior to litigation in exchange for a release, Plaintiff disputed that USAA's  
2 offer constitutes the value of his claim. Accordingly, once the value of Plaintiff's claim is  
3 determined by a jury, or through additional discovery undertaken in this litigation, USAA will pay  
4 the value of the claim in conformance with the provisions of the policy. Discovery continues, as  
5 such, Defendant reserves the right to supplement this response as appropriate

6 **INTERROGATORY NO. 22:**

7 Please state any and all pre-existing illness, injuries, diseases and/or conditions of Plaintiff  
8 which were considered by you in evaluating the value of their claim.

9 **ANSWER TO INTERROGATORY NO. 22:**

10 Objection. This interrogatory is compound, vague, ambiguous and overbroad in seeking  
11 "any and all pre-existing illness, injuries, diseases and/or conditions of Plaintiff" and calling  
12 inappropriately for Defendant to supply a narrative account for its investigation and evaluation of  
13 Plaintiff's claim. Further, Defendant objects that this Interrogatory calls for opinions or mental  
14 impressions of the answering party and the extent the information sought would invade the  
15 attorney-client privilege and/or the work product privilege. Defendant also objects that this  
16 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
17 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
18 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
19 including its evaluation, are set forth in the claim file, previously produced in this case. As such,  
20 because the answer to this Interrogatory may be determined by examining, auditing, compiling,  
21 abstracting, or summarizing, Defendant's claims file, Bates USAA000001 to USAA004785, and  
22 because the burden to derive or ascertain the answer is substantially the same for Plaintiff as it is  
23 for Defendant, Defendant refers Plaintiff to those documents. Without waiving these objections,  
24 Defendant responds as follows: USAA also considered Plaintiff's prior injuries and pre-existing  
25 conditions, as set forth in his medical records, including multiple surgeries before the loss, a failed  
26 knee replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical  
27 fusion. Defendant could not determine the full extent of Plaintiff's prior medical condition as

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1 Plaintiff refused to provide requested records and/or a medical authorization. Discovery  
2 continues, as such, Defendant reserves the right to supplement this response as appropriate

3 **INTERROGATORY NO. 23:**

4 State the date and amount of each offer made to Plaintiff, or their counsel, in an attempt to  
5 settle the subject claim, and state the method the offer was made (i.e., written, oral, etc.).

6 **ANSWERTO INTERROGATORY NO. 23:**

7 Objection. This interrogatory is compound, inappropriately calls for Defendant to supply a  
8 narrative account for its investigation and evaluation of Plaintiff's claim and is burdensome in that  
9 it seeks information equally within Plaintiff's knowledge. Defendant also objects that this  
10 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
11 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
12 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
13 including all settlement offers, are set forth in the claim file, previously produced in this case. As  
14 such, because the answer to this Interrogatory may be determined by examining, auditing,  
15 compiling, abstracting, or summarizing, Defendant' claims file, Bates USAA000001 to  
16 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
17 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents. Without waiving  
18 these objections, Defendant responds as follows: On March 15, 2018, Steven Lucent extended an  
19 offer of \$46,000 to fully and finally compromise Plaintiff's claim. Steven Lucent confirmed the  
20 offer in writing that same day. Mr. Lucent followed up with Plaintiff's counsel regarding the offer  
21 and on April 3, April 30, May 9, June 8, July 7, August 1, August 6, September 5, September 11,  
22 October 3, November 5, and December 3, 2018 in writing. On December 14, 2018, Mr. Lucent  
23 discussed the claim with Plaintiff's counsel. On February 1, 2019, Mr. Lucent wrote the law firm  
24 and advised of the basis for the offer. Mr. Lucent followed up with Plaintiff's counsel regarding  
25 the offer and on February 28, March 5, April 1, April 18, April 30, May 29, 2019 in writing. On  
26 June 11, 2019, Lucent called the law firm and requested a call to discuss the offer. On July 2,  
27 2019, Lucent again wrote the law firm and asked the attorney to contact him to discuss the offer.

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1 **INTERROGATORY NO. 24:**

2 For each amount stated in the preceding interrogatory, state the total amount at which you  
3 had valued the subject claim before any offsets and divide your evaluation into past medical  
4 expenses, future medical expenses, past lost wages, future lost wages, past pain and suffering, and  
5 future pain and suffering; and state all amounts you applied as an offset and explain what each  
6 offset was for when you determined the amount owed to the insured.

7 **ANSWER TO INTERROGATORY NO. 24:**

8 Objection. This interrogatory is assumes and misstates facts, is compound, duplicative,  
9 and inappropriately calls for Defendant to supply a narrative account for its evaluation of  
10 Plaintiff's claim. Further, Defendant objects that this Interrogatory calls for opinions or mental  
11 impressions of the answering party and the extent the information sought would invade the  
12 attorney-client privilege and/or the work product privilege. Defendant also objects that this  
13 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
14 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
15 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
16 including its evaluation, are set forth in the claim file, previously produced in this case. As such,  
17 because the answer to this Interrogatory may be determined by examining, auditing, compiling,  
18 abstracting, or summarizing, Defendant' claims file, Bates USAA000001 to USAA004785, and  
19 because the burden to derive or ascertain the answer is substantially the same for Plaintiff as it is  
20 for Defendant, Defendant refers Plaintiff to those documents.

21 Subject to and without waiving these objections, Defendant responds as follows: USAA  
22 does not "value" Plaintiff's claim at \$46,000, but based on the information available to USAA,  
23 USAA made an offer of \$46,000 to settle Plaintiff's claim. USAA's offer to settle the claim for  
24 \$46,000 considered Plaintiff's complaints, diagnoses, treatment, and prognosis for future  
25 treatment. USAA also considered Plaintiff's prior injuries and pre-existing conditions, including  
26 multiple surgeries before the loss, a failed knee replacement, and the fact that prior to the subject  
27 accident, Plaintiff was planning a cervical fusion. After review of all records, it concluded that

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1 this loss aggravated pre-existing conditions but did not appear to have caused any new pathology  
2 or surgical recommendations.

3       USAA considered medicals specials of \$32,760 as related to the aggravation of pre-  
4 existing conditions, assigned a range of value for general damages of between \$38,240 to \$48,240,  
5 and applied offsets totaling \$25,000 based on the provisions of the USAA policy. USAA applied  
6 an offset of \$15,000 based on the policy provision that USAA shall reduce amounts otherwise  
7 payable for damages under UM coverage by the greater of all sums paid because of the BI by or  
8 on behalf of persons who may be legally responsible or the persons' BI Coverage limits; in this  
9 case the tortfeasor carried BI coverage with each person limits of \$15,000. USAA applied an  
10 offset of \$10,000 based on the policy provision that no covered person is entitled to receive  
11 duplicate payments under the UM coverage for the same elements of loss which were paid under  
12 another coverage of the policy; in this case, Plaintiff received \$10,000 under the medical payments  
13 coverage of the policy. Discovery continues, as such, Defendant reserves the right to supplement  
14 this response as appropriate.

15 **INTERROGATORY NO. 25:**

16       Describe each and every conversation you had with Plaintiff in reference to their policy  
17 and/or claims, after the evaluation of their claims.

18 **ANSWER TO INTERROGATORY NO. 25:**

19       Objection. This interrogatory is compound, inappropriately calls for Defendant to supply a  
20 narrative account for its investigation and evaluation of Plaintiff's claim and is burdensome in that  
21 it seeks information equally within Plaintiff's knowledge. Defendant also objects that this  
22 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
23 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
24 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
25 including all conversations with Plaintiff, are set forth in the claim file, previously produced in this  
26 case. As such, because the answer to this Interrogatory may be determined by examining,  
27 auditing, compiling, abstracting, or summarizing, Defendant' claims file, Bates USAA000001 to

28 ///

1 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
2 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

3 **INTERROGATORY NO. 26:**

4 Describe each and every conversation you had with Plaintiff in reference to their policy  
5 and/or claims, prior the evaluation of their claims.

6 **ANSWER TO INTERROGATORY NO. 26:**

7 Objection. This interrogatory is compound, inappropriately calls for Defendant to supply a  
8 narrative account for its investigation and evaluation of Plaintiff's claim and is burdensome in that  
9 it seeks information equally within Plaintiff's knowledge. Defendant also objects that this  
10 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required  
11 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
12 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim,  
13 including all conversations with Plaintiff, are set forth in the claim file, previously produced in this  
14 case. As such, because the answer to this Interrogatory may be determined by examining,  
15 auditing, compiling, abstracting, or summarizing, Defendant's claims file, Bates USAA000001 to  
16 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
17 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

18 **INTERROGATORY NO. 27:**

19 Please state in detail every step you took in assisting Plaintiff in making their claim. In  
20 responding, please identify each witness who has knowledge of those facts by name, employer and  
21 last known address.

22 **ANSWER TO INTERROGATORY NO. 27:**

23 Objection. This interrogatory is assumes and misstates facts, is compound, duplicative,  
24 and inappropriately calls for Defendant to supply a narrative account for its investigation and  
25 evaluation of Plaintiff's claim. Further, Defendant objects that this Interrogatory calls for opinions  
26 or mental impressions of the answering party and the extent the information sought would invade  
27 the attorney-client privilege and/or the work product privilege. Defendant also objects that this  
28 Interrogatory is overly broad and unduly burdensome and beyond the scope of the duties required

1 of Defendant in responding to interrogatories in that it purports to require Defendant to compile a  
2 summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim  
3 are set forth in the claim file, previously produced in this case. As such, because the answer to this  
4 Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing,  
5 Defendant's claims file, Bates USAA000001 to USAA004785, and because the burden to derive or  
6 ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers  
7 Plaintiff to those documents.

8         Subject to and without waiving these objections, Defendant responds as follows: Plaintiff  
9 retained counsel to assist in submitting his claim to USAA. USAA promptly responded to all  
10 communications from Plaintiff's counsel, regularly reviewed the claim, considered all information  
11 submitted by Plaintiff, requested necessary information to facilitate its review of Plaintiff's claim  
12 and provided an authorization to allow USAA to collect the records on behalf of Plaintiff.  
13 Plaintiff refused to provide the requested information or an authorization to allow USAA to collect  
14 the records on his behalf. Thereafter, USAA made an offer based on the information it had  
15 available. Defendant continued to diligently review the claim and attempted to obtain necessary  
16 information to facilitate its review of Plaintiff's claim up until the date Defendant was notified of  
17 Plaintiff's filing the instant lawsuit on or around July 8, 2019 and will continue its investigation  
18 and evaluation during discovery in this litigation. Discovery continues, as such, Defendant  
19 reserves the right to supplement this response as appropriate.

20 **INTERROGATORY NO. 28:**

21         State the net worth of UNITED SERVICES AUTOMOBILE ASSOCIATION for each of  
22 the last five (5) fiscal years according to GENERAL ACCEPTED ACCOUNTING PRINCIPLES  
23 (GAAP).

24 **ANSWER TO INTERROGATORY NO. 28:**

25         This Interrogatory is overly broad, unduly burdensome, and seeks information that is not  
26 relevant to the claims or defenses of either party. USAA further objects on the basis that this  
27 Interrogatory is not proportional to the needs of this case. This Interrogatory is not limited to the  
28 present claim, is not limited in scope or time, and is otherwise irrelevant to the issues presented in

1 the present matter. Additionally this request is premature. The Nevada Supreme Court has held  
2 that “before tax returns or financial records are discoverable on the issue of punitive damages, the  
3 plaintiff must demonstrate some factual basis for its punitive damage claim.” *Hetter v. District*  
4 *Court*, 110 Nev. 513, 520, 874 P.2d 762, 766, 1994 Nev. LEXIS 65, \*13-14 (emphasis added). If  
5 the Court allows the question of punitive damages to proceed to the jury, USAA will supplement  
6 this response.

7 **INTERROGATORY NO. 29:**

8 Please identify with particularity each and every action taken by you in evaluating the  
9 subject claim.

10 **ANSWER TO INTERROGATORY NO. 29:**

11 Objection. This interrogatory is duplicative, compound, vague, ambiguous, overbroad as  
12 to “each and every action”, and inappropriately calls for Defendant to supply a narrative account  
13 for its investigation and evaluation of Plaintiff’s claim. Further, Defendant objects that this  
14 Interrogatory calls for opinions or mental impressions of the answering party and the extent the  
15 information sought would invade the attorney-client privilege and/or the work product privilege.  
16 Defendant also objects that this Interrogatory is overly broad and unduly burdensome and beyond  
17 the scope of the duties required of Defendant in responding to interrogatories in that it purports to  
18 require Defendant to compile a summary of its own claim file. The actions Defendant took with  
19 regard to Plaintiff’s UM claim are set forth in the claim file, previously produced in this case. As  
20 such, because the answer to this Interrogatory may be determined by examining, auditing,  
21 compiling, abstracting, or summarizing, Defendant’ claims file, Bates USAA000001 to  
22 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
23 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

24 Without waiving these objections, Defendant responds as follows: Defendant first received  
25 notice of the subject motor vehicle accident on May 10, 2014. Thereafter, Steven Lucent  
26 examined medical records and other documents related to the subject accident. He communicated  
27 with Plaintiff’s attorney regarding the claim. He reviewed Plaintiff’s demand for benefits under  
28 the policy, investigated Plaintiff’s damages to determine whether the claimed injuries and



1 associated medical treatment and expenses incurred were related to the subject accident and  
2 requested information to assist Defendant in making this determination. He then made offers  
3 based on the information reasonably known to Defendant at that time. Defendant was unable to  
4 come to a final “determination on the merits” due to Plaintiff’s refusal to provide requested  
5 documents. Defendant continued to diligently review the claim and attempted to obtain necessary  
6 information to facilitate its review of Plaintiff’s claim up until the date Defendant was notified of  
7 Plaintiff’s filing the instant lawsuit on or around July 8, 2019 and will continue its investigation  
8 and evaluation during discovery in this litigation. Discovery continues, as such, Defendant  
9 reserves the right to supplement this response as appropriate.

10 **INTERROGATORY NO. 30:**

11 Please identify with particularity each and every document or thing upon which you relied  
12 upon in answering any of these interrogatories.

13 **ANSWER TO INTERROGATORY NO. 30:**

14 Objection. Defendant objects that the term “which you relied upon” is vague, ambiguous,  
15 unduly burdensome, calls for speculation and is not proportional to the needs of the case and calls  
16 for information protected by the attorney-client and/or work product privileges. Subject to and  
17 without waiving these objections, Defendant responds as follows: Defendant utilized its claim file  
18 Bates, USAA000001 to USAA004785, in responding to these requests. Discovery continues, as  
19 such, Defendant reserves the right to supplement this response as appropriate.

20 **INTERROGATORY NO. 31:**

21 Please state the amount You have set as reserves for the Plaintiff’s 1<sup>st</sup> party claim.

22 **ANSWER TO INTERROGATORY NO. 31:**

23 Objection. Defendant also objects to this interrogatory on the grounds that reserve  
24 information is irrelevant and not reasonably calculated to lead to the discovery of admissible  
25 evidence as this litigation concerns only Plaintiff’s entitlement to benefits under the policy of  
26 insurance issued to Plaintiff and Defendant’s handling of the claim submitted thereunder, and is  
27 therefore not proportional to the needs of the case. Defendant further objects to the extent the  
28 interrogatory seeks confidential and proprietary business information. Subject to and without

1 waiving these objections, Defendant responds as follows: The reserves Defendant set with regard  
2 to Plaintiff's UM claim are set forth in the claim file. As such, because the answer to this  
3 Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing,  
4 Defendant' claims file, Bates USAA000001 to USAA004785, and because the burden to derive or  
5 ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers  
6 Plaintiff to those documents. Please see the *First Supplement to Defendant United Services*  
7 *Automobile Association's Initial Disclosure of Witnesses and Production of Documents Pursuant*  
8 *to NRCP 16.1*, produced concurrently herewith, which includes USAA000001 to USAA004785 with  
9 unredacted reserve information. Discovery continues, as such, Defendant reserves the right to  
10 supplement this response as appropriate.

11 **INTERROGATORY NO. 32:**

12 Please state the formula used by You in determining the reserves for the Plaintiff's 1<sup>st</sup> party  
13 claim.

14 **ANSWER TO INTERROGATORY NO. 32:**

15 Objection. Defendant objects that this interrogatory seeks information which is not  
16 relevant to the claims or defenses of any party to this litigation. As such, the request is not  
17 proportional to the needs of this litigation as it is unlikely to resolve the issues presented.  
18 Defendant further objects to the extent the interrogatory seeks confidential and proprietary  
19 business information. Subject to and without waiving these objections, Defendant responds as  
20 follows: Defendant does not have a "formula" for determining reserves. Discovery continues, as  
21 such, Defendant reserves the right to supplement this response as appropriate.

22 **INTERROGATORY NO. 33:**

23 Please state each and every fact considered by You in determining the amount set as  
24 reserves for the Plaintiff's claim.

25 **ANSWER TO INTERROGATORY NO. 33:**

26 Objection. Defendant objects that this interrogatory seeks information which is not  
27 relevant to the claims or defenses of any party to this litigation. As such, the request is not  
28 proportional to the needs of this litigation as it is unlikely to resolve the issues presented.

1 Defendant further objects to the extent the interrogatory seeks confidential and proprietary  
2 business information. Defendant also objects that this Interrogatory is overly unduly burdensome  
3 and beyond the scope of the duties required of Defendant in responding to interrogatories in that it  
4 purports to require Defendant to compile a summary of its own claim file. The actions Defendant  
5 took with regard to Plaintiff's UM claim are set forth in the claim file, previously produced in this  
6 case. As such, because the answer to this Interrogatory may be determined by examining,  
7 auditing, compiling, abstracting, or summarizing, Defendant's claims file, Bates USAA000001 to  
8 USAA004785, and because the burden to derive or ascertain the answer is substantially the same  
9 for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

10 Subject to and without waiving these objections, Defendant responds as follows: In setting  
11 reserves, USAA considered the coverage available for the claim, all information available to  
12 USAA at the time, and included consideration of Plaintiff's complaints, diagnoses, treatment, and  
13 prognosis for future treatment. USAA also considered Plaintiff's prior injuries and pre-existing  
14 conditions, including multiple surgeries before the loss, a failed knee replacement, and the fact  
15 that prior to the subject accident, Plaintiff was planning a cervical fusion. After review of all  
16 records, it concluded that this loss aggravated pre-existing conditions but did not appear to have  
17 caused any new pathology or surgical recommendations. USAA made multiple requests to  
18 Plaintiff for additional information and repeatedly requested a medical authorization to obtain  
19 additional information to complete its evaluation.

20 **INTERROGATORY NO. 34:**

21 Please identify any reason you believe the Plaintiff has not complied or cooperated with  
22 the policy.

23 **ANSWER TO INTERROGATORY NO. 34:**

24 Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in  
25 that it is not proportional to the needs of the case. As drafted, this interrogatory calls for  
26 Defendant to speculate as to why Plaintiff has not complied or cooperated with "the policy".  
27 Subject to and without waiving these objections, Defendant responds as follows: Defendant does  
28 not purport to know Plaintiff's motivations with respect to his non-compliance and/or non-

1 cooperation, or lack thereof, as it relates to Defendant's investigation and evaluation of Plaintiff's  
2 claim.

3 **INTERROGATORY NO. 35:**

4 During your evaluation of the claim, please set forth any treatment, diagnosis, or expense  
5 that you determined to be unrelated, unnecessary or unreasonable, along with any basis for such  
6 determination.

7 **ANSWER TO INTERROGATORY NO. 35:**

8 Objection. Defendant objects that this interrogatory is compound, vague, overbroad and  
9 unduly burdensome. Subject to and without waiving these objections, Defendant responds as  
10 follows: USAA considered Plaintiff's prior injuries and pre-existing conditions, including multiple  
11 surgeries before the loss, a failed knee replacement, and the fact that prior to the subject accident,  
12 Plaintiff was planning a cervical fusion. Throughout the entirety of Defendant's evaluation it  
13 requested additional information and medical records from Plaintiff in order to assist in  
14 Defendant's evaluation of what was unrelated, unnecessary or unreasonable. Plaintiff refused to  
15 timely provide requested information and medical records, as such, Defendant's evaluation of  
16 Plaintiff's claim, including the reasonableness of each diagnosis, treatment or expense, was never  
17 completed. Defendant's evaluation will continue in this litigation, as such, Defendant reserves the  
18 right to supplement this response as appropriate.

19 **INTERROGATORY NO. 36:**

20 During your evaluation, if you apportioned any prior or subsequent injury or diagnosis,  
21 please set forth any such apportionment and the complete basis for the amount of the  
22 apportionment.

23 **ANSWER TO INTERROGATORY NO. 36:**

24 Objection. Defendant objects that this interrogatory is compound, vague, overbroad and  
25 unduly burdensome. Subject to and without waiving these objections, Defendant responds as  
26 follows: Throughout the entirety of Defendant's evaluation it requested additional information and  
27 medical records from Plaintiff in order to assist in Defendant's evaluation of what medical  
28 treatment was apportionable to Plaintiff's documented prior medical conditions. Plaintiff refused

1 to timely provide requested information and medical records, as such, Defendant's evaluation of  
2 Plaintiff's claim, including the reasonableness of each diagnosis, treatment or expense, was never  
3 completed. However, after review of all records, it concluded that this loss aggravated pre-  
4 existing conditions but did not appear to have caused any new pathology or surgical  
5 recommendations, as such USAA considered medicals specials of \$32,760 as related to the  
6 aggravation of pre-existing conditions. Defendant's evaluation will continue in this litigation, as  
7 such, Defendant reserves the right to supplement this response as appropriate.

