

# In the Supreme Court of the State of Nevada

NATIONSBUILDERS INSURANCE  
SERVICES INC., a foreign  
corporation; NBIS CONSTRUCTION  
& TRANSPORT INSURANCE  
SERVICES, INC., a foreign  
corporation;  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT of the State of Nevada, in and  
for the County of Clark; and THE  
HONORABLE MARK R. DENTON,  
District Judge;  
Respondents.

DIANE SANCHEZ, an individual;  
Real Party in Interest.

Supreme Court Case No. 84227

Electronically Filed  
Apr 04 2022 05:02 p.m.  
District Court Case No. A-19-805351-C  
Elizabeth A. Brown  
Clerk of Supreme Court

## REAL PARTY IN INTEREST DIANE SANCHEZ'S APPENDIX TO ANSWER TO WRIT PETITION VOLUME I PAGES 1-250

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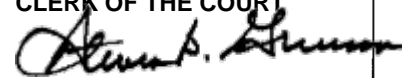
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07	Plaintiff Diane Sanchez's Motion for Relief from Order Denying Defendant Blas Bon's Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief and to Alter or Amend that Order Pursuant to NRCP 60(b)(3)	01/11/2022	3	RPI.APP.000550-RPI.APP.000708
08	Plaintiff Diane Sanchez's Reply in Support of Motion for Relief from Order Denying Defendant Blas Bon's Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief and to Alter or Amend that Order Pursuant to NRCP 60(b)(3) and Opposition to Countermotion to Strike Materials in Violation of Protective Order and Cross-Motion for Relief from Void Judgment	02/08/2022	3  4	RPI.APP.000709-RPI.APP.000750  RPI.APP.000751-RPI.APP.000797

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01	Plaintiff Diane Sanchez's Opposition to Defendant Blas Bon's Motion to Set Aside Default Judgment	02/07/2020	1	RPI.APP.000001- RPI.APP.000152



**1**



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8 **EIGHTH JUDICIAL DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

11 DIANE SANCHEZ,

12 Plaintiff,

13 vs.

14 BLAS BON, individually; JOSEPH  
15 ACOSTA, individually; WILFREDO  
16 ACOSTA, individually; DOES I-X and  
17 ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO. A-15-722815-C  
DEPT. NO. XXV

**PLAINTIFF DIANE SANCHEZ'S**  
**OPPOSITION TO DEFENDANT**  
**BLAS BON'S MOTION TO SET**  
**ASIDE DEFAULT JUDGMENT**

Hearing Date: February 25, 2020  
Hearing Time: 9:00 a.m.

18 Plaintiff DIANE SANCHEZ, by and through her attorneys of record, Dennis M.  
19 Prince and Kevin T. Strong of PRINCE LAW GROUP, hereby submits her *Opposition to*  
20 *Defendant Blas Bon's Motion to Set Aside Default Judgment.*

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10801 W. Charleston Blvd.  
Suite 560  
Las Vegas, NV 89135

RPI.APP.000001

1 This Opposition is based on the pleadings and papers on file in this action, the  
2 Memorandum of Points and Authorities set forth herein, and any argument this Court  
3 wishes to entertain at the hearing of this matter.

4 DATED this 7th day of February, 2020.

5 Respectfully Submitted,

6 **PRINCE LAW GROUP**

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9   
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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.**

3   **INTRODUCTION**

4           Nearly four (4) years after entry of default and nearly six (6) months after entry  
5 of a default judgment, Defendant Blas Bon (“Bon”) has suddenly decided to become  
6 involved in this litigation. Rest assured, however, that Bon himself has not initiated  
7 this attempt to set aside the substantial default judgment entered against him because  
8 his negligence caused Plaintiff Diane Sanchez (“Sanchez”) to sustain severe injuries.  
9 Rather, it is Bon’s insurance company, ATX Premier Insurance (“ATX”), that has now  
10 decided to use Bon to involve itself in this litigation.<sup>1</sup> The timing of ATX/Windhaven’s  
11 involvement in this action should come as no surprise given that Sanchez obtained Bon’s  
12 rights via judicial assignment and recently sued ATX/Windhaven and DMA Claims  
Services (“DMA”).

13           ATX/Windhaven, through Bon, wants this Court to somehow believe that Bon was  
14 surprised by entry of the Default Judgment and that service of the Summons and  
15 Complaint was ineffective. Not only are these arguments invalid, but they also reek of  
16 desperation given the posture of this case. ATX/Windhaven cannot escape the reality  
17 that ATX had notice that Sanchez sued Bon for personal injuries and that Bon was  
18 served with the Summons and Complaint. Yet, when presented with this information,  
19 ATX stuck its head in the sand and refused to satisfy its contractual obligation to defend  
20 Bon against Sanchez’s allegations against him.<sup>2</sup> ATX chose to not protect Bon’s interests  
21 by defending him in this litigation. There is no indication that ATX ever even attempted  
22 to contact Bon upon learning that he was sued. Even when ATX was directly informed  
23 that a default was entered against Bon, there was no attempt to participate in this action  
24 on Bon’s behalf. Now that a substantial default judgment has been entered,

25 \_\_\_\_\_  
26 <sup>1</sup> ATX Premier Insurance no longer exists. Windhaven National Insurance Company (“Windhaven”) purchased the assets  
of ATX, which became effective on October 24, 2016.

27 <sup>2</sup> The Honorable Judge Douglas W. Herndon characterized Century Surety Company’s failure to defend its insured in  
28 precisely the same terms when he refused to set aside the Default Judgment in *Pretner v. Vasquez*, Case No. A-11-632845-  
C. See 12/10/12 hearing transcript excerpt, at 32:25 – 33:5, attached as **Exhibit “1.”**

1 ATX/Windhaven expect this Court to simply set aside the Default Judgment because it  
2 now wants to represent Bon's interests. ATX/Windhaven ask this Court to shift the  
3 blame for entry of the Default Judgment on Sanchez based on arguments that lack a  
4 sufficient factual or legal basis. ATX/Windhaven fail to provide this Court with any  
5 legitimate reason to set aside the Default Judgment entered in this action and the  
6 motion should be denied.

## 7 II.

### 8 STATEMENT OF FACTS

9 Both Bon and ATX received adequate notice that a claim was initiated against  
10 Bon and that a default was entered. ATX failed to act on Bon's behalf until a substantial  
11 default judgment was entered against him and Sanchez sued ATX/Windhaven and  
12 DMA. To fully understand and appreciate that a default judgment was entered because  
13 ATX chose not to satisfy its contractual duty owed to Bon, a detailed explanation of  
Sanchez's claim and her subsequent lawsuit is necessary.

#### 14 A. Bon Causes a Motor Vehicle Collision and Sanchez Sustains Injuries

15 On April 28, 2015, a motor vehicle collision that involved four (4) cars occurred on  
16 Interstate 15 in Las Vegas, Nevada. Sanchez traveled northbound on Interstate 15 in a  
17 1995 BMW 325i sedan behind non-party Donna Evans ("Evans") in the #5 travel lane.  
18 Bon drove a 1997 Dodge Ram 2500 pickup truck directly behind Sanchez. Bon hauled  
19 two wheelbarrows in the back of the truck at that time. Sanchez slowed her vehicle  
20 down for traffic that was ahead of her. Bon failed to pay attention to the traffic in front  
21 of him and veered hard to the left to avoid striking Sanchez's vehicle. Bon's efforts were  
22 unsuccessful, however, and he struck the left portion of Sanchez's rear bumper with the  
23 right front end of his truck. Bon's truck eventually came to a rest in the #4 travel lane.  
24 Former Defendant Joseph Acosta ("Joseph"), who drove a 1997 BMW 528i directly  
25 behind Bon, was unable to bring his vehicle to a stop and also struck the rear bumper  
26 on Sanchez' car. As a result of the second impact, Sanchez's car struck the back of  
27 Evans's vehicle. Sanchez's vehicle suffered damage to both the front bumper and rear  
bumper as a result of the subject collision.

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1        **B. Sanchez Submits an Injury Claim to ATX**

2        Non-party Hipolito Cruz was the registered owner of the Dodge pickup truck that  
3        Bon negligently drove when he crashed into Sanchez's vehicle. At the time of the subject  
4        collision, ATX issued a personal liability insurance policy to Cruz, policy number  
5        ANV00003087. *See* ATX proof of insurance, attached as **Exhibit "2."** The ATX policy  
6        provided personal automobile liability coverage limits of \$15,000.00 per person and  
7        \$30,000.00 per occurrence. *Id.* As a permissive driver, Bon was personally insured  
8        under the ATX policy at the time of the subject collision. Notably, ATX never disputed  
9        that Bon was a permissive driver.

10       On May 21, 2015, Sanchez faxed and mailed a letter to ATX Insurance wherein  
11       she enclosed her medical records for treatment she received for the injuries sustained as  
12       a result of the subject collision. *See* 5/21/15 letter to ATX, attached as **Exhibit "3."**  
13       Sanchez also requested that ATX disclose the applicable policy limits for Bon in the May  
14       21, 2015 letter. *Id.* ATX was already aware of Sanchez's injury claim at the time of the  
15       May 21, 2015 letter because Claim No. DMA0147074 was assigned. *Id.*

16       On June 16, 2015, Sanchez faxed and mailed her two-week time limit demand for  
17       policy limits to DMA Claims Services ("DMA"). *See* 6/21/15 demand letter, attached as  
18       **Exhibit "4."** At the time of the demand, Sanchez's past medical special damages totaled  
19       \$7,818.00 and she was recommended to undergo a cervical fusion surgery at C6-7. *Id.*  
20       Sanchez included a copy of the traffic accident report and her medical records, including  
21       the record outlining her future surgical recommendation, with her demand. *Id.*

22       On July 10, 2015, DeLawrence Templeton ("Templeton"), a bodily injury claims  
23       representative with DMA, sent a letter to Sanchez's attorney. *See* 7/10/15 DMA letter,  
24       attached as **Exhibit "5."** Templeton informed Sanchez's attorney that DMA  
25       represented the interests of ATX for the subject collision. *Id.* Templeton requested  
26       additional time to complete its investigation of Sanchez's claim because he was unable  
27       to gather information he believed was necessary to determine liability. *Id.* The  
28       information Templeton believed he needed was a statement from the drivers involved in  
29       the subject collision and photographs of the vehicles involved in the subject collision. *Id.*  
30       Templeton estimated that he would be able to evaluate Sanchez's claim within thirty

1 (30) days after receiving the information. *Id.* Templeton confirmed that he would  
2 contact Sanchez's attorney after he received and reviewed the information. *Id.*

3 On July 17, 2015, a mere one (1) week after Templeton's initial letter, he mailed  
4 another letter to Sanchez's attorney. *See* 7/17/15 DMA letter, attached as **Exhibit "6."**  
5 Templeton informed Sanchez's counsel that he completed a thorough investigation of  
6 the facts and circumstances surrounding the subject collision. *Id.* Templeton  
7 inexplicably determined that Bon, its insured, was not liable for the subject collision,  
8 despite the contents of the traffic accident report, which he possessed. *Id.* Based on this  
9 determination, Templeton denied Sanchez's claim because the policy "only covers losses  
10 for which our insured becomes legally liable." *Id.* Templeton never confirmed that he  
11 actually obtained the information referenced in his July 10, 2015 letter as part of his  
12 investigation and denial of Sanchez's claim.

13 On December 11, 2015, Sanchez's counsel mailed a letter to Templeton in which  
14 he formally withdrew Sanchez's policy limits demand. *See* 12/11/15 letter to Templeton,  
15 attached as **Exhibit "7."** Sanchez's counsel noted that Templeton contacted him on July  
16 10, 2015 to inform him that demands sent to ATX at that time were not assigned to  
17 claims handlers with DMA in a timely fashion. *Id.* at p. 1. Notably, the December 11,  
18 2015 letter was sent to DMA's PO Box address contained on Templeton's July 10, 2015  
19 letter. *See* **Exhibit "5."** ATX, DMA, and Templeton never responded to the December  
20 11, 2015 letter. ATX, DMA, and Templeton's complete failure to take any interest in  
21 Sanchez's injury claim or to consider the interests of its insured, Bon, continued even  
22 after Sanchez filed her Complaint.

23 **C. Sanchez Sues Bon for Personal Injuries and Makes Substantial Efforts**  
24 **to Serve Bon with the Summons and Complaint**

25 On August 7, 2015, Sanchez sued Bon and Acosta for personal injuries stemming  
26 from the subject collision. The traffic accident report listed 3900 Cambridge Street,  
27 Suite 106, Las Vegas, Nevada 89119 as Bon's residential address. *See* traffic accident  
28 report, at p. 3, attached as **Exhibit "8."** On October 20, 2015, Sanchez filed her Affidavit  
of Due Diligence wherein Michael E. Clarke, the process server, described his failed  
efforts to personally serve Bon at his last known address:

1           **10/19/15 – 8:36 AM** Attempted to serve defendant at last  
2           known address of 3900 Cambridge Street, Suite 106, Las  
3           Vegas Nevada. This address is a Clark County  
4           neighborhood community center where the defendant had  
5           his mail sent, his current whereabouts are now unknown  
6           to them. A record search with the Clark County Assessor's  
            Office reveals no records found. A search with the Clark  
            County voters registration reveals no records found. A  
            local phone search for defendant's phone number reveals  
            no records found. A registered vehicle search with Nevada  
            DMV and Premium Finder search reveals no records found.

7           *See* 10/20/15 Affidavit of Due Diligence, at p. 2, attached as **Exhibit "9."**

8           On October 27, 2015, Sanchez's attorney delivered a letter to the Nevada  
9           Department of Motor Vehicles wherein he enclosed copies of the Complaint, Summons,  
10          and Affidavit of Due Diligence. *See* 10/27/15 letter to DMV, attached as **Exhibit "10."**  
11          Sanchez's counsel remitted payment of \$5.00 and requested the DMV to serve Bon  
12          pursuant to NRS 14.070. *Id.* On November 2, 2015, the DMV mailed a letter to  
13          Sanchez's attorney acknowledging service of the Summons and Complaint on Bon. *See*  
14          11/2/15 DMV letter, attached as **Exhibit "11."** On November 9, 2015, Sanchez's  
15          attorney mailed, via certified mail, return receipt requested, copies of the Summons,  
16          Complaint, traffic accident report, and DMV letter confirming proof of service to Bon's  
17          last known address. *See* 3/29/16 Amended Affidavit of Compliance, at Exhibit 2,  
18          attached as **Exhibit "12."** On November 12, 2015, the package containing such  
19          documents was returned to Sanchez's attorney because it was unclaimed. *Id.* On  
20          November 19, 2015, Sanchez filed her Affidavit of Compliance, but inadvertently forgot  
21          to notify the Court that the package was returned as unclaimed. *See* 11/19/15 Affidavit  
22          of Compliance, attached as **Exhibit "13."** On March 29, 2016, Sanchez filed her  
23          Amended Affidavit of Compliance wherein she confirmed that she served Bon through  
24          the DMV and attempted, yet again, to notify Bon of her lawsuit via certified mail, return  
25          receipt requested. *See* **Exhibit "12,"** at p. 2. Sanchez informed the Court in the  
26          amended affidavit that the package sent by certified mail was returned as unclaimed.  
27          *Id.* at p. 3.

28          ...

        ...

1     **D. Sanchez Directly Notifies Templeton, ATX, and DMA that Bon was**  
2     **Served with the Summons and Complaint**

3     On January 20, 2016, Sanchez's attorney sent a letter, via U.S. mail, to Templeton  
4     advising him that ATX's insured, Bon, was served with the Summons and Sanchez's  
5     personal injury complaint via the Nevada DMV. See 1/20/16 letter to ATX, attached as  
6     **Exhibit "14."** Sanchez's attorney enclosed copies of the Complaint, the November 19,  
7     2015 Affidavit of Compliance, and the November 2, 2015 DMV letter confirming service  
8     on Bon with her January 20, 2016 letter to Templeton. *Id.* Sanchez's attorney  
9     specifically requested Templeton and/or ATX to "file an Answer to Plaintiff's Complaint  
10    as soon as possible, or *I will have no choice but to request for the Court to enter a*  
11    ***Default against your insured.***" *Id.* (emphasis added).

12     **E. Sanchez Requests Templeton and ATX to File an Answer on Bon's Behalf**  
13     **for a Second Time**

14     On February 16, 2016, Sanchez's attorney sent yet another letter to Templeton  
15     and ATX advising that Bon still had not yet filed his Answer to Sanchez's Complaint.  
16     See 2/16/16 letter to ATX, attached as **Exhibit "15."** Sanchez's attorney clarified that  
17     if Bon did not file his Answer to Sanchez's Complaint by February 23, 2016, he would  
18     "request for the Court to enter a Default against your insured." *Id.* From February 16,  
19     2016 through March 31, 2016, ATX never: (1) responded to the February 16, 2016 letter,  
20     or (2) filed an answer to Sanchez's Complaint on Bon's behalf.

21     **F. Default is Entered Against Bon and ATX Receives Notice of the Same**

22     On April 1, 2016, Sanchez filed her Default against Bon. On June 22, 2016,  
23     Sanchez filed her Notice of Entry of Default and served a copy of its to Templeton, ATX,  
24     and DMA via certified mail. See 6/22/16 Notice of Entry of Default, attached as **Exhibit**  
25     **"16."** Templeton, ATX, and DMA took no further action in response to the entry of  
26     default against its insured, Bon.

27     **G. Sanchez Files Her Amended Complaint and Resolves Her Claims Against**  
28     **Acosta and Wilfredo Acosta**

On August 29, 2016, over four (4) months after default was entered against Bon,  
Sanchez filed a motion for leave to file an amended complaint. See 8/29/16 Motion,  
pleading portion only, attached as **Exhibit "17."** The requested amendment *solely*

1 related to the inclusion of Defendant Wilfredo Acosta, Joseph's father and the owner of  
2 the vehicle that Joseph drove when the collision occurred. *Id.* at p. 3. Joseph admitted  
3 that he received Wilfredo's permission to drive the vehicle at the time of the subject  
4 collision. *Id.* On October 13, 2016, Sanchez filed her Amended Complaint wherein  
5 Wilfredo was named as a Defendant and a negligent entrustment cause of action was  
6 alleged against Wilfredo. *See* 10/13/16 Amended Complaint, at pp. 3-4, attached as  
7 **Exhibit "18."** No new or additional claims or allegations were asserted against Bon in  
8 the Amended Complaint. *Id.*

9 On October 16, 2018, after several years of litigation, Sanchez, Joseph, and  
10 Wilfredo filed their Stipulation and Order for Dismissal, with Prejudice, following their  
11 confidential settlement of Sanchez's claims.