8 DATED this 5<sup>th</sup> day of October, 2020.

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By /s/ Priscilla L. O'Briant

12 ROBERT W. FREEMAN

13 Nevada Bar No. 3062

14 PRISCILLA L. O'BRIANT

15 Nevada Bar No. 010171

16 6385 S. Rainbow Boulevard, Suite 600

17 Las Vegas, Nevada 89118

18 Telephone: 702.893.3383

19 Fax: 702.893.3789

20 *Attorneys for Defendant United Services*

21 *Automobile Association*

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**VERIFICATION**

I, Steven Lucent, hereby declare as follows:

I am an Auto Examiner and on behalf of United Services Automobile Association, have read the above and foregoing, **DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** and know the contents thereof, that the same are true and correct of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this \_\_\_\_ day of October, 2020 at Colorado Springs, Colorado.

---

Steven Lucent

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS  
3 BRISBOIS BISGAARD & SMITH LLP, and that on this 5th day of October, 2020, I did cause a  
4 true and correct copy of DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION'S  
5 SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES in  
6 Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the  
7 Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed  
8 as follows:

9  
10 Jordan P. Schnitzer, Esq.  
11 THE SCHNITZER LAW FIRM  
12 9205 W. Russell Road, Ste. 240  
13 Las Vegas, NV 89148  
14 Tel: (702) 960-4050  
15 Fax: (702) 960-4092  
16 *Attorney for Plaintiff*

[Jordan@theschnitzerlawfirm.com](mailto:Jordan@theschnitzerlawfirm.com)

17 By /s/ Anne Cordell

18 Anne Cordell, an Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20 Email: [Anne.cordell@lewisbrisbois.com](mailto:Anne.cordell@lewisbrisbois.com)  
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*Attorneys for Defendant United Services*  
7 *Automobile Association*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

11 JOHN ROBERTS, an individual,  
12 Plaintiff,  
13 vs.

CASE NO. A-19-790757-C  
Dept. No.: IV

**DEFENDANT UNITED SERVICES  
AUTOMOBILE ASSOCIATION'S  
SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S FIRST SET OF REQUESTS  
FOR PRODUCTION**

14 UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
15 and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
16 DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
17 Defendants.  
18

19 COMES NOW Defendant, UNITED SERVICES AUTOMOBILE ASSOCIATION  
20 (hereinafter "Defendant"), by and through its counsel of record, the law firm LEWIS BRISBOIS  
21 BISGAARD & SMITH, LLP, and hereby supplements its responses to Plaintiff's First Set of  
22 Requests for Production to Defendant United Services Automobile Association as follows:

23 **DEFINITIONS**

24 A. "Non-discoverable/Irrelevant." The request in question concerns a matter that is  
25 not relevant to the subject matter and the matters that remain at issue in this litigation and is not  
26 reasonably calculated to lead to the discovery of admissible evidence.

27 B. "Unduly burdensome." The request in question seeks discovery which is unduly  
28 burdensome or expensive, taking into account the needs of the case, the amount in controversy,



1 limitations on the parties' resources, and the importance of the issues at stake in the litigation.

2 C. "Vague." The request in question contains a word or phrase which is not  
3 adequately defined, or the overall request is confusing, and Defendant is unable to reasonably  
4 ascertain what information or documents are sought in the request.

5 D. "Overly broad." The request seeks information beyond the scope of, or beyond the  
6 time period relevant to, the subject matter of this litigation and, accordingly, seeks information  
7 which is non-discoverable/irrelevant and is unduly burdensome.

8 **GENERAL OBJECTIONS**

9 1. Defendant objects to the requests to the extent that they seek documents that are  
10 protected by any absolute or qualified privilege or exemption, including, but not limited to, the  
11 attorney-client privilege, the attorney work-product exemption, and the consulting-expert  
12 exemption. Specifically, Defendant objects to these requests on the following grounds:

13 a. Defendant objects to these requests to the extent they seek documents that  
14 are protected from disclosure by the attorney-client privilege in accordance with Rule 26 of the  
15 Nevada Rules of Civil Procedure and NRS 89.095;

16 b. Defendant objects to these requests to the extent they seek documents that  
17 are protected from disclosure by the work-product exemption in accordance with Rule 26(b)(1)(3)  
18 and (4) of the Nevada Rules of Civil Procedure and applicable case law.

19 c. Defendant objects to these requests to the extent they seek documents that  
20 are protected from disclosure pursuant to the consultant/expert exemption in accordance with Rule  
21 26(b)(3) and (4) of the Nevada Rules of Civil Procedure and applicable case law.

22 d. Defendant objects to these requests to the extent they seek trade secrets,  
23 commercially sensitive information, or confidential proprietary data entitled to protection under  
24 Rule 26(c)(7) of the Nevada Rules of Civil Procedure.

25 2. This response is made on the basis of information and writings available to and  
26 located by Defendant upon reasonable investigation of Defendant's records. There may be other  
27 and further information respecting the requests propounded by Plaintiff of which Defendant,  
28 despite its reasonable investigation and inquiry, is presently unaware. Defendant reserves the right

1 to modify or enlarge any responses with such pertinent additional information as Defendant may  
2 subsequently discover.

3 3. No incidental or implied admissions will be made by the responses to these  
4 requests. The fact that Defendant may respond or object to any request or any part thereof shall  
5 not be deemed an admission that Defendant accepts or admits the existence of any fact set forth or  
6 assumed by such request, or that such response constitutes admissible evidence. The fact that  
7 Defendant responds to a part of any request is not to be deemed a waiver by Defendant of its  
8 objections, including privilege, to other parts to such request.

9 4. Defendant objects to any instruction to the extent that it would impose upon  
10 Defendant greater duties than are set forth under the Nevada Rules of Civil Procedure. Defendant  
11 will supplement responses to the requests as required by the Nevada Rules of Civil Procedure.

12 5. All responses will be made solely for the purpose of this action. Each response will  
13 be subject to all objections as to competence, relevance, materiality, propriety and admissibility,  
14 and to any and all other objections on any ground which would require the exclusion from  
15 evidence of any statement herein if any such statements were made by a witness present and  
16 testifying at trial, all of which objections and grounds are expressly reserved and may be  
17 interposed at such hearings.

18 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

19 **REQUEST FOR PRODUCTION NO. 1:**

20 Please produce any and all documents, writings, and communications that were produced  
21 as a result of or related to any of Plaintiff's applications for insurance with you. These documents  
22 should include, but not be limited to, the entire underwriting file, printouts from all computer  
23 communications and electronic databases and logs, all electronically imaged documents, and all  
24 reports and investigations.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

26 Objection. Defendant objects that the request is compound, overbroad and burdensome to  
27 the extent it seeks "the entire underwriting file". Defendant objects to this Request as overbroad  
28 as it is not limited in time or scope (the underwriting file for the policy at issue in this litigation),

1 and seeks information that it is neither relevant to the claims or defenses of any party, nor  
2 proportional to the needs of the case, as the request is not reasonably tailored to include only those  
3 underwriting matters relevant to the insurance claim made the basis of this suit and there is no  
4 dispute that the applicable policy was in effect on the date of loss. Underwriting information is  
5 stored electronically in multiple locations. Responding party further objects to the term  
6 “underwriting file” because it assumes a physical file folder exists and because the request is  
7 vague, ambiguous and overbroad as to what is meant by an underwriting file. Responding party  
8 does not maintain a physical file folder with respect to most insurance policies issued. In addition,  
9 this request has the potential to be unduly burdensome. Subject to and without waiving the stated  
10 objections: Defendant has requested the underwriting documents and will produce upon receipt.  
11 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

12 **REQUEST FOR PRODUCTION NO. 2:**

13 Please produce all documents, writings, and communications that are used by field,  
14 regional, and home office underwriters for reference, training, and guidelines for the underwriting  
15 of your policies.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

17 Objection. Defendant objects that the request is compound, overbroad and burdensome to  
18 the extent it seeks information related to its “reference, training, and guidelines” related to  
19 underwriting, as Defendant’s underwriting is not at issue in this case. As such, this request seeks  
20 information that it is neither relevant to the claims or defenses of any party, nor proportional to the  
21 needs of the case, as the request is not reasonably tailored to include only those matters relevant to  
22 the insurance claim made the basis of this suit and there is no dispute that the applicable policy  
23 was in effect on the date of loss. Responding party further objects to the term “underwriting file”  
24 because it assumes a physical file folder exists and because the request is vague, ambiguous and  
25 overbroad as to what is meant by an underwriting file. Finally, this request seeks documents  
26 “reference, training, and guidelines” that are confidential, proprietary, and trade secret. In  
27 addition, this request has the potential to be unduly burdensome.

28 ///

1 **REQUEST FOR PRODUCTION NO. 3:**

2 Please produce all documents, writings, and communications that were produced as a  
3 result of or are related to Plaintiff's claim and the Plaintiff's claim for coverage. These documents  
4 should include, but not be limited to, the entire claim file, printouts from all computer  
5 communications and electronic databases and logs, all electronically imaged documents and all  
6 reports and investigations.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

8 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
9 and ambiguous as to the terms "all documents, writings, and communications" and "related to  
10 Plaintiff's claim" and "the Plaintiff's claim for coverage". Defendant objects to this Request to  
11 the extent that it seeks an un-redacted copy of the claim file which contains documents protected  
12 by the attorney/client privilege and/or work product doctrine. Defendant further objects to  
13 production of a "electronic databases and logs" as based on the nature of Defendant's claim file  
14 structure and the system which houses the same, Defendant cannot produce a standalone live or  
15 interactive claims file on a separate portable medium. Defendant further objects in that its Claim  
16 Loss Report Systems which is the system in which Defendant maintains its electronic claims file is  
17 proprietary and created solely for Defendant's own use and has great economic value to  
18 Defendant. Subject to and without waiving the stated objections: Responsive and non-privileged  
19 documents responsive to this request were produced in *Defendant United Services Automobile*  
20 *Association's Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
21 *16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto.  
22 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

23 **REQUEST FOR PRODUCTION NO. 4:**

24 Please produce any and all documents, writings, and communications between Plaintiff  
25 and you, including all proof of loss forms.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

27 Objection. USAA objects to this request as overbroad as it is unlimited in time and scope.  
28 Subject to and without waiving the stated objections, USAA responds as follows: All non-

1 privileged communications related to Plaintiff's claim are contained within the claims file. USAA  
2 has produced the non-privileged portions of its claim file. Responsive and non-privileged claims  
3 documents relating to Plaintiffs' claim were produced in *Defendant United Services Automobile*  
4 *Association's Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
5 *16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto.  
6 USAA withheld portions of its claim file that contain information protected by the attorney client  
7 privilege, the work product doctrine, the litigation privilege, and portions that contain confidential  
8 and/or proprietary information. Discovery continues and Defendant reserves the right to  
9 supplement this response as appropriate.

10 **REQUEST FOR PRODUCTION NO. 5:**

11 Please produce any and all documents, writings, and communications between you and any  
12 third party or third party's attorney concerning the subject claim.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

14 Objection. Defendant objects that the request assumes and misstates facts, is compound,  
15 overbroad, burdensome, vague and ambiguous as to the terms "all documents, writings, and  
16 communications". Defendant objects as this Request seeks documents protected by the  
17 attorney/client privilege and/or the work product doctrine. Defendant further objects this request  
18 seeks information that it is neither relevant to the claims or defenses of any party, nor proportional  
19 to the needs of the case, as the request is not reasonably tailored to include only those matters  
20 relevant to this suit.

21 Subject to and without waiving the stated objections: Responsive and non-privileged  
22 documents responsive to this request were produced in *Defendant United Services Automobile*  
23 *Association's Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
24 *16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto.  
25 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

26 **REQUEST FOR PRODUCTION NO. 6:**

27 Please produce any and all documents, writings, and communications between you and any  
28 third party concerning the processing, acceptance, or denial of the subject claim.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

2       Objection. Defendant objects that the request Defendant objects that the request assumes  
3 and misstates facts, is compound, overbroad, burdensome, vague and ambiguous as to the terms  
4 “all documents, writings, and communications”. Defendant objects as this Request seeks  
5 documents protected by the attorney/client privilege and/or the work product doctrine. Defendant  
6 further objects this request seeks information that it is neither relevant to the claims or defenses of  
7 any party, nor proportional to the needs of the case, as the request is not reasonably tailored to  
8 include only those matters relevant to this suit.

9       Subject to and without waiving the stated objections: Responsive and non-privileged  
10 documents responsive to this request were produced in *Defendant United Services Automobile*  
11 *Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
12 *16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto.  
13 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

14 **REQUEST FOR PRODUCTION NO. 7:**

15       Please produce any and all documents, writings, and communications that are used by your  
16 claims personnel for reference, training, and guidelines for the adjusting of claims. These items  
17 should include, but not be limited to, all claims manuals, all information and guidelines for the  
18 adjudication of claims and all other resources used by your personnel for the adjudication of  
19 claims.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

21       Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
22 and ambiguous as to the terms “all documents, writings, and communications,” “reference,  
23 training, and guidelines” and “adjudication of claims”. As presently worded, the information  
24 sought by this Request is not relevant to the claims or defenses of any party, nor proportional to  
25 the needs of the case, as Defendant’s “reference, training and guidelines” are intended to provide  
26 guidance but each claim is handled on its own merits. Defendant further objects on the grounds  
27 that the request seeks information that is confidential, sensitive, proprietary business information  
28 and/or trade secrets. Subject to and without waiving the stated objections, Defendant responds as

1 follows: Defendant does not have claims “manuals” but rather provides online guidance to claims  
2 handlers through its “Knowledge Delivery” online search tool. Defendant will produce, only upon  
3 entry of a Confidentiality and Protective Order , the KD materials relating to the handling of UM  
4 claims for the state of Nevada, for the applicable time period. Discovery continues and Defendant  
5 reserves the right to supplement this response as appropriate.

6 **REQUEST FOR PRODUCTION NO. 8:**

7 Please produce all documents, writings, and communications, and any drafts or revisions  
8 thereof, which contain explanations of the basis in the insurance policy, with respect to the facts of  
9 the Plaintiff’s claim and the applicable law, for the determination of the subject claim.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

11 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
12 and ambiguous as to the terms “all documents, writings, and communications”. Defendant objects  
13 as this Request seeks documents protected by the attorney/client privilege and/or the work product  
14 doctrine. Defendant further objects this request seeks information that it is neither relevant to the  
15 claims or defenses of any party, nor proportional to the needs of the case, as the request is not  
16 reasonably tailored to include only those matters relevant to this suit.

17 Subject to and without waiving the stated objections: Responsive and non-privileged  
18 documents responsive to this request were produced in *Defendant United Services Automobile*  
19 *Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
20 *16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto.  
21 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

22 **REQUEST FOR PRODUCTION NO. 9:**

23 Please produce any and all documents, writings, and communications, and amendments  
24 thereto, for the contracting of third-party administration and outsourcing of any operations related  
25 to new business processing, policy issue, policyholder services, claims processing, billing,  
26 collection, and payment receipt.

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1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

2       Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
3 and ambiguous as to the terms “all documents, writings, and communications”. Defendant objects  
4 as this Request seeks documents protected by the attorney/client privilege and/or the work product  
5 doctrine. Defendant further objects this request seeks information that it is neither relevant to the  
6 claims or defenses of any party, nor proportional to the needs of the case, as the request is not  
7 reasonably tailored to include only those matters relevant to this suit, specifically new business  
8 processing, policy issue, policyholder services, billing, collection and payment receipt have no  
9 bearing on the issues in this case – the value of Plaintiff’s claim and whether Defendant’s handling  
10 of that claim was proper. Defendant further objects on the grounds that the request seeks  
11 information that is sensitive, confidential, proprietary business information and/or trade secrets.  
12 Subject to and without waiving the stated objection, USAA does not outsource its claim handling  
13 services.

14 **REQUEST FOR PRODUCTION NO. 10:**

15       Please produce any and all documents, writings, communications, financial statements,  
16 both audited and unaudited, and amendments thereto, which state your net income or loss for the  
17 last five (5) years according to GENERAL ACCEPTED ACCOUNTING PRINCIPLES (GAAP).

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

19       Objection. Defendant objects that the request is compound, overbroad as it purports to  
20 require “all documents, writings, and communications”, unduly burdensome, and seeks  
21 information that is not relevant to the claims or defenses of either party. USAA further objects on  
22 the basis that this request is not proportional to the needs of this case. This request is not limited to  
23 the present claim, is not limited in scope or time, and is otherwise irrelevant to the issues presented  
24 in the present matter. Additionally, this request is premature. The Nevada Supreme Court has held  
25 that “before tax returns or financial records are discoverable on the issue of punitive damages, the  
26 plaintiff must demonstrate some factual basis for its punitive damage claim.” *Hetter v. District*  
27 *Court*, 110 Nev. 513, 520, 874 P.2d 762, 766, 1994 Nev. LEXIS 65, \*13-14 (emphasis added). If  
28 the Court allows the question of punitive damages to proceed to the jury, USAA will supplement



1 this response. Discovery continues and Defendant reserves the right to supplement this response  
2 as appropriate.

3 **REQUEST FOR PRODUCTION NO. 11:**

4 Please produce any and all insurance policies and declaration pages that were in effect at  
5 the time of the subject claim.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

7 Objection. Defendant objects that the request is compound, overbroad and burdensome as  
8 it seeks all policies in effect at the time of the claim, without limit, and is vague and ambiguous as  
9 to the terms “all insurance policies” and “in effect at the time of the subject claim” and seems to  
10 require USAA to obtain “any and all” insurance policies issued to Plaintiff, regardless of insurer  
11 or type of policy. Subject to and without waiving the stated objections: The auto policy issued by  
12 Defendant to Plaintiff and responsive to this request was produced in *Defendant United Services*  
13 *Automobile Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant*  
14 *to NRCP 16.1* as documents Bates stamped USAA000001POL to USAA000042POL.

15 **REQUEST FOR PRODUCTION NO. 12:**

16 Please produce any and all documents, writings, and communications including, but not  
17 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
18 statements, provided to any private investigators regarding Plaintiff.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

20 Objection. Defendant objects that the request assumes and misstated facts, is compound,  
21 overbroad, burdensome, vague and ambiguous as to the terms “all documents, writings, and  
22 communications” and the term “private investigators.” Defendant further objects this request  
23 seeks information that it is neither relevant to the claims or defenses of any party, nor proportional  
24 to the needs of the case, as the request is not reasonably tailored to include only those matters  
25 relevant to this suit. Subject to and without waiving the stated objections: Defendant has no  
26 documents responsive to this request. Discovery is continuing and Defendant reserves the right to  
27 supplement this response.

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1 **REQUEST FOR PRODUCTION NO. 13:**

2 Please produce any and all documents, writings, and communications including, but not  
3 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
4 statements, received from any private investigators regarding Plaintiff.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

6 Objection. Defendant objects that the request assumes and misstated facts, is compound,  
7 overbroad, burdensome, vague and ambiguous as to the terms “all documents, writings, and  
8 communications” and the term “private investigators.” Defendant further objects this request  
9 seeks information that it is neither relevant to the claims or defenses of any party, nor proportional  
10 to the needs of the case, as the request is not reasonably tailored to include only those matters  
11 relevant to this suit. Subject to and without waiving the stated objections: Defendant has no  
12 documents responsive to this request. Discovery is continuing and Defendant reserves the right to  
13 supplement this response.

14 **REQUEST FOR PRODUCTION NO. 14:**

15 Please produce any and all photographs, motion pictures, videotapes, tape recordings (or  
16 transcripts of tape recordings), documents, writings, communications or investigative reports  
17 concerning taken by or on behalf of you, relating to the processing or denial of any portion of the  
18 subject claim.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

20 Defendant objects that the request assumes and misstated facts, is compound, overbroad,  
21 burdensome, and vague and ambiguous as to the term “concerning taken by or on behalf of you.”  
22 Subject to and without waiving the stated objections: Responsive and non-privileged documents  
23 responsive to this request were produced in *Defendant United Services Automobile Association’s*  
24 *Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as  
25 documents Bates stamped USAA000001 to USAA004785 and all supplements thereto. Discovery  
26 is continuing and Defendant reserves the right to supplement this response.