12 **H. Default Judgment is Entered Against Bon and Sanchez is Judicially**  
13 **Assigned Bon's Claims against ATX/Windhaven and DMA**

14 On March 29, 2019, Sanchez filed her Application for Entry of Default Judgment.  
15 On July 19, 2019, a default judgment in the amount of \$15,209,896.28 plus costs of  
16 \$2,759.45 was entered in favor of Sanchez and against Bon. *See* 7/19/19 Default  
17 Judgment, attached as **Exhibit "19."** Entry of the Default Judgment also resolved all  
18 issues of liability and causation against Bon. *Id.* at p. 2.

19 After the Default Judgment was entered against Bon, Sanchez filed her Motion  
20 for Judicial Assignment of each of Bon's claims or causes of action against ATX or any  
21 other applicable liability insurer. On August 20, 2018, the Court granted Sanchez's  
22 Motion for Judicial Assignment. *See* 8/20/18 Order, attached as **Exhibit "20."** The  
23 August 20, 2018 Order expressly authorized Sanchez to assert:

24 all of Defendant Blas Bon's claims of any kind whatsoever,  
25 arising in contract or tort, including, but not limited to,  
26 claims for breach of contract, breach of the duty of good  
27 faith and fair dealing, breach of the duty to settle, breach  
28 of the contractual duty to defend, and any other tort claims  
or claims for breach of fiduciary duties, against his  
insurer(s), including, but not limited to, ATX Premier  
Insurance, or any other insurance company or entity . . . .

*Id.* at p. 2.

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1                    *may very well warrant a denial of the motion for*  
2                    *relief from the judgment.*

3                    *Kahn v. Orme*, 108 Nev. 510, 516 (1992) (quoting *Lentz v. Boles*, 84 Nev. 197, 200 (1968))  
4                    (emphasis added).

5                    There is no question that both Bon and his insurer at the time, ATX, disregarded  
6                    that Sanchez filed a lawsuit for personal injuries against Bon. Not only did Sanchez  
7                    exercise all options available to serve Bon, but she also directly informed his insurer  
8                    that she filed a complaint and that she served Bon with the complaint. Sanchez provided  
9                    Bon and ATX with more than enough time and notice to defend Bon against the action.  
10                    A sophisticated insurer, like ATX, should have known that it was required to tender a  
11                    defense on Bon's behalf. Yet, ATX chose to ignore its contractual obligation to defend  
12                    Bon and did not even take any action to contact Bon regarding the allegations in the  
13                    personal injury complaint. The inaction of Bon and ATX belies all logic and common  
14                    sense and undermines the validity of the arguments set forth in the motion to set aside  
15                    the default judgment.

16                    Generally, a district court has broad discretion to determine whether a default  
17                    judgment should be set aside. *Britz v. Consolidated Casinos Corp.*, 87 Nev. 441, 445  
18                    (1971). The standard to set aside entry of a default judgment under NRCP 55(c) is good  
19                    cause. See Nev. R. Civ. P. 55(c). The NRCP 55(c) standard applies to "non-final default  
20                    judgments." *Nev. Direct Ins. Co. v. Fields*, No. 66561, 2016 Nev. Unpub. LEXIS 457, at  
21                    \*3, 2016 WL 797048 (Feb. 26, 2016) (citing *Dassault Systemes, SA v. Childress*, 663 F.3d  
22                    832, 840 (6th Cir. 2011)).<sup>3</sup> NRCP 60(b) applies to final judgments. *Id.* Sanchez  
23                    stipulated to dismiss her claims against Joseph and Wilfredo after reaching a  
24                    confidential settlement agreement. Therefore, the default judgment entered against  
25                    Bon, who was the last remaining defendant, is final and subject to the standard set forth  
26                    in NRCP 60(b).

27                    NRCP 60(b) articulates the specific grounds for a court to provide relief from a  
28                    final judgment:

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<sup>3</sup> NRAP 36(c)(3) allows a party to cite an unpublished disposition issued by the Nevada Supreme Court on or after January 1, 2016 for its persuasive value.

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed, or vacated; or applying it prospectively is not longer equitable; or
- (6) any other reason that justifies relief.

See Nev. R. Civ. P. 60(b).

A district court's decision to set aside a judgment is reviewed for abuse of discretion and the decision must be affirmed if supported by sufficient evidence in the record. *Cook v. Cook*, 112 Nev. 179, 181-82 (1996). "The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect *or the wrongs of an opposing party*." *Nevada Indus. Dev. v. Benedetti*, 103 Nev. 360, 364 (1987) (emphasis added). Of course, the only wrongs in this action were perpetrated by ATX for its failure to defend Bon upon timely notice that he was served with the Summons and Complaint. Similarly, Bon failed to timely answer or otherwise dispute the factual allegations contained within Sanchez's complaint for personal injuries. As a result, entry of the default constitutes an admission by Bon of all material facts alleged in Sanchez's Complaint. *Estate of LoMastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1068 (2008). These are the relevant facts that inform this Court's analysis of the arguments ATX/Windhaven, through "Bon," set forth in the underlying motion.

**B. Bon Fails to Provide this Court with any Credible Factual Basis Necessary to Set Aside the Default Judgment for Surprise or Excusable Neglect**

Rule 60(b)(1) "permits relief from judgment because of mistake, inadvertence, surprise, or excusable neglect, but that rule requires the moving party to justify its

1 actions . . . .” *In re M/V/Peacock*, 809 F.2d 1403, 1405 (9th Cir. 1987).<sup>4</sup> The Nevada  
2 Supreme Court has not defined “surprise” in the context of NRCP 60(b)(1). However,  
3 the Idaho Supreme Court has defined surprise in the context of Rule 60(b) as “some  
4 condition or situation in which a party to an action is unexpectedly placed to his injury,  
5 ***without any default or negligence of his own, and which ordinary prudence***  
6 ***could not have guarded against.***” *Leasefirst v. Burns*, 131 Idaho 158, 162 (Idaho  
7 1998) (emphasis added).<sup>5</sup>

8 Although a district court has the discretion to relieve a party from a final  
9 judgment due to excusable neglect, “the district court has wide discretion in determining  
10 what neglect is excusable and what neglect is inexcusable.” *Durango Fire Prot., Inc. v.*  
11 *Troncoso*, 120 Nev. 658, 662 (2004). There are three disjunctive factors employed to  
12 determine if excusable neglect justifies setting aside a default judgment pursuant to  
Rule 60(b):

13 (1) Whether the party seeking to set aside the default  
14 engaged in culpable conduct that led to the default; (2)  
15 whether it had no meritorious defense; or (3) whether  
reopening the default judgment would prejudice the other  
party.

16 *United States v. Aguilar*, 782 F.3d 1101, 1105 (9th Cir. 2015).

17 The disjunctive aspect of this standard is important because it means that “a  
18 finding that any one of these factors is true is sufficient reason for the district court to  
19 refuse to set aside the default.” *United States v. Mesle*, 615 F.3d 1085, 1091 (9th Cir.  
20 2010). “A court need not consider the meritorious defense or prejudice prongs of the test  
21 if culpable conduct is shown. *FTC v. International Charity Consultants*, No. CV-S-94-  
22 0195-DWH (RLH), 1997 U.S. Dist. LEXIS 7954, at \*7 (D. Nev. May 27, 1997) (citing  
23 *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987)). “Conduct is  
24 culpable if the defendant has received ***actual or constructive notice of the filing of***

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25  
26 <sup>4</sup> “Federal cases interpreting the Federal Rules of Civil Procedure ***are strong persuasive authority***,  
because the Nevada Rules of Civil Procedure are based in large party upon their federal counterparts.”  
27 *Exec. Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53 (2002) (emphasis added).

28 <sup>5</sup> Idaho Rule of Civil Procedure 60(b)(1) is identical in language to Nevada Rule of Civil Procedure 60(b)(1).

1 *the action and fails to answer.” Id. at \*7 (citing Alan Neuman Prods., Inc. v. Albright,*  
2 *862 F.2d 1388, 1392 (9th Cir. 1988)) (emphasis added).*

3 Bon and ATX cannot credibly claim that they were surprised by entry of the  
4 Default Judgment. There is no dispute that Bon and ATX had actual notice that  
5 Sanchez filed a complaint for personal injuries. Bon was properly served with the  
6 Summons and Complaint via the DMV pursuant to NRS 14.070. *See Exhibit “11.”* Bon  
7 knew or should have known that entry of a default and a default judgment would follow  
8 because the Summons expressly warned of the same:

9 2. Unless you respond, your default will be entered  
10 upon application of the Plaintiff(s) and this Court  
11 may enter judgment against you for the relief  
12 demanded in the Complaint, which could result in  
13 the taking of money or property or other relief  
14 requested in the complaint.

15 *See Exhibit “10,”* at p. 5

16 ATX received actual notice of the complaint when Sanchez’s counsel mailed a  
17 copy of the Complaint, and proof of service on Bon through the DMV on January 20,  
18 2016. *See Exhibit “14.”* At that point, ATX, as a sophisticated insurer, knew that if  
19 Bon did not answer the complaint, a default would be entered. Sanchez’s counsel even  
20 warned ATX that he would “have no choice but to request for the Court to enter a Default  
21 against your insured” if an answer was not filed. *Id.* Sanchez’s counsel notified ATX a  
22 second time on February 16, 2016 that Bon had yet to file an answer and that if an  
23 answer was not filed a default would be entered. *See Exhibit “15.”* ATX chose to do  
24 absolutely nothing to protect Bon’s interests by satisfying its contractual duty to defend  
25 him against Sanchez’s personal injury allegations. Accordingly, neither Bon, nor ATX,  
26 can now assert that they were surprised that a default judgment would be entered as a  
27 result of Bon’s failure to file his Answer to Sanchez’s Complaint.

28 Bon and ATX/Windhaven’s claim that they were surprised because the Default  
Judgment was entered three (3) years after default was entered is similarly not  
persuasive. Sanchez was not obligated to file her default judgment application by a  
certain date or time, particularly because she continued to litigate her personal injury  
claims against Defendants Joseph and Wilfredo. Once Sanchez’s claims against Joseph

1 and Wilfredo resolved and a stipulation and order to dismiss was filed on October 16,  
2 2018, Sanchez filed her default judgment application a little more than five (5) months  
3 later. Even if Sanchez submitted her default judgment application earlier, neither Bon,  
4 nor ATX, gave any indication that they would dispute the application or otherwise ever  
5 become involved in the action.

6 Bon and ATX/Windhaven also incorrectly imply that there is Nevada Supreme  
7 Court precedent to set aside a default judgment based on when the application is made  
8 in relation to when the default was entered. *See Bruno v. Schoch*, 94 Nev. 712, 714  
9 (1978). In *Bruno*, the mother initiated an action against the putative father for support  
10 of their children. *Id.* at 713. Eleven (11) months after a default was entered, the mother  
11 secured a default judgment against the father. *Id.* The *Bruno* Court determined the  
12 trial court abused its discretion to set aside and vacate the default judgment. *Id.*  
13 However, the *Bruno* Court relied on uncontroverted evidence the father presented to the  
14 district court that he carried on a relationship with the mother *after* the default was  
15 entered. *Id.* Thus, the length of time the mother waited to seek a default judgment did  
16 not cause the surprise necessary to set aside the default judgment. Rather, the fact that  
17 the father continued to carry on a relationship with the mother during the months  
18 leading up to entry of the default created the surprise. *Id.* Clearly, the facts of *Bruno*  
19 are not analogous here as both Bon and ATX knew that a default was entered and should  
20 have known that, at any time, a default judgment would be entered against Bon.

21 Bon and ATX/Windhaven's claim that they were surprised by the substantial  
22 amount of the Default Judgment rings hollow. Any surprise they may have suffered  
23 from the size of the Default Judgment was a direct result of ATX's failure to defend Bon  
24 against Sanchez's personal injury allegations. Had ATX chosen to defend Bon against  
25 these claims by actively defending him in the personal injury action, both Bon and ATX  
26 would have known that Sanchez's injuries were severe. They would have known that  
27 Sanchez received ongoing care and treatment for her injuries that culminated in a fusion  
28 surgery of the cervical spine. In fact, ATX knew that Sanchez's past medical expenses  
would grow because she informed ATX that her treating spine surgeon recommended  
that she undergo a cervical fusion surgery *before* she even filed her Complaint. *See*

1 **Exhibit “3.”** For ATX/Windhaven, through Bon, to now somehow claim surprise by the  
2 judgment amount truly reflects their failure to accept responsibility for the  
3 consequences of their failure to defend Bon.

4 ATX/Windhaven, through Bon, cannot establish excusable neglect to justify this  
5 Court to set aside the default judgment. Both Bon and ATX were clearly aware of the  
6 proceedings. ATX and Bon were aware of the consequences that would result if an  
7 answer was not filed. This conduct was deliberate and culpable, which automatically  
8 proves that there is no excusable neglect to set aside the Default Judgment. *Alan*  
9 *Neuman Prods., Inc.* 862 F.2d at 1392. The factors outlined in *Yochum v. Davis*, 98 Nev.  
10 484 (1982) similarly do not justify an order setting aside the Default Judgment. ATX  
11 and Bon knew, through the Summons and two (2) letters, that a default and default  
12 judgment would be entered if an answer was not filed. Bon’s lack of representation  
13 during the subject proceedings was ***solely and directly*** a result of ATX’s failure to fulfill  
14 its contractual duty to defend Bon. For ATX/Windhaven to even imply that they played  
15 no role in Bon’s failure to have defense counsel underscores the tenuous legal grounds  
16 upon which the arguments contained in the underlying motion are based. It also  
17 establishes the utter lack of credibility that ATX/Windhaven have before this Court.  
18 ATX/Windhaven, through Bon, have not moved in good faith to set aside the default  
19 judgment. Instead, ATX/Windhaven improperly ask this Court to absolve ATX of the  
20 consequences that resulted from its wrongful failure to defend Bon against Sanchez’s  
21 personal injury claims.

22 **C. There are No Other Reasons to Justify Relief from Entry of the Default**  
23 **Judgment**

24 ATX/Windhaven, through Bon, also seek to set aside the Default Judgment for  
25 other reasons they believe justify relief pursuant to NRCP 60(b)(6). ATX/Windhaven  
26 somehow believe this Court should set aside the Default Judgment because the other  
27 defendants were represented by counsel, Bon was never able to retain his own experts  
28 or cross-examine Sanchez’s experts, and that his liability was questionable. The  
absurdity of these claims is obvious and certainly cannot reasonably be questioned. Bon  
was unable to dispute liability, retain experts, or otherwise learn that Sanchez’s medical

1 damages were substantial because ATX breached its contractual duty to defend Bon.  
2 ATX/Windhaven cannot reasonably request this Court to adjudicate this action on the  
3 merits when it had every opportunity to do just that but failed. Allowing  
4 ATX/Windhaven to use Bon to set aside the Default Judgment would effectively reward  
5 ATX for its failure to defend Bon. Setting aside the Default Judgment would also  
6 condone ATX's breach of its contractual duty to defend by erasing the inevitable  
7 consequences that result from such a breach. Not only does this contravene express  
8 Nevada law, but it also disregards the importance of the duty to defend to insureds, like  
9 Bon.

10 ***1. The relationship of confidence and trust between the insurer and***  
11 ***insured underscores the importance of the duty to defend***

12 The insurance industry is heavily regulated by the state because it is an  
13 important ***public trust***. *Ainsworth v. Combined Ins. Co.*, 104 Nev. 587, 592 (1988). "A  
14 consumer buys insurance for security, protection, and peace of mind." *Id.* The important  
15 role insurance plays in society, particularly to individual insureds, is the cornerstone  
16 that establishes the relationship between insurer and insured to be one of special  
17 confidence. *Id.* The Nevada Supreme Court has recognized this special relationship  
18 between an insurer and insured as being akin to a fiduciary relationship. *Powers v.*  
19 *United Servs. Auto Ass'n*, 114 Nev. 690, 700 (1998). The nature of this relationship  
20 requires that the insurer adequately protect the insured's interest and requires the  
21 insurer, at a minimum, to equally consider the insured's interests with its own. *Allstate*  
22 *Ins. Co. v. Miller*, 125 Nev. 300, 311 (2009).

23 A liability insurer's primary business purpose is to manage risk, which is why  
24 this insurer makes a promise to provide litigation insurance (*i.e.* the duty to defend)  
25 against the costs of those risks. *Elliott v. Donahue*, 169 Wis. 2d 310, 320, 485 N.W.2d  
26 403, 407 (Wis. 1992). This is precisely why individuals and businesses alike contract to  
27 purchase liability insurance policies, namely to secure the insurer's sophistication to  
28 navigate the uncertainties of litigation by providing a defense against third-party  
claims.

...



1           The insured's *desire to secure the right to call on the*  
2           *insurer's superior resources for the defense of third*  
3           *party claims is, in all likelihood, typically as*  
              *significant a motive for the purchase of insurance as*  
              *is the wish to obtain indemnity for possible liability.*

4           *Montrose Chemical Corp. v. Superior Court*, 6 Cal. 4th 287, 295-96, 861 P.2d 1153, 1158  
5           (1993) (emphasis added).

6           Given the unequal bargaining power between insured and insurer, the Nevada  
7           Supreme Court has undertaken the approach to construe liability insurance policies  
8           with a keen eye towards equalizing this imbalance. The Nevada Supreme Court has  
9           achieved this goal by incentivizing insurers to fulfill their duties under the policy.  
10          Specifically, any ambiguity or uncertainty as to an obligation in an insurance policy  
11          must be construed against the insurer and in favor of the insured. *Vitale v. Jefferson*  
12          *Ins. Co.*, 116 Nev. 590, 594 (2000). Construing any uncertainty in an insurance policy  
13          against the insurer is appropriate because the insurer is in a "superior bargaining  
14          position to the insured." *United Rentals Highway Techs., Inc. v. Wells Cargo, Inc.*, 128  
15          Nev. 666, 677 (2012). The Nevada Supreme Court has continually relied on this  
16          approach to protect insureds when insurers skirt their responsibilities under the  
              insurance policies.