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**REQUEST FOR PRODUCTION NO. 15:**

Please produce any and all files containing information regarding the processing of any insurance applications made to you by Plaintiff or any policies issued to Plaintiff.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Objection. Defendant objects that the request assumes and misstates facts, is compound, overbroad and burdensome. Defendant further objects this request seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the request is not reasonably tailored to include only those matters relevant to this suit; specifically the processing of any insurance applications made to you by Plaintiff is not at issue in this litigation, as USAA does not dispute that it issued a policy to Plaintiff and that the policy was in effect on the date of the subject accident. The requested documents have no bearing on the issues in this case – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was proper. Subject to and without waiving the stated objections: Subject to and without waiving the stated objections: Subject to and without waiving the stated objections: Defendant has requested the underwriting documents and will produce upon receipt. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 16:**

Please produce any and all processing manuals and other materials available to your personnel for reference or training in their duties of processing applications or issuing policies.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

Objection. Defendant objects that the request assumes and misstates facts, is compound, overbroad and burdensome. Defendant further objects this request seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the request is not reasonably tailored to include only those matters relevant to this suit; specifically the processing of insurance applications and issuance of policies are not at issue in this litigation, as USAA does not dispute that it issued a policy to Plaintiff and that the policy was in effect on the date of the subject accident. The requested documents have no bearing on the issues in this

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1 case – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was proper.  
2 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

3 **REQUEST FOR PRODUCTION NO. 17:**

4 Please produce any and all documents and writings you have pertaining to agent Steve  
5 Lucent. These documents should include, but not be limited to, the agent application, the  
6 appointment of agency, all other contracts between you and Steve Lucent, all approved sales  
7 materials used by Steve Lucent, the commission schedule for Steve Lucent, all correspondence  
8 between you and Steve Lucent, all investigative and other reports on Steve Lucent, records of all  
9 disciplinary information for Steve Lucent, and any other documents and writings kept on Steve  
10 Lucent.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

12 Objection. Defendant objects that the request is compound, overbroad as it requires  
13 production of any and all documents pertaining to Steven Lucent, is burdensome, vague and  
14 ambiguous as to the terms “any and all documents and writings” and “pertaining to agent Steve  
15 Lucent”, and harassing. The request is also argumentative and assumes facts not on the record.  
16 Defendant objects to this request in that it seeks information that it is neither relevant to Plaintiffs’  
17 claims for breach of contract or tortious bad faith claims handling, nor proportional to the needs of  
18 the case, as the requested information does not, generally, speak to whether Plaintiffs’ claim was  
19 properly handled. Moreover, this request explicitly seeks confidential and sensitive information of  
20 USAA’s employees. Subject to and without waiving these objections, Steve Lucent is not an  
21 insurance agent as USAA understands this request to assert, and as such, there is no appointment,  
22 agent contract, sales materials used by Lucent, or commission schedule for Lucent. All non-  
23 privileged documents relating to Steve Lucent’s communications, correspondence and reports  
24 related to the claim which is the subject of this litigation were produced in *Defendant United*  
25 *Services Automobile Association’s Initial Disclosure of Witnesses and Production of Documents*  
26 *Pursuant to NRCP 16.1* as documents Bates stamped USAA000001 to USAA004785 and all  
27 supplements thereto. Defendant will produce, only upon entry of a Confidentiality and Protective  
28 Order, the KD materials relating to the handling of UM claims for the state of Nevada, for the

1 applicable time period, as well as relevant information within Steve Lucent's personnel file, for  
2 the subject time period. Discovery continues and Defendant reserves the right to supplement this  
3 response as appropriate.

4 **REQUEST FOR PRODUCTION NO. 18:**

5 Please produce any and all documents and writings given to your agents by you, for  
6 training, reference, use in the sale of insurance, or otherwise. These documents should include, but  
7 not be limited to, rate books, product guides, field underwriting manuals, a blank application and  
8 other forms used by your agents, advertising materials, instructions for the completion of  
9 applications for insurance, instructions for completion of conditional receipts, policies and  
10 guidelines, ethical standards, and the like.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

12 Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
13 and ambiguous as to the terms "any and all documents and writings" and "use in the sale of  
14 insurance, or otherwise". As presently worded, the information sought by this Request is not  
15 relevant to the claims or defenses of any party, nor proportional to the needs of the case, as there  
16 are no allegations with regard to USAA's issuance of the subject policy to Plaintiff and USAA  
17 does not dispute that the policy was issued to Plaintiff and in effect on the date of the subject  
18 accident. Subject to and without waiving these objections, USAA does not use agents for the sale  
19 of insurance, and thus, there are no documents responsive to this request.

20 **REQUEST FOR PRODUCTION NO. 19:**

21 Produce any and all documents, writings, and communications which were obtained from  
22 Steve Lucent, which contain notes of conversations with Steve Lucent, which contain statements  
23 of Steve Lucent, and which contain information on the responsibilities and duties of Steve Lucent  
24 when filling out an application.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

26 Objection. Defendant objects that the request assumes and mistakes facts, is  
27 compound, overbroad, burdensome, vague and ambiguous as to the terms "any and all documents,  
28 writings, and communications" and "which contain information on the responsibilities and duties

1 of Steve Lucent when filling out an application”. Defendant objects to this request in that it seeks  
2 information that it is neither relevant to Plaintiffs’ claims for breach of contract or tortious bad  
3 faith claims handling, nor proportional to the needs of the case, as the requested information does  
4 not, generally, speak to whether Plaintiffs’ claim was properly handled. Moreover, this request  
5 explicitly seeks confidential and sensitive information of USAA’s employees. Finally, the request  
6 is patently overbroad as it is not narrowed in scope in any way to be relevant to the claim made  
7 basis of this suit. Subject to and without waiving these objections, Steve Lucent is not an  
8 insurance agent as USAA understands this request to assert, and does not participate in the  
9 completion of applications for insurance. All communications of Steven Lucent relating to  
10 Plaintiff’s claim were produced in *Defendant United Services Automobile Association’s Initial*  
11 *Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as documents  
12 Bates stamped USAA000001 to USAA004785 and all supplements thereto. Discovery continues  
13 and Defendant reserves the right to supplement this response as appropriate.

14 **REQUEST FOR PRODUCTION NO. 20:**

15 Please produce any and all documents and writings constituting a liability guarantee given  
16 to you by Steve Lucent.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

18 Objection. Defendant objects that the request assumes and misstates facts, is vague and  
19 ambiguous as to the terms “liability guarantee” and “given to you by Steve Lucent”. Defendant  
20 further objects this request seeks information that it is neither relevant to the claims or defenses of  
21 any party, nor proportional to the needs of the case, as the request is not reasonably tailored to  
22 include only those matters relevant to this suit.

23 Subject to and without waiving the stated objections: Defendant has no “liability  
24 guarantee” documents responsive to this request. Discovery continues and Defendant reserves the  
25 right to supplement this response as appropriate.

26 **REQUEST FOR PRODUCTION NO. 21:**

27 Please produce a copy of any and all standards implemented by you for the prompt  
28 investigation of claims.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

2       Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
3 and ambiguous as to the terms “any and all standards”. As presently worded, the information  
4 sought by this Request is not relevant to the claims or defenses of any party, nor proportional to  
5 the needs of the case, as Defendant’s “standards” are intended to provide guidance but each claim  
6 is handled on its own merits. Defendant further objects on the grounds that the documents sought  
7 are confidential, sensitive, proprietary business information and/or trade secrets.

8       Subject to and without waiving the stated objections, Defendant responds as follows:  
9 Defendant provides online guidance to claims handlers through its “Knowledge Delivery” online  
10 search tool. Defendant will produce, only upon entry of a Confidentiality and Protective Order, the  
11 KD materials relating to the handling of UM claims for the state of Nevada, for the applicable time  
12 period. Discovery continues and Defendant reserves the right to supplement this response as  
13 appropriate.

14 **REQUEST FOR PRODUCTION NO. 22:**

15       Please produce a copy of any and all standards implemented by you referring or relating to  
16 the provisions of the Nevada Unfair Claims Practices Act, NRS 686A.310, including, but not  
17 limited to, standards relating to:

- 18       (a) Representing to insureds or claimants pertinent facts of insurance policy provisions  
19       relating to any coverage at issue.
- 20       (b) Acknowledging and acting reasonably promptly upon communications with respect to  
21       claims arising under insurance policies.
- 22       (c) Adopting and implementing reasonable standards for the prompt investigation and  
23       processing of claims arising under insurance policies.
- 24       (d) Affirming or denying coverage of claims within a reasonable time after proof of loss  
25       requirements have been completed and submitted by the insured.
- 26       (e) Effectuating prompt, fair and equitable settlements of claims in which liability of the  
27       insurer has become reasonably clear.

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- 1 (f) Not compelling insureds to institute litigation to recover amounts due under an  
2 insurance policy by offering substantially less than the amounts ultimately recovered in  
3 actions brought by such insureds, when the insureds have made claims for amounts  
4 reasonably similar to the amounts ultimately recovered.
- 5 (g) Attempting to settle a claim by an insured for an amount to which a reasonable person  
6 would have believed he was entitled by reference to written or printed advertising  
7 material accompanying or made part of an application.
- 8 (h) Not attempting to settle claims on the basis of an application which was altered without  
9 notice to, or knowledge or consent of, the insured, their representative, agent or broker.
- 10 (i) Informing insured or beneficiaries, upon payment of a claim, of the coverage under  
11 which payment is made.
- 12 (j) Not informing insureds or claimants a practice of the insurer of appealing from  
13 arbitration awards in favor of insureds or claimants for the purpose of compelling them  
14 to accept settlements or compromises less than the amount awarded in arbitration.
- 15 (k) Not delaying the investigation or payment of claims by requiring an insured or a  
16 claimant, or the physician of either, to submit a preliminary claim report, and then  
17 requiring the subsequent submission of formal proof of loss forms, both of which  
18 submissions contain substantially the same information.
- 19 (l) Not settling claims promptly, where liability has become reasonably clear, under one  
20 portion of the insurance policy coverage in order to influence settlements under other  
21 portions of the insurance policy coverage.
- 22 (m) Compliance with the provisions of NRS 687B.310 to 687B.390, inclusive, or  
23 687B.410.
- 24 (n) Providing promptly to an insured a reasonable explanation of the basis in the insurance  
25 policy, with respect to the facts of the insured's claim and the applicable law, for the  
26 denial of their claim or for an offer to settle or compromise their claim.
- 27 (o) Not advising an insured or claimant not to seek legal counsel.
- 28 (p) Not misleading an insured or claimant concerning any applicable statute of limitations.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “any and all standards”. Defendant further objects on the grounds that the request seeks information that is confidential, sensitive, proprietary business information and/or trade secrets.

Subject to and without waiving the stated objections, Defendant responds as follows: Defendant provides online guidance to claims handlers through its “Knowledge Delivery” online search tool. Defendant will produce, only upon entry of a Confidentiality and Protective Order , the KD materials relating to the handling of UM claims, for the state of Nevada, for the subject time period. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 23:**

To the extent you are asserting “advice of counsel” as a defense to the allegations contained in Plaintiff’s complaint, please produce any and all documents referring to, evidencing, or constituting coverage opinions, legal research, and/or legal advice that you received from an attorney concerning any aspect of the subject claim.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “advice of counsel as a defense”. Defendant objects as this Request seeks documents protected by the attorney/client privilege and/or the work product doctrine.

Subject to and without waiving the stated objections, Defendant responds as follows: Defendant is not currently asserting “advice of counsel” as a defense to any claim. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 24:**

Please produce any and all documents, writings, and communications concerning, reflecting, evidencing, or constituting payments received by you from Plaintiff for insurance policy premiums.

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1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

2       Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
3 and ambiguous as to the terms “documents, writings, and communications”. Defendant further  
4 objects this request seeks information that it is neither relevant to the claims or defenses of any  
5 party, nor proportional to the needs of the case, as the request is not reasonably tailored to include  
6 only those matters relevant to this suit, and his intended only to harass as Defendant is not  
7 disputing that Plaintiff paid premiums or that the policy was in effect on the date of the subject  
8 accident.

9 **REQUEST FOR PRODUCTION NO. 25:**

10       Please produce any and all documents, writings, and communications concerning,  
11 reflecting, evidencing, or constituting settlement negotiations regarding Plaintiff’s claims.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

13       Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
14 and ambiguous as to the terms “documents, writings, and communications”. Subject to and  
15 without waiving the stated objections: Responsive and non-privileged documents responsive to  
16 this request were produced in *Defendant United Services Automobile Association’s Initial*  
17 *Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as documents  
18 Bates stamped USAA000001 to USAA004785 and all supplements thereto. Discovery continues  
19 and Defendant reserves the right to supplement this response as appropriate.

20 **REQUEST FOR PRODUCTION NO. 26:**

21       In regard to Defendant’s handling of the subject incident/claim, produce the adjusting  
22 claims file(s) with any and all contents herein to include, but not limited to, recorded and/or  
23 written statements, notes by adjusters/processors and/or investigators, photographs and videotapes  
24 (in color if available), index bureau information regarding claims made or believed to have been  
25 made by Plaintiff, medical records, documentation between agents and claims department, and  
26 computer print-outs of incident information stored on computer data base(s), including any and all  
27 computer claims log(s) and notes.

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1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

2       Objection. Defendant objects that the request is compound, vague and ambiguous to the  
3 extent it seeks “the adjusting claims file(s)”, and overbroad to the extent it seeks any information  
4 unrelated to Defendant’s handling of Plaintiff’s claim. To the extent it seeks information  
5 unrelated to Defendant’s handling of Plaintiff’s claim, Defendant objects to this Request as the  
6 requested documents have no bearing on the issues in this case – the value of Plaintiff’s claim and  
7 whether Defendant’s handling of that claim was proper. As such, this request seeks information  
8 that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the  
9 case. Subject to and without waiving the stated objections: Responsive and non-privileged  
10 documents responsive to this request were produced in *Defendant United Services Automobile*  
11 *Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP*  
12 *16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto.  
13 Discovery continues and Defendant reserves the right to supplement this response as appropriate.

14 **REQUEST FOR PRODUCTION NO. 27:**

15       Please produce any and all documents, writings, and communications that are used by your  
16 personnel for reference, training, and guidelines for solicitation of underinsured motorist policies  
17 from customers.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

19       Objection. Defendant objects that the request is compound, overbroad, burdensome, vague  
20 and ambiguous as to the terms “all documents, writings, and communications” and “solicitation of  
21 underinsured motorist policies”. As presently worded, the information sought by this Request is  
22 not relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
23 these documents do not relate in any way to the issues in this litigation – the value of Plaintiff’s  
24 claim and whether Defendant’s handling of that claim was proper. As such, this request seeks  
25 information that it is neither relevant to the claims or defenses of any party, nor proportional to the  
26 needs of the case. Subject to and without waiving these objections, USAA does not use agents for  
27 the sale of insurance, and thus, there are no documents responsive to this request.

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1 **REQUEST FOR PRODUCTION NO. 28:**

2 Please produce Defendant's policies, procedures, manuals or other training for evaluating  
3 claims including but not limited to any and all training courses given or required for Defendant's  
4 Claims Adjusters that were taken within 5 years prior to the claim in question through the present  
5 time.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

7 Objection. Defendant objects that the request assumes and misstates facts, is compound,  
8 overbroad in scope, burdensome, vague and ambiguous as to the terms "policies, procedures,  
9 manuals or other training". As presently worded, the information sought by this Request is not  
10 relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
11 materials related to Defendant's "policies, procedures, manuals or other training" are intended to  
12 provide guidance but each claim is handled on its own merits. Defendant further objects on the  
13 grounds that the request seeks information that is confidential, sensitive, proprietary business  
14 information and/or trade secrets.

15 Subject to and without waiving the stated objections, Defendant responds as follows:  
16 Defendant does not have claims "manuals" but rather provides online guidance to claims handlers  
17 through its "Knowledge Delivery" online search tool. Defendant will produce only upon entry of  
18 a Confidentiality and Protective Order, the KD materials relating to evaluation of UM claims in  
19 Nevada for the subject time period. Defendant objects to producing "any and all training courses  
20 given or required" as patently overbroad and unduly burdensome.

21 **REQUEST FOR PRODUCTION NO. 29:**

22 Please produce any and all documents and items relied upon by Defendant in evaluating  
23 the claim.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

25 Objection. Defendant objects that the request is vague and overbroad to the extent it seeks  
26 "all documents" relied upon by Defendant in "evaluating the claim". Subject to and without  
27 waiving the stated objections: Responsive and non-privileged documents responsive to this request  
28 were produced in *Defendant United Services Automobile Association's Initial Disclosure of*

1 *Witnesses and Production of Documents Pursuant to NRCP 16.1* as documents Bates stamped  
2 USAA000001 to USAA004785 and all supplements thereto. Discovery continues and Defendant  
3 reserves the right to supplement this response as appropriate.

4 **REQUEST FOR PRODUCTION NO. 30:**

5 Please produce any and all documents, writings, and communications including, but not  
6 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
7 statements, provided to any person or entity related to medical opinions concerning Plaintiff  
8 including, but not limited to, regarding record reviews.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

10 Objection. Defendant objects that the request is vague and overbroad to the extent it seeks  
11 “any and all documents provided to any person or entity”, and is not limited in scope in any way.  
12 Defendant also objects to this request to the extent it seeks documents protected by the attorney-  
13 client privilege and work product doctrine. Subject to and without waiving the stated objections:  
14 With regard to the claim made basis of this suit, responsive and non-privileged documents  
15 responsive to this request were produced in *Defendant United Services Automobile Association’s*  
16 *Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as  
17 documents Bates stamped USAA000001 to USAA004785. See also documents produced in the  
18 *First Supplement to Defendant United Services Automobile Association’s Initial Disclosure of*  
19 *Witnesses and Production of Documents Pursuant to NRCP 16.1*, as documents Bates stamped  
20 USAA004786 to USAA004890. Discovery continues and Defendant reserves the right to  
21 supplement this response as appropriate.

22 **REQUEST FOR PRODUCTION NO. 31:**

23 Please produce any and all documents, writings, and communications including, but not  
24 limited to, correspondence, e-mails, reports, memos, audio recordings, visual recordings and  
25 statements, received from to any person or entity related to medical opinions concerning Plaintiff  
26 including, but not limited to, regarding record reviews.

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1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

2       Objection. Defendant objects that the request is vague and overbroad to the extent it seeks  
3 “any and all documents provided to any person or entity”, and is not limited in scope in any way.  
4 Defendant also objects to this request to the extent it seeks documents protected by the attorney-  
5 client privilege and work product doctrine. Subject to and without waiving the stated objections:  
6 With regard to the claim made basis of this suit, responsive and non-privileged documents  
7 responsive to this request were produced in *Defendant United Services Automobile Association’s*  
8 *Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1* as  
9 documents Bates stamped USAA000001 to USAA004785 and all supplements thereto. Discovery  
10 continues and Defendant reserves the right to supplement this response as appropriate.

11 **REQUEST FOR PRODUCTION NO. 32:**

12       With respect to any vendor or medical provider providing an opinion concerning Plaintiff’s  
13 injuries, treatment or medical costs, please provide a copy of reports and invoices generated by  
14 that vendor or medical provider for you in the five (5) years preceding your use of such vendor or  
15 medical provider on Plaintiff’s claim.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

17       Objection. Defendant objects that the request is overbroad and burdensome to the extent it  
18 seeks “reports” and “invoices” for matters completely unrelated to the instant suit, and which  
19 relate solely to the claims of other non-party insureds. Defendant will not produce such  
20 documents. Defendant also objects to this Request as overbroad as it seeks information that it is  
21 neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
22 the request is not reasonably tailored to include only those matters bearing on the issues in this  
23 case – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was proper.  
24 Subject to and without waiving the stated objections: with regards to Plaintiff’s claim made basis  
25 of this suit, documents responsive to this request were produced in *Defendant United Services*  
26 *Automobile Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant*  
27 *to NRCP 16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements

28 ///

1 thereto. Discovery continues, as such, Defendant reserves the right to supplement this response as  
2 appropriate.

3 **REQUEST FOR PRODUCTION NO. 33:**

4 Please produce any and all documents informing the Plaintiff that he has not complied or  
5 cooperated with any provision of the policy.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

7 Objection. Defendant objects that the request is overbroad and burdensome to the extent it  
8 seeks “all documents”. Subject to and without waiving the stated objections: Responsive and non-  
9 privileged documents responsive to this request were produced in *Defendant United Services*  
10 *Automobile Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant*  
11 *to NRCP 16.1* as documents Bates stamped USAA000001 to USAA004785 and all supplements  
12 thereto. Discovery continues, as such, Defendant reserves the right to supplement this response as  
13 appropriate.

14 **REQUEST FOR PRODUCTION NO. 34:**

15 Please produce the personnel files of each employee, manager, supervisor or other agent  
16 who was involved, had supervisory capacity over the Plaintiff’s claim or audited the Plaintiff’s  
17 claim.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

19 Objection. Defendant objects that the request is overbroad in scope and time, burdensome  
20 to the extent it seeks “personnel files” of employees “involved” with “Plaintiff’s claim” without  
21 any limitation as to time or scope, and vague and/or ambiguous as to the terms “personnel file”.  
22 Defendant objects to this request in that it seeks information that it is neither relevant to Plaintiffs’  
23 claims for breach of contract or tortious bad faith claims handling, nor proportional to the needs of  
24 the case, as the requested information does not, generally, speak to whether Plaintiffs’ claim was  
25 properly handled. Moreover, this request explicitly seeks confidential and sensitive information of  
26 USAA’s employees. USAA further objects to the extent this request seeks business information  
27 that is confidential and/or proprietary. Subject to and without waiving the stated objections,  
28 Defendant will produce, upon entry of a Confidentiality and Protective Order, relevant information

1 within Steve Lucent's personnel file, for the subject time period. Discovery continues and  
2 Defendant reserves the right to supplement this response as appropriate.

3 **REQUEST FOR PRODUCTION NO. 35:**

4 Please produce any and all quality assurance audits in the five (5) years prior to the claim  
5 through the present, relating to any of the personnel involved in handling, taking action, or  
6 reviewing of the Plaintiff's claim. For the purpose of this request, quality assurance audit means  
7 any review of claims files to assess the quality of work done by claims handlers or adjusters.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

9 USAA objects to this request on the grounds that it assumes and misstates facts, is vague  
10 and ambiguous as to the term "quality insurance audits ...relating to . . .personnel", is overly  
11 broad, burdensome, oppressive and intended only to harass. Defendant objects to this request in  
12 that it seeks information that it is neither relevant to Plaintiffs' claims for breach of contract or bad  
13 faith claims handling, nor proportional to the needs of the case as any action by USAA on any  
14 other claims does not generally speak to whether Plaintiffs' claim was properly handled or  
15 whether the insurance policy was breached by Defendant. Any such matter, with no nexus to the  
16 harm alleged by Plaintiffs with regard to their claims under the subject policy, is irrelevant and the  
17 request is not reasonably calculated to lead to the discovery of admissible evidence. See *State*  
18 *Farm Mutual Auto Ins. Co. v. Campbell*, 538 US 4087 (2003). USAA objects to the extent that  
19 this request seeks information protected by the attorney-client privilege and the work product  
20 doctrine. Subject to and without waiving the stated objections, USAA responds as follows: As  
21 USAA understands this request, there are no documents responsive to this request. Defendant will  
22 produce, upon entry of a Confidentiality and Protective Order, relevant information within Steve  
23 Lucent's personnel file, including performance reviews, for the subject time period. Discovery  
24 continues and Defendant reserves the right to supplement this response as appropriate.