17                   **2. The duty to defend is an expansive contractual obligation that ATX**  
18                   **should have satisfied**

19          The four corners of a personal injury complaint solely dictate whether an insurer  
20          must satisfy its contractual duty to defend. This is unquestionably the state of the law  
21          in Nevada as recently articulated by the Nevada Supreme Court in *Century Surety Co.*  
              *v. Andrew*:

22                   We take this opportunity to clarify that where there is  
23                   potential coverage based on 'comparing the allegations of  
24                   the complaint with the terms of the policy,' **an insurer**  
                      **does have a duty to defend.**

25                   134 Nev. \_\_\_, 432 P.3d 180, 184 n.4 (2018) (quoting *United Natl Ins. Co. v. Frontier Ins.*  
                      *Co.*, 120 Nev. 678, 687, 99 P.3d 1153, 1158 (2004)).

26          An insurer's duty to defend is, by definition, broader than the duty to indemnify  
27          because it is triggered whenever there is even the **potential** for indemnification  
28          coverage under the policy. *Benchmark Ins. Co. v. Sparks*, 127 Nev. 407, 412 (2011). An



1 insurer's duty to defend continues until the potential for indemnification ends. *Id.* If  
2 there is even a shred of doubt as to whether the insurer must defend, that doubt should  
3 be resolved in the *insured's favor*. Therefore, an insurer that does not provide a  
4 defense, like ATX here, does so at its own risk. *Howard v. American National Fire Ins.*  
5 *Co.*, 187 Cal. App. 4th 498, 520, 115 Cal Rptr. 3d 42, 62 (Cal. Ct. App. 2010).

6 The duty to defend gives the insurer the right to control litigation against the  
7 insured. *Miller*, 125 Nev. at 309. The right to control litigation creates the contractual  
8 duty to defend insureds from lawsuits that merely contain allegations that fall within  
9 the scope of the policy's insurance coverage. *Id.* In Nevada, an insurer has an *absolute*  
10 *duty* to defend an action brought against its insured that potentially seeks damages  
11 within the coverage of the policy, even if the claims are false, fraudulent or unprovable.  
12 *Rockwood Ins. Co. v. Federated Capital Corp.*, 694 F. Supp. 772, 776 (D. Nev. 1998).

13 There is no question that ATX had notice that the allegations in the Complaint  
14 implicated coverage and triggered the duty to defend. ATX received a copy of the  
15 personal injury complaint. See **Exhibit "14."** On two (2) separate occasions, Sanchez  
16 essentially requested ATX to file an answer on behalf of Bon. *Id.*; see also **Exhibit "15."**  
17 Both times, ATX failed to defend Bon and failed to even acknowledge the existence of  
18 Sanchez's personal injury complaint. Incredibly, ATX/Windhaven now ask this Court to  
19 effectively set aside the Default Judgment for *their benefit* because they understand  
20 that ATX breached its contractual duty to defend. ATX/Windhaven cannot provide this  
21 Court with any legitimate excuse for ATX's failure to defend. It bears repeating that if  
22 ATX simply defended Bon against Sanchez's personal injury claims, a default judgment  
23 would not have resulted. This fact alone defeats the arguments to set aside the Default  
24 Judgment pursuant to NRCP 60(b) set forth in the underlying motion.

25 **D. Sanchez Did Not Improperly Serve Bon with the Summons and**  
26 **Complaint**

27 ATX/Windhaven's desperate attempt to set aside the Default Judgment through  
28 its "representation" of Bon is alternatively based on alleged defects in the way Bon was  
served. As detailed below, Sanchez was not required to serve Bon with the Amended  
Complaint because the Amended Complaint did not assert new claims against Bon in

any way. Further, Sanchez fully complied with the requirements of NRS 14.070 for service through the DMV.

**1. Sanchez was not required to serve Bon with the amended complaint as a matter of Nevada law**

NRCP 5(a)(2) governs service of pleadings when a party fails to appear and states, in relevant part:

***No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such party must be served on that party under Rule 4*** (emphasis added).

The Amended Complaint does not assert any new claims against Bon. It is not surprising that ATX/Windhaven, through Bon, fail to identify any new claim asserted against Bon in the Amended Complaint. Rather, ATX/Windhaven assert that the allegations in the Amended Complaint are unclear as they relate to Bon. This contention is not only baseless, but irrelevant to establish that Bon should have been served with the Amended Complaint. On April 1, 2016, a default was entered against Bon. See **Exhibit “16.”** On August 29, 2016, Sanchez filed a motion for leave to file an amended complaint that only impacted her claims against Joseph, **not** Bon. Specifically, Sanchez discovered that Joseph had permission from his father, Wilfredo, to drive his car at the time of the subject collision. See generally **Exhibit “17.”** As a result, Sanchez filed her Amended Complaint to name Wilfredo and assert a cause of action against him pursuant to NRS 41.440. See **Exhibit “15,”** at pp. 3-4. ATX/Windhaven cherry-pick allegations that refer solely to Joseph to somehow imply that the claims in the Amended Complaint substantively changed against Bon, which is not true. The irrationality of ATX/Windhaven’s argument is apparent by their reference to the singular use of “Defendant” in Paragraph 13 of the Amended Complaint. The Court need only compare Paragraphs 13 in **both** the Complaint and Amended Complaint to realize that they both read exactly the same:

13. Defendants owed Plaintiff a duty of care to operate their vehicles in a reasonable and safe manner. Defendant breached that duty of care by striking Plaintiff’s vehicle on the roadway. As a direct and proximate result of the negligence of Defendant,

1 Plaintiff has been damaged in an amount in excess  
2 of \$10,000.00

3 See Exhibit "18," at p. 3, ¶ 13; see also, Exhibit "10," at Diane Sanchez Complaint, p.  
4 3, ¶ 13.

5 The Amended Complaint was not the operative complaint as to Bon because no  
6 new claims were asserted against him and a default was already entered against him  
7 on the same claims asserted in both Complaints. Therefore, the Default Judgment is  
8 not void and should remain in full force and effect against Bon.

9 **2. Sanchez properly served Bon with the summons and complaint in**  
10 **accordance with the terms outlined in NRS 14.070**

11 NRS 14.070 allows service of process to be effectuated on the Director of the DMV  
12 for any action arising from the defendant's negligent operation of a motor vehicle if the  
13 motorist cannot be found within the state. *Browning v. Dixon*, 114 Nev. 213, 216 (1998).  
14 The precise method to effectuate service of process through the DMV is articulated in  
15 the statute, which reads, in pertinent part:

16 2. Service of process must be made by leaving a copy of the  
17 process with a fee of \$5 in the hands of the Director of the  
18 Department of Motor Vehicles or in the Office of the  
19 Director, and the service shall be deemed sufficient upon  
20 the operator if notice of service and a copy of the process is  
21 sent by registered or certified mail by the plaintiff to the  
22 defendant at the address supplied by the defendant in the  
23 defendant's crash report, if any, and if not, at the best  
24 address available to the plaintiff, and a return receipt  
25 signed by the defendant or a return of the United States  
26 Postal Service stating that the defendant refused to accept  
27 delivery or could not be located, or that the address was  
28 insufficient, and the plaintiff's affidavit of compliance  
therewith are attached to the original process and returned  
and filed in the action in which it was issued.

See Nev. Rev. Stat. 14.070(2).

ATX/Windhaven first assert that Sanchez's Affidavit of Compliance and Amended  
Affidavit of Compliance are defective because neither state the source of the Cambridge  
Address. This argument is truly one of form over substance and not at all persuasive.  
Even ATX/Windhaven, through Bon, acknowledge in the underlying motion that the  
traffic accident report lists 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119  
as Bon's address. See Motion to Set Aside, at 6:16-17. This directly undermines any

1 suggestion or implication that the source of this address should reasonably be  
2 questioned as fraudulent. ATX/Windhaven inaccurately suggest to this Court that the  
3 affidavit of compliance must state the source of the best-known address. In actuality,  
4 “[w]hen notice is sent to the best address to the plaintiff, the affidavit **should** state the  
5 source of the address.” *Mitchell v. Second Judicial Dist. Court*, 82 Nev. 377, 381 (1966)  
6 (emphasis added). Stating the source of the best-known address is not mandatory,  
7 particularly in this context when the facts clearly establish that Sanchez served Bon at  
8 the address listed on the traffic accident report. This is not a legitimate basis to set  
9 aside the Default Judgment for defective service of process through the DMV.

10 ATX/Windhaven also argue that Sanchez failed to exercise due diligence to locate  
11 Bon before serving him through the DMV. This argument defies logic as Sanchez  
12 exhausted all reasonable options to locate Bon before serving him through the DMV.  
13 The Affidavit of Due Diligence details the efforts that process server Michael E. Clarke  
14 made to locate Bon. *See Exhibit “9.”* Obviously, Mr. Clarke learned that the Cambridge  
15 address was Bon’s residential address from the traffic accident report. The reliability of  
16 the traffic accident report as the source of the address could not reasonably be  
17 questioned then and cannot be questioned now. Aside from his attempt to personally  
18 serve Bon at his residential address, Mr. Clarke performed a records search with the  
19 Clark County Assessor’s Office, Clark County Voter Registration, and a registered  
20 vehicle search with the Nevada DMV and Premium Finder. *Id.* Mr. Clarke also  
21 searched the phone records. *Id.* The efforts made to serve Bon were substantial and  
22 satisfied Sanchez’s obligation to diligently. ATX/Windhaven somehow believe that  
23 Sanchez should have tried to serve Bon at his alleged place of work even though NRCP  
24 5(a)(2)(B)(ii) requires service to be effectuated at “a person’s dwelling or usual place of  
25 abode.” There is no evidence that Bon maintained an office with his alleged employer  
26 at the time of the subject collision, “South West Trees” to justify service of process  
27 pursuant to NRCP 5(a)(2)(B)(i). Furthermore, Sanchez had no reason to suspect that  
28 Bon lived with Hipolito Cruz, the owner of the subject pickup truck, merely because he  
drove the truck when the subject collision occurred.

1 Sanchez's failure to serve Bon at the address of 4000 Abrams 89, Las Vegas,  
2 Nevada that is contained in his voluntary statement does not undermine the diligence  
3 made to personally serve Bon. The ultimate fact that defeats any claim that Sanchez  
4 failed to diligently search for Bon is that Sanchez mailed letters to Templeton at the  
5 address for DMA informing him that the complaint was filed and served on Bon. See  
6 **Exhibit "14," Exhibit "15."** Templeton and DMA's knowledge that Bon was served  
7 with the Summons and Complaint should be imputed to ATX given that ATX hired DMA  
8 to represent its interests. See **Exhibit "5."** It defies all logic and common sense that  
9 ATX/Windhaven have the audacity to represent to this Court that DMA was never  
10 contacted about the Summons and Complaint. Not only was DMA contacted about the  
11 Summons and Complaint, but Sanchez even provided Templeton/DMA with a copy of  
12 the Complaint. Once again, this further establishes the desperation of ATX/Windhaven  
13 to set aside the Default Judgment to escape liability for ATX's clear breach of its  
14 contractual duty to defend.

15 Finally, ATX/Windhaven ask this Court to determine that service through the  
16 DMV was defective because Sanchez allegedly did not file a return receipt that stated  
17 the address was insufficient. As a practical matter, the return receipt does not list an  
18 option that the address was "insufficient." The mere fact that the package containing  
19 the Summons, Complaint, traffic accident report, and copy of the DMV letter  
20 establishing proof of service was returned as unclaimed in and of itself establishes the  
21 insufficiency of the address. If the address was sufficient, then Bon would have either  
22 accepted delivery of the certified mail or refused to accept it. This analysis requires a  
23 simplistic approach and the desperation with which ATX/Windhaven seek to question  
24 the sufficiency of service is apparent and not at all convincing.

25 **E. ATX and/or DMA Claims Made it Abundantly Clear that They had No**  
26 **Intention to Defend Bon Before Default was Entered**

27 ATX/Windhaven's final argument demonstrates their complete lack of self-  
28 awareness and ability to recognize their own culpable conduct. On January 20, 2016,  
Sanchez provided Templeton, ATX, and DMA with a copy of the Complaint and proof  
that Bon was served with the Complaint through the DMV. See **Exhibit "14."** Sanchez

1 requested ATX to file an answer on behalf of Bon to the Complaint. Certainly,  
2 Templeton, ATX, and DMA understood that filing an answer on behalf of Bon required  
3 the retention of an attorney. Yet, nearly one month went by and no answer was filed.  
4 On February 16, 2016, Sanchez provided ATX, Templeton, and DMA with yet another  
5 chance to file an answer on behalf of Bon. See Exhibit "15." From February 16, 2016  
6 through March 31, 2016, ATX, Templeton, and DMA could have secured counsel to file  
7 an answer and defend Bon. None of them lifted a finger. Despite the inaction and utter  
8 disregard for the consequences resulting from ATX's failure to defend, ATX/Windhaven  
9 shockingly accuse Sanchez's counsel of violating the spirit of NRPC 3.5A. Nearly four  
10 (4) years after default was first entered against it insured and ATX/Windhaven still  
11 refuse to acknowledge their own misconduct. Now, they choose to serve Bon's interests  
12 to avoid the consequences of their own failures. ATX/Windhaven's motivation behind  
13 the filing of the underlying motion cannot be questioned and justifies this Court's denial  
14 of the motion in its entirety.

14 IV.

15 CONCLUSION

16 Based on the foregoing facts, law, and analysis, Plaintiff Diane Sanchez  
17 respectfully requests that this Court **DENY** Blas Bon's Motion to Set Aside Default  
18 Judgment.

19 DATED this 7<sup>th</sup> day of February, 2020.

20 Respectfully Submitted,

21 **PRINCE LAW GROUP**

22   
23 \_\_\_\_\_  
24 DENNIS M. PRINCE  
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Las Vegas, Nevada 89135  
Attorneys for Plaintiff  
Diane Sanchez

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of **PRINCE LAW**  
3 **GROUP**, and that on the \_\_\_\_ day of January, 2020, I caused the foregoing document  
4 entitled **PLAINTIFF DIANE SANCHEZ'S OPPOSITION TO DEFENDANT BLAS**  
5 **BON'S MOTION TO SET ASIDE DEFAULT JUDGMENT** to be served upon those  
6 persons designated by the parties in the E-Service Master List for the above-referenced  
7 matter in the Eighth Judicial District Court E-Filing System in accordance with the  
8 mandatory electronic service requirements of Administrative Order 14-2 and the  
9 Nevada Electronic Filing and Conversion Rules.

10 William P. Volk  
11 William D. Schuller  
12 **KOLESAR & LEATHAM**  
13 400 South Rampart Boulevard  
14 Suite 400  
15 Las Vegas, Nevada 89145  
16 Attorneys for Defendant  
17 *Blas Bon*

18   
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21  
22  
23  
24  
25  
26  
27  
28  
An Employee of PRINCE LAW GROUP



# EXHIBIT 1



TRAN  
CASE NO. C-632  
845  
DEPT. NO. 3

COPY

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

LEE PRETNER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICHAEL VASQUEZ, )  
 )  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT  
OF  
MOTION FOR LEAVE

BEFORE THE HONORABLE DOUGLAS HERNDON  
DISTRICT COURT JUDGE

DATED: MONDAY, DECEMBER 10, 2012

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the Plaintiff: DENNIS PRINCE, ESQ.

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4 For the Defendant: ALAN LEFEBVRE, ESQ.

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1 LAS VEGAS, NEVADA; MONDAY, DECEMBER 10, 2012

2 P R O C E E D I N G S

3 \* \* \* \* \*

4  
5 THE COURT: Good morning.

6 MR. LEFEBVRE: I appreciate the court continuing  
7 the matter to have a full review of the papers. And of  
8 course, as all civil lawyers we like to load you up with  
9 as much --

10 THE COURT: My appreciation is for you all  
11 understanding I didn't get it all done the first time.  
12 But thank you.

13 MR. LEFEBVRE: There are a couple of things that  
14 are not as apparent from the papers as perhaps they should  
15 be. One is you recall the accident occurred in January of  
16 2009. Mr. Prince did not become counsel until the end of  
17 2010 and into '11. And a great deal happened during that  
18 period of time.

19 The other policy, as you recall we have two. We have  
20 the Progressive policy and my client, Century. Both of  
21 which have two duties -- duty to defend, duty to  
22 indemnify. Indemnify means pay the policy limits.

23 What happened, if we look at the file that was in the  
24 hands of prior counsel, Ms. Esperaza, prior to when  
25 Mr. Prince and his firm were involved, she already had, on

1 ~~default and chose not to seek any kind of intervention or~~  
2 involvement in the case. Ultimately default judgment is  
3 entered.

4 I also think that under Chapter 12, the right to  
5 intervene exists before trial, when there is a litigation  
6 ongoing between the original parties in the case. I don't  
7 believe that there is a right to intervene after final  
8 judgment has been entered and now you feel aggrieved  
9 somehow by the language of an order and you want to  
10 basically breathe life into a closed case, all for the  
11 purpose of getting your intervention.

12 I think your intervention exists when there is a  
13 litigation that's ongoing. Even under Rule 24, when it  
14 talks about -- or even under the case law, when it talks  
15 about timeliness issues and not delaying or prejudicing  
16 the original parties, that is speaking solely to what's  
17 happening ongoing in a litigation pending resolution.  
18 That you can't intervene in an untimely fashion and  
19 somehow delay the ability of the original parties to get  
20 justice to move forward and bring the case to  
21 resolution.

22 So I think that it's woefully untimely under Chapter  
23 12 and Rule 24 and under the cause law, because we're not  
24 even pending a trial. This case has been closed out.

25 Secondly I think you had notice of it. This is a

1 ~~case honestly -- not you Mr. Lefebvre, this is Century. I~~  
2 think Century stuck their head in the sand and said, hey.  
3 We determined we're not going to have coverage here  
4 because of what we believe the facts to be. So we're  
5 going to stand back and we're not going to defend. We're  
6 not going to intervene. We're not going to seek any  
7 reservation of rights or any declaratory relief. We're  
8 just going to let the baby fall forward and hopefully we  
9 won't have any involvement. Then oops. It's going into  
10 default. I know the lawsuits says course and scope of  
11 employment. Clear as day on page 3 of the facts alleged  
12 in the complaint. But that's okay. Now they're in  
13 default.

14 Just like I'm certain that Mr. Prince could guess  
15 that the insurance company was going to try and take a  
16 position of, you know what. This wasn't course and scope.  
17 I would also fall out of my chair if the insurance company  
18 said even though a lawsuit was filed alleging course and  
19 scope, even though it went into default, I never guessed  
20 they were actually assess that position when they came in  
21 for judgment and put it in the order. Of course the  
22 insurance company could have or should have reasonably  
23 guessed that a part of the lawsuit was part of the  
24 order.