25 **REQUEST FOR PRODUCTION NO. 36:**

26 Please produce any and all copies of documents that reference bonus programs or  
27 employee award programs applicable to any and all departments or sections involved in the  
28 handling of the Plaintiff's claim for five (5) years prior to the claim through the present.



1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

2 USAA objects to this request as it assumes and misstates facts, is overbroad in scope and  
3 time, and is vague and/or ambiguous as to the terms “bonus and/or incentive programs”.  
4 Defendant objects to this request in that it seeks information that it is neither relevant to Plaintiffs’  
5 claims for breach of contract or tortious bad faith claims handling, nor proportional to the needs of  
6 the case, as the requested information does not, generally, speak to whether Plaintiffs’ claim was  
7 properly handled.

8 Subject to the forgoing objections, USAA has a company wide incentive program not  
9 specifically tied to payment or non-payment of claims. Since at least 2014, Defendant’s Board of  
10 Directors has approved a holiday bonus that is paid to all employees in December of each year.  
11 Employees who are actively employed at the end of November receive an amount equal to their  
12 then-current bi-weekly base pay, prorated for any partial period of employment. Employees who are  
13 actively employed for less than the entire preceding year receive a pro rata amount, based upon the  
14 number of months they have been employed. Additionally, since at least 2014, Defendant’s Board of  
15 Directors has awarded an enterprise-wide performance bonus paid in February of the following year.  
16 In order to be eligible for the bonus, employees must have been hired prior to October and still  
17 employed as of February (or retired from USAA on or after January) of the payment year. With  
18 limited exceptions noted below, every employee working with USAA, regardless of job title, job  
19 duties, or job location, received a bonus equal to a percentage of their eligible earnings. Employees  
20 whose individual performance required a form of corrective action during the year may have  
21 received a reduced bonus or no bonus at all.

22 **REQUEST FOR PRODUCTION NO. 37:**

23 Please produce any and all copies of documents referring to goals, targets or objectives  
24 established for claim payments, loss ratios, combined loss ratios, settlement goals, timing of  
25 settlements, percentage of cases to resolve prelitigation or percentage of cases to take to trial.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

27 Objection. Defendant objects that the request assumes and misstates facts, is overbroad  
28 and burdensome to the extent it seeks documents related to “goals”, “targets” or “objectives”

1 related to “claim payments”, “loss ratios”, “combined loss ratios”, “settlement goals”, “timing of  
2 settlements”, “percentages of cases to resolve prelitigation” and “percentage of cases to take to  
3 trial” without any limitation as to time or scope, and is vague and ambiguous as to these terms.  
4 Defendant objects to this Request as overbroad as it seeks information that it is neither relevant to  
5 the claims or defenses of any party, nor proportional to the needs of the case, as the request is not  
6 reasonably tailored to include only those matters relevant to the insurance claim made the basis of  
7 this suit. Subject to and without waiving the states objections, after a diligent search, USAA has  
8 no documents responsive to this request. Discovery is continuing and USAA reserves the right to  
9 supplement this response.

10 **REQUEST FOR PRODUCTION NO. 38:**

11 Please produce any and all documents referencing, discussing or analyzing settlement  
12 offers and/or reserves compared to verdicts and/or judgements for five (5) years prior to the  
13 Plaintiff’s claim.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

15 Objection. Defendant objects that the request is overbroad and burdensome to the extent it  
16 seeks documents related to “settlement offers” and/or “reserves” for matters unrelated to the  
17 instant suit without any limitation as to time or scope. Defendant further objects that the request  
18 assumes and misstates facts, is vague and ambiguous as to the terms “goals”, “targets” or  
19 “objectives” related to “claim payments”, “loss ratios”, “combined loss ratios”, “settlement goals”,  
20 “timing of settlements”, “percentages of cases to resolve prelitigation” and “percentage of cases to  
21 take to trial”. Defendant objects to this Request as overbroad as it seeks information that it is  
22 neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as  
23 the request is not reasonably tailored to include only those matters relevant to the insurance claim  
24 made the basis of this suit. Finally, Defendant objects to this request to the extent it seeks  
25 document protected by the attorney/client privilege and/or work product doctrines. Subject to and  
26 without waiving the stated objections, after a diligent search, USAA has no documents responsive  
27 to this request. Discovery is continuing and USAA reserves the right to supplement this response.

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1 **REQUEST FOR PRODUCTION NO. 39:**

2 Please produce any and all deposition transcripts or trial testimony transcripts of any of the  
3 Defendant's officers or personnel, since January 1, 2010, in any suit relating to bad faith claims  
4 handling of uninsured or underinsured claim(s).

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

6 Objection. This request is unduly burdensome and overly broad in time and scope. This  
7 request seeks information that is not narrowly tailored to the claims and defenses in this matter  
8 and is disproportional to the needs of the case. The request is also overbroad as to geography, and  
9 to the extent it seeks information regarding claims and non-parties other than the claim at issue in  
10 this litigation. As presently worded, the information sought by the Request is not relevant to the  
11 claims or defenses of any party, nor proportional to the needs of the case. The existence of  
12 unrelated "bad faith suits" against Defendant and Defendant's testimony regarding the same, will  
13 neither prove nor disprove any alleged improper actions of Defendant in the handling of Plaintiff's  
14 claim. Defendant will not produce these documents.

15 **REQUEST FOR PRODUCTION NO. 40:**

16 Please produce any and all copies of any regulatory actions, including but not limited to  
17 suspension or revocation proceedings, Market Conduct Examinations, Cease and Desist Orders,  
18 Consent Orders, Reports of Examinations, Corrective Orders or Corrective Action Plans relating  
19 to Defendant's uninsured or underinsured insurance coverage, from January 1, 2010 to present.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

21 Defendant objects to this request on the grounds that it assumes facts, is overbroad and  
22 unduly burdensome in that it seeks information that is not narrowly tailored to the claims and  
23 defenses in this matter and is disproportional to the needs of the case. Defendant further objects to  
24 this request on the grounds that it is overly broad in time, scope and geography, and because it is  
25 not reasonably tailored to include only matters relevant to the handling of the claims which form  
26 the basis of this suit. Any such matter, with no nexus to the harm claimed to have been sustained  
27 by Plaintiff herein with regard to its claims under the subject policies, is irrelevant and the request  
28 is not reasonably calculated to lead to the discovery of admissible evidence. See *State Farm*

1 *Mutual Auto Ins. Co. v. Campbell*, 538 US 4087 (2003). In addition, regulatory matters are not  
2 probative of any issue in this case. Additionally, Defendant objects to this request to the extent it  
3 seeks the private and personal information of other insureds of Defendant or the confidential  
4 information of Defendant. Further, Defendant objects to the extent that this inquiry seeks  
5 information protected by the attorney-client privilege and the work product doctrine. Finally, this  
6 request seeks information which is a matter of public record and can be independently obtained by  
7 Plaintiff without requiring Defendant to compile the information. Based on all of the above, no  
8 further response will be provided.

9 **REQUEST FOR PRODUCTION NO. 41:**

10 Please produce any and all company newsletters designed to inform employees of industry  
11 or company news or developments related to uninsured or underinsured motorist coverage or  
12 policies in Nevada since January 1, 2001.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

14 Objection. This request assumes facts, is vague and ambiguous as to the term  
15 “newsletters”, and is unduly burdensome and overly broad in that it seeks information that is not  
16 narrowly tailored to the claims and defenses in this matter and is disproportional to the needs of  
17 the case. The request is also overbroad to the extent it seeks the production of internal newsletters,  
18 unrelated to this litigation, for a period of over 10 years; i.e., January 1, 2001 to present. As  
19 presently worded, the information sought by the Request is not relevant to the claims or defenses  
20 of any party, nor proportional to the needs of the case. Subject to and without waiving the stated  
21 objections, Defendant does not have any “newsletters”. However, Defendant will produce, only  
22 upon entry of a Confidentiality and Protective Order, the KD materials relating to the handling of  
23 UM claims for the state of Nevada, for the applicable time period. Discovery continues and  
24 Defendant reserves the right to supplement this response as appropriate.

25 **REQUEST FOR PRODUCTION NO. 42:**

26 Please produce any and all transcripts and recordings of speeches or presentations in any  
27 form whatsoever, including Power Point presentation materials, overheads, slides, on the subject  
28 of uninsured or underinsured motorist coverage in since January 1, 2010.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

2       Objection. This request is unduly burdensome and overly broad in that it seeks  
3 information that is not narrowly tailored to the claims and defenses in this matter and is  
4 disproportional to the needs of the case. The request is also overbroad and unduly burdensome to  
5 the extent it seeks the production of “transcripts” and “recordings” of “speeches or presentations”  
6 for a period of almost 10 years; i.e., January 1, 2010 to present and is patently overbroad and  
7 harassing.

8 **REQUEST FOR PRODUCTION NO. 43:**

9       Please produce any and all advertisements or other marketing materials (including but not  
10 limited to brochures and/or video) issued by Defendant in Nevada or available on any website and  
11 pertaining to uninsured or underinsured motorist coverage, since January 1, 2010.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

13       Objection. Defendant objects to this request as it is neither relevant to the claims or  
14 defenses of any party, nor proportional to the needs of the case. There are no allegations within  
15 the Plaintiff’s complaint regarding advertisements, nor did the Plaintiff allege any reliance upon  
16 such advertisements. Additionally, this request is overly broad in scope and time, and responding  
17 would be unduly burdensome. No documents will be produced.

18 **REQUEST FOR PRODUCTION NO. 44:**

19       Please produce any and all copies of any reinsurance or co-insurance agreements, and all  
20 the terms and conditions thereof, between Defendant and any other entity, relating to the  
21 policy(ies) at issue.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

23 Defendant objects to this Request in that it is overbroad and neither relevant to the claims or  
24 defenses of any party, nor proportional to the needs of the case. Subject to and without waiving

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1 the stated objections, after a diligent search, USAA has no documents responsive to this request.  
2 Discovery is continuing and USAA reserves the right to supplement this response.

3 DATED this 5<sup>th</sup> day of October, 2020.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5

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By /s/ Priscilla L. O'Briant

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**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 5th day of October, 2020, I did cause a true and correct copy of **DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** in Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

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By /s/ Anne Cordell

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9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

12 JOHN ROBERTS, an individual,  
13 Plaintiff,

14 vs.

15 UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity  
16 and/or a reciprocal insurance exchange with  
members residing in the State of Nevada;  
17 DOES 1 through 10; and ROE  
CORPORATIONS 11 through 25, inclusive,  
18 Defendants.  
19

CASE NO. A-19-790757-C  
Dept. No.: XXII

**DEFENDANT'S RESPONSES TO  
PLAINTIFF'S SECOND SET OF  
REQUESTS FOR PRODUCTION**

20 COMES NOW Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION,  
21 ("USAA"), by and through its attorneys, Lewis Brisbois Bisgaard & Smith LLP, and hereby  
22 responds to Plaintiff JOHN ROBERTS's ("Plaintiff") Second Set of Requests for Production to  
23 Defendant as follows:

24 **DEFINITIONS**

25 A. "Non-discoverable/Irrelevant." The request in question concerns a matter that is  
26 not relevant to the subject matter and the matters that remain at issue in this litigation and is not  
27 reasonably calculated to lead to the discovery of admissible evidence.

28 B. "Unduly burdensome." The request in question seeks discovery which is unduly



1 burdensome or expensive, taking into account the needs of the case, the amount in controversy,  
2 limitations on the parties' resources, and the importance of the issues at stake in the litigation.

3 C. "Vague." The request in question contains a word or phrase which is not  
4 adequately defined, or the overall request is confusing, and Defendant is unable to reasonably  
5 ascertain what information or documents are sought in the request.

6 D. "Overly broad." The request seeks information beyond the scope of, or beyond the  
7 time period relevant to, the subject matter of this litigation and, accordingly, seeks information  
8 which is non-discoverable/irrelevant and is unduly burdensome.

9 **GENERAL OBJECTIONS**

10 1. Defendant objects to the requests to the extent that they seek documents that are  
11 protected by any absolute or qualified privilege or exemption, including, but not limited to, the  
12 attorney-client privilege, the attorney work-product exemption, the consulting-expert exemption,  
13 and the government/investigatory privilege. Specifically, Defendant objects to these requests on  
14 the following grounds:

15 a. Defendant objects to these requests to the extent they seek documents that  
16 are protected from disclosure by the attorney-client privilege in accordance with Rule 26 of the  
17 Nevada Rules of Civil Procedure and NRS 89.095;

18 b. Defendant objects to these requests to the extent they seek documents that  
19 are protected from disclosure by the work-product exemption in accordance with Rule 26(b)(1)(3)  
20 and (4) of the Nevada Rules of Civil Procedure and applicable case law.

21 c. Defendant objects to these requests to the extent they seek documents that  
22 are protected from disclosure pursuant to the consultant/expert exemption in accordance with Rule  
23 26(b)(3) and (4) of the Nevada Rules of Civil Procedure and applicable case law.

24 d. Defendant objects to these requests to the extent they seek trade secrets,  
25 commercially sensitive information, or confidential proprietary data entitled to protection under  
26 Rule 26(c)(7) of the Nevada Rules of Civil Procedure.

27 2. This response is made on the basis of information and writings available to and  
28 located by Defendant upon reasonable investigation of Defendant's records. There may be other

1 and further information respecting the requests propounded by Plaintiff of which Defendant,  
2 despite its reasonable investigation and inquiry, is presently unaware. Defendant reserves the right  
3 to modify or enlarge any responses with such pertinent additional information as Defendant may  
4 subsequently discover.

5 3. No incidental or implied admissions will be made by the responses to these  
6 requests. The fact that Defendant may respond or object to any request or any part thereof shall  
7 not be deemed an admission that Defendant accepts or admits the existence of any fact set forth or  
8 assumed by such request, or that such response constitutes admissible evidence. The fact that  
9 Defendant responds to a part of any request is not to be deemed a waiver by Defendant of its  
10 objections, including privilege, to other parts to such request.

11 4. Defendant objects to any instruction to the extent that it would impose upon  
12 Defendant greater duties than are set forth under the Nevada Rules of Civil Procedure. Defendant  
13 will supplement responses to the requests as required by the Nevada Rules of Civil Procedure.

14 5. All responses will be made solely for the purpose of this action. Each response will  
15 be subject to all objections as to competence, relevance, materiality, propriety and admissibility,  
16 and to any and all other objections on any ground which would require the exclusion from  
17 evidence of any statement herein if any such statements were made by a witness present and  
18 testifying at trial, all of which objections and grounds are expressly reserved and may be  
19 interposed at such hearings.

20 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

21 **REQUEST FOR PRODUCTION NO. 45:**

22 Please produce the managerial bonus or incentive plan for managers responsible for under  
23 insured or uninsured claims in effect for the time period of five (5) years before the date of loss in  
24 this matter through the present.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

26 USAA objects to this request as it assumes and misstates facts not in evidence. It is also  
27 overbroad in scope and time, and is vague and/or ambiguous as to the terms “bonus and/or  
28 incentive plan”. Defendant objects to this request in that it seeks information that it is neither

1 relevant to Plaintiff's claims for breach of contract or tortious bad faith claims handling, nor  
2 proportional to the needs of the case, as the requested information does not, generally, speak to  
3 whether Plaintiff's claim was properly handled.

4       Subject to and without waiving the foregoing objections, USAA has a company-wide  
5 incentive program not specifically tied to payment or non-payment of claims. Since at least 2010,  
6 Defendant's Board of Directors has approved a holiday bonus that is paid to all employees in  
7 December of each year. Employees who are actively employed at the end of November receive an  
8 amount equal to their then-current bi-weekly base pay, prorated for any partial period of  
9 employment. Additionally, since at least 2010, Defendant's Board of Directors has awarded an  
10 enterprise-wide performance bonus paid in February of the following year. In order to be eligible  
11 for the bonus, employees must have been hired prior to October and still employed as of February  
12 (or retired from USAA on or after January) of the payment year. With limited exceptions noted  
13 below, every employee working with USAA, regardless of job title, job duties, or job location,  
14 received a bonus equal to a percentage of their eligible earnings. Employees whose individual  
15 performance required a form of corrective action during the year may have received a reduced  
16 bonus or no bonus at all.

17 **REQUEST FOR PRODUCTION NO. 46:**

18       Please produce the bonus or incentive plan for adjusters responsible for under insured or  
19 uninsured claims in effect for the time period of five (5) years before the date of loss in this matter  
20 through the present.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

22       USAA objects to this request as it assumes and misstates facts not in evidence. It is also  
23 overbroad in scope and time, and is vague and/or ambiguous as to the terms "bonus and/or  
24 incentive plan". Defendant objects to this request in that it seeks information that it is neither  
25 relevant to Plaintiff's claims for breach of contract or tortious bad faith claims handling, nor  
26 proportional to the needs of the case, as the requested information does not, generally, speak to  
27 whether Plaintiff's claim was properly handled.

28       Subject to and without waiving the foregoing objections, USAA has a company-wide

1 incentive program not specifically tied to payment or non-payment of claims. Since at least 2010,  
2 Defendant's Board of Directors has approved a holiday bonus that is paid to all employees in  
3 December of each year. Employees who are actively employed at the end of November receive an  
4 amount equal to their then-current bi-weekly base pay, prorated for any partial period of  
5 employment. Additionally, since at least 2010, Defendant's Board of Directors has awarded an  
6 enterprise-wide performance bonus paid in February of the following year. In order to be eligible  
7 for the bonus, employees must have been hired prior to October and still employed as of February  
8 (or retired from USAA on or after January) of the payment year. With limited exceptions noted  
9 below, every employee working with USAA, regardless of job title, job duties, or job location,  
10 received a bonus equal to a percentage of their eligible earnings. Employees whose individual  
11 performance required a form of corrective action during the year may have received a reduced  
12 bonus or no bonus at all.

13 **REQUEST FOR PRODUCTION NO. 47:**

14 Please produce the portions of the personnel file of the adjuster(s) and supervisors directly  
15 involved in handling and evaluating Plaintiff's claim regarding performance evaluation, audits,  
16 disciplinary actions, and performance under a bonus or incentive plan.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

18 USAA objects to this request as it is overbroad in scope and time, vague and/or  
19 ambiguous as to the terms "personnel file". Defendant objects to this request in that it seeks  
20 information that it is neither relevant to Plaintiff's claims for breach of contract or tortious bad  
21 faith claims handling, nor proportional to the needs of the case, as the requested information does  
22 not, generally, speak to whether Plaintiff's claim was properly handled. Moreover, this request  
23 explicitly seeks confidential information of third parties not joined to this litigation. Those  
24 persons have an expectation that their personal information will be maintain in confidence.  
25 USAA further objects to the extent this request seeks business information that is confidential  
26 and/or proprietary. To the extent that such documents exists and are discoverable, they will only  
27 be produced after the entry of an appropriate protective order. Subject to and without waiving  
28 the foregoing objections, after the entry of an appropriate confidentiality and protection order,

1 USAA will produce the job-related materials contained within Steven Lucent's employee file for  
2 the relevant time frame.

3 DATED this 6th day of November, 2020.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5  
6 By /s/ Jennifer A. Taylor

7 ROBERT W. FREEMAN

8 Nevada Bar No. 3062

9 PRISCILLA L. O'BRIANT

10 Nevada Bar No. 010171

11 JENNIFER A. TAYLOR

12 Nevada Bar No. 6141

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Telephone: 702.893.3383

16 Fax: 702.893.3789

17 *Attorneys for Defendant United Services*

18 *Automobile Association*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 6th day of November, 2020, I did cause a true and correct copy of **DEFENDANT’S RESPONSES TO PLAINTIFF’S SECOND SET OF REQUESTS FOR PRODUCTION** in Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

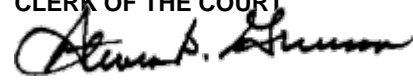
Jordan P. Schnitzer, Esq.  
THE SCHNITZER LAW FIRM  
9205 W. Russell Road, Ste. 240  
Las Vegas, NV 89148  
Tel: (702) 960-4050  
Fax: (702) 960-4092  
*Attorney for Plaintiff*

[Jordan@theschnitzerlawfirm.com](mailto:Jordan@theschnitzerlawfirm.com)

*/s/ Anne Cordell*

By

Anne Cordell, an Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
Email: [Anne.cordell@lewisbrisbois.com](mailto:Anne.cordell@lewisbrisbois.com)



JORDAN P. SCHNITZER, ESQ.  
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*Attorney for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOHN ROBERTS, an individual,  
  
Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity and/or a  
reciprocal insurance exchange with members  
residing in the State of Nevada; DOES 1 through  
10; and ROE CORPORATIONS 11 through 25,  
inclusive,  
  
Defendants.

Case No.: A-19-790757-C  
Dept. No.: IV

**PLAINTIFF'S MOTION TO COMPEL  
DEFENDANT'S RESPONSES TO  
INTERROGATORIES AND  
REQUESTS FOR ADMISSION**

**DISCOVERY COMMISSIONER**

**HEARING REQUESTED**

COMES NOW, Plaintiff John Roberts, by and through his attorney of record, THE  
SCHNITZER LAW FIRM, and hereby files his Motion to Compel Defendant's Responses to and  
Interrogatories and Requests for Admission ("Motion").

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1 This Motion is based on the Points and Authorities submitted herewith, together with the  
2 papers and pleadings on file herein, exhibits attached hereto and oral arguments at the time of  
3 hearing.

4 DATED this 14<sup>th</sup> day of January 2021.

5 THE SCHNITZER LAW FIRM

6  
7 By:   
8 JORDAN P. SCHNITZER, ESQ.  
9 Nevada Bar No. 10744  
10 9205 West Russell Road, Suite 240  
11 Las Vegas, NV 89148  
12 *Attorney for Plaintiff*  
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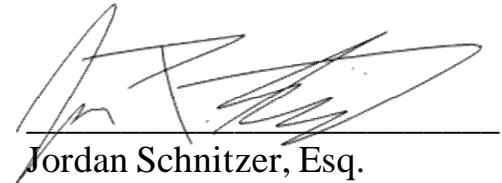


1     **DECLARATION OF JORDAN SCHNITZER IN SUPPORT OF MOTION TO COMPEL**  
2                     **PURSUANT TO EDCR 2.34**

3     JORDAN SCHNITZER, being first duly sworn, deposes and says:

- 4     1. I am a licensed attorney admitted to practice law in all courts in the State of Nevada.  
5     2. I make this affidavit in support of Plaintiff's Motion to Compel.  
6     3. I have personal knowledge of the matters stated in this affidavit and could testify as a  
7         competent witness, if called upon to do so.  
8     4. On September 10, 2020, my office sent correspondence outlining the deficient  
9         responses. *See* **Exhibit 4**.  
10    5. I met and conferred with opposing counsel on USAA's deficient discovery responses  
11         on June 4, 2020, and again on October 7, 2020. True and accurate copies of the email  
12         correspondences between opposing counsel and I are attached hereto as **Exhibit 5**.  
13    6. Defendant sent supplemental responses to Interrogatories on October 6, 2020. *See*  
14         **Exhibits 6**. However, such responses did not resolve the issues that remained at the  
15         time of the latest telephonic meet and confer.  
16    7. Despite the parties, good faith effort, the disputes have not been resolved.  
17    8. I submit this Declaration in compliance with EDCR 2.34 to demonstrate my  
18         compliance with the rule and to illustrate the efforts that were undertaken to try to  
19         resolve these issues without the need to involve the Court.

20     DATED this 14<sup>th</sup> day of January 2021.

21                       
22                     Jordan Schnitzer, Esq.

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION (“Defendant” or “USAA”) has improperly objected to a number of interrogatories and requests for admission. USAA claimed the information sought is privileged, irrelevant to this action, or the request or overbroad, among others. All of Plaintiff’s requests have been reasonable and are regarding relevant information, and USAA’s cited objections and privilege do not apply to the information Plaintiff requests. The objections appear to be an effort to obstruct Plaintiff from receiving information directly related to his claims that his injuries were foreseeable by Defendant.

Plaintiff, through his attorney, and USAA have conducted telephonic meet and confer conferences, but to no avail. USAA many times uses the same objections to several different requests in an attempt to simply refuse to respond with any substantive information to Plaintiff. Plaintiff has no other option than to seek relief from the Court in the form of an Order compelling USAA to respond to Plaintiff’s propounded discovery including 8 interrogatories and 10 requests for admission. Therefore, the Court should grant this motion and award monetary sanctions.

### **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

Plaintiff filed his *Complaint* on March 8, 2019, in Nevada State Court. The *Complaint* alleges that Plaintiff was injured from a vehicle accident on or about May 9, 2014. *See Exhibit 1* at ¶¶ 10-14. Plaintiff made demand upon Defendants for payment of the claim. *Id.* at ¶¶ 17. Plaintiff alleges that Defendants did not pay the undisputed portions of the claim and did not reasonably evaluate the claim. *Id.* at ¶¶ 18-20. Plaintiff alleges that these actions are the basis for a breach of contract, breach of the implied covenant of good faith and fair dealing, tortious breach of the implied covenant of good faith and fair dealing and request declaratory relief. *Id.* at ¶¶ 18-22.

Plaintiff has sent to USAA Interrogatories and Requests for Admissions. USAA returned responses to the Interrogatories and Requests for Admissions on August 7, 2020, but some of USAA’s responses were either inadequate or merely objections with no answer. *See Exhibits 2*

1 **and 3.** Plaintiff sent correspondence to USAA on September 10, 2020 outlining the deficient  
2 responses. *See Exhibit 4.*

3 Plaintiff, through his attorney, met and conferred with Defendant on June 4, 2020, and  
4 again on October 7, 2020 to attempt to resolve these issues. *See Exhibit 5 and Declaration of*  
5 **Jordan P. Schnitzer, Esq.** Defendant sent supplemental responses to Interrogatories on October  
6 6, 2020. *See Exhibits 6.* However, such responses did not resolve the issues that remained at the  
7 time of the latest telephonic meet and confer.

### 8 **III. LEGAL ARGUMENT**

#### 9 **A. Scope of Discovery**

10 Discovery is limited, not merely to admissible evidence, but to requests that are “relevant  
11 to any party’s claim or defense.” Nev. R. Civ. P. 26 “Relevance for purposes of discovery is  
12 defined very broadly.” *See Hickman v. Taylor*, 329 U.S. 495, 506-07 (1947) (“Information is  
13 relevant to the subject matter if it might reasonably assist a party in evaluating the case,  
14 preparing for trial or facilitating settlement.”) This broad right of discovery is based on the  
15 general principle that litigants have a right to every man’s evidence, and that wide access to  
16 relevant facts serves the integrity and fairness of the judicial process by promoting the search for  
17 the truth. *See, United States v. Bryan*, 339 U.S. 323, 331 (1950).

18 Although discovery is not limited to the merits of the case, discovery should be  
19 proportional to the needs of the case. Nev. R. Civ. P. 26(b)(1). However, the issue of  
20 proportionality “does not place on the party seeking discovery the burden of addressing all  
21 proportionality considerations.” *See* Fed. R. Civ. P. 26 committee notes. Moreover the parties’  
22 relative access to relevant information is a consideration in regards to determining whether  
23 information is discoverable. *Ibid.* Specifically, when one party has more access to vast  
24 information than the other party, **“the burden of responding to discovery lies heavier on the  
party that has more information, and properly so.”** (emphasis added) *Ibid.*

25 Moreover, Rule 34(a) of the Nevada Rules of Civil Procedure allows a party to “request  
26 the production of any designated documents or electronically stored information...stored in any  
27 medium from which information can be obtained either directly or, if necessary, after translation  
28 by the responding party into a reasonably usable form[.]” Nev. R. Civ. P. 34.

If a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”

Nev. R. Civ. P. 26.

**“To withhold materials without such notice is contrary to this Rule, subjects the party to sanctions under Rule 37(b)(2), and may be viewed a waiver of the privilege or protection.”**

(emphasis added) Fed. R. Civ. P. 26 committee notes. If a party refuses to comply with a request pursuant to FRCP 34, “a party may move for an order compelling disclosure or discovery.” Fed. R. Civ. P. 37.

The party opposing discovery has the burden of showing that it is irrelevant, overly broad, or unduly burdensome. *Fosbre v. Las Vegas Sands Corp.*, 2016 U.S. Dist. LEXIS 1073, at \*14 (D. Nev. Jan. 5, 2016). To meet this burden, the objecting party must specifically detail the reasons why each request is irrelevant. *Ibid.* If a party withholds documents on the basis of a privilege, the party asserting the privilege also bears the burden of proving its validity. *Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615, 627 (D. Nev. 2013)(citing *In re Grand Jury Investigation*, 974 F.2d 1068, 1070-1071 (9<sup>th</sup> Cir. 1992)).

#### **B. Defendant USAA Makes Boilerplate Objections to Interrogatories and Requests for Admissions, with Little to no Support**

USAA provides minimal legal precedent in support of many of its objections. Merely asserting the ground for the objection generally is not sufficient to sustain an objection to the request. *See, e.g., McLeod, Alexander, Powel & Apffel, P.C., v. Quarles*, 894 F.2d 1482, 1484-85 (5<sup>th</sup> Cir. 1990); *Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1559 (11<sup>th</sup> Cir. 1985); *Josephs v. Harris Corp.*, 677 F.2d 985, 991-92 (3<sup>rd</sup> Cir. 1982); *Wauchop v. Domino’s Pizza, Inc.*, 138 F.R.D. 539, 544 (N.D. Ill. 1991); *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296-97 (E.D. Pa. 1980)). Courts may – and generally will – disregard objections that lack explanation and support. *See, e.g., Roesberg*, 85 F.R.D. at 297 (failure to properly assert an

objection generally results in a waiver of objection). As the other sections will show, USAA's objections, even if sufficiently preserved, are without merit.

**C. USAA Should Be Compelled to Meaningfully Respond to Plaintiff's Interrogatories**

**i. Interrogatory 2**

**INTERROGATORY NO. 2:**

State the name; position, employer, last known address, social security number and date of birth, of every person known by you or any third-party administrator who either reviewed, investigated, or made any decision to accept, deny or pay any portion of the subject claim.

**RESPONSE TO INTERROGATORY NO. 2**

Objection. This interrogatory is compound, overbroad, vague and unduly burdensome in that its scope is not narrowly tailored to the claims and defenses in this matter and is not proportional to the needs of the case. Defendant objects to the extent that the interrogatory calls for information protected by the attorney-client and/or work product privileges and also calls for sensitive, personal information. Defendant further objects that the term "...reviewed, investigated, or made any decision", is vague and overbroad. Subject to and without waiving these objections, Defendant responds as follows: The persons who reviewed and evaluated Plaintiff's claim and participated in recommending the actions taken by Defendant with respect to Plaintiff's claim are Steven Lucent, Auto Examiner, and Deborah Springer, Manager, Claims Operations. both are employed by Defendant. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

*See Exhibit 2.*

Here, this Answer is insufficient for at least 2 reasons. First, the information related to "Steven Lucent and Deborah Springer" is insufficient as it only provides this person's name – and does not provide this person's position, employer, last known address, social security number and date of birth. Second, USAA failed to identify the people other than Steven Lucent and Deborah Springer "known by you or any third-party administrator who either reviewed, investigated, or made any decision to accept, deny or pay any portion of the subject claim." Therefore, the Court should compel Defendant to provide an adequate response to Interrogatory No. 2.

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ii. Interrogatories 12, 13 and 14

**INTERROGATORY NO. 12**

For each person within the past ten years, who contended that you had violated the Unfair Claims Practices Act, please state the following: (a) The name and last known address of the person; (b) Date the claim or lawsuit was made against you; (c) Court jurisdiction and case number of the litigation.

**RESPONSE TO INTERROGATORY NO. 12**

Defendant objects to this Interrogatory on the grounds that it is overly broad in both time and location and burdensome. The existence of other contentions or legal proceedings will neither prove nor disprove the amount owed on this claim or the existence of any mishandling of this claim. Any such matter, with no nexus to the harm claimed to have been sustained by the plaintiff herein with regard to his claim under the subject policy, is irrelevant and the Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. See State Farm Mutual Auto Ins. Co. v. Campbell, 538 US 4087 (2003). As such, the request is not proportional to the needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly burdensome. Additionally, the interrogatory is vague as to the term “who contended”. In addition, pending litigation matters are not probative of any issue in this case. Additionally, Defendant objects to this request to the extent it seeks the private and personal information of other insureds of Defendant or the confidential information of Defendant. Further, Defendant objects to the extent that this inquiry seeks information protected by the attorney-client privilege and the work product doctrine. Finally, this Request seeks information which is a matter of public record and can be independently obtained by Plaintiff without requiring Defendant to compile the information. No further response will be provided.

**INTERROGATORY NO. 13**

For each person within the past ten years, who contended that you had acted in bad faith, please state the following: (a) The name and last known address of the person; (b) Date the claim or lawsuit was made against you; (c) Court jurisdiction and case number of the litigation.”

**RESPONSE TO INTERROGATORY NO. 13**

Objection. Defendant objects that this request seeks information which is not relevant to the claims or defenses of any party to this litigation. As such, the request is not proportional to the needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly burdensome. Additionally, the interrogatory is vague as to the term “who contended”. Defendant objects to the extent that the interrogatory calls for information protected by the attorney-client and/or work product privileges. Defendant further objects as the existence of other contentions or legal proceedings will neither prove nor disprove any of the issues involved in this case, the value of Plaintiff’s claim or the existence of any mishandling of this claim. Any such matter, with no nexus to the harm claimed to have been sustained by the plaintiff herein with regard to her claim under the subject policy, is irrelevant and the interrogatory is not reasonably calculated to



lead to the discovery of admissible evidence. See State Farm Mutual Auto Ins. Co. v. Campbell, 538 US 4087 (2003).

**INTERROGATORY NO. 14**

For each person within the past ten years, who contended that you violated the covenant of good faith and fair dealing, please state the following: (a) The name and last known address of the person; (b) Date the claim or lawsuit was made against you; (c) Court jurisdiction and case number of the litigation.”

**RESPONSE TO INTERROGATORY NO. 14**

Objection. Defendant objects that this request seeks information which is not relevant to the claims or defenses of any party to this litigation. As such, the request is not proportional to the needs of this litigation as it is unlikely to resolve the issues presented, and is also therefore unduly burdensome. Additionally, the interrogatory is vague as to the term “who contended”. Defendant objects to the extent that the interrogatory calls for information protected by the attorney-client and/or work product privileges. Defendant further objects as the existence of other contentions or legal proceedings will neither prove nor disprove any of the issues involved in this case, the value of Plaintiff’s claim or the existence of any mishandling of this claim. Any such matter, with no nexus to the harm claimed to have been sustained by the plaintiff herein with regard to her claim under the subject policy, is irrelevant and the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. See State Farm Mutual Auto Ins. Co. v. Campbell, 538 US 4087 (2003).

See **Exhibit 2.**

Here, there are a myriad of issues with USAA’s objections. First, the Interrogatories are properly limited as to time and scope, i.e., to the “past ten years” and as to Nevada claims as an allegation of a statutory violation of the Unfair Claims Practices Act – a Nevada statute – would inherently be a Nevada claim. Second, Plaintiff disagrees with the claim that “[t]he existence of other contentions or legal proceedings will neither prove nor disprove the amount owed on this claim or the existence of any mishandling of this claim. Any such matter, with no nexus to the harm claimed to have been sustained by the plaintiff herein with regard to his claim under the subject policy, is irrelevant and the Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.” This is because USAA may have a pattern or claims process that itself violates the Unfair Claims Practices Act. Arguendo, if USAA has acted in breach of the Act – as would be alleged by the lawsuits/information sought by this Interrogatory – in other past matters, yet failed to correct these improper practices, that certainly would be relevant to this action.

The mere fact that “this Request seeks information which is a matter of public record and can be independently obtained by Plaintiff without requiring Defendant to compile the information” does not absolve USAA of its requirements to respond to written discovery. “The fact that a responding party maintains records in different locations, utilizes a filing system that does not directly correspond to the subjects set forth in Plaintiffs' Interrogatory, or that responsive documents might be voluminous does not suffice to sustain a claim of undue burden.” *Thomas v. Cate*, 715 F. Supp. 2d 1012, 1033, 2010 U.S. Dist. LEXIS 21750, \*47-48 (E.D. Cal. 2010); *see also Simon v. ProNational Insurance Co.*, 2007 U.S. Dist. LEXIS 96318, 2007 WL 4893477, \*2 (S.D. Fla. 2007) (in granting Plaintiff's Motion to Compel documents regarding similarly situated policy holders over a six (6) year period, held that Defendant's claim of undue burden was insufficient to preclude production; noted that a company cannot sustain a claim of undue burden by citing deficiencies in its own filing system); *Kelly v. Montgomery Lynch & Associates, Inc.*, 2007 U.S. Dist. LEXIS 93651, 2007 WL 4412572, \*2 (N.D. Ohio 2007) (in granting Plaintiff's Motion to Compel, rejected Defendant's claim of undue burden, notwithstanding Defendant's proffer that its “filing system is not maintained in a searchable way and the information sought would require ‘manually searching through hundreds of thousands of records.’”).

Additionally, USAA indicates that information sought by this Interrogatory is “public record” so USAA can then use these public records as a starting point and then narrow down from all cases to cases involving a contention/claim for breach of the Unfair Claims Practices Act. Although information may be public record and accessible, USAA is in the best position to narrow the cases to the scope of those contending/claiming that USAA violated the Unfair Claims Practices Act. As is well settled in Nevada, discovery’s boundaries are “broad” and extend beyond admissible evidence. *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). Therefore, the Court should compel Defendant to provide an adequate response to Interrogatory Nos. 12 through 14.

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iii. Interrogatory 28

**INTERROGATORY NO. 28**

State the net worth of UNITED SERVICES AUTOMOBILE ASSOCIATION for each of the last five (5) fiscal years according to GENERAL ACCEPTED ACCOUNTING PRINCIPLES (GAAP).

**RESPONSE TO INTERROGATORY NO. 28**

This Interrogatory is overly broad, unduly burdensome, and seeks information that is not relevant to the claims or defenses of either party. USAA further objects on the basis that this Interrogatory is not proportional to the needs of this case. This Interrogatory is not limited to the present claim, is not limited in scope or time, and is otherwise irrelevant to the issues presented in the present matter. Additionally this request is premature. The Nevada Supreme Court has held that “before tax returns or financial records are discoverable on the issue of punitive damages, the plaintiff must demonstrate some factual basis for its punitive damage claim.” *Hetter v. District Court*, 110 Nev. 513, 520, 874 P.2d 762, 766, 1994 Nev. LEXIS 65, \*13-14 (emphasis added). If the Court allows the question of punitive damages to proceed to the jury, USAA will supplement this response.

See **Exhibit 2.**

Although not a publicly traded company, USAA provides financial reports to its Members. <https://communities.usaa.com/t5/USAA-News/USAA-2019-Report-to-Members/bap/227998>. From this link, financial reports from 2017 – 2019 can be readily accessed. Additional reports from prior years are also maintained by USAA. Thus, USAA’s net worth for the last 5 years should be readily accessible to the company and must be provided in response to Interrogatory No. 28.

Here, Plaintiff is seeking punitive damages, making discovery related to USAA’s net worth proper. *Hetter v. District Court*, 110 Nev. 513, 519 (1994) (In Nevada, a defendant’s financial condition is a proper subject of discovery on the question of punitive damages.). Additionally, USAA’s net worth and other financial information likely contain relevant evidence related to USAA’s claims practices. Thus, this information is discoverable. *Koninklijke Philips Elecs. N.V. v. KXD Tech., Inc.*, Nos. 2:05-cv-01532-RLH-GWF, 2:06-cv-00101-RLH-GWF, 2007 U.S. Dist. LEXIS 13956 at \*22 (D. Nev. February 21, 2007) (finding that, over Defendants’ objections, Plaintiff was entitled to obtain information regarding financial records, as they likely contained relevant evidence or would lead to the discovery of admissible

evidence.). USAA should be compelled to supplement/amend its answer to Interrogatory No. 24.

**iv. Interrogatory 31 through 33**

**INTERROGATORY NO. 31**

Please state the amount You have set as reserves for the Plaintiff's 1<sup>st</sup> party claim.

**RESPONSE TO INTERROGATORY NO. 31**

Objection. Defendant also objects to this interrogatory on the grounds that reserve information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as this litigation concerns only Plaintiff's entitlement to benefits under the policy of insurance issued to Plaintiff and Defendant's handling of the claim submitted thereunder, and is therefore not proportional to the needs of the case. Defendant further objects to the extent the interrogatory seeks confidential and proprietary business information. Subject to and without waiving these objections, Defendant responds as follows: The reserves Defendant set with regard to Plaintiff's UM claim are set forth in the claim file. As such, because the answer to this Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing, Defendant's claims file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents. Please see the First Supplement to Defendant United Services Automobile Association's Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1, produced concurrently herewith, which includes USAA000001 to USAA004785 with unredacted reserve information. Discovery continues, as such, Defendant reserves the right to supplement this response as appropriate.

**INTERROGATORY NO. 32**

Please state the formula used by You in determining the reserves for the Plaintiff's 1st party claim.

**INTERROGATORY NO. 32**

Objection. Defendant objects that this interrogatory seeks information which is not relevant to the claims or defenses of any party to this litigation. As such, the request is not proportional to the needs of this litigation as it is unlikely to resolve the issues presented. Defendant further objects to the extent the interrogatory seeks confidential and proprietary business information. Subject to and without waiving these objections, Defendant responds as follows: Defendant does not have a "formula" for determining reserves. Discovery continues, as such, Defendant reserves the right to supplement this response as appropriate.

**INTERROGATORY NO. 33**

Please state each and every fact considered by You in determining the amount set as reserves for the Plaintiff's claim.

**INTERROGATORY NO. 33**

Objection. Defendant objects that this interrogatory seeks information which is not relevant to the claims or defenses of any party to this litigation. As such, the request is not proportional to the needs of this litigation as it is unlikely to resolve the issues presented. Defendant further objects to the extent the interrogatory seeks confidential and proprietary business information. Defendant also objects that this Interrogatory is overly unduly burdensome and beyond the scope of the duties required of Defendant in responding to interrogatories in that it purports to require Defendant to compile a summary of its own claim file. The actions Defendant took with regard to Plaintiff's UM claim are set forth in the claim file, previously produced in this case. As such, because the answer to this Interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing, Defendant's claims file, Bates USAA000001 to USAA004785, and because the burden to derive or ascertain the answer is substantially the same for Plaintiff as it is for Defendant, Defendant refers Plaintiff to those documents.