25 In regard to just discussing intervention under 24,

## 1 CERTIFICATE

2 OF

3 CERTIFIED COURT REPORTER

4 \* \* \* \* \*

5  
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7  
8 I, the undersigned certified court reporter in and for the  
9 State of Nevada, do hereby certify:

10  
11 That the foregoing proceedings were taken before me at the  
12 time and place therein set forth; that the testimony and  
13 all objections made at the time of the proceedings were  
14 recorded stenographically by me and were thereafter  
15 transcribed under my direction; that the foregoing is a  
16 true record of the testimony and of all objections made at  
17 the time of the proceedings.

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23 Sharon Howard  
24 C.C.R. #745  
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# EXHIBIT 2

ANV00003087 (A) HIPOLITO F CRUZ

Full Term: \$1,045.00 Written: \$914.00 Changed: \$0.00 Annual: \$2

Term Dates: 12/16/2014 - 6/16/2015 | Transaction Dates: 3/23/2015 12:55:10 PM - 6/16/2015

Online to Current Policy Term

More Links

My Navigator

ANV00003087

Policy Info

Drivers (3)

HIPOLITO F CRUZ

BARBARAINA CRUZ

MARK J CRUZ

Vehicles (3)

1999-CHEVROLET-SUBURBAN 1500

1997-DODGE-RAM 2500 XCAB 5.9L

1995-Ford-F-150 REGULAR CAB

Coverages

3rd Party Reports

Loss History (1)

Billing Info

Additional Policy Info

Policy Summary

Close

\*\* Policy is in inquiry mode. No changes will be saved. \*\*

Coverages

Vehicle Level Coverages

Bodily Injury 15/30

Property Damage 10,000

Medical Payments N/A

UMBI/UMBI N/A

Reset all combos to "N/A"

Vehicle Basic Information

	Num	Year	Make	Model	Body Type	Vin	Principal Driver	Comp Only
Select 1	1	1999	CHEVROLET	SUBURBAN 1500	SUV	3GNEC16R5XG249893	BARBARAINA CRUZ	No
Select 2	2	1997	DODGE	RAM 2500 XCAB 5.9L	Pickup	3B7KC23Z5VM536338	HIPOLITO F CRUZ	No
Select 3	3	1995	Ford	F-150 REGULAR CAB	Pickup	2FTEF15Y9SCA60315		No

Vehicle Level Coverages for 1997 DODGE RAM 2500 XCAB 5.9L Use Previous Vehicle

Comprehensive N/A

Collision N/A

Reset all combos to "N/A"



# EXHIBIT 3



VIA FAX AND US MAIL  
866-291-3559

ATX Premier Insurance  
PO BOX 648  
Battle Creek Michigan 49016

RE: Our Client : Diane Sanchez  
Your Insured : T-Bon Blass  
Claim No. : DMA0147074  
Date of Accident : April 28, 2015

To Whom It May Concern:

Please find enclosed all currently available medical records incurred by our client:

Records and billing from Align Chiropractor for Diane Sanchez.

Pursuant to Nevada Revised Statutes § 690B.042(3), you are required to immediately disclose all pertinent facts or provisions of the policy relating to any coverage at issue. More particularly, the statute states:

3. Upon receipt of any photocopies of medical reports or bills or a written authorization pursuant to subsection 2, the insurer who issued the policy specified in subsection 1 shall, upon request **immediately** disclose to the insured or the claimant all pertinent facts or provisions of the policy relating to any coverage at issue.

**WE REQUEST DISCLOSURE OF APPLICABLE POLICY LIMITS. THIS DISCLOSURE SHOULD INCLUDE ANY EXCESS COVERAGES.**

Also enclosed is an affidavit of coverage for your insured. Please be advised that we need the affidavit filled out in its entirety and it must be notarized. Please note that "N/A" is not an acceptable answer for any of the questions. We need a written out answer. If the insured does not have that type of policy, please have him specify that using the word "none".

If you have any questions, feel free to contact my office at the above-listed telephone number.

Thank you for your courtesy and cooperation.

Sincerely,

Paul D. Powell, Esq.

# EXHIBIT 4



June 16, 2015

VIA FAX AND U.S. MAIL  
866-291-3559

DMA Claims Services  
P.O. BOX 648  
Battle Creek, MI 49016

RE: Our Client : Diane Sanchez  
Your Insured : Hipolito Cruz  
Claim No. : DMA-0147074  
Date of Accident : April 28, 2015

To Whom It May Concern:

This letter and the attached information constitute our settlement demand in the above-mentioned matter for Diane Sanchez.

**Specials.** The medical bills of Ms. Sanchez total \$7,818 the bills and records are attached for your review.

**Futures:** Ms. Sanchez has been recommended for C6-C7 cervical decompression and fusion by Dr. Khavkin which is in Dr. Khavkin's June 4, 2015 chart note.

**Demand.** We are prepared to settle this matter on behalf of Diane Sanchez, fully and finally, for ALL APPLICABLE POLICY LIMITS. If you do not respond to this demand by **June 30, 2015**, we will file suit and seek the full measure of our client's damages, without regard to policy limits. Your response must be delivered by 5 p.m. Pacific Standard Time by either facsimile or phone call on the aforementioned date. Notice by regular mail will be insufficient notice since it is unlikely that the mail will reach my office prior to the deadline.

Additionally, please disclose the existence of any other applicable policies, umbrellas, or any other coverage on this claim. I look forward to hearing from you.

Thank you for your courtesy and cooperation.

Sincerely,

  
Paul D. Powell, Esq.

# EXHIBIT 5

July 10, 2015

Nevada Injury Lawyers  
7785 West Sahara, Suite 101  
Las Vegas, NV 89117

Re: Insured: Hipolito Cruz  
Claim Number: Diane Sanchez  
Date of Loss: 04/28/2015  
Owner of File: DMA-0147074

Dear Mr. Powell:

We represent the interest of ATX Premier Insurance Company for the above loss.

We are writing to advise you that we are in the process of investigating DMA-0147074 this claim. In order for us to complete our investigation, we need additional time to secure the following information:

- \* Statement from the vehicle drivers involved in this incident.  
Photos of the vehicles involved in this incident

We are unable to come to a determination regarding DMA-0147074 claim because we have not received the above information. There are multiple impacts involved in this incident and we are attempting to determine the liability. We are currently operating on a reservation of rights with our insured for non-cooperation. If you have additional information that could help us make these determinations we would appreciate any assistance that you can provide.

We estimate that we will be in a position to evaluate DMA-0147074 claim within thirty days of receipt of this information. We will contact you after we have received and had the opportunity to review the above.

In the meantime, if you have any questions, please let us know. Thank you for your cooperation.

Sincerely,

DeLawrence Templeton  
Bodily Injury Claims Representative  
(269) 200-4846  
dtempleton@dmaclaims.com

# EXHIBIT 6



Claims Services

www.dmaclaims.com

P.O. Box 648 Battle Creek, MI 49016

July 17, 2015

Nevada Injury Lawyers  
7785 West Sahara, Suite 101  
Las Vegas, NV 89117

Insured: Hipolito Cruz  
Claim No: DMA-0147074  
D/Loss: 04/28/2015  
O/File: Diane Sanchez

Dear Mr. Powell:

We represent the interests of ATX Premier Insurance Company in the above matter.

We have completed a thorough investigation and examination of the facts and circumstances surrounding the above-referenced accident.

We have completed our investigation into the facts of the above listed loss and must inform you that the claim is denied. Our policy only covers losses for which our insured becomes legally liable. After a review of the facts of this loss, we have determined that our insured was not the proximate cause of the loss, and therefore, not legally liable for the resulting damages.

Therefore, we are unable to consider any portion of your claim. In taking this action of denying the claim for specific reasons stated herein, ATX Premier Insurance Company EXPRESSLY RESERVES and DOES NOT WAIVE any right to raise other defenses at any subsequent time.

If there is any information, not already provided, that you believe would affect this determination, please forward it to the undersigned for further consideration.

Sincerely,

DeLawrence Templeton  
Bodily Injury Claims Representative  
(269) 200-4846  
dtempleton@dmaclaims.com

**"ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES"**

RPI.APP.000042



# EXHIBIT 7



December 11, 2015

**Via U.S. MAIL**

ATX Premier Insurance  
Attn: DeLawrence Templeton  
PO Box 142768  
Dallas, Texas 75014

Re: **Sanchez v. Cruz**  
***Claim No. DMA-0147074***  
**Date of Loss: April 28, 2015**

Dear Mr. Templeton:

I am in receipt of your correspondence from July 10, 2015. As you know, my office recently attempted to resolve Ms. Sanchez's claims with ATX PREMIER. The policy limit of your insured, Mr. Cruz, is just \$15,000. At the time of the demand, Ms. Sanchez's bills were nearly \$8,000, and she was scheduled to undergo a cervical fusion surgery by Dr. Gene Khavkin for crash-related injuries. Instead of paying the policy limit, ATX PREMIER confusingly failed to respond to the time-sensitive demand.

On July 10, 2015 — approximately 10 days after the demand due date — you contacted me and requested additional time to evaluate the claim. You indicated to me that the claim was passed around to multiple claims handlers prior to you. You indicated that ATX PREMIER was bought by an another company and that any demands sent to the ATX PREMIER PO Box weren't handled in a timely manner with respect to allocation to claims handlers.

As you know, this crash occurred in late April 2015. The Traffic Report indicates that Mr. Blas (who was driving the car insured by Mr. Cruz) caused the start of a four-car crash by striking Ms. Sanchez from behind. There is no dispute that fault lies with Mr. Blas under Nevada's "duty to use due care" requirement. ATX PREMIER indicated that it could not offer any settlement on the case because it was still evaluating the claim. Yet, you indicated that ATX PREMIER had yet to investigate the claim due to the mishaps with the PO Box. ATX PREMIER had yet to review photos of the crash. ATX PREMIER made no substantive efforts to contact Mr. Blas or Mr. Cruz. And even if driver/insured were contacted, it doesn't change our story line — Mr. Blas struck Ms.

6785 W. RUSSELL, SUITE 210 • LAS VEGAS, NV 89118 • (702) 728-5500 • FAX (702) 728-5501

RPI.APP.000044

Sanchez from behind, and Ms. Sanchez required immediate fusion surgery for crash-related injuries.

In light of the need for immediate fusion surgery, and considering the nature of this crash, the refusal to tender policy limits is troubling. Please be advised that Ms. Sanchez withdraws the policy limit demand. The refusal by ATX PREMIER to timely tender the policy limits forces Ms. Sanchez to file a lawsuit. She also intends to continue with recommended medical treatment. As this case now moves into litigation, please be advised that ATX PREMIER's conduct will be treated as a bad faith attempt to avoid payment. Accordingly, Ms. Sanchez will no longer accept the ATX PREMIER policy limits at any time in the future.

The bad faith component is important as we move forward. In my experience, it is unlikely that ATX PREMIER will alert Mr. Cruz to the fact that Ms. Sanchez offered to settle for the policy limit prior to commencing litigation, and that ATX PREMIER rejected this offer. It is also unlikely that ATX PREMIER will alert Mr. Cruz to potential extra-contractual claims based on the likelihood of an excess judgment. Insurance companies never do. This failure to notify your own insured of this bad faith conduct creates a direct conflict between ATX PREMIER and Mr. Cruz.

ATX PREMIER's business gamble also creates a troublesome conflict for the defense attorney on this case. The attorney is hired by ATX PREMIER. But ultimately, the attorney must provide Mr. Cruz with advice that is potentially detrimental to ATX PREMIER. To alleviate this conflict, both long-standing and recent case law suggests that Mr. Cruz should consult with independent bad faith counsel.

To further this protection, I can suggest several extremely competent bad faith attorneys who can advise Mr. Cruz of the potential bad faith rights. **Importantly, these attorneys will meet with Mr. Cruz at no charge.** In my experience, bad faith counsel is critical to ensure that Mr. Cruz receives a fair-handed legal evaluation. And considering the present and future medical care in this case, an excess verdict is likely — thus mandating the need for bad faith counsel. Please let me know if you would like assistance in this regard, or if you desire to discuss this matter further.

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Lastly, to my knowledge, at no time since our earlier discussion has ATX PREMIER engaged in any contact with my office. And no additional settlement offers were provided. Once again, please be advised that any offers to settle for policy limits have been withdrawn. A lawsuit has been filed on behalf of my client. And my client intends to treat for injuries sustained in this crash, and to recover the full measure of damages through litigation. The sole cause of this need to litigate is because ATX PREMIER failed to properly and fairly evaluate the claim. Please notify your insured of this upcoming litigation and the unfortunate need for bad faith counsel.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line extending to the right.

Paul D. Powell, Esq.

# EXHIBIT 8

Event Number:		<b>STATE OF NEVADA TRAFFIC ACCIDENT REPORT SCENE INFORMATION SHEET</b> <small>Revised 1/14/04</small>				Accident Number: NHP150402417 REDACTED COPY	
Code Revision: 01/01/2011						<input type="checkbox"/> 1) Property <input checked="" type="checkbox"/> 2) Injury <input type="checkbox"/> 3) Fatal	
<input checked="" type="checkbox"/> 1) Urban <input type="checkbox"/> 1) Emergency Use <input type="checkbox"/> 2) Rural <input type="checkbox"/> 2) Office Report		<input type="checkbox"/> 1) Preliminary Report <input type="checkbox"/> 3) Resubmission <input checked="" type="checkbox"/> 2) Initial Report <input type="checkbox"/> 4) Supplement Report		<input type="checkbox"/> 1) Hit and Run <input type="checkbox"/> 2) Private Property		Agency Name: NEVADA HIGHWAY PATROL	
Collision Date: 4 / 28 / 2015		Time: 1200		Day: TUE		Beat / Sector: HLC30	
				<input checked="" type="checkbox"/> 1) County <input type="checkbox"/> 2) City CLARK			
Mile Marker: 40	# Vehicles: 4	# Non Motorists: 0	# Occupants: 6	# Fatalities: 0	# Injured: 1	# Restrained: 6	
Occurred On: (Highway # or Street Name)						Surface: <input type="checkbox"/> 1) Asphalt <input checked="" type="checkbox"/> 2) Concrete <input type="checkbox"/> 3) Gravel <input type="checkbox"/> 4) Dirt <input type="checkbox"/> 5) Other	
<input type="checkbox"/> 1) Parking Lot IR15 <input type="checkbox"/> 1) At Intersection With: <input checked="" type="checkbox"/> 2) Or 324 <input checked="" type="checkbox"/> 3) East <input type="checkbox"/> 4) Miles <input checked="" type="checkbox"/> 5) Approximate NORTH						Intersection: <input type="checkbox"/> 1) Four Way <input type="checkbox"/> 2) > Four Way <input type="checkbox"/> 3) T <input type="checkbox"/> 4) Y <input type="checkbox"/> 5) Roundabout <input type="checkbox"/> 6) Other	
						Paddle Markers: <input type="checkbox"/> 1) None <input type="checkbox"/> 2) Left Side <input type="checkbox"/> 3) Right Side <input checked="" type="checkbox"/> 4) Both Sides <input type="checkbox"/> 5) Unknown	
						Access Control: <input type="checkbox"/> 1) None <input checked="" type="checkbox"/> 2) Full <input type="checkbox"/> 3) Partial	
Roadway Character: <input type="checkbox"/> 1) Curve & Grade <input type="checkbox"/> 2) Curve & Hillcrest <input type="checkbox"/> 3) Curve & Level <input type="checkbox"/> 4) Straight & Grade <input type="checkbox"/> 5) Straight & Hillcrest <input checked="" type="checkbox"/> 6) Straight & Level <input type="checkbox"/> 7) Unknown <input type="checkbox"/> 8) Other		Roadway Conditions: <input checked="" type="checkbox"/> 1) Dry <input type="checkbox"/> 7) Slush <input type="checkbox"/> 2) icy <input type="checkbox"/> 8) Standing Water <input type="checkbox"/> 3) Wet <input type="checkbox"/> 9) Moving Water <input type="checkbox"/> 4) Snow <input type="checkbox"/> 10) Unknown <input type="checkbox"/> 5) Sand / Mud / Oil / Dirt / Gravel <input type="checkbox"/> 6) Other		Total Thru Lanes: Main Road: <input type="checkbox"/> 1) One <input type="checkbox"/> 2) Two <input type="checkbox"/> 3) Three <input type="checkbox"/> 4) Four <input checked="" type="checkbox"/> 5) Five <input type="checkbox"/> 6) > 5 Total All Lanes: 5		Average Roadway Widths: Travel Lane: 12 Ft Storage / Turn Lane: 0 Ft Median: 4 Ft Paved Shoulder: Inside: 3    Outside: 7	
				Roadway Grade: <input checked="" type="checkbox"/> 1) Not Determined <input type="checkbox"/> 2) Relatively Level Roadway <input type="checkbox"/> 3) Up Slope (+) <input type="checkbox"/> 4) Down Slope (-) Relative To: _____ Grade: _____ %			
Pavement Markings and Type: _____ 1) Centerline, Broken Yellow    _____ 6) No Passing, Either Direction <input type="checkbox"/> 12) None _____ 2) Centerline, Solid Yellow    _____ 7) Turn Arrow Symbols <input type="checkbox"/> 13) Unknown _____ 3) Centerline, Double Yellow    _____ 8) Center Turn Lane Line 4 _____ 4) Lane Line, Broken White    1 _____ 9) Edge Line, Left, Yellow 4 _____ 5) Lane Line, Solid White    1 _____ 10) Edge Line, Right, White <input type="checkbox"/> 11) Other				Highway Description: <input type="checkbox"/> 1) Two-Way, Not Divided <input type="checkbox"/> 2) Two-Way, Divided, Unpro, Median <input checked="" type="checkbox"/> 3) Two-Way, Divided, Median Barrier <input type="checkbox"/> 4) One-Way, Not Divided <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 6) Off Road		Weather Conditions: <input checked="" type="checkbox"/> 1) Clear <input type="checkbox"/> 7) Fog, Smog, Smoke, Ash <input type="checkbox"/> 2) Cloudy <input type="checkbox"/> 8) Severe Crosswinds <input type="checkbox"/> 3) Snow <input type="checkbox"/> 9) Sleet / Hail <input type="checkbox"/> 4) Rain <input type="checkbox"/> 10) Unknown <input type="checkbox"/> 5) Blowing Sand, Dirt, Soil, Snow <input type="checkbox"/> 6) Other	
Light Conditions: <input type="checkbox"/> 1) Dusk <input type="checkbox"/> 6) Dark - No Roadway Lighting <input type="checkbox"/> 2) Dawn <input type="checkbox"/> 7) Dark - Spot Roadway Lighting <input checked="" type="checkbox"/> 3) Daylight <input type="checkbox"/> 8) Dark - Continuous Roadway Lighting <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 9) Dark - Unknown Roadway Lighting <input type="checkbox"/> 5) Other		Vehicle Collision Type: <input type="checkbox"/> 1) Head On <input type="checkbox"/> 5) Rear to Rear <input checked="" type="checkbox"/> 2) Rear End <input type="checkbox"/> 6) Sideswipe - Meeting <input type="checkbox"/> 3) Backing <input type="checkbox"/> 7) Sideswipe - Overtaking <input type="checkbox"/> 4) Angle <input type="checkbox"/> 8) Non - Collision <input type="checkbox"/> 9) Unknown		Location of First Event: <input checked="" type="checkbox"/> 1) Travel Lane 5 <input type="checkbox"/> 6) Outside Shoulder <input type="checkbox"/> 11) Ramp <input type="checkbox"/> 2) Turn Lane <input type="checkbox"/> 7) Intersection <input type="checkbox"/> 12) Unknown <input type="checkbox"/> 3) Dero <input type="checkbox"/> 8) Private Property <input type="checkbox"/> 4) Median <input type="checkbox"/> 9) Roadside <input type="checkbox"/> 5) Inside Shoulder <input type="checkbox"/> 10) Other			
Highway / Environment Factors: <input checked="" type="checkbox"/> 1) None <input type="checkbox"/> 7) Shoulders <input type="checkbox"/> 11) Ruts, Holes, Bumps <input type="checkbox"/> 2) Weather <input type="checkbox"/> 8) Road Obstruction <input type="checkbox"/> 12) Active Work Zone <input type="checkbox"/> 3) Debris <input type="checkbox"/> 9) Worn Traffic Surface <input type="checkbox"/> 13) Inactive Work Zone <input type="checkbox"/> 4) Glare <input type="checkbox"/> 10) Wet, Icy, Snow, Slush <input type="checkbox"/> 14) Animal In Roadway <input type="checkbox"/> 5) Other Highway <input type="checkbox"/> 15) Unknown <input type="checkbox"/> 6) Other Environmental				Property Damage To Other Than Vehicle: Describe Property Damage: Owner's Name: _____ <input type="checkbox"/> 1) Owner Notified Owner's Address: (Street Address City, State Zip) NV			
First Harmful Event							
Code #: 217		Description: SLOW/STOPPED VEHICLE					
Description of Accident / Narrative							
V1, V2, V3 AND V4 WERE TRAVELING N/B ON IR15 IN THE NUMBER 5 TRAVEL LANE. V1 WAS DIRECTLY BEHIND V2. V2 WAS DIRECTLY BEHIND V4. V3 WAS DIRECTLY BEHIND V1. V2 AND V4 SLOWED DOWN FOR TRAFFIC AHEAD. D1 TO AVOID STRIKING V2, VEERED HARD LEFT WHILE STRIKING THE LEFT REAR OF V2 WITH V1'S RIGHT FRONT. V1 CONTINUED LEFT COMING TO REST IN THE NUMBER 4 TRAVEL LANE. V3							
<input checked="" type="checkbox"/> 1) Continued On Back of Scene Information Sheet							
Investigation Complete: <input checked="" type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No		Photos Taken: <input checked="" type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No		Scene Diagram: <input type="checkbox"/> 1) Yes <input checked="" type="checkbox"/> 2) No		Statements: <input checked="" type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No # 4	
Date Notified: 4 / 28 / 2015		Time Notified: 1209		Arrival Date: 4 / 28 / 2015		Arrival Time: 1212	
Investigator(s): Diaz		ID Number: H6143		Date: 4 / 28 / 2015		Reviewed By: Kevin Kelley	
Date Reviewed: 4 / 29 / 2015		Page: 1 of 10					

Scene Information

Event Number:

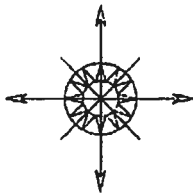
**STATE OF NEVADA**  
**TRAFFIC ACCIDENT REPORT**  
SCENE INFORMATION SHEET  
Revised 1/14/04

Accident Number:  
NHP150402417

Agency Name:  
NEVADA HIGHWAY PATROL

**Description of Accident / Narrative Continuation**

FOLLOWING TOO CLOSELY, ALSO STRUCK THE REAR OF V2 WITH V3'S FRONT. THIS CAUSED V2 TO MOVE FORWARD STRIKING THE REAR OF V4 WITH V2'S FRONT. ALL VEHICLES WERE MOVED PRIOR TO THIS TROOPERS ARRIVAL.



Indicate North

A.I.C.: \_\_\_\_\_

Page  
2 of 10

**Scene Information**

Event Number:		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 1/14/04				Accident Number: NHP150402417					
Vehicle # V1		# Occupants 3		<input checked="" type="checkbox"/> 1) At Fault <input type="checkbox"/> 2) Non Contact Vehicle		Agency Name: NEVADA HIGHWAY PATROL					
Direction of Travel: <input checked="" type="checkbox"/> 1) North <input type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 2) South <input type="checkbox"/> 4) West				Highway / Street Name: IR15		Travel Lane #: 5					
Vehicle <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 (d) <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 19) Unknown Action: <input type="checkbox"/> 2) Backing <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 8) Stopped (u) <input type="checkbox"/> 10) Backing <input type="checkbox"/> 12) Entering Lane <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) BON, BLAS T				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: 3900 CAMBRIDGE ST STE 106				Transported To:							
City: LAS VEGAS		State / Country <input checked="" type="checkbox"/> 1) NV		Zip Code: 89119		Person Type: 1 Seating Position: 1 Occupant Restraints: 7					
<input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: 2 / 3 / 1983		Phone Number: 7027063017		Injury Severity: 0 Injury Location:					
OLN:		State: <input checked="" type="checkbox"/> 1) NV NV		Class: <input type="checkbox"/> 1) CDL <input checked="" type="checkbox"/> 2) DL		License Status: 6					
Compliance: <input type="checkbox"/> 1) Restrict <input type="checkbox"/> 2) Endorse		Endorsements		Restrictions		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					
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		Test Results:		Vehicle Factors <input type="checkbox"/> 1) Failed To Yield Right Of Way <input type="checkbox"/> 9) Failed To Maintain Lane <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 2) Disregard Control Device <input checked="" type="checkbox"/> 10) Following Too Close <input type="checkbox"/> 17) Unsafe Backing <input type="checkbox"/> 3) Too Fast For Conditions <input type="checkbox"/> 11) Unsafe Lane Change <input type="checkbox"/> 18) Ran Off Road <input type="checkbox"/> 4) Exceeding Speed Limit <input type="checkbox"/> 12) Made Improper Turn <input type="checkbox"/> 19) Hit and Run <input type="checkbox"/> 5) Wrong Way / Direction <input type="checkbox"/> 13) Over Correct/Steering <input type="checkbox"/> 20) Road Defect (u) <input type="checkbox"/> 6) Mechanical Defects <input type="checkbox"/> 14) Other Improper Driving <input type="checkbox"/> 21) Object Avoidance <input type="checkbox"/> 7) Drove Left Of Center <input type="checkbox"/> 15) Aggressive / Reckless / Careless <input type="checkbox"/> 8) Other <input type="checkbox"/> 22) Unknown (u)					
Vehicle Year: 1997		Vehicle Make: DODGE		Vehicle Model: RAM 2500		Vehicle Type: SEDAN 4-DOOR					
Plate / Permit No.: 257LVB		State: <input checked="" type="checkbox"/> 1) NV NV		Expiration Date: 5 / 14 / 2015		Vehicle Color: GRY					
Vehicle Identification Number: 3B7KC23Z5VM536338											
Registered Owner Name: <input type="checkbox"/> 1) Same As Driver CRUZ, HIPOLITO FELIPE											
Registered Owner Address: 4000 ABRAMS AVE, LAS VEGAS, NV 89110											
Insurance Company Name: <input checked="" type="checkbox"/> 1) Insured JACINTO INS											
Policy Number: ANV0003087		Effective: 12 / 16 / 2014		To: 6 / 16 / 2015		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 checked="" 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					
Insurance Company Address or Phone Number: 702-450-2222											
<input type="checkbox"/> 1) Vehicle Towed		Towed By: *RETAINED BY DRIVER									
Removed To:											
Traffic Control F 1) Speed Zone 11) Stop Sign 2) Signal Light 12) Yield Sign 3) Flashing Light 13) R. R. Sign 4) School Zone 14) R. R. Gates 5) Ped. Signal F 15) R. R. Signal (d) 6) No Passing 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 MOVED		Speed Estimate From To Limit 40 45 65		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		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 checked="" type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (1) 484B.127				Violation FOLLOWING TOO CLOSELY		NOC 53794		Citation Number X01313227			
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC (2)				Violation		NOC		Citation Number			
Investigator(s) Diaz		ID Number H6143		Date 4 / 28 / 2015		Reviewed By Kevin Kelley		Date Reviewed 4 / 29 / 2015		Page 3 of 10	



Event Number:		<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> VEHICLE INFORMATION SHEET <small>Revised 1/14/04</small>			Accident Number: NHP150402417  Agency Name: NEVADA HIGHWAY PATROL	
Name: (Last Name, First Name, Middle Name, Suffix) MONTERROSAS-MONTERROSAS, ANTONIO FLORENCIO					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: 3317 WINNING AVE					Transported To:	
City: NORTH LAS VEGAS		State / Country <input checked="" type="checkbox"/> 1) NV		Zip Code: 89030		
Person Type: 2		Seating Position: 3		Occupant Restraints: 7		
<input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: 4 / 28 / 1989		Phone Number: 7025951718		
Injury Severity: 0		Injury Location:				
Airbags: 2		Airbag Switch: 1		Ejected: 0 Trapped: 0		
Name: (Last Name, First Name, Middle Name, Suffix) MENESES-GOMEZ, ALEJANDRO					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: 4000 ABRAMS APT# 34					Transported To:	
City: NORTH LAS VEGAS		State / Country <input checked="" type="checkbox"/> 1) NV		Zip Code: 89030		
Person Type: 2		Seating Position: 5		Occupant Restraints: 7		
<input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: 4 / 12 / 1982		Phone Number: 7024901320		
Injury Severity: 0		Injury Location:				
Airbags: 2		Airbag Switch: 1		Ejected: 0 Trapped: 0		
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"/> 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				<b>Source</b> <input type="checkbox"/> 1) Driver <input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 5) Side of Vehicle <input type="checkbox"/> 3) Shipping Papers / Trip Manifest <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		
Carrier Street Address:				City: State: <input type="checkbox"/> 1) NV Zip:		
<b>Cargo Body Type</b> <input type="checkbox"/> 1) Pole <input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 11) Grain, Gravel Chute <input type="checkbox"/> 2) Tank <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 12) Bus, 9 - 15 Occupants <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 4) Dump <input type="checkbox"/> 9) Garbage/Refuse <input type="checkbox"/> 14) Other <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 10) Not Applicable				Haz-Mat ID #:		
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"/> 5) None				NAS Safety Report #:		
Hazard Classification #:				Carrier Number:		
				Page 4 of 10		

**Vehicle Information**

Event Number:		<b>STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET</b> <small>Revised 1/14/04</small>				Accident Number: NHP150402417																									
Vehicle # V2	# Occupants 1	<input type="checkbox"/> 1) At Fault <input type="checkbox"/> 2) Non Contact Vehicle		Agency Name: NEVADA HIGHWAY PATROL																											
Direction of Travel: <input checked="" type="checkbox"/> 1) North <input type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 2) South <input type="checkbox"/> 4) West		Highway / Street Name: IR15				Travel Lane #: 5																									
Vehicle <input 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 (U) <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 19) Unknown Action: <input type="checkbox"/> 2) Backing <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input checked="" type="checkbox"/> 8) Stopped (U) <input type="checkbox"/> 10) Racing <input type="checkbox"/> 12) Entering Lane <input type="checkbox"/> 14) Other Turning <input type="checkbox"/> 16) Driveways Vehicle <input type="checkbox"/> 18) Other																															
Driver: (Last Name, First Name, Middle Name, Suffix) SANCHEZ-LAZO, DIANE MARIA				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: 2551 STURROCK DR				Transported To:																											
City: HENDERSON		State / Country: <input checked="" type="checkbox"/> 1) NV		Zip Code: 89044		Person Type: 1																									
Seating Position: 1		Occupant Restraints: 7																													
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input checked="" type="checkbox"/> 2) Female		DOB: 4 / 11 / 1968		Phone Number: 7024608036		Injury Severity: C																									
Injury Location: 1		3																													
OLN:		State: <input checked="" type="checkbox"/> 1) NV		Class: <input type="checkbox"/> 1) CDL <input checked="" type="checkbox"/> 2) DL		License Status: 0																									
Airbags: 2		Airbag Switch:		Ejected: 0		Trapped: 0																									
Compliance: <input checked="" type="checkbox"/> 1) Restrict <input type="checkbox"/> 2) Endorse		Endorsements:		Restrictions: 1		Driver Factors																									
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		Test Results:		<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: 1995		Vehicle Make: BMW		Vehicle Model: 325i		Vehicle Type: SEDAN 4-DOOR																									
Plate / Permit No.: UNR08502		State: <input checked="" type="checkbox"/> 1) NV		Expiration Date: 5 / 10 / 2015		Vehicle Color: WHI																									
Vehicle Identification Number: WBACB4329SFM21272																															
Registered Owner Name: <input checked="" type="checkbox"/> 1) Same As Driver SANCHEZ-LAZO, DIANE MARIA																															
Registered Owner Address: 2551 STURROCK DR, HENDERSON, NV 89044																															
Insurance Company Name: <input checked="" type="checkbox"/> 1) Insured MENDAKOTA INSURANCE CO.																															
Policy Number: PA1992072		Effective: 12 / 20 / 2014		To: 6 / 20 / 2015																											
Insurance Company Address or Phone Number: 1-800-422-0792																															
<input type="checkbox"/> 1) Vehicle Towed		Towed By: FAST TOW (AAA)																													
Removed To: TOW YARD																															
<b>Traffic Control</b> F 1) Speed Zone 11) Stop Sign 2) Signal Light 12) Yield Sign 3) Flashing Light 13) B. R. Sign 4) School Zone 14) R. R. Gats 5) Ped. Signal 15) R. R. Signal (U) 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 5 FEET		Speed Estimate From 0 To 0 Limit 65																									
				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																											
<b>Damaged Areas</b> <input checked="" type="checkbox"/> 1) Front <input type="checkbox"/> 2) Right Side <input type="checkbox"/> 3) Left Side <input checked="" 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 checked="" type="checkbox"/> 9) Left Front <input checked="" type="checkbox"/> 10) Left Rear <input type="checkbox"/> 11) Unknown <input type="checkbox"/> 12) Other																															
<b>Sequence Of Events</b> <table border="1" style="width:100%; border-collapse: collapse;"> <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 214</td> <td>MOTOR VEHICLE IN TRANSPORT</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>2nd 217</td> <td>SLOW/STOPPED VEHICLE</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>3rd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>4th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>5th</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	MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input type="checkbox"/>	2nd 217	SLOW/STOPPED VEHICLE	<input type="checkbox"/>	<input checked="" 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	MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input type="checkbox"/>																												
2nd 217	SLOW/STOPPED VEHICLE	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (1)		Violation		NOC		Citation Number																									
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC (2)		Violation		NOC		Citation Number																									
Investigator(s) Diaz		ID Number H6143	Date 4 / 28 / 2015	Reviewed By Kevin Kelley	Date Reviewed 4 / 29 / 2015	Page 5	of 10																								

**Vehicle Information**

Event Number:		<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> <b>VEHICLE INFORMATION SHEET</b> <small>Revised 1/14/04</small>		Accident Number: NHP 150402417  Agency Name: NEVADA HIGHWAY PATROL	
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:	
<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:	
<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:	
<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"/> 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			<b>Source</b> <input type="checkbox"/> 1) Driver <input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 5) Side of Vehicle <input type="checkbox"/> 3) Shipping Papers / Trip Manifest <input type="checkbox"/> 6) Other _____		
Carrier Name:			Power Unit GVWR <input type="checkbox"/> 1) ≤ 10,000 Lbs <input type="checkbox"/> 2) 10,000 - 25,000 Lbs <input type="checkbox"/> 3) ≥ 25,000 Lbs		
Carrier Street Address:			City: State: <input type="checkbox"/> 1) NV Zip:		
<b>Cargo Body Type</b> <input type="checkbox"/> 1) Flatbed <input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 11) Grain, Gravel Chpts <input type="checkbox"/> 2) Tank <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 12) Bus, 9 - 15 Occupants <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 4) Dump <input type="checkbox"/> 9) Garbage/Refuse <input type="checkbox"/> 14) Other <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 10) Not Applicable			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"/> 5) None		
			NAS Safety Report #: Carrier Number:		
			Page 6 of 10		