Subject to and without waiving these objections, Defendant responds as follows: In setting reserves, USAA considered the coverage available for the claim, all information available to USAA at the time, and included consideration of Plaintiff's complaints, diagnoses, treatment, and prognosis for future treatment. USAA also considered Plaintiff's prior injuries and pre-existing conditions, including multiple surgeries before the loss, a failed knee replacement, and the fact that prior to the subject accident, Plaintiff was planning a cervical fusion. After review of all records, it concluded that this loss aggravated pre-existing conditions but did not appear to have caused any new pathology or surgical recommendations. USAA made multiple requests to Plaintiff for additional information and repeatedly requested a medical authorization to obtain additional information to complete its evaluation.

*See Exhibit 2.*

USAA's response after objections to Interrogatories Nos. 31 through 33 fails to provide a sufficient answer, essentially claiming that "the interrogatory seeks confidential and proprietary information" and referring Plaintiff to nearly 5,000 pages of records to obtain the answer. Such a response is non-responsive and inappropriate.

Further, reserve information is discoverable (and USAA did not object to providing the actual reserve information) and prelitigation claims files are not privileged. The Supreme Court of Nevada has held that "the materials resulting from an insurance company's investigation are not made 'in anticipation of litigation' unless the insurer's investigation has been performed at the request of an attorney." *Ballard v. Eighth Jud. Dist. Ct. of State In & For Cnty. of Clark*, 787 P.2d 406, 407 (Nev.1990). However, a party cannot render documents privileged merely "by

injecting an attorney into the investigative process.” *Columbia/HCA Healthcare Corp. v. Eighth Jud. Dist. Ct. In & For Cnty. of Clark*, 936 P.2d 844, 848 (Nev.1997). If the documents would have been prepared or created in the ordinary course of business regardless of the attorney's involvement, they are not subject to work product protection. *Id.*

Further, “[r]eserve information is relevant in an insurance bad faith lawsuit because the insurer has the contractual duty to defend and indemnify its insured, which also encompasses the duty to reasonably evaluate and settle claims within the policy’s coverage.” *RFK Retail Holdings Ltd Liab. Co. v. Tropicana Las Vegas, Inc.*, 2017 U.S. Dist. LEXIS 80436, at \*23 (D. Nev. May 25, 2017). Courts have even allowed discovery of an insurer’s reserve information when neither bad faith nor breach of contract has been asserted as long as there is a claim in dispute. *Olin Corp v. Cont. Cas. Co.*, 2011 U.S. Dist. LEXIS 98177, at \*11-12 (D. Nev. Aug. 30, 2011). As Plaintiff asserted bad faith and due to a claim being in dispute in this Lawsuit, discovery for the insurer’s reserves is proper and has already been disclosed. USAA should be compelled to properly respond to Plaintiff’s Interrogatory Nos. 31 through 33.

**D. USAA Should Be Compelled to Meaningfully Respond to Requests for Admissions**

**i. Request for Admission Nos. 6 – 11, and 13**

N.R.C.P. Rule 36 sets forth the scope and standards for requests for admission. “A party may serve on any other party a written request to admit...the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, the application of law to fact, or opinions about either...” N.R.C.P. Rule 36(a)(1). “The requesting party may move to determine the sufficiency of an answer or objection. *Unless the court finds an objection justified*, it must order that answer be served.” N.R.C.P. Rule 36(a)(6) (emphasis added). Furthermore, “[o]n finding that an answer does not comply with this rule, the court may order either that the matters is admitted or that an amended answer be served.” N.R.C.P. Rule 36(a)(6). “A party must not object solely on the ground that the request presents a genuine issue for trial.” N.R.C.P. Rule 36(a)(5).

**REQUEST FOR ADMISSION NO. 6:**

Admit that you have a duty to fully, fairly and promptly evaluate claims.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 7:**

Admit that you have a duty to pay all claim amounts not in dispute.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 8:**

Admit an insurance company should pay a claim where its liability under the policy is reasonably clear.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 9:**

Admit an insurance company should reasonably assist the insured in presenting the claim.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 10:**

Admit an insurance company should pay a first party claim where its liability under the policy is reasonably clear.

//



**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 11:**

Admit an insurance company should pay a claim where its liability under the policy is reasonably clear.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 13:**

Admit an insurance company must search for and consider evidence that supports payment of benefits in a first party claim.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

*See Exhibits 3.*

Here, USAA relies upon NRCP 36 for its objections, which provides in pertinent part:

Rule 36. Requests for Admission

(a) Scope and Procedure.

(1) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

...

...

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) Motion Regarding the Sufficiency of an Answer or Objection. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

Yet, USAA's reliance upon Rule 36 is improper – and thus its objections based upon this Rule are also improper. Pursuant to NRCP 36(a)(1)(A), “A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, **the application of law to fact**, or opinions about either...” NRCP 36(a)(1)(A) (emphasis added). For Requests Nos. 6 – 11 and 13, Plaintiff is asking for USAA to admit *the application of law to fact*, thus requiring proper Responses without the improper objections to these Requests. More specifically, Plaintiff is asking about duties of USAA – which apply to the Lawsuit and its facts – as these duties always apply pursuant to Nevada's Unfair Claims Practices Act, Nevada Administrative Code (“NAC”) §686A and N.R.S. §686A.310.

Therefore, USAA should be compelled to properly respond to Requests for Admission Nos. 6 – 11 and 13.

**ii. Request for Admission Nos. 12, 14 and 15**

**REQUEST FOR ADMISSION NO. 12:**

Admit an insurance company should conduct a prompt, fair and thorough investigation.

//

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. Subject to and without waiving the objection, Defendant responds as follows: This Request is vague, argumentative, lacks context and mischaracterizes facts. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 14:**

Admit an insurance company may not withhold insurance benefits in a first party claim based upon speculation.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. Subject to and without waiving the objection, Defendant responds as follows: This Request is vague, argumentative, lacks context and mischaracterizes facts. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

**REQUEST FOR ADMISSION NO. 15:**

Admit interest accrues pursuant to NRS 99.040 beginning 30 days after the claim should have been paid. (See NAC 686A.665).

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Objection. This Request improperly seeks an admission as to a pure conclusion of law. NRCP Rule 36 does not authorize a request that requires a pure legal conclusion without application to the facts of the case. Thus Defendant is not required to admit or deny this Request. Subject to and without waiving the objection, Defendant responds as follows: This Request is vague, argumentative, lacks context and mischaracterizes facts. To the extent this Request contains any purported factual inference that Defendant actions in evaluating or adjusting Plaintiff's claim breach an obligation owed under contract or law, this Request is denied.

*See Exhibits 3.*

Here, Requests for Admission Nos. 12, 14 and 15 (like Requests for Admission Nos. 6 – 11 and 13) are based upon the specific language of Nevada's Unfair Claims Practices Act, NAC §686A and N.R.S. §686A.310. As the Act applies to the facts of this matter, these Requests are not "vague, argumentative, lacks context and mischaracterizes facts." As explained above,



Defendant USAA's reliance upon NRCP 36 as a shield to deny these Requests is improper. USAA should be compelled to properly respond to Requests for Admission Nos. 12, 14 and 15.

**E. Sanctions Awarding Plaintiff Attorneys' Fees Are Appropriate**


The Nevada Rules of Civil Procedure provide: "If the motion [to compel] is granted...the court must...require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." N.R.C.P. Rule 37(a)(5)(A) (emphasis added). Moreover, a failure to properly respond to discovery "is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c)." Ned. R. Civ. P. 37(d)(2). When this failure arises, "the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified other circumstances make an award of expenses unjust." Nev. R. Civ. P. 37(d)(3). Due to Defendant's failure to provide adequate discovery disclosures as required by the applicable Nevada Rules of Civil Procedure, Plaintiff is entitled reasonable expenses including attorney's fees.

**IV. CONCLUSION**

Based upon the foregoing, Plaintiff requests this Court compel answers to interrogatories, and deem the requests for admission at issue admitted. Plaintiff further requests the Court grant Plaintiff's attorney's fees and costs for having to prepare this Motion.

DATED this 14<sup>th</sup> day of January 2021.

THE SCHNITZER LAW FIRM

By:   
JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
9205 West Russell Road, Suite 240  
Las Vegas, NV 89148  
*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

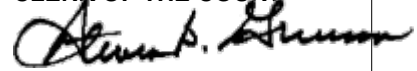
I hereby certify that on the 14<sup>th</sup> day of January 2021, I served a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION** to the above-entitled Court for electronic filing and service upon the Court's Service List to the following counsel.

ROBERT W. FREEMAN  
Nevada Bar No. 3062  
PRISCILLA L. O'BRIANT  
Nevada Bar No. 010171  
LEWIS BRISBOIS BISGAARD & SMITH, LLP.  
6385 S. Rainbow Blvd., Suite 600  
Las Vegas, NV 89119  
*Attorney for Defendants*



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An employee of  
THE SCHNITZER LAW FIRM



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Nevada Bar No. 10744  
THE SCHNITZER LAW FIRM  
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[Jordan@TheSchnitzerLawFirm.com](mailto:Jordan@TheSchnitzerLawFirm.com)  
*Attorney for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JOHN ROBERTS, an individual,  
  
Plaintiff,

Case No.: A-19-790757-C  
Dept. No.: IV

vs.

**PLAINTIFF'S MOTION TO  
COMPEL DEFENDANT'S  
REQUESTS FOR PRODUCTION  
RESPONSES**

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated entity and/or a  
reciprocal insurance exchange with members  
residing in the State of Nevada; DOES 1 through  
10; and ROE CORPORATIONS 11 through 25,  
inclusive,

**DISCOVERY COMMISSIONER  
HEARING REQUESTED**

Defendants.

COMES NOW, Plaintiff John Roberts, by and through his attorney of record, THE SCHNITZER LAW FIRM, and hereby files his Motion to Compel Defendant's Requests for Production Responses ("Motion").

This Motion is based on the Points and Authorities submitted herewith, together with the papers and pleadings on file herein, exhibits attached hereto and oral arguments at the time of hearing.

DATED this 14<sup>th</sup> day of January 2021.

THE SCHNITZER LAW FIRM

By:   
JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
9205 West Russell Road, Suite 240  
Las Vegas, NV 89148  
*Attorney for Plaintiff*

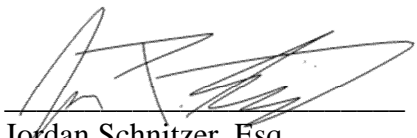


1     **DECLARATION OF JORDAN SCHNITZER IN SUPPORT OF MOTION TO COMPEL**  
2                             **PURSUANT TO EDCR 2.34**

3     JORDAN SCHNITZER, being first duly sworn, deposes and says:

- 4     1. I am a licensed attorney admitted to practice law in all courts in the State of Nevada.  
5     2. I make this affidavit in support of Plaintiff's Motion to Compel.  
6     3. I have personal knowledge of the matters stated in this affidavit and could testify as a  
7         competent witness, if called upon to do so.  
8     4. On September 10, 2020, my office sent correspondence outlining the deficient  
9         responses. *See Exhibit 3.*  
10    5. I met and conferred with opposing counsel on USAA's deficient discovery responses  
11         on June 4, 2020, and again on October 7, 2020. True and accurate copies of the email  
12         correspondences between opposing counsel and I are attached hereto as **Exhibit 4.**  
13    6. Defendant sent supplemental responses to Requests for Production on October 6,  
14         2020. *See Exhibits 5.* However, such responses did not resolve the issues that  
15         remained at the time of the latest telephonic meet and confer.  
16    7. Despite the parties, good faith effort, the disputes have not been resolved.  
17    8. I submit this Declaration in compliance with EDCR 2.34 to demonstrate my  
18         compliance with the rule and to illustrate the efforts that were undertaken to try to  
19         resolve these issues without the need to involve the Court.

20     DATED this 14<sup>th</sup> day of January 2021.

21                               
22                             Jordan Schnitzer, Esq.



## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION (“Defendant” or “USAA”) has improperly objected to a number of requests for production of documents. USAA claimed the information sought is privileged, irrelevant to this action, or the request or overbroad, among others. All of Plaintiff’s requests have been reasonable and are regarding relevant information, and USAA’s cited objections and privilege do not apply to the information Plaintiff requests. The objections appear to be an effort to obstruct Plaintiff from receiving information directly related to his claims that his injuries were foreseeable by Defendant.

Plaintiff, through his attorney, and USAA have conducted telephonic meet and confer conferences, but to no avail. USAA many times uses the same objections to several different requests in an attempt to simply refuse to respond with any substantive information to Plaintiff. Plaintiff has no other option than to seek relief from the Court in the form of an Order compelling USAA to respond to Plaintiff’s propounded discovery including 24 requests for production. Therefore, the Court should grant this motion and award monetary sanctions.

### **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

Plaintiff filed his *Complaint* on March 8, 2019, in Nevada State Court. The *Complaint* alleges that Plaintiff was injured from a vehicle accident on or about May 9, 2014. *See Exhibit 1* at ¶¶ 10-14. Plaintiff made demand upon Defendants for payment of the claim. *Id.* at ¶¶ 17. Plaintiff alleges that Defendants did not pay the undisputed portions of the claim and did not reasonably evaluate the claim. *Id.* at ¶¶ 18-20. Plaintiff alleges that these actions are the basis for a breach of contract, breach of the implied covenant of good faith and fair dealing, tortious breach of the implied covenant of good faith and fair dealing and request declaratory relief. *Id.* at ¶¶ 18-22.

Plaintiff has sent to USAA Interrogatories, Requests for Admissions, and Requests for Production of Documents. USAA returned responses to the Requests for Production of Documents on August 7, 2020, but some of USAA’s responses were either inadequate or merely objections with no answer. *See Exhibit 2.* Plaintiff sent correspondence to USAA on September 10, 2020 outlining the deficient responses. *See Exhibit 3.*

Plaintiff, through his attorney, met and conferred with Defendant on June 4, 2020, and again on October 7, 2020 to attempt to resolve these issues. *See Exhibit 4.* Defendant sent supplemental responses on October 6, 2020 and additional responses to Plaintiff’s Request for Production of Documents on November 6, 2020. *See Exhibit 5.* However, such responses did not resolve the issues that remained at the time of the latest telephonic meet and confer.

### III. LEGAL ARGUMENT

#### A. Scope of Discovery

Discovery is limited, not merely to admissible evidence, but to requests that are “relevant to any party’s claim or defense.” Nev. R. Civ. P. 26 “Relevance for purposes of discovery is defined very broadly.” *See Hickman v. Taylor*, 329 U.S. 495, 506-07 (1947) (“Information is relevant to the subject matter if it might reasonably assist a party in evaluating the case, preparing for trial or facilitating settlement.”) This broad right of discovery is based on the general principle that litigants have a right to every man’s evidence, and that wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for the truth. *See, United States v. Bryan*, 339 U.S. 323, 331 (1950).

Although discovery is not limited to the merits of the case, discovery should be proportional to the needs of the case. Nev. R. Civ. P. 26(b)(1). However, the issue of proportionality “does not place on the party seeking discovery the burden of addressing all proportionality considerations.” *See* Fed. R. Civ. P. 26 committee notes. Moreover the parties’ relative access to relevant information is a consideration in regards to determining whether information is discoverable. *Ibid.* Specifically, when one party has more access to vast information than the other party, **“the burden of responding to discovery lies heavier on the party that has more information, and properly so.”** (emphasis added) *Ibid.*

Moreover, Rule 34(a) of the Nevada Rules of Civil Procedure allows a party to “request the production of any designated documents or electronically stored information...stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form[.]” Nev. R. Civ. P. 34.

If a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”

Nev. R. Civ. P. 26.

**“To withhold materials without such notice is contrary to this Rule, subjects the party to sanctions under Rule 37(b)(2), and may be viewed a waiver of the privilege or protection.”**

(emphasis added) Fed. R. Civ. P. 26 committee notes. If a party refuses to comply with a request pursuant to FRCP 34, “a party may move for an order compelling disclosure or discovery.” Fed. R. Civ. P. 37.

The party opposing discovery has the burden of showing that it is irrelevant, overly broad, or unduly burdensome. *Fosbre v. Las Vegas Sands Corp.*, 2016 U.S. Dist. LEXIS 1073, at \*14 (D. Nev. Jan. 5, 2016). To meet this burden, the objecting party must specifically detail the reasons why each request is irrelevant. *Ibid.* If a party withholds documents on the basis of a privilege, the party asserting the privilege also bears the burden of proving its validity. *Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615, 627 (D. Nev. 2013)(citing *In re Grand Jury Investigation*, 974 F.2d 1068, 1070-1071 (9<sup>th</sup> Cir. 1992)).

## **B. Defendant USAA Makes Boilerplate Objections To Requests For Production Of Documents, With Little To No Support**

USAA provides minimal legal precedent in support of many of its objections. Merely asserting the ground for the objection generally is not sufficient to sustain an objection to the request. *See, e.g., McLeod, Alexander, Powel & Apffel, P.C., v. Quarles*, 894 F.2d 1482, 1484-85 (5<sup>th</sup> Cir. 1990); *Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1559 (11<sup>th</sup> Cir. 1985); *Josephs v. Harris Corp.*, 677 F.2d 985, 991-92 (3<sup>rd</sup> Cir. 1982); *Wauchop v. Domino’s Pizza, Inc.*, 138 F.R.D. 539, 544 (N.D. Ill. 1991); *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296-97 (E.D. Pa. 1980)). Courts may – and generally will – disregard objections that lack explanation and support. *See, e.g., Roesberg*, 85 F.R.D. at 297 (failure to properly assert an objection generally results in a waiver of objection). As the other sections will show, USAA’s objections, even if sufficiently preserved, are without merit.



1                   **C.      USAA Should Be Compelled To Produce Its Underwriting File, Standards**  
2                   **Related To Underwriting, And Information On The Adjuster's Decisions.**

3                   USAA should be compelled to respond to RPDs 15-18.

4                   **REQUEST FOR PRODUCTION NO. 15:**

5                   Please produce any and all files containing information regarding the processing  
6                   of any insurance applications made to you by Plaintiff or any policies issued to  
7                   Plaintiff.

8                   **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

9                   Objection. Defendant objects that the request assumes and misstates facts, is  
10                  compound, overbroad and burdensome. Defendant further objects this request  
11                  seeks information that it is neither relevant to the claims or defenses of any party,  
12                  nor proportional to the needs of the case, as the request is not reasonably tailored  
13                  to include only those matters relevant to this suit; specifically the processing of  
14                  any insurance applications made to you by Plaintiff is not at issue in this  
15                  litigation, as USAA does not dispute that it issued a policy to Plaintiff and that the  
16                  policy was in effect on the date of the subject accident. The requested documents  
17                  have no bearing on the issues in this case – the value of Plaintiff's claim and  
18                  whether Defendant's handling of that claim was proper. Subject to and without  
19                  waiving the stated objections: Subject to and without waiving the stated  
20                  objections: Subject to and without waiving the stated objections: Defendant has  
21                  requested the underwriting documents and will produce upon receipt. Discovery  
22                  continues and Defendant reserves the right to supplement this response as  
23                  appropriate.

24                  **REQUEST FOR PRODUCTION NO. 16:**

25                  Please produce any and all processing manuals and other materials available to  
26                  your personnel for reference or training in their duties of processing applications  
27                  or issuing policies.

28                  **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

Objection. Defendant objects that the request assumes and misstates facts, is  
compound, overbroad and burdensome. Defendant further objects this request  
seeks information that it is neither relevant to the claims or defenses of any party,  
nor proportional to the needs of the case, as the request is not reasonably tailored  
to include only those matters relevant to this suit; specifically the processing of  
insurance applications and issuance of policies are not at issue in this litigation, as  
USAA does not dispute that it issued a policy to Plaintiff and that the policy was  
in effect on the date of the subject accident. The requested documents have no  
bearing on the issues in this case – the value of Plaintiff's claim and whether  
Defendant's handling of that claim was proper. Discovery continues and  
Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 17:**

Please produce any and all documents and writings you have pertaining to agent  
Steve Lucent. These documents should include, but not be limited to, the agent  
application, the appointment of agency, all other contracts between you and Steve



Lucent, all approved sales materials used by Steve Lucent, the commission schedule for Steve Lucent, all correspondence between you and Steve Lucent, all investigative and other reports on Steve Lucent, records of all disciplinary information for Steve Lucent, and any other documents and writings kept on Steve Lucent.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Objection. Defendant objects that the request is compound, overbroad as it requires production of any and all documents pertaining to Steven Lucent, is burdensome, vague and ambiguous as to the terms “any and all documents and writings” and “pertaining to agent Steve Lucent”, and harassing. The request is also argumentative and assumes facts not on the record. Defendant objects to this request in that it seeks information that it is neither relevant to Plaintiffs’ claims for breach of contract or tortious bad faith claims handling, nor proportional to the needs of the case, as the requested information does not, generally, speak to whether Plaintiffs’ claim was properly handled. Moreover, this request explicitly seeks confidential and sensitive information of USAA’s employees. Subject to and without waiving these objections, Steve Lucent is not an insurance agent as USAA understands this request to assert, and as such, there is no appointment, agent contract, sales materials used by Lucent, or commission schedule for Lucent. All non-privileged documents relating to Steve Lucent’s communications, correspondence and reports related to the claim which is the subject of this litigation were produced in Defendant United Services Automobile Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCPC 16.1 as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto. Defendant will produce, only upon entry of a Confidentiality and Protective Order, the KD materials relating to the handling of UM claims for the state of Nevada, for the applicable time period, as well as relevant information within Steve Lucent’s personnel file, for the subject time period. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 18:**

Please produce any and all documents and writings given to your agents by you, for training, reference, use in the sale of insurance, or otherwise. These documents should include, but not be limited to, rate books, product guides, field underwriting manuals, a blank application and other forms used by your agents, advertising materials, instructions for the completion of applications for insurance, instructions for completion of conditional receipts, policies and guidelines, ethical standards, and the like.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “any and all documents and writings” and “use in the sale of insurance, or otherwise”. As presently worded, the information sought by this Request is not relevant to the claims or defenses of any party, nor proportional to the needs of the case, as there are no allegations with regard to USAA’s issuance of the subject policy to Plaintiff and USAA does

not dispute that the policy was issued to Plaintiff and in effect on the date of the subject accident. Subject to and without waiving these objections, USAA does not use agents for the sale of insurance, and thus, there are no documents responsive to this request.