**Vehicle Information**

RPI.APP.000053

Event Number:		<b>STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET</b> <small>Revised 1/14/04</small>		Accident Number: NHP150402417																									
Vehicle # V3	# Occupants 1	<input checked="" type="checkbox"/> 1) At Fault <input type="checkbox"/> 2) Non Contact Vehicle		Agency Name: NEVADA HIGHWAY PATROL																									
Direction of Travel: <input checked="" type="checkbox"/> 1) North <input type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 2) South <input type="checkbox"/> 4) West		Highway / Street Name: IR15			Travel Lane #: 5																								
Vehicle <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 (P) <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 19) Unknown Action: <input type="checkbox"/> 2) Backing <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 8) Stopped (S) <input type="checkbox"/> 10) Racing <input type="checkbox"/> 12) Entering Lane <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) ACOSTA, JOSEPH ALEXANDER			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: 2356 MYSTIC STAR ST			Transported To:																										
City: HENDERSON		State / Country <input checked="" type="checkbox"/> 1) NV	Zip Code: 89044	Person Type: 1	Seating Position: 1 Occupant Restraints: 7																								
<input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB: 12 / 4 / 1993	Phone Number: 7027226949		Injury Severity: 0	Injury Location:																								
OLN:	State: <input checked="" type="checkbox"/> 1) NV NV	Class: <input type="checkbox"/> 1) CDL <input checked="" type="checkbox"/> 2) DL	License Status: 0	Airbags: 2	Airbag Switch: 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		Test Results:																									
Vehicle Year: 1997		Vehicle Make: BMW	Vehicle Model: 528i AUTOMATIC	Vehicle Type: SEDAN 4-DOOR																									
Plate / Permit No.: 361LKK		State: <input checked="" type="checkbox"/> 1) NV NV	Expiration Date: 12 / 13 / 2015	Vehicle Color: SIL																									
Vehicle Identification Number: WBADD6321VBW19396																													
Registered Owner Name: <input type="checkbox"/> 1) Same As Driver ACOSTA, WILFRED STAR ST R																													
Registered Owner Address: 2356 MYSTIC STAR ST, HENDERSON, NV 89044																													
Insurance Company Name: <input checked="" type="checkbox"/> 1) Insured STATE FARM																													
Policy Number: 0957130E2128B		Effective: 11 / 21 / 2014	To: 5 / 21 / 2015	Insurance Company Address or Phone Number: 1-800-782-8332																									
<input type="checkbox"/> 1) Vehicle Towed	Towed By: ABC TOWING (AAA)																												
Removed To: OWNERS RESIDENCE/REQUEST																													
<b>Traffic Control</b> F 1) Speed Zone 11) Stop Sign 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 (P) 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 MOVED		<b>Speed Estimate</b> From To Limit 40 45 65																									
				<b>Extent Of Damage</b> <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																									
<b>Sequence Of Events</b> <table border="1" style="width:100%; border-collapse: collapse;"> <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 214</td> <td>MOTOR VEHICLE IN TRANSPORT</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>2nd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>3rd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>4th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>5th</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	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	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 checked="" type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (1) 484B.127		Violation FOLLOWING TOO CLOSELY		NOC 53794	Citation Number X01313228																								
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC (2)		Violation		NOC	Citation Number																								
Investigator(s) Diaz		ID Number H6143	Date 4 / 28 / 2015	Reviewed By Kevin Kelley	Date Reviewed 4 / 29 / 2015 Page 7 of 10																								

**Vehicle Information**

Event Number:		<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> VEHICLE INFORMATION SHEET <small>Revised 1/14/04</small>		Accident Number: NHP150402417  Agency Name: NEVADA HIGHWAY PATROL	
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"/> 6) Tractor Only <input type="checkbox"/> 11) Tractor / Semi Trailer <input type="checkbox"/> 2) Bus, > 15 Occupants <input type="checkbox"/> 7) Tractor / Trailer <input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat) <input type="checkbox"/> 3) Single 2 Axle and 5 Tire <input type="checkbox"/> 8) Tractor / Doubles <input type="checkbox"/> 13) Light Truck, (Haz-Mat) <input type="checkbox"/> 4) Single > 3 Axle <input type="checkbox"/> 9) Tractor / Triples <input type="checkbox"/> 14) Other Heavy Vehicle <input type="checkbox"/> 5) Any 4 Tire Vehicle <input type="checkbox"/> 10) Truck with Trailer			<b>Source</b> <input type="checkbox"/> 1) Driver <input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 5) Side Of Vehicle <input type="checkbox"/> 3) Shipping Papers / Trip Manifest <input type="checkbox"/> 6) Other _____		
Carrier Name:			<b>Power Unit GVWR</b> <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"/> 6) Van / Box <input type="checkbox"/> 11) Grain, Gravel Chips <input type="checkbox"/> 2) Tank <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 12) Bus, 9 - 15 Occupants <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 4) Dump <input type="checkbox"/> 9) Garbage/Refuse <input type="checkbox"/> 14) Other <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 10) Not Applicable		Haz-Mat ID #:  Hazard Classification #:		<b>Type of Carrier</b> <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	
				<b>NAS Safety Report #:</b>  Carrier Number:	
				Page 8 of 10	

**Vehicle Information**



Event Number:		<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> VEHICLE INFORMATION SHEET <small>Revised 1/14/04</small>			Accident Number: NHP150402417  Agency Name: NEVADA HIGHWAY PATROL	
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:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: / /		Phone Number:		Seating Position:
				Injury Severity:		Occupant Restraints:
				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:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: / /		Phone Number:		Seating Position:
				Injury Severity:		Occupant Restraints:
				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:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: / /		Phone Number:		Seating Position:
				Injury Severity:		Occupant Restraints:
				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"/> 6) Tractor Only <input type="checkbox"/> 11) Tractor / Semi Trailer <input type="checkbox"/> 2) Bus, > 15 Occupants <input type="checkbox"/> 7) Tractor / Trailer <input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat) <input type="checkbox"/> 3) Single 2 Axle and 5 Tire <input type="checkbox"/> 8) Tractor / Doubles <input type="checkbox"/> 13) Light Truck, (Haz-Mat) <input type="checkbox"/> 4) Single > 3 Axle <input type="checkbox"/> 9) Tractor / Triples <input type="checkbox"/> 14) Other Heavy Vehicle <input type="checkbox"/> 5) Any 4 Tire Vehicle <input type="checkbox"/> 10) Truck with Trailer				<b>Source</b> <input type="checkbox"/> 1) Driver <input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 5) Side Of Vehicle <input type="checkbox"/> 3) Shipping Papers / Trip Manifest <input type="checkbox"/> 6) Other		
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Carrier Street Address:				City:		State: <input type="checkbox"/> 1) NV Zip:
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<b>NAS Safety Report #:</b> Carrier Number:						Page 10 of 10

**Vehicle Information**

**Voluntary Statement**

**Nevada Department of Public Safety**

CAD# 150402411  
Citation #: X01313227

Are you Injured? Yes ☒ No ☐ N/A

If yes, please describe the injuries:

Driver ☒ Passenger ☐ Victim ☐ Other ☐ (Please circle one)

Witness ☒ (V-1)

Other

Date & Time of Statement: 4-28-15 12:30  
Date & Time of Accident / Event: 4-28-15 12:00  
Your current Location: 4000 Abrams

Are you Injured? Yes ☒ No ☐ N/A

Date of Birth: 2-3-83  
State: NV Zip Code: 89102

Drivers License Number: [blank] State: NV

Home Phone: 702-906-3047  
Work/Cell Phone: [blank]

Business / School / Agency Name: South West Tree

Occupation: Tires

Depart Date (if visitor): [blank]

Did you use your Seat belt? Yes ☒ No ☐ N/A

Residence Address: (Number, Street & Bldg./Apt#): 4000 Abrams 89  
City: Las Vegas State: NV Zip Code: 89102

Work Address: (Number & Street): [blank]

Work Schedule (Hours): 8 to 5 PM Days Off: 1

Additional or Emergency Contact, Name(s) & Number(s): [blank]

Vehicle: Year & Make: [blank] License #: [blank] State: [blank]

Best Place & Time of day to contact you: [blank]

PASSENGER INFORMATION (OTHER THAN DRIVER)				Date of Birth		Phone Number		Restraints S/B A/B Injured	
Seating Position	Full Name	Address	City	State	Zip	Home	Cell	S/B	A/B
RF	Antonia Meneses	3317 Twining Ave.	Las Vegas	NV	89102	702-595-1112			
M	Antonia Meneses	4000 Abrams	Las Vegas	NV	89102	702-480-1320			

PLEASE WRITE BELOW WHAT HAPPENED:

I was changing lanes and I don't know if the white was changing but I bump in to.

Witnessed by: [blank]

Continued on back P# [blank]

I affirm the Truth and Accuracy of the facts contained herein: [Signature]



**PASSENGER INFORMATION (OTHER THAN DRIVER)**

**PLEASE WRITE BELOW WHAT HAPPENED:**

SP-5 FORM 9 (12-79) (Rev. 1-79) - PENDING APPROVAL

You are: (Please circle one) <input checked="" type="radio"/> Driver <input type="radio"/> Passenger <input type="radio"/> Witness <input type="radio"/> Victim <input type="radio"/> Other		 <b>Nevada Department of Public Safety</b>		<h1 style="margin: 0;">VOLUNTARY STATEMENT</h1>		Event / Case # CAD# 150402417 Citation #: X01313228			
Date & Time of Statement 4/28 12:25		Date & Time of Accident / Event 4/28 12:15		Your current Location 15 North, Schen		Are you Injured? Yes <input type="radio"/> No <input checked="" type="radio"/> N/A		If yes, please describe the injuries:	
Your Name (Last / First / Middle) Acosta / Joseph / Alexander				Date of Birth 12/04/93		Drivers License Number		State	
Residence Address: (Number, Street & Bldg./Apt#) 2356 Mystic Star Street Henderson				City Henderson		State NV		Zip Code 89044	
Work Address: (Number & Street)				City		State		Zip Code	
Additional or Emergency Contact, Name(s) & Number(s):				Work Schedule (Hours)		Days Off		Occupation:	
Best Place & Time of day to contact you: Anytime				Vehicle; Year & Make BMW, 1997 361-4KK NV		License #		State	
Did you use your Seat belt? <input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A				Depart Date (if visitor):		Business / School / Agency Name:		Home Phone: 702-722-6149 Work/Cell Phone: 630-828-1943	

### PASSENGER INFORMATION (OTHER THAN DRIVER)

Seating Position	Full Name	Address	Date of Birth	Phone Number	Restrains S/B	A/B	Injured

### PLEASE WRITE BELOW WHAT HAPPENED:

The car in front of me clipped the car ahead of him and he got out of the way so I ran into the car he clipped. I was about a full car length behind the truck and then I slammed on my brakes into the white BMW		<input type="checkbox"/> Continued on back
This Statement is given Voluntarily and I affirm the Truth and Accuracy of the facts contained herein:		Witnessed by: P#
X		

DP-9 FORM 9 (REVISED) (PENDING APPROVAL)

You are? (Please circle one) <input checked="" type="radio"/> Driver <input type="radio"/> Passenger <input type="radio"/> Witness <input type="radio"/> Other		Nevada Department of <b>Public Safety</b>		<b>VOLUNTARY STATEMENT</b>		Event / Case # CAD# 15040 2417 Citation #:	
Date & Time of Statement 4/28/2015 12:10 PM		Date & Time of Accident / Event 4/28/2015 2:10 PM		Your current Location Las Vegas		Are you injured? Yes <input type="radio"/> No <input checked="" type="radio"/> N/A	
Your Name (Last / First / Middle) Evans, Donna Mae				Date of Birth 9/1/71		If yes, please describe the injuries:	
Residence Address: (Number, Street & Bldg./Apt#) 2323 NW 18th Ave Apt 926, Hillsboro, OR 97124				State Zip Code OR 97124		Drivers License Number State 503459 9186	
Work Address: (Number & Street) 2230 NW Pettygrove, Suite B3 Portland, OR				State Zip Code OR		Home Phone: 503459 9186 Work/Cell Phone: Business / School / Agency Name:	
Additional or Emergency Contact, Name(s) & Number(s):				Work Schedule (Hours) 8-5		Days Off S/S	
Best Place & Time of day to contact you: Anytime				Vehicle: Year & Make License # State 2015 KIA Soul NJR 2583 CA		Occupation: Slipu Depart Date (if visitor): Did you use your Seat belt? Yes <input checked="" type="radio"/> No <input type="radio"/> N/A	

**PASSENGER INFORMATION (OTHER THAN DRIVER)**


Seating Position	Full Name	Address	Date of Birth	Phone Number	Restraints S/B A/B Injured
driver					

**PLEASE WRITE BELOW WHAT HAPPENED:**

All traffic in lane stopped. Cars behind <del>going</del> moving forward, truck appeared to change lanes to pass or maybe to avoid hitting someone, kept my foot on the brake & closed my eyes. The white BMW hit me.	
This Statement is given Voluntarily and I affirm the Truth and Accuracy of the facts contained herein: x <u>Donna</u>	Witnessed by: P# <input type="checkbox"/> Continued on back

DPS FORM 1 (REV. 03-01) (NOT FOR APPROVAL)

# EXHIBIT 9



CLERK OF THE COURT

1 Paul D. Powell, Esq.  
2 Nevada Bar No. 7488  
3 THE POWELL LAW FIRM  
4 6785 West Russell Road, Suite 210  
5 Las Vegas, Nevada 89118  
6 paul@TPLF.com  
7 Phone: (702) 728-5500  
8 Facsimile: (702) 728-5501  
9 Attorneys for DIANE SANCHEZ

DISTRICT COURT

CLARK COUNTY, NEVADA

9 DIANE SANCHEZ, )  
10 )  
11 Plaintiff, )  
12 vs. )  
13 BLAS BON, individually; JOSEPH ACOSTA, )  
14 individually; DOES I - X, and ROE )  
15 CORPORATIONS I - X, inclusive, )  
16 Defendants. )

CASE NO. A722815  
DEPT. NO. XXV

**AFFIDAVIT OF DUE DILIGENCE**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Bar Number, and address) <b>Paul Powell</b> <b>Powell Law Firm</b> <b>5765 West Russell Road Las Vegas, NV 89118</b> TELEPHONE NO: (702) 728-5501 FAX NO: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Plaintiff</b> Case File # <b>Sanchez v. Bon</b>		FOR COURT USE ONLY
DISTRICT COURT STREET ADDRESS: <b>200 LEWIS AVENUE</b> CITY AND ZIP CODE: <b>LAS VEGAS, NV 89118</b>		
PLAINTIFF/PETITIONER: <b>Diane Sanchez</b> DEFENDANT/RESPONDENT: <b>Bias Bon</b>		
DECLARATION OF DILIGENCE		CASE NUMBER: <b>A722815</b>

I received the within assignment for filing and/or service on September 22, 2015 and that after due and diligent effort I have not been able to serve said person. I attempted service on this servee on the following dates and times.

Servee: **Bias Bon**

Documents: **Summons & Complaint;**

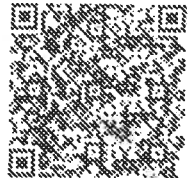
Address: **3900 Cambridge Street Suite 106**  
**Las Vegas, NV 89118**

As enumerated below:

10/19/2015 -- 9:35 AM Attempted to serve defendant at last known address of 3900 Cambridge Street Suite 106, Las Vegas Nevada. This address is a Clark County neighborhood community center where the defendant had his mail sent, his current whereabouts are now unknown to them. A record search with the Clark County Assessor's Office reveals no records found. A search with Clark County voters registration reveals no records found. A local phone search for defendants phone number reveals no records found. A registered vehicle search with Nevada DMV and Premium Finder search reveals no records found.



Registration No.: **NR-003972**  
**Clark County Process Service LLC dba CCPS LV**  
**720 E Charleston Blvd, Suite 135**  
**Las Vegas, NV 89104**  
**State License #2031C**



I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Signature: \_\_\_\_\_

**Michael E. Clarke**

**DECLARATION OF DILIGENCE**

Order#: CC9817/DilFormat.mdt

RPI.APP.000064

# EXHIBIT 10



October 27, 2015

Department of Motor Vehicles  
Attention: Director's Office  
555 Wright Way  
Carson City, Nevada 89711

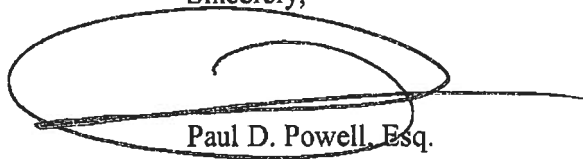
Re: Sanchez vs. Bon  
Case No.: A-15-722815-C  
Date of Loss: April 28, 2015

To Whom It May Concern:

Please find enclosed copies of the Complaint, Summons and Declaration of Diligence with regards to the above-referenced matter. Also, pursuant to NRS 14.070, please find enclosed a check (#1811) in the amount of \$5.00. Please serve Defendant, Blas Bon, accordingly.

If you have any questions or concerns, please contact my office.

Sincerely,



Paul D. Powell, Esq.



THIS DOCUMENT HAS A COLORED SECURITY BACKGROUND. DO NOT CASH IF THE WORD "VOID" IS VISIBLE. THIS PAPER HAS AN ARTIFICIAL WATERMARK ON REVERSE SIDE AND IS ALTERATION PROTECTED

NEVADA INJURY ATTORNEY'S, INC.  
DBA THE POWELL LAW FIRM  
6785 W. RUSSELL ROAD, SUITE 210  
LAS VEGAS, NV 89118

Bank of America  
70-361/711

1811

PAY TO THE  
ORDER OF DMV

10/27/2015

\$ \*\*5.00

DOLLARS

DMV

MEMO

Process Service - Sanchez

⑈001811⑈ ⑆071103619⑆ 002913235083⑈

AUTHORIZED SIGNATURE

NEVADA INJURY ATTORNEY'S, INC. DBA THE POWELL LAW FIRM  
DMV

Process Service - Sanchez

10/27/2015

1811

5.00

CIB - Cost #5083

Process Service - Sanchez

5.00

  
CLERK OF THE COURT

**COMP**

Paul D. Powell, Esq.  
Nevada Bar No. 7488  
THE POWELL LAW FIRM  
6785 W. Russell Road, Suite 210  
Las Vegas, Nevada 89118  
Phone: (702) 728-5500  
Facsimile: (702) 728-5501  
Email: paul@TPLF.com

Attorneys for DIANE SANCHEZ

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DIANE SANCHEZ,

Plaintiff,

vs.

BLAS BON, individually, JOSEPH ACOSTA,  
individually; DOES I - X, and ROE  
CORPORATIONS I - X, inclusive,

Defendants.

A-15-722815-C

CASE NO.

DEPT. NO. XXV

**DIANE SANCHEZ COMPLAINT**

Plaintiff DIANE SANCHEZ, by and through attorney of record, PAUL D. POWELL,  
ESQ., of THE POWELL LAW FIRM complains against Defendants BLAS BON and JOSEPH  
ACOSTA, as follows:

**GENERAL ALLEGATIONS**

1. That Plaintiff DIANE SANCHEZ (hereinafter "Plaintiff") is, and at all times mentioned herein, was, a resident of the County of Clark, State of Nevada.
2. That Defendant BLAS BON (hereinafter "Defendant") is, and at all times mentioned herein, was, a resident of the County of Clark, State of Nevada.
3. That Defendant JOSEPH ACOSTA (hereinafter "Defendant") is, and at all times mentioned herein, was, a resident of the County of Clark, State of Nevada.
4. That the true names and capacities of the Defendants designated herein as Doe or

1 Roe Corporations are presently unknown to Plaintiff at this time, who therefore  
2 sues said Defendants by such fictitious names. When the true names and  
3 capacities of these defendants are ascertained, Plaintiff will amend this  
4 Complaint accordingly.

- 5 5. That at all times pertinent, Defendants were agents, servants, employees or joint  
6 venturers of every other Defendant herein, and at all times mentioned herein  
7 were acting within the scope and course of said agency, employment, or joint  
8 venture, with knowledge and permission and consent of all other named  
9 Defendants.  
10
- 11 6. That on April 28, 2015, in Clark County, Nevada, Defendants BLAS BON  
12 caused a crash with Plaintiff. During the same sequence of events, Defendant  
13 JOSEPH ACOSTA also negligently crashed into Plaintiff. The vehicle operated  
14 by BLAS BON was owned by HIPOLITO CRUZ. The vehicle operated by  
15 JOSEPH ACOSTA was owned by WILFRED ACOSTA.  
16
- 17 7. That as a direct and proximate result of the negligence of Defendants, Plaintiff  
18 sustained injuries to Plaintiff's shoulders, back, bodily limbs, organs and  
19 systems, all or some of which condition may be permanent and disabling, and all  
20 to Plaintiff's damage in a sum in excess of \$10,000.  
21
- 22 8. That as a direct and proximate result of the negligence of Defendants, Plaintiff  
23 received medical and other treatment for the aforementioned injuries, and that  
24 said services, care, and treatment are continuing and shall continue in the future,  
25 all to the damage of Plaintiff.  
26  
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- 1 9. That as a direct and proximate result of the negligence of Defendants, Plaintiff  
2 has been required to, and has limited occupational and recreational activities,  
3 which have caused and shall continue to cause Plaintiff loss of earning capacity,  
4 lost wages, physical impairment, mental anguish, and loss of enjoyment of life,  
5 in a presently unascertainable amount.  
6  
7 10. That as a direct and proximate result of the negligence of Defendants, Plaintiff's  
8 vehicle was damaged and Plaintiff lost the use of that vehicle.  
9  
10 11. That as a direct and proximate result of the aforementioned negligent of all  
11 Defendants, Plaintiff has been required to engage the services of an attorney,  
12 incurring attorney's fees and costs to bring this action.

13 **FIRST CAUSE OF ACTION**

- 14 12. Plaintiff incorporates paragraphs 1 through 15 of the Complaint as though said  
15 paragraphs were fully set forth herein.  
16  
17 13. Defendants owed Plaintiff a duty of care to operate their vehicles in a reasonable  
18 and safe manner. Defendant breached that duty of care by striking Plaintiff's  
19 vehicle on the roadway. As a direct and proximate result of the negligence of  
20 Defendant, Plaintiff has been damaged in an amount in excess of \$10,000.00.

21 **SECOND CAUSE OF ACTION**

- 22 14. Plaintiff incorporates paragraphs 1 through 17 of the Complaint as though said  
23 paragraphs were fully set forth herein.  
24

25 ///

26 ///

27 ///

1           15.    The acts of Defendants as described herein violated the traffic laws of the State  
2                   of Nevada and Clark County, constituting negligence per se, and Plaintiff has  
3                   been damaged as a direct and proximate result thereof in an amount in excess of  
4                   \$10,000.00.

5           WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to  
6                   or at the time of trial of this action, to insert those items of damage not yet fully ascertainable,  
7                   prays judgment against all Defendants, and each of them, as follows:  
8

- 9           1.    For general damages sustained by Plaintiff in an amount in excess of \$10,000.00;  
10          2.    For special damages sustained by Plaintiff in an amount in excess of \$10,000.00;  
11          3.    For property damages sustained by Plaintiff;  
12          4.    For reasonable attorney's fees and costs;  
13          5.    For interest at the statutory rate; and  
14          6.    For such other relief as the Court deems just and proper.  
15

16          DATED this 7<sup>th</sup> day of August 2015.

17  
18                   THE POWELL LAW FIRM

19                   

20                   Paul D Powell, Esq.  
21                   Nevada Bar No. 7488  
22                   6785 W. Russell Road, Suite 210  
23                   Las Vegas, Nevada 89118

24                   Attorneys for DIANE SANCHEZ  
25  
26  
27  
28

**ORIGINAL**

1 Paul D. Powell, Esq.  
2 Nevada Bar No. 7488  
3 THE POWELL LAW FIRM  
4 6785 West Russell Road, Suite 210  
5 Las Vegas, Nevada 89118  
6 paul@TPLF.com  
7 Phone: (702) 728-5500  
8 Facsimile: (702) 728-5501  
9 Attorneys for DIANE SANCHEZ

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DIANE SANCHEZ, )  
)  
Plaintiff, )  
vs. ) CASE NO. A722815  
) DEPT. NO. XXV  
BLAS BON, individually, DOES I - X, and ROE )  
CORPORATIONS I - X, inclusive, ) **SUMMONS**  
)  
Defendants. )

**NOTICE! YOU HAVE BEEN SUED, THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS, READ THE INFORMATION BELOW.**

**BLAS BON**

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:
  - a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
  - b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advise of an attorney in this matter, you should do so promptly so that your response may be filed on time.

///

///

///

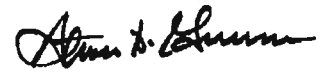
1 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission  
2 members and legislators, each have 45 days after service of this summons within which to file an answer or other  
3 responsive pleading to the complaint.

4  
5 Issued at the direction of:

6  
7 Paul D. Powell, Esq.  
8 Nevada Bar No. 7488  
9 6785 West Russell Road, Suite 210  
10 Las Vegas, Nevada 89117  
11 Attorneys for Diane Sanchez  
12  
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CLERK OF THE COURT

SEP 14 2015  
DEPUTY CLERK DATE  
County Courthouse  
200 Lewis Avenue, 3<sup>rd</sup> Floor, Suite 3125  
Las Vegas, Nevada 89155



CLERK OF THE COURT

1 Paul D. Powell, Esq.  
Nevada Bar No. 7488  
2 THE POWELL LAW FIRM  
6785 West Russell Road, Suite 210  
3 Las Vegas, Nevada 89118  
paul@TPLF.com  
4 Phone: (702) 728-5500  
Facsimile: (702) 728-5501  
5 Attorneys for DIANE SANCHEZ

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8  
9 DIANE SANCHEZ,

10 Plaintiff,

11 vs.

12 BLAS BON, individually; JOSEPH ACOSTA,  
individually; DOES I - X, and ROE  
13 CORPORATIONS I - X, inclusive,

14 Defendants.

)  
)  
) CASE NO. A722815

) DEPT. NO. XXV

) **AFFIDAVIT OF DUE DILIGENCE**  
)  
)  
)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Print name, State Bar number, and address) <b>Paul Powell</b> <b>Powell Law Firm</b> <b>8785 West Russell Road Las Vegas, NV 89118</b> TELEPHONE NO.: (702) 728-5501 FAX NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Plaintiff</b>		FOR COURT USE ONLY          
DISTRICT COURT STREET ADDRESS: <b>200 LEWIS AVENUE</b> CITY AND ZIP CODE: <b>LAS VEGAS, NV 89116</b>		
PLAINTIFF/PETITIONER: <b>Diana Sanchez</b> DEFENDANT/RESPONDENT: <b>Bias Bon</b>		
DECLARATION OF DILIGENCE		CASE NUMBER: <b>A722815</b>

I received the within assignment for filing and/or service on September 22, 2015 and that after due and diligent effort I have not been able to serve said person. I attempted service on this server on the following dates and times:

Server: **Bias Bon**

Documents: **Summons & Complaint;**

Address: **3900 Cambridge Street Suite 106**  
**Las Vegas, NV 89116**

As enumerated below:

10/19/2015 -- 9:36 AM Attempted to serve defendant at last known address of 3900 Cambridge Street Suite 106, Las Vegas Nevada. This address is a Clark County neighborhood community center where the defendant had his mail sent, his current whereabouts are now unknown to them. A record search with the Clark County Assessor's Office reveals no records found. A search with Clark County voters registration reveals no records found. A local phone search for defendants phone number reveals no records found. A registered vehicle search with Nevada DMV and Premium Finder search reveals no records found.



Registration No.: **#R-003972**  
**Clark County Process Service LLC dba CCPS LV**  
**720 E Charleston Blvd, Suite 135**  
**Las Vegas, NV 89104**  
**State License #2031C**



I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Signature: *Michael E. Clarke*

**Michael E. Clarke**

**DECLARATION OF DILIGENCE**

Order#: **CC9817/DilFormat.mdt**

RPI.APP.000075

# EXHIBIT 11

**Brian Sandoval**  
Governor



555 Wright Way  
Carson City, Nevada 89711  
Telephone (775) 684-4368  
www.dmvnv.com

**Troy L. Dillard**  
Director

November 2, 2015

Mr. Paul D Powell Esq  
6785 W. Russell Rd., Ste. 210  
Las Vegas Nevada 89118

**Re: Diane Sanchez vs. Blas Bon; Joseph Acosta**  
**CASE NO: A-15-722815-C**  
**SERVICE DATE: 11/2/15**  
**DELIVERY METHOD: USPS**

Dear Mr. Powell Esq,

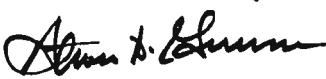
This letter acknowledges service of a Summons Complaint received in the Director's office of the State of Nevada, Department of Motor Vehicles for the above referenced case, along with \$5.00 as provided for in the NRS 14.070.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Springer", is written over a horizontal line.

Tina Springer  
Administrative Assistant  
Director's Office

# EXHIBIT 12



CLERK OF THE COURT

**AFFT**  
Paul D. Powell, Esq.  
Nevada Bar No. 7488  
**THE POWELL LAW FIRM**  
6785 West Russell Road, Suite 210  
Las Vegas, Nevada 89118  
paul@TPLF.com  
Phone: (702) 728-5500  
Facsimile: (702) 728-5501  
Attorneys for DIANE SANCHEZ

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DIANE SANCHEZ,	)	
	)	CASE NO. A722815
Plaintiff,	)	DEPT. NO. XXV
vs.	)	
	)	
BLAS BON, individually; JOSEPH ACOSTA,	)	AMENDED AFFIDAVIT OF
individually; DOES I - X, and ROE	)	COMPLIANCE
CORPORATIONS I - X, inclusive,	)	
	)	
Defendants.	)	

STATE OF NEVADA	)
	) ss.
COUNTY OF CLARK	)

PAUL D. POWELL, ESQ., being duly sworn on oath, deposes and says:

That I am an attorney at THE POWELL LAW FIRM maintaining offices at 6785 W. Russell Road, Suite 210, Las Vegas, Nevada 89118 and the firm has been retained by Plaintiff DIANE SANCHEZ to represent her in an action against Defendant BLAS BON.

That on October 19, 2015 service of the Complaint on file herein and a copy of the Summons issued following the filing of said Complaint was attempted on BLAS BON at his best known address of 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. Said best known

1 address was found not to be current for BLAS BON as evidenced by the Declaration of Diligence  
2 attached hereto as **Exhibit 1**.

3 That on or about October 27, 2015 I caused to be served upon the Director of the  
4 Department of Motor Vehicles of the State of Nevada at Carson City, Nevada, via United States  
5 Mail, a copy of the Complaint on file herein, a copy of the Summons issued following the filing of  
6 the Complaint, a copy of the Declaration of Diligence, together with the statutory fee of \$5.00, all in  
7 accordance with N.R.S. 14.070. Said documents were received by the Department of Motor  
8 Vehicles on November 2, 2015 as evidenced by the letter from the Department of Motor Vehicles  
9 attached hereto as **Exhibit 2**, acknowledging receipt of said Complaint and Summons.  
10

11 That on or about November 9, 2015 I caused to be deposited in the United States Mail at Las  
12 Vegas, Nevada, certified mail return receipt requested, with postage fully prepaid thereon, a copy of  
13 the Complaint and Summons, the traffic accident report and a copy of the DMV letter evidencing  
14 proof of service on Defendant BLAS BON at the Defendant's last known address of 3900  
15 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. **The package was returned to sender on**  
16 **November 12, 2015 as unclaimed. A copy is attached hereto as Exhibit 3.**  
17

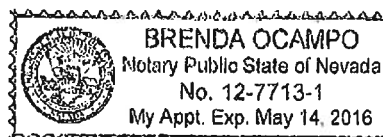
18 DATED this 29<sup>th</sup> day of March, 2015.  
19

20 THE POWELL LAW FIRM  
21

22 Paul D. Powell, Esq.  
23 Nevada Bar No. 7488  
24 6785 W. Russell Road, Suite 210  
25 Las Vegas, NV 89118

26 SUBSCRIBED AND SWORN TO before me  
27 this 29 day of March, 2016.

28 NOTARY PUBLIC



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**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5 (b), I hereby certify that on the 29<sup>th</sup> day of March, 2015, the **AMENDED AFFIDAVIT OF COMPLIANCE** was served via electronic service to the following counsel of record:

Marissa Temple, Esq.  
MESSNER REEVES LLP  
5556 S. Fort Apache Road, Suite 100  
Las Vegas, Nevada 89148  
Attorneys for Defendant

*/s/ Lauren Pellino*

---

An Employee of THE POWELL LAW FIRM

# **EXHIBIT 1**



1 **AFFT**  
2 Paul D. Powell, Esq.  
3 Nevada Bar No. 7488  
4 THE POWELL LAW FIRM  
5 6785 West Russell Road, Suite 210  
6 Las Vegas, Nevada 89118  
7 paul@TPLF.com  
8 Phone: (702) 728-5500  
9 Facsimile: (702) 728-5501  
10 Attorneys for DIANE SANCHEZ

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DIANE SANCHEZ, )  
10 ) CASE NO. A722815  
11 Plaintiff, ) DEPT. NO. XXV  
12 vs. )  
13 )  
14 BLAS BON, individually; JOSEPH ACOSTA, ) **AFFIDAVIT OF COMPLIANCE**  
15 individually; DOES I - X, and ROE )  
16 CORPORATIONS I - X, inclusive, )  
17 )  
18 Defendants. )

16 STATE OF NEVADA )  
17 ) ss.  
18 COUNTY OF CLARK )

19  
20 PAUL D. POWELL, ESQ., being duly sworn on oath, deposes and says:

21 That I am an attorney at THE POWELL LAW FIRM maintaining offices at 6785 W. Russell  
22 Road, Suite 210, Las Vegas, Nevada 89118 and the firm has been retained by Plaintiff DIANE  
23 SANCHEZ to represent her in an action against Defendant BLAS BON.

24 That on October 19, 2015 service of the Complaint on file herein and a copy of the  
25 Summons issued following the filing of said Complaint was attempted on BLAS BON at his best  
26 known address of 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. Said best known  
27  
28

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4 Department of Motor Vehicles of the State of Nevada at Carson City, Nevada, via United States  
5 Mail, a copy of the Complaint on file herein, a copy of the Summons issued following the filing of  
6 the Complaint, a copy of the Declaration of Diligence, together with the statutory fee of \$5.00, all in  
7 accordance with N.R.S. 14.070. Said documents were received by the Department of Motor  
8 Vehicles on November 2, 2015 as evidenced by the letter from the Department of Motor Vehicles  
9 attached hereto as Exhibit 2, acknowledging receipt of said Complaint and Summons.  
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12 Vegas, Nevada, certified mail return receipt requested, with postage fully prepaid thereon, a copy of  
13 the Complaint and Summons, the traffic accident report and a copy of the DMV letter evidencing  
14 proof of service on Defendant BLAS BON at the Defendant's last known address of 3900  
15 Cambridge Street, Suite 106, Las Vegas, Nevada 89119.  
16

17 To date, return receipt (Article Number 7015 0640 0004 9496 0326) has not been returned.

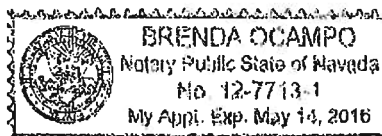
18 DATED this 13<sup>th</sup> day of November, 2015.  
19

20 THE POWELL LAW FIRM  
21

22 Paul D. Powell, Esq.  
23 Nevada Bar No. 7488  
24 6785 W. Russell Road, Suite 210  
25 Las Vegas, NV 89118

26 SUBSCRIBED AND SWORN TO before me  
27 this 13<sup>th</sup> day of November, 2015.

28 NOTARY PUBLIC



# **EXHIBIT 2**

**Brian Sandoval**  
Governor



555 Wright Way  
Carson City, Nevada 89711  
Telephone (775) 684-4368  
www.dmvnv.com

**Troy L. Dillard**  
Director

November 2, 2015

Mr. Paul D Powell Esq  
6785 W. Russell Rd., Ste. 210  
Las Vegas Nevada 89118

**Re: Diane Sanchez vs. Blas Bon; Joseph Acosta**  
**CASE NO: A-15-722815-C**  
**SERVICE DATE: 11/2/15**  
**DELIVERY METHOD: USPS**

Dear Mr. Powell Esq,

This letter acknowledges service of a Summons Complaint received in the Director's office of the State of Nevada, Department of Motor Vehicles for the above referenced case, along with \$5.00 as provided for in the NRS 14.070.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Springer", is written over a horizontal line.

Tina Springer  
Administrative Assistant  
Director's Office

The Power Law Firm  
6785 W. Russell Rd. #210  
Las Vegas, NV 89118

CERTIFIED MAIL



7015 0640 0004 9496 0326



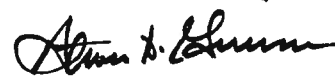
Undeliverable as  
addressed  
No Address  
Returned  
Permitted Not Known  
Attempted No Such Number  
No Such Number  
No Receipt  
Decayed  
Resent

Blas Bar

3900 Cambridge Street #

Las Vegas, NV 89119

# EXHIBIT 13



CLERK OF THE COURT

**AFFT**  
Paul D. Powell, Esq.  
Nevada Bar No. 7488  
THE POWELL LAW FIRM  
6785 West Russell Road, Suite 210  
Las Vegas, Nevada 89118  
paul@TPLF.com  
Phone: (702) 728-5500  
Facsimile: (702) 728-5501  
Attorneys for DIANE SANCHEZ

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DIANE SANCHEZ,	)	
	)	CASE NO. A722815
Plaintiff,	)	DEPT. NO. XXV
vs.	)	
	)	
BLAS BON, individually; JOSEPH ACOSTA,	)	<b>AFFIDAVIT OF COMPLIANCE</b>
individually; DOES I - X, and ROF	)	
CORPORATIONS I - X, inclusive,	)	
	)	
Defendants.	)	

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK     )

PAUL D. POWELL, ESQ., being duly sworn on oath, deposes and says:

That I am an attorney at THE POWELL LAW FIRM maintaining offices at 6785 W. Russell Road, Suite 210, Las Vegas, Nevada 89118 and the firm has been retained by Plaintiff DIANE SANCHEZ to represent her in an action against Defendant BLAS BON.