See **Exhibit 2**.

“Underwriting information, as well as policy drafting history, is relevant and therefore discoverable in a breach of contract claim because it indicates what the coverage included and also whether the insurer failed to meet its obligation.” *Int’l Game Tech. v. Ill. Nat’l Ins. Co.*, 2017 U.S. Dist. LEXIS 189753, at \*6 (D. Nev. Nov. 16, 2017). As such, “[t]he relevancy of underwriting and policy drafting history information is not exclusive to cases that involve bad faith claims.” *Id.* (citing *Renfrow v. Redwood Fire & Cas. Ins. Co.*, 288 F.R.D. 514, 521 (D. Nev. 2013)). Producing the underwriting file is necessary even when certain matters may be in dispute as long as they relate to a party’s claims. See *Renfrow*, 288 F.R.D. at 521 (rejecting the insurer’s claim that producing the claim file is premature when the court had not decided whether the insured’s claim was covered under the policy).

In *Phillips*, the United States District Court for the District of Nevada overruled the insurer’s objections that the underwriting file was irrelevant due to the insured not asserting a bad faith claim. *Phillips v. Clark Cty. Sch. Dist.* 2012 U.S. Dist. LEXIS 5309, at \*34-35 (D. Nev. Jan. 18, 2012). Similarly in *Renfrow*, the United States District Court for the District of Nevada found that the insured was entitled to the underwriting files “as they are relevant to [the] claims of breach of contract and bad faith.” *Renfrow v. Redwood Fire & Cas. Ins. Co.*, 288 F.R.D. 514, 521 (D. Nev. 2013).

In this matter, Plaintiff asserted breach of contract, bad faith, and violations under the Unfair Claim Practices Act against the insurer. Just as the Court in *Phillips* and *Renfrow* found that the insurer’s underwriting file was relevant when the insured asserted an action against its insurer as it related handling of the insured’s claim, the underwriting file in this matter is relevant as it relates to USAA’s handling of Plaintiff’s claim. *Ibid*; *Phillips*, 2012 U.S. Dist. LEXIS 5309 at \*34-35. Producing the underwriting file is even more pertinent in this matter because Plaintiff asserts both a breach of contract and bad faith claim, in addition to other causes of action, against USAA.

Regarding Request 15, 16, and 18, this information is discoverable as it relates to the breach of contract and bad faith claims. *Renfrow v. Redwood Fire & Cas. Ins. Co.*, 288 F.R.D. 514, 518 (D. Nev. 2013). Here, as this action stems from allegations that USAA committed acts that are unfair claims practices, these acts could stem as far back as the underwriting of Plaintiff's insurance policy with USAA. As N.R.S. §686A.310(1)(c) provides that it is an unfair claims practice if an insurer "[f]ail[s] to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies," USAA's underwriting guidelines, manuals, and the other documents responsive to Request Nos. 15, 16, and 18 are relevant to this Lawsuit. Nev. Rev. Stat. §686A.310(1)(n).

Similarly, the adjuster is a material witness to the facts and circumstances of this action. Steve Lucent will have discoverable information related to Plaintiff's allegations against USAA of unfair claims practices. Therefore, USAA should be compelled to respond to Plaintiff's Request for Production Number 17.

**D. USAA Should Be Compelled To Produce Its Training Manuals, Claim Manuals Compensation Policies, And Personnel Files Related To Handling Plaintiff's Claim And Policy.**

USAA should be compelled to respond to RPDs 2, 7, 16, 18, 21, 22, 27, 28, 34, 36, 41, 42, and 47.

**REQUEST FOR PRODUCTION NO. 2:**

Please produce all documents, writings, and communications that are used by field, regional, and home office underwriters for reference, training, and guidelines for the underwriting of your policies.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Objection. Defendant objects that the request is compound, overbroad and burdensome to the extent it seeks information related to its "reference, training, and guidelines" related to underwriting, as Defendant's underwriting is not at issue in this case. As such, this request seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the request is not reasonably tailored to include only those matters relevant to the insurance claim made the basis of this suit and there is no dispute that the applicable policy was in effect on the date of loss. Responding party further objects to the term "underwriting file" because it assumes a physical file folder exists and because the request is vague, ambiguous and overbroad as to what is meant by an underwriting file. Finally, this request seeks documents "reference, training, and guidelines" that are confidential, proprietary, and trade secret. In addition, this request has the potential to be unduly burdensome.

**REQUEST FOR PRODUCTION NO. 7:**

Please produce any and all documents, writings, and communications that are used by your claims personnel for reference, training, and guidelines for the adjusting of claims. These items should include, but not be limited to, all claims manuals, videos, bulletins, webinars, newsletters, all information and guideline for the adjudication of claims and all other resources used by your personnel for the adjudication of claims.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “all documents, writings, and communications,” “reference, training, and guidelines” and “adjudication of claims”. As presently worded, the information sought by this Request is not relevant to the claims or defenses of any party, nor proportional to the needs of the case, as Defendant’s “reference, training and guidelines” are intended to provide guidance but each claim is handled on its own merits. Defendant further objects on the grounds that the request seeks information that is confidential, sensitive, proprietary business information and/or trade secrets.

Subject to and without waiving the stated objections, Defendant responds as follows: Defendant does not have claims “manuals” but rather provides online guidance to claims handlers through its “Knowledge Delivery” online search tool. Defendant will produce, only upon entry of a Confidentiality and Protective Order, the KD materials relating to the handling of UM claims for the state of Nevada, for the applicable time period. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 21:**

Please produce a copy of any and all standards implemented by you for the prompt investigation of claims.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “any and all standards”. As presently worded, the information sought by this Request is not relevant to the claims or defenses of any party, nor proportional to the needs of the case, as Defendant’s “standards” are intended to provide guidance but each claim is handled on its own merits. Defendant further objects on the grounds that the documents sought are confidential, sensitive, proprietary business information and/or trade secrets.

Subject to and without waiving the stated objections, Defendant responds as follows: defendant provides online guidance to claims handlers through its “Knowledge Delivery” online search tool. Defendant will produce, only upon entry of a Confidentiality and Protective Order, the KD materials relating to the handling of UM claims for the state of Nevada, for the applicable time period.

1 Discovery continues and Defendant reserves the right to supplement this response  
2 as appropriate.

3 **REQUEST FOR PRODUCTION NO. 22:**

4 Please produce a copy of any and all standards implemented by you referring or  
5 relating to the provisions of the Nevada Unfair Claims Practices Act, NRS  
6 686A.310, including, but not limited to, standards relating to:

7 (a) Representing to insureds or claimants pertinent facts of insurance policy  
8 provisions relating to any coverage at issue.

9 (b) Acknowledging and acting reasonably promptly upon communications with  
10 respect to claims arising under insurance policies.

11 (c) Adopting and implementing reasonable standards for the prompt investigation  
12 and processing of claims arising under insurance policies.

13 (d) Affirming or denying coverage of claims within a reasonable time after proof  
14 of loss requirements have been completed and submitted by the insured.

15 (e) Effectuating prompt, fair and equitable settlements of claims in which  
16 liability of the insurer has become reasonably clear.

17 (f) Not compelling insureds to institute litigation to recover amounts due under  
18 an insurance policy by offering substantially less than the amounts ultimately  
19 recovered in actions brought by such insureds, when the insureds have made  
20 claims for amounts reasonably similar to the amounts ultimately recovered.

21 (g) Attempting to settle a claim by an insured for an amount to which a reasonable  
22 person would have believed he was entitled by reference to written or printed  
23 advertising material accompanying or made part of an application.

24 (h) Not attempting to settle claims on the basis of an application which was  
25 altered without notice to, or knowledge or consent of, the insured, their  
26 representative, agent or broker.

27 (i) Informing insured or beneficiaries, upon payment of a claim, of the coverage  
28 under which payment is made.

(j) Not informing insureds or claimants a practice of the insurer of appealing  
from arbitration awards in favor of insureds or claimants for the purpose of  
compelling them to accept settlements or compromises less than the amount  
awarded in arbitration.

(k) Not delaying the investigation or payment of claims by requiring an insured or  
a claimant, or the physician of either, to submit a preliminary claim report, and  
then requiring the subsequent submission of formal proof of loss forms, both of  
which submissions contain substantially the same information.

(l) Not settling claims promptly, where liability has become reasonably clear,  
under one portion of the insurance policy coverage in order to influence  
settlements under other portions of the insurance policy coverage.

(m) Compliance with the provisions of NRS 687B.310 to 687B.390, inclusive, or  
687B.410.

(n) Providing promptly to an insured a reasonable explanation of the basis in the  
insurance policy, with respect to the facts of the insured's claim and the  
applicable law, for the denial of their claim or for an offer to settle or compromise  
their claim.

(o) Not advising an insured or claimant not to seek legal counsel.

(p) Not misleading an insured or claimant concerning any applicable statute of limitations.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “any and all standards”. Defendant further objects on the grounds that the request seeks information that is confidential, sensitive, proprietary business information and/or trade secrets.

Subject to and without waiving the stated objections, Defendant responds as follows: Defendant provides online guidance to claims handlers through its “Knowledge Delivery” online search tool. Defendant will produce, only upon entry of a Confidentiality and Protective Order, the KD materials relating to the handling of UM claims, for the state of Nevada, for the subject time period. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 27:**

Please produce any and all documents, writings, and communications that are used by your personnel for reference, training, and guidelines for solicitation of underinsured motorist policies from customers.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “all documents, writings, and communications” and “solicitation of underinsured motorist policies”. As presently worded, the information sought by this Request is not relevant to the claims or defenses of any party, nor proportional to the needs of the case, as these documents do not relate in any way to the issues in this litigation – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was proper. As such, this request seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case. Subject to and without waiving these objections, USAA does not use agents for the sale of insurance, and thus, there are no documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 28:**

Please produce Defendant’s policies, procedures, manuals or other training for evaluating claims including but not limited to any and all training courses given or required for Defendant’s Claims Adjusters that were taken within 5 years prior to the claim in question through the present time.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

Objection. Defendant objects that the request assumes and misstates facts, is compound, overbroad in scope, burdensome, vague and ambiguous as to the terms “policies, procedures, manuals or other training”. As presently worded, the information sought by this Request is not relevant to the claims or defenses of any party, nor proportional to the needs of the case, as materials related to Defendant’s “policies, procedures, manuals or other training” are intended to



1 provide guidance but each claim is handled on its own merits. Defendant further  
2 objects on the grounds that the request seeks information that is confidential,  
sensitive, proprietary business information and/or trade secrets.

3 Subject to and without waiving the stated objections, Defendant responds as  
4 follows: Defendant does not have claims “manuals” but rather provides online  
5 guidance to claims handlers through its “Knowledge Delivery” online search tool.  
6 Defendant will produce only upon entry of a Confidentiality and Protective Order,  
7 the KD materials relating to evaluation of UM claims in Nevada for the subject  
time period. Defendant objects to producing “any and all training courses given  
or required” as patently overbroad and unduly burdensome.

8 **REQUEST FOR PRODUCTION NO. 34:**

9 Please produce the personnel files of each employee, manager, supervisor or other  
10 agent who was involved, had supervisory capacity over the Plaintiff’s claim or  
audited the Plaintiff’s claim.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

12 Objection. Defendant objects that the request is overbroad in scope and time,  
13 burdensome to the extent it seeks “personnel files” of employees “involved” with  
14 “Plaintiff’s claim” without any limitation as to time or scope, and vague and/or  
15 ambiguous as to the terms “personnel file”. Defendant objects to this request in  
16 that it seeks information that it is neither relevant to Plaintiffs’ claims for breach  
17 of contract or tortious bad faith claims handling, nor proportional to the needs of  
18 the case, as the requested information does not, generally, speak to whether  
19 Plaintiffs’ claim was properly handled. Moreover, this request explicitly seeks  
confidential and sensitive information of USAA’s employees. USAA further  
objects to the extent this request seeks business information that is confidential  
and/or proprietary. Subject to and without waiving the stated objections,  
Defendant will produce, upon entry of a Confidentiality and Protective Order,  
relevant information within Steve Lucent’s personnel file, for the subject time  
period. Discovery continues and Defendant reserves the right to supplement this  
response as appropriate.

20 **REQUEST FOR PRODUCTION NO. 36:**

21 Please produce any and all copies of documents that reference bonus programs or  
22 employee award programs applicable to any and all departments or sections  
involved in the handling of the Plaintiff’s claim for five (5) years prior to the  
claim through the present.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

24 USAA objects to this request as it assumes and misstates facts, is overbroad in  
25 scope and time, and is vague and/or ambiguous as to the terms “bonus and/or  
26 incentive programs”. Defendant objects to this request in that it seeks information  
27 that it is neither relevant to Plaintiffs’ claims for breach of contract or tortious bad  
28 faith claims handling, nor proportional to the needs of the case, as the requested  
information does not, generally, speak to whether Plaintiffs’ claim was properly  
handled. Subject to the forgoing objections, USAA has a companywide incentive

program not specifically tied to payment or non-payment of claims. Since at least 2014, Defendant's Board of Directors has approved a holiday bonus that is paid to all employees in December of each year. Employees who are actively employed at the end of November receive an amount equal to their then-current bi-weekly base pay, prorated for any partial period of employment. Employees who are actively employed for less than the entire preceding year receive a pro rata amount, based upon the number of months they have been employed. Additionally, since at least 2014, Defendant's Board of Directors has awarded an enterprise-wide performance bonus paid in February of the following year. In order to be eligible for the bonus, employees must have been hired prior to October and still employed as of February (or retired from USAA on or after January) of the payment year. With limited exceptions noted below, every employee working with USAA, regardless of job title, job duties, or job location, received a bonus equal to a percentage of their eligible earnings. Employees whose individual performance required a form of corrective action during the year may have received a reduced bonus or no bonus at all.

**REQUEST FOR PRODUCTION NO. 41:**

Please produce any and all company newsletters designed to inform employees of industry or company news or developments related to uninsured or underinsured motorist coverage or policies in Nevada since January 1, 2001.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

Objection. This request assumes facts, is vague and ambiguous as to the term "newsletters", and is unduly burdensome and overly broad in that it seeks information that is not narrowly tailored to the claims and defenses in this matter and is disproportional to the needs of the case. The request is also overbroad to the extent it seeks the production of internal newsletters, unrelated to this litigation, for a period of over 10 years; i.e., January 1, 2001 to present. As presently worded, the information sought by the Request is not relevant to the claims or defenses of any party, nor proportional to the needs of the case. Subject to and without waiving the stated objections, Defendant does not have any "newsletters". However, Defendant will produce, only upon entry of a Confidentiality and Protective Order, the KD materials relating to the handling of UM claims for the state of Nevada, for the applicable time period. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

**REQUEST FOR PRODUCTION NO. 42:**

Please produce any and all transcripts and recordings of speeches or presentations in any form whatsoever, including Power Point presentation materials, overheads, slides, on the subject of uninsured or underinsured motorist coverage in since January 1, 2010.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

Objection. This request is unduly burdensome and overly broad in that it seeks information that is not narrowly tailored to the claims and defenses in this matter and is disproportional to the needs of the case. The request is also



overbroad and unduly burdensome to the extent it seeks the production of “transcripts” and “recordings” of “speeches or presentations” for a period of almost 10 years; i.e., January 1, 2010 to present and is patently overbroad and harassing.

**REQUEST FOR PRODUCTION NO. 47:**

Please produce the portions of the personnel file of the adjuster(s) and supervisors directly involved in handling and evaluating Plaintiff’s claim regarding performance evaluation, audits, disciplinary actions, and performance under a bonus or incentive plan.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

USAA objects to this request as it is overbroad in scope and time, vague and/or ambiguous as to the terms “personnel file”. Defendant objects to this request in that it seeks information that it is neither relevant to Plaintiff’s claims for breach of contract or tortious bad faith claims handling, nor proportional to the needs of the case, as the requested information does not, generally, speak to whether Plaintiff’s claim was properly handled. Moreover, this request explicitly seeks confidential information of third parties not joined to this litigation. Those persons have an expectation that their personal information will be maintain in confidence. USAA further objects to the extent this request seeks business information that is confidential and/or proprietary. To the extent that such documents exists and are discoverable, they will only be produced after the entry of an appropriate protective order. Subject to and without waiving the foregoing objections, after the entry of an appropriate confidentiality and protection order, USAA will produce the job-related materials contained within Steven Lucent’s employee file for the relevant time frame.

See **Exhibits 2 and 5.**

“Documents relating to the handling of insurance claims...are relevant and discoverable.” *Phillips*, 2012 U.S. Dist. LEXIS 5309, at \*34-35. In fact, “[i]nformation regarding the job qualification and training of the claims employees who actually handled the plaintiff’s insurance claim is relevant and generally discoverable in a bad faith action.” *McCall v. State Farm Mut. Auto. Ins. Co.*, 2017 U.S. Dist. LEXIS 117250, at \*28 (D. Nev. July 26, 2017). Moreover, “information concerning [an insurer’s] policies for evaluating and compensating claims adjusters and representatives may be relevant to the Plaintiff’s bad faith claim.” *Wood Expressions Fine Custom Cabinetry, Inc. v. Cincinnati Ins. Co.*, 2013 U.S. Dist. LEXIS 200176, at \*9 (D. Ariz. Nov. 26, 2013).

In *Phillips*, the District Court for the District of Nevada required the insurer to produce its employee training materials and claim manuals when the insured alleged breach of contract, violations under the Nevada Unfair Claim Practices Act, and the breach of covenant of good

1 faith and fair dealing against the insurer. *Id.* Moreover, courts routinely provide that the insurer  
 2 must produce its training and claims manuals that were in effect at the time that an insurer  
 3 handled the insured's claim. *Renfrow*, 288 F.R.D. at 521; *Zewdu v. Citigroup Long Term*  
 4 *Disability Plan*, 264 F.R.D. 622, 628 (N.D. Cal. 2010) (court allowing discovery of claims  
 5 manuals the insurer used); *see also McCurdy v. Metro Life Ins. Co.*, 2007 U.S. Dist. LEXIS  
 6 25917, at \*11-12 (E.D. Cal. Mar. 23, 2007) (claim and procedural manuals were relevant as to  
 7 "whether or not an administrator has complied with the procedural requirements dictated by a  
 8 Plan"). Similarly in *Wood Expressions*, the insurer was required to produce its employees'  
 9 compensation policies as the insured alleged bad faith and breach of contract against its insured.  
 10 *Wood Expressions*, 2013 U.S. dist. LEXIS 200176, at \*9.

11 In this matter, the training manual and claims manual are relevant in regards to USAA  
 12 improperly handling Plaintiff's claim. Just as the *Phillips* court required the insurer to produce  
 13 its claims and training manuals, USAA should be compelled to do the same and thus properly  
 14 respond to Request for Production Numbers 2, 7, 16, 18, 21, 22, 27, 28, 34, 36, 41, 42, and 47.  
 15 *Phillips*, 2012 U.S. Dist. LEXIS at \*34-35.

16 Further, USAA to date failed to seek a protective order even though the burden is on  
 17 USAA to file a motion for protective order. USAA cannot therefore withhold information under  
 18 the guise of requiring a protective order. *Kerley v. Aetna Casualty & Sur. Co.*, 94 Nev. 710, 585  
 19 P.2d 1339, 1978 Nev. LEXIS 662 (Nev. 1978) (The method for raising an objection to discovery  
 20 is by motion for a protective order.); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,  
 21 1130 (9th Cir. 2003) ("A party asserting good cause bears the burden, for each particular  
 22 document it seeks to protect, of showing that specific prejudice or harm will result if no  
 23 protective order is granted.").

24 USAA should also be required to produce the personnel files of any adjuster and  
 25 supervisors directly involved in handling and evaluating Plaintiff's claim pursuant to Plaintiff's  
 26 Request for Production No. 47. USAA refused this information by objecting that such  
 27 information is confidential, proprietary or internal. However, there is nothing proprietary about  
 28 an employee's personnel file, and USAA has not sought a protective order related to its  
 employees' personnel files. "Information regarding the job qualification and training of the

claims employees who actually handled the plaintiff's insurance claim is relevant and generally discoverable in a bad faith action." *McCall*, 2017 U.S. Dist. LEXIS 117250, at \*28; *Am. Auto. Ins. Co. v. Haw. Nut & Bolt, Inc.*, 2017 U.S. Dist. LEXIS 3033, at \*12 (D. Haw. Jan. 9, 2017) personnel files and an insurer's bonus structure are discoverable because they "may reveal an inappropriate reason or reasons for defendant's action with respect to plaintiff's claim or an improper corporate culture."). Personnel files are relevant and discoverable in bad faith actions. See *Yamagata Enterprises, Inc.*, 2008 WL 11388696 at \*14 (holding that "relevant and discoverable in a bad faith action because the qualifications, training and experience of Defendant's claims personnel are relevant to the reasonableness of the insurer's conduct in handling the claim," and "[t]o the extent that irrelevant personal information such as the employee's social security numbers or health information is contained in the employment or performance reviews of the employees, it may be redacted by Defendant.") As a result thereof, USAA should be compelled to produce this material for Request for Production No. 47.

Just as the *Wood Expressions* court required the insurer to produce its compensation policies due to its relevance to the plaintiff's bad faith claim, the Plaintiff here also claims bad faith on the part of USAA. As a result, thereof, USAA should be compelled to produce this material in response to Request for Production Number 36.

**E. USAA Should Be Compelled To Produce Reports And Invoices Generated By Vendors Or Medical Providers Providing Opinions Regarding Plaintiff's Injuries**

USAA should be compelled to respond to Plaintiff's Request for Production Number 32.

**REQUEST FOR PRODUCTION NO. 32:**

With respect to any vendor or medical provider providing an opinion concerning Plaintiff's injuries, treatment or medical costs, please provide a copy of reports and invoices generated by that vendor or medical provider for you in the five (5) years preceding your use of such vendor or medical provider on Plaintiff's claim.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

Objection. Defendant objects that the request is overbroad and burdensome to the extent it seeks "reports" and "invoices" for matters completely unrelated to the instant suit, and which relate solely to the claims of other non-party insureds. Defendant will not produce such documents. Defendant also objects to this Request as overbroad as it seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the

request is not reasonably tailored to include only those matters bearing on the issues in this case – the value of Plaintiff’s claim and whether Defendant’s handling of that claim was proper. Subject to and without waiving the stated objections: with regards to Plaintiff’s claim made basis of this suit, documents responsive to this request were produced in Defendant United Services Automobile Association’s Initial Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1 as documents Bates stamped USAA000001 to USAA004785 and all supplements thereto. Discovery continues, as such, Defendant reserves the right to supplement this response as appropriate.

*See Exhibit 2.*

Reports and invoices by vendors and medical providers providing opinions regarding Plaintiff’s injuries is relevant to showing that those vendors or medical providers paid by USAA were biased and incentivized to create reports favorable to USAA’s positions. The Nevada Supreme Court has explicitly held that the relationship between an expert and a party’s attorney is relevant towards bias. *Robinson v. G.G.C., Inc.*, 107 Nev. 135, 143, 808 P.2d 522, 527 (1991) (“relationships between witnesses and the parties or their counsel are admissible to show possible bias of a witness.”). “[F]ee-payment arrangements are relevant to credibility and bias, and discoverable.” *Bryant v. Mattel, Inc.*, 2007 WL 5430886, \*20 (C.D. Cal., June 27, 2007) (citing *United States v. Biackman*, 72 F.3d 1418, 1424 (9th Cir. 1995).

Court’s around the country have found evidence of expert witness bias, including financial information, not only relevant, but discoverable. A party “does have the right to cross-examine an expert witness concerning fees earned in prior cases... [therefore, the expert] must produce information regarding [his] income.” *Hawkins v. S. Plains Int’l Trucks, Inc.*, 139 F.R.D. 679, 682 (D. Colo. 1991) citing *Collins v. Wayne Corp.*, 621 F.2d 777, 783 (5th Cir. 1980). *See also Spencer v. United States*, 2003 WL 23484640, at \*11–12 (D. Kan. Dec. 16, 2003) (finding that information regarding expert’s annual income from litigation consulting is within the scope of permissible discovery); *Butler v. Rigsby*, 1998 WL 164857, at \*4 (E.D. La. Apr. 7, 1998) (finding that magistrate judge’s decision to allow discovery of expert witness’s net income and percentage of net income that is litigation-related was not clearly erroneous because this information is relevant to show bias); *Amister v. River Cap. Int’l Group, LLC*, No. 00 Civ. 9708 (DCDF), 2002 WL 2031614, at \*1 (S.D.N.Y. Sept. 4, 2002) (“[O]ther courts have ordered [compensation] disclosure ... on the grounds that an expert’s compensation is not protected by

any privilege or work-product immunity, and that the extent of the expert's financial interest in the case may be relevant to bias.”); *Butler v. Rigsby*, 1998 WL 164857, at \*3–4 (E.D.La. Apr. 7, 1998) (stating that “courts have held that the amount of income derived from services related to testifying as an expert witness is relevant to show bias or financial interest” and citing cases).

An experts’ bias related to the party or firm that hired him is equally fair game. For example, the Eastern District for the District of Michigan noted:

Certainly, a continuing relationship between the witness and a party in which a witness receives payment for generating an opinion that may be favorable to the interests of the party seeking the opinion is a source of bias.

In addition, expert witnesses in the business of furnishing litigation support, including medical-legal consultations, may have a motive to slant testimony to favor their customers and promote the continuation of their consultation business. Courts have recognized that expert witnesses who seek law firms, insurance companies, or the government as clients may have interests beyond the fact of individual cases in producing opinion evidence.

*Great Lakes Anesthesia, PLLC v. State Farm Mut. Auto. Ins. Co.*, 11-10658, 2011 WL 4507417, at \*5 (E.D. Mich. Sept. 29, 2011) (requiring four year financial and three year report disclosure).

The frequency of an expert’s similar opinion is also relevant. “An expert's testimony in prior cases involving similar issues is a legitimate subject of cross-examination when it is relevant to the bias of the witness.” *People v. DeHoyos*, 57 Cal. 4th 79, 123 (2013).

In fact, a number of courts have required production of an expert’s prior reports. *Expeditors International of Washington, Inc. v. Vastera*, No. 04-C-0321, 2004 WL 406999 at \*2 (N.D. Ill. 2004) (defendant entitled to examine potential inconsistencies between views expert intends to express in pending litigation with the testimony and opinions he has given and the theories and methodologies he had used in prior cases); *Phillips v. Raymond Corp.*, 213 F.R.D. 521, 524 (N.D. Ill. 2003) (plaintiff entitled to inquire as to how often expert had testified for defendant in the past, his comparative record in testifying for plaintiffs and defendants and the expert's prior expressions of opinion about other forklifts and other injuries sustained by their operators); *Ladd Furniture, Inc. v. Ernst & Young*, No. 2:95CV00403, 1998 WL 1093901 (M.D.

N.C. 1998) (court granted motion to compel response to request for information about expert's previous reports, including all reports expert had authored and transcripts of all deposition and trial testimony expert had given in previous six years). *See also Parkervision v. Qualcomm Inc.*, No. 3:11-CV-719-J-37-TEM, 2013 WL 3771226 (M.D. Fla. 2013)(prior expert reports, deposition transcripts and trial testimony transcripts fall within the ambit of Rule 26(b)(1) general fact discovery); *Spano v. Boeing Co.*, 2011 WL 3890268, at \*1 (S.D.Ill. Sept. 2, 2011); *Duplantier v. Bisso Marine Co., Inc.*, 2011 WL 2600995, at \*2–\*3 (E.D. La. June 30, 2011); *Expeditors Int'l of Washington, Inc. v. Vastera, Inc.*, 2004 WL 406999, at \*2 (N.D.Ill. Feb. 26, 2004); *Phillips v. Raymond Corp.*, 213 F.R.D. 521, 524 (N.D. Ill. 2003) (“bias is of course one of the quintessential bases for impeachment of a witness” and a plaintiff is “entitled” to inquire into an expert's “comparative record in testifying for plaintiffs or for defendants as such.”); *Hussey v. State Farm Lloyds Ins. Co.*, 216 F.R.D. 591, 594 (E.D.Tex.2003) (requiring production of prior expert reports because a fact-finder could draw inferences from prior reports).

Therefore, USAA should be compelled to respond to Plaintiff’s Request for Production Number 32.

**F. USAA Should Be Compelled To Produce Documents Regarding Reviews Of Its Uninsured Or Underinsured Insurance Coverage Policies As Well As Marketing Material**

**REQUEST FOR PRODUCTION NO. 40:**

Please produce any and all copies of any regulatory actions, including but not limited to suspension or revocation proceedings, Market Conduct Examinations, Cease and Desist Orders, Consent Orders, Reports of Examinations, Corrective Orders or Corrective Action Plans relating to Defendant’s uninsured or underinsured insurance coverage, from January 1, 2010 to present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

Defendant objects to this request on the grounds that it assumes facts, is overbroad and unduly burdensome in that it seeks information that is not narrowly tailored to the claims and defenses in this matter and is disproportional to the needs of the case. Defendant further objects to this request on the grounds that it is overly broad in time, scope and geography, and because it is not reasonably tailored to include only matters relevant to the handling of the claims which form the basis of this suit. Any such matter, with no nexus to the harm claimed to have been sustained by Plaintiff herein with regard to its claims under the subject policies, is irrelevant and the request is not reasonably calculated to lead to the discovery of admissible evidence. *See State Farm Mutual Auto Ins. Co. v. Campbell*, 538 US 4087 (2003). In addition, regulatory matters are not probative



1 of any issue in this case. Additionally, Defendant objects to this request to the  
2 extent it seeks the private and personal information of other insureds of Defendant  
3 or the confidential information of Defendant. Further, Defendant objects to  
4 the extent that this inquiry seeks information protected by the attorney-client  
5 privilege and the work product doctrine. Finally, this request seeks information  
6 which is a matter of public record and can be independently obtained by Plaintiff  
7 without requiring Defendant to compile the information. Based on all of the  
8 above, no further response will be provided.

9  
10 **REQUEST FOR PRODUCTION NO. 43:**

11 Please produce any and all advertisements or other marketing materials (including  
12 but not limited to brochures and/or video) issued by Defendant in Nevada or  
13 available on any website and pertaining to uninsured or underinsured motorist  
14 coverage, since January 1, 2010.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

16 Objection. Defendant objects to this request as it is neither relevant to the  
17 claims or defenses of any party, nor proportional to the needs of the case. There  
18 are no allegations within the Plaintiff's complaint regarding advertisements, nor  
19 did the Plaintiff allege any reliance upon such advertisements. Additionally, this  
20 request is overly broad in scope and time, and responding would be unduly  
21 burdensome. No documents will be produced.

22  
23 *See Exhibit 2.*

24  
25  
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USAA refused to provide documents requested in Request for Production of Documents  
No. 40 to 43, claiming these requests are "overbroad" and "unduly burdensome." However,  
"[t]he fact that a responding party maintains records in different locations, utilizes a filing system  
that does not directly correspond to the subjects set forth in [p]laintiffs' Interrogatory, or that  
responsive documents might be voluminous does not suffice to sustain a claim of undue burden."  
*Thomas v. Cate*, 715 F. Supp. 2d 1012, 1033, 2010 U.S. Dist. LEXIS 21750, \*47-48 (E.D. Cal.  
2010); see also *Simon v. ProNational Insurance Co.*, 2007 U.S. Dist. LEXIS 96318, 2007 WL  
4893477, \*2 (S.D. Fla. 2007) (in granting Plaintiff's Motion to Compel documents regarding  
similarly situated policy holders over a six (6) year period, held that Defendant's claim of undue  
burden was insufficient to preclude production; noted that a company cannot sustain a claim of  
undue burden by citing deficiencies in its own filing system); *Kelly v. Montgomery Lynch &  
Associates, Inc.*, 2007 U.S. Dist. LEXIS 93651, 2007 WL 4412572, \*2 (N.D. Ohio 2007) (in  
granting Plaintiff's Motion to Compel, rejected Defendant's claim of undue burden,  
notwithstanding Defendant's proffer that its "filing system is not maintained in a searchable way

and the information sought would require 'manually searching through hundreds of thousands of records.'"). USAA cannot sustain a claim of undue burden by citing deficiencies in its own filing system.

Further, these requests are narrowly tailored and limited to USAA's uninsured or underinsured coverage and are limited as to time. Related to Request No. 41, it is narrowly tailored to the specific USAA newsletters "*related to uninsured or underinsured motorist coverage or policies in Nevada*" and is limited as to time. Requests Nos. 42 and 43 contain the same narrowly tailored parameters.

Because USAA failed to elaborate how this request is overbroad and how production would be an undue burden, USAA should be compelled to properly respond to Request for Production Numbers 40 through 43.

**G. USAA Should Produce Testimony Of Its Employees And Officers Related To The Handling Of UM And UIM Claims**

**REQUEST FOR PRODUCTION NO. 39:**

Please produce any and all deposition transcripts or trial testimony transcripts of any of the Defendant's officers or personnel, since January 1, 2010, in any suit relating to bad faith claims handling of uninsured or underinsured claim(s).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

Objection. This request is unduly burdensome and overly broad in time and scope. This request seeks information that is not narrowly tailored to the claims and defenses in this matter and is disproportional to the needs of the case. The request is also overbroad as to geography, and to the extent it seeks information regarding claims and non-parties other than the claim at issue in this litigation. As presently worded, the information sought by the Request is not relevant to the claims or defenses of any party, nor proportional to the needs of the case. The existence of unrelated "bad faith suits" against Defendant and Defendant's testimony regarding the same, will neither prove nor disprove any alleged improper actions of Defendant in the handling of Plaintiff's claim. Defendant will not produce these documents.

**See Exhibit 2.**

USAA's objections have no merit for the same reasons stated in the preceding section.

In addition, USAA's prior personnel testimony related to UM and UIM claims is relevant because such depositions typically deal with many topics relevant as discussed above. Specifically, such depositions usually deal with claims handling policies and procedures, how



evaluations are done, incentives given to employees, etc. As a result, such depositions would be discoverable. *Inventio AG v. ThyssenKrupp Elevator Americas Corp.*, 662 F. Supp. 2d 375, 383 (D. Del. 2009)(“... but based upon Gaussmann's supervisory role and his generalized knowledge on the subject matter at issue, his prior deposition testimony could lead to the discovery of admissible evidence.”).

USAA has not made any showing related to the burden of obtaining such documents. Therefore, USAA should be compelled to properly respond to Plaintiff’s Request for Production No. 39.

**H. USAA Should Be Compelled To Produce Documents Concerning Payments It Received From Plaintiff For Insurance Policy Premiums**

**REQUEST FOR PRODUCTION NO. 24:**

Please produce any and all documents, writings, and communications concerning, reflecting, evidencing, or constituting payments received by you from Plaintiff for insurance policy premiums.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms “documents, writings, and communications”. Defendant further objects this request seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the request is not reasonably tailored to include only those matters relevant to this suit, and his intended only to harass as Defendant is not disputing that Plaintiff paid premiums or that the policy was in effect on the date of the subject accident.

*See Exhibit 2.*

USAA cannot sustain a claim of undue burden by citing deficiencies in its own filing system. “[t]he fact that a responding party maintains records in different locations, utilizes a filing system that does not directly correspond to the subjects set forth in [p]laintiffs’ Interrogatory, or that responsive documents might be voluminous does not suffice to sustain a claim of undue burden.” *Thomas*, 715 F. Supp. 2d at 1033, 2010 U.S. Dist. LEXIS 21750 at \*47-48; *see also Simon*, 2007 U.S. Dist. LEXIS 96318, 2007 WL 4893477 at \*2 (in granting Plaintiff’s Motion to Compel documents regarding similarly situated policy holders over a six (6) year period, held that Defendant’s claim of undue burden was insufficient to preclude production;

noted that a company cannot sustain a claim of undue burden by citing deficiencies in its own filing system); *Kelly*, 2007 U.S. Dist. LEXIS 93651, 2007 WL 4412572 at \*2.

USAA's objections are meritless and seemingly indicate that such premium payment documents exist. If the information is available in the form of Plaintiff's payment history, then USAA can easily access such documents and produce them. USAA should be compelled to properly respond to Plaintiff's Request for Production No. 24.

**I. USAA Should Be Compelled To Produce Information And Documents Related To USAA's Financial Condition**

**REQUEST FOR PRODUCTION NO. 10:**

Please produce any and all documents, writings, communications, financial statements, both audited and unaudited, and amendments thereto, which state your net income or loss for the last five (5) years according to GENERAL ACCEPTED ACCOUNTING PRINCIPLES (GAAP).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Objection. Defendant objects that the request is compound, overbroad as it purports to require "all documents, writings, and communications", unduly burdensome, and seeks information that is not relevant to the claims or defenses of either party. USAA further objects on the basis that this request is not proportional to the needs of this case. This request is not limited to the present claim, is not limited in scope or time, and is otherwise irrelevant to the issues presented in the present matter. Additionally, this request is premature. The Nevada Supreme Court has held that "before tax returns or financial records are discoverable on the issue of punitive damages, the plaintiff must demonstrate some factual basis for its punitive damage claim." *Hetter v. District Court*, 110 Nev. 513, 520, 874 P.2d 762, 766, 1994 Nev. LEXIS 65, \*13-14 (emphasis added). If the Court allows the question of punitive damages to proceed to the jury, USAA will supplement this response. Discovery continues and Defendant reserves the right to supplement this response as appropriate.

*See Exhibit 2.*

USAA claims that "this request is premature" and that "the Nevada Supreme Court has held that 'before tax returns or financial records are discoverable on the issue of punitive damages, the plaintiff must demonstrate some factual basis for its punitive damages claim.'" *See Exhibit 2*. Although not a publicly traded company, USAA provides financial reports to its Members. <https://communities.usaa.com/t5/USAA-News/USAA-2019-Report-to-Members/bap/227998> From this link, financial reports from 2017 – 2019 can be readily accessed. Additional

reports from prior years are also maintained by USAA. Thus, USAA's net worth for the last 5 years should be readily accessible to the company and must be provided in response to Request No. 10.

Here, Plaintiff is seeking punitive damages, making discovery related to USAA's net worth proper. *Hetter v. District Court*, 110 Nev. 513, 519 (1994) (In Nevada, a defendant's financial condition is a proper subject of discovery on the question of punitive damages.). Additionally, USAA's net worth and other financial information likely contain relevant evidence related to USAA's claims practices. Thus, this information is discoverable. *Koninklijke Philips Elecs. N.V. v. KXD Tech., Inc.*, Nos. 2:05-cv-01532-RLH-GWF, 2:06-cv-00101-RLH-GWF, 2007 U.S. Dist. LEXIS 13956 at \*22 (D. Nev. February 21, 2007) (finding that, over Defendants' objections, Plaintiff was entitled to obtain information regarding financial records, as they likely contained relevant evidence or would lead to the discovery of admissible evidence.).

Therefore, USAA should be compelled to produce its financial statements to properly respond to Plaintiff's Request for Production No. 10.

**J. USAA Should Be Compelled To Produce Documents Related To Contracting Third-Parties Or Outsourcing Operations Related To New Business Processing, Policy Issue, Policyholder Services, Claims Processing, Billing, Collection, And Payment Receipt**

**REQUEST FOR PRODUCTION NO. 9:**

Please produce any and all documents, writings, and communications, and amendments thereto, for the contracting of third-party administration and outsourcing of any operations related to new business processing, policy issue, policyholder services, claims processing, billing, collection, and payment receipt.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Objection. Defendant objects that the request is compound, overbroad, burdensome, vague and ambiguous as to the terms "all documents, writings, and communications". Defendant objects as this Request seeks documents protected by the attorney/client privilege and/or the work product doctrine. Defendant further objects this request seeks information that it is neither relevant to the claims or defenses of any party, nor proportional to the needs of the case, as the request is not reasonably tailored to include only those matters relevant to this suit, specifically new business processing, policy issue, policyholder services, billing, collection and payment receipt have no bearing on the issues in this case – the value of Plaintiff's claim and whether Defendant's handling of that claim

was proper. Defendant further objects on the grounds that the request seeks information that is sensitive, confidential, proprietary business information and/or trade secrets. Subject to and without waiving the stated objection, USAA does not outsource its claim handling services.

See **Exhibit 2**.

USAA has provided objections to Request for Production No. 9, but did not indicate whether documents are being withheld. As a preliminary matter, the absence of possession, custody, or control is not a basis to object. *FDIC v. 26 Flamingo, LLC*, 2013 U.S. Dist. LEXIS 108231, 2013 WL 3975006 (D. Nev. August 1, 2013) (“An earmark of a recipient’s inadequate inquiry is the obvious absence of documents and other written materials that the recipient reasonably would have expected to have been retained in the ordinary course of its business.”). Even in the event that USAA does not possess such materials, Plaintiff is entitled to know that as well. USAA may not side-step the fact issue by blanketly objecting to the inquiry. *Id.* Therefore, USAA should be compelled to properly respond to Plaintiff’s Request for Production No. 9.

**K. Sanctions Awarding Plaintiff Attorneys’ Fees Are Appropriate**

The Nevada Rules of Civil Procedure provide: “If the motion [to compel] is granted...the court must...require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.” N.R.C.P. Rule 37(a)(5)(A) (emphasis added). Moreover, a failure to properly respond to a request for production “is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).” Nev. R. Civ. P. 37(d)(2). When this failure arises, “the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified other circumstances make an award of expenses unjust.” Nev. R. Civ. P. 37(d)(3). Due to Defendant’s failure to provide adequate discovery disclosures as required by the applicable Nevada Rules of Civil Procedure, Plaintiff is entitled reasonable expenses including attorney’s fees.

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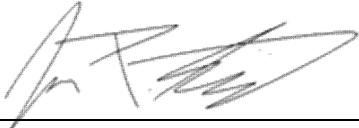
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1 **IV. CONCLUSION**

2 Based upon the foregoing, Plaintiff requests this Court compel answers to production of  
3 documents. Plaintiff further requests the Court grant Plaintiff's attorney's fees and costs for  
4 having to prepare this Motion.

5 DATED this 14<sup>th</sup> day of January 2021.

6 THE SCHNITZER LAW FIRM

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8   
9 By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of January 2021, I served a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S RESPONSES TO REQUESTS FOR PRODUCTION** to the above-entitled Court for electronic filing and service upon the Court's Service List to the following counsel.

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