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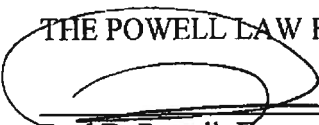
3 That on or about October 27, 2015 I caused to be served upon the Director of the  
4 Department of Motor Vehicles of the State of Nevada at Carson City, Nevada, via United States  
5 Mail, a copy of the Complaint on file herein, a copy of the Summons issued following the filing of  
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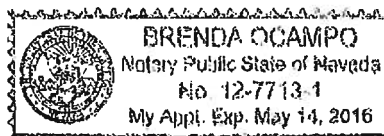
19 DATED this 13<sup>th</sup> day of November, 2015.  
20

21 THE POWELL LAW FIRM

22   
23 Paul D. Powell, Esq.  
24 Nevada Bar No. 7488  
25 6785 W. Russell Road, Suite 210  
26 Las Vegas, NV 89118

27 SUBSCRIBED AND SWORN TO before me  
28 this 13<sup>th</sup> day of November, 2015.

  
NOTARY PUBLIC





# **EXHIBIT 1**

1 **AFFT**  
Paul D. Powell, Esq.  
2 Nevada Bar No. 7488  
THE POWELL LAW FIRM  
3 6785 West Russell Road, Suite 210  
Las Vegas, Nevada 89118  
4 paul@TPLF.com  
Phone: (702) 728-5500  
5 Facsimile: (702) 728-5501  
6 Attorneys for DIANE SANCHEZ

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DIANE SANCHEZ, )  
10 ) CASE NO. A722815  
Plaintiff, ) DEPT. NO. XXV  
11 vs. )  
12 )  
BLAS BON, individually; JOSEPH ACOSTA, ) **AFFIDAVIT OF COMPLIANCE**  
13 individually; DOES I - X, and ROF )  
CORPORATIONS I - X, inclusive, )  
14 )  
15 Defendants. )

16 STATE OF NEVADA )  
17 ) ss.  
18 COUNTY OF CLARK )

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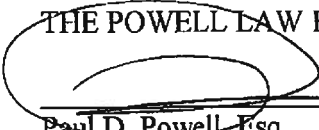
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10

11 That on or about November 9, 2015 I caused to be deposited in the United States Mail at Las  
12 Vegas, Nevada, certified mail return receipt requested, with postage fully prepaid thereon, a copy of  
13 the Complaint and Summons, the traffic accident report and a copy of the DMV letter evidencing  
14 proof of service on Defendant BLAS BON at the Defendant's last known address of 3900  
15 Cambridge Street, Suite 106, Las Vegas, Nevada 89119.  
16

17 To date, return receipt (Article Number 7015 0640 0004 9496 0326) has not been returned.  
18

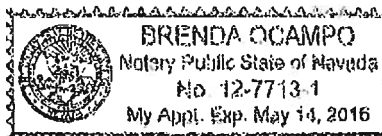
19 DATED this 13<sup>th</sup> day of November, 2015.  
20

21 THE POWELL LAW FIRM

22   
23 Paul D. Powell, Esq.  
24 Nevada Bar No. 7488  
25 6785 W. Russell Road, Suite 210  
26 Las Vegas, NV 89118

27 SUBSCRIBED AND SWORN TO before me  
28 this 13<sup>th</sup> day of November, 2015.

  
NOTARY PUBLIC



# **EXHIBIT 2**

**Brian Sandoval**  
Governor



555 Wright Way  
Carson City, Nevada 89711  
Telephone (775) 684-4368  
www.dmvnv.com

**Troy L. Dillard**  
Director

November 2, 2015

Mr. Paul D Powell Esq  
6785 W. Russell Rd., Ste. 210  
Las Vegas Nevada 89118

**Re: Diane Sanchez vs. Blas Bon; Joseph Acosta**  
**CASE NO: A-15-722815-C**  
**SERVICE DATE: 11/2/15**  
**DELIVERY METHOD: USPS**

Dear Mr. Powell Esq,

This letter acknowledges service of a Summons Complaint received in the Director's office of the State of Nevada, Department of Motor Vehicles for the above referenced case, along with \$5.00 as provided for in the NRS 14.070.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Springer", is written over a horizontal line.

Tina Springer  
Administrative Assistant  
Director's Office

# EXHIBIT 14

January 20, 2016



**Via U.S. Mail**

ATX Premier Insurance  
Attn: DeLawrence Templeton  
PO Box 142768  
Dallas, Texas 75014

**Re: Sanchez vs. Bon**  
*Claim No. DMA-0147074*  
Date of Loss: April 28, 2015

Dear Mr. Templeton:

Please be advised that your insured, Blas Bon, has been served in the above-referenced matter. I have enclosed a copy of the Complaint and Affidavit of Compliance, evidencing proof of service via the Department of Motor Vehicles.

Please file an Answer to Plaintiff's Complaint as soon as possible, or I will have no choice but to request for the Court to enter a Default against your insured.

Sincerely,

  
Paul D. Powell, Esq.

Paul D. Powell, Esq.  
Nevada Bar No. 7488  
**THE POWELL LAW FIRM**  
6785 W. Russell Road, Suite 210  
Las Vegas, Nevada 89118  
Phone: (702) 728-5500  
Facsimile: (702) 728-5501  
Email: paul@TPLF.com



1 Roe Corporations are presently unknown to Plaintiff at this time, who therefore  
2 sues said Defendants by such fictitious names. When the true names and  
3 capacities of these defendants are ascertained, Plaintiff will amend this  
4 Complaint accordingly.

5 5. That at all times pertinent, Defendants were agents, servants, employees or joint  
6 venturers of every other Defendant herein, and at all times mentioned herein  
7 were acting within the scope and course of said agency, employment, or joint  
8 venture, with knowledge and permission and consent of all other named  
9 Defendants.  
10

11 6. That on April 28, 2015, in Clark County, Nevada, Defendants BLAS BON  
12 caused a crash with Plaintiff. During the same sequence of events, Defendant  
13 JOSEPH ACOSTA also negligently crashed into Plaintiff. The vehicle operated  
14 by BLAS BON was owned by HIPOLITO CRUZ. The vehicle operated by  
15 JOSEPH ACOSTA was owned by WILFRED ACOSTA.  
16

17 7. That as a direct and proximate result of the negligence of Defendants, Plaintiff  
18 sustained injuries to Plaintiff's shoulders, back, bodily limbs, organs and  
19 systems, all or some of which condition may be permanent and disabling, and all  
20 to Plaintiff's damage in a sum in excess of \$10,000.  
21

22 8. That as a direct and proximate result of the negligence of Defendants, Plaintiff  
23 received medical and other treatment for the aforementioned injuries, and that  
24 said services, care, and treatment are continuing and shall continue in the future,  
25 all to the damage of Plaintiff.  
26  
27  
28

1 9. That as a direct and proximate result of the negligence of Defendants, Plaintiff  
2 has been required to, and has limited occupational and recreational activities,  
3 which have caused and shall continue to cause Plaintiff loss of earning capacity,  
4 lost wages, physical impairment, mental anguish, and loss of enjoyment of life,  
5 in a presently unascertainable amount.

6  
7 10. That as a direct and proximate result of the negligence of Defendants, Plaintiff's  
8 vehicle was damaged and Plaintiff lost the use of that vehicle.

9 11. That as a direct and proximate result of the aforementioned negligent of all  
10 Defendants, Plaintiff has been required to engage the services of an attorney,  
11 incurring attorney's fees and costs to bring this action.  
12

13 **FIRST CAUSE OF ACTION**

14 12. Plaintiff incorporates paragraphs 1 through 15 of the Complaint as though said  
15 paragraphs were fully set forth herein.

16 13. Defendants owed Plaintiff a duty of care to operate their vehicles in a reasonable  
17 and safe manner. Defendant breached that duty of care by striking Plaintiff's  
18 vehicle on the roadway. As a direct and proximate result of the negligence of  
19 Defendant, Plaintiff has been damaged in an amount in excess of \$10,000.00.  
20

21 **SECOND CAUSE OF ACTION**

22 14. Plaintiff incorporates paragraphs 1 through 17 of the Complaint as though said  
23 paragraphs were fully set forth herein.  
24

25 ///

26 ///

27 ///

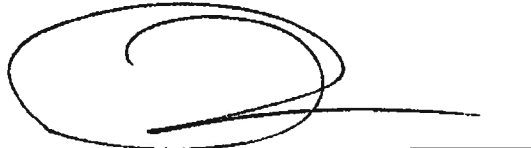
15. The acts of Defendants as described herein violated the traffic laws of the State of Nevada and Clark County, constituting negligence per se, and Plaintiff has been damaged as a direct and proximate result thereof in an amount in excess of \$10,000.00.

WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to or at the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays judgment against all Defendants, and each of them, as follows:

1. For general damages sustained by Plaintiff in an amount in excess of \$10,000.00;
2. For special damages sustained by Plaintiff in an amount in excess of \$10,000.00;
3. For property damages sustained by Plaintiff;
4. For reasonable attorney's fees and costs;
5. For interest at the statutory rate; and
6. For such other relief as the Court deems just and proper.

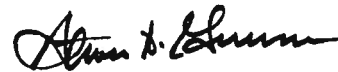
DATED this 7th day of August 2015.

THE POWELL LAW FIRM



Paul D Powell, Esq.  
Nevada Bar No. 7488  
6785 W. Russell Road, Suite 210  
Las Vegas, Nevada 89118

Attorneys for DIANE SANCHEZ



CLERK OF THE COURT

1 **AFFT**  
2 Paul D. Powell, Esq.  
3 Nevada Bar No. 7488  
4 **THE POWELL LAW FIRM**  
5 6785 West Russell Road, Suite 210  
6 Las Vegas, Nevada 89118  
7 paul@TPLF.com  
8 Phone: (702) 728-5500  
9 Facsimile: (702) 728-5501  
10 Attorneys for DIANE SANCHEZ

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DIANE SANCHEZ, )  
10 ) CASE NO. A722815  
11 Plaintiff, ) DEPT. NO. XXV  
12 vs. )  
13 )  
14 BLAS BON, individually; JOSEPH ACOSTA, ) **AFFIDAVIT OF COMPLIANCE**  
15 individually; DOES I - X, and ROF )  
16 CORPORATIONS I - X, inclusive, )  
17 )  
18 Defendants. )

16 STATE OF NEVADA )  
17 ) ss.  
18 COUNTY OF CLARK )

19  
20 PAUL D. POWELL, ESQ., being duly sworn on oath, deposes and says:

21 That I am an attorney at THE POWELL LAW FIRM maintaining offices at 6785 W. Russell  
22 Road, Suite 210, Las Vegas, Nevada 89118 and the firm has been retained by Plaintiff DIANE  
23 SANCHEZ to represent her in an action against Defendant BLAS BON.

24 That on October 19, 2015 service of the Complaint on file herein and a copy of the  
25 Summons issued following the filing of said Complaint was attempted on BLAS BON at his best  
26 known address of 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. Said best known  
27  
28

1 address was found not to be current for BLAS BON as evidenced by the Declaration of Diligence  
2 attached hereto as Exhibit 1.

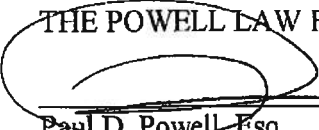
3 That on or about October 27, 2015 I caused to be served upon the Director of the  
4 Department of Motor Vehicles of the State of Nevada at Carson City, Nevada, via United States  
5 Mail, a copy of the Complaint on file herein, a copy of the Summons issued following the filing of  
6 the Complaint, a copy of the Declaration of Diligence, together with the statutory fee of \$5.00, all in  
7 accordance with N.R.S. 14.070. Said documents were received by the Department of Motor  
8 Vehicles on November 2, 2015 as evidenced by the letter from the Department of Motor Vehicles  
9 attached hereto as Exhibit 2, acknowledging receipt of said Complaint and Summons.  
10

11 That on or about November 9, 2015 I caused to be deposited in the United States Mail at Las  
12 Vegas, Nevada, certified mail return receipt requested, with postage fully prepaid thereon, a copy of  
13 the Complaint and Summons, the traffic accident report and a copy of the DMV letter evidencing  
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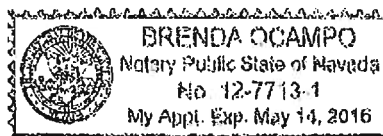
19 DATED this 13<sup>th</sup> day of November, 2015.  
20

21 THE POWELL LAW FIRM

22   
23 Paul D. Powell, Esq.  
24 Nevada Bar No. 7488  
25 6785 W. Russell Road, Suite 210  
26 Las Vegas, NV 89118

26 SUBSCRIBED AND SWORN TO before me  
27 this 13<sup>th</sup> day of November, 2015.

28 NOTARY PUBLIC



# **EXHIBIT 1**

1 **AFFT**  
2 Paul D. Powell, Esq.  
3 Nevada Bar No. 7488  
4 THE POWELL LAW FIRM  
5 6785 West Russell Road, Suite 210  
6 Las Vegas, Nevada 89118  
7 paul@TPLF.com  
8 Phone: (702) 728-5500  
9 Facsimile: (702) 728-5501  
10 Attorneys for DIANE SANCHEZ

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DIANE SANCHEZ, )  
10 ) CASE NO. A722815  
11 Plaintiff, ) DEPT. NO. XXV  
12 vs. )  
13 )  
14 BLAS BON, individually; JOSEPH ACOSTA, ) **AFFIDAVIT OF COMPLIANCE**  
15 individually; DOES I - X, and ROE )  
16 CORPORATIONS I - X, inclusive, )  
17 )  
18 Defendants. )

16 STATE OF NEVADA )  
17 ) ss.  
18 COUNTY OF CLARK )

19  
20 PAUL D. POWELL, ESQ., being duly sworn on oath, deposes and says:

21 That I am an attorney at THE POWELL LAW FIRM maintaining offices at 6785 W. Russell  
22 Road, Suite 210, Las Vegas, Nevada 89118 and the firm has been retained by Plaintiff DIANE  
23 SANCHEZ to represent her in an action against Defendant BLAS BON.

24 That on October 19, 2015 service of the Complaint on file herein and a copy of the  
25 Summons issued following the filing of said Complaint was attempted on BLAS BON at his best  
26 known address of 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. Said best known  
27  
28

1 address was found not to be current for BLAS BON as evidenced by the Declaration of Diligence  
2 attached hereto as Exhibit 1.

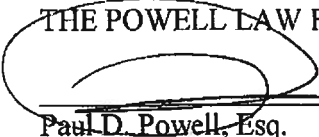
3 That on or about October 27, 2015 I caused to be served upon the Director of the  
4 Department of Motor Vehicles of the State of Nevada at Carson City, Nevada, via United States  
5 Mail, a copy of the Complaint on file herein, a copy of the Summons issued following the filing of  
6 the Complaint, a copy of the Declaration of Diligence, together with the statutory fee of \$5.00, all in  
7 accordance with N.R.S. 14.070. Said documents were received by the Department of Motor  
8 Vehicles on November 2, 2015 as evidenced by the letter from the Department of Motor Vehicles  
9 attached hereto as Exhibit 2, acknowledging receipt of said Complaint and Summons.  
10

11 That on or about November 9, 2015 I caused to be deposited in the United States Mail at Las  
12 Vegas, Nevada, certified mail return receipt requested, with postage fully prepaid thereon, a copy of  
13 the Complaint and Summons, the traffic accident report and a copy of the DMV letter evidencing  
14 proof of service on Defendant BLAS BON at the Defendant's last known address of 3900  
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16

17 To date, return receipt (Article Number 7015 0640 0004 9496 0326) has not been returned.  
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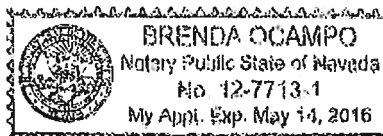
19 DATED this 13<sup>th</sup> day of November, 2015.  
20

21 THE POWELL LAW FIRM

22   
23 Paul D. Powell, Esq.  
24 Nevada Bar No. 7488  
25 6785 W. Russell Road, Suite 210  
26 Las Vegas, NV 89118

26 SUBSCRIBED AND SWORN TO before me  
27 this 13<sup>th</sup> day of November, 2015.

28 NOTARY PUBLIC





# **EXHIBIT 2**

**Brian Sandoval**  
Governor



555 Wright Way  
Carson City, Nevada 89711  
Telephone (775) 684-4368  
www.dmvnv.com

**Troy L. Dillard**  
Director

November 2, 2015

Mr. Paul D Powell Esq  
6785 W. Russell Rd., Ste. 210  
Las Vegas Nevada 89118

**Re: Diane Sanchez vs. Blas Bon; Joseph Acosta**  
**CASE NO: A-15-722815-C**  
**SERVICE DATE: 11/2/15**  
**DELIVERY METHOD: USPS**

Dear Mr. Powell Esq,

This letter acknowledges service of a Summons Complaint received in the Director's office of the State of Nevada, Department of Motor Vehicles for the above referenced case, along with \$5.00 as provided for in the NRS 14.070.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Springer", is written over a horizontal line.

Tina Springer  
Administrative Assistant  
Director's Office

# EXHIBIT 15



February 16, 2016

**Via U.S. Mail**

ATX Premier Insurance  
Attn: DeLawrence Templeton  
PO Box 142768  
Dallas, Texas 75014

**Re: Sanchez vs. Bon**  
*Claim No. DMA-0147074*  
Date of Loss: April 28, 2015

Dear Mr. Templeton:

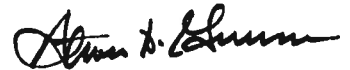
I am following up on my correspondence dated January 20, 2016, wherein I informed you that your insured, Blas Bon, had been served with the Complaint and Summons in the above-referenced matter. To date, I still have not received an Answer to Plaintiff's Complaint.

If I do not receive Mr. Bon's Answer to Plaintiff's Complaint by February 23, 2016, I will request for the Court to enter a Default against your insured.

Sincerely,

Paul D. Powell, Esq.

# EXHIBIT 16



CLERK OF THE COURT

1 **NOTC**  
2 Paul D. Powell, Esq.  
3 Nevada Bar No. 7488  
4 THE POWELL LAW FIRM  
5 6785 West Russell Road, Suite 210  
6 Las Vegas, Nevada 89118  
7 paul@TPLF.com  
8 Phone: (702) 728-5500  
9 Facsimile: (702) 728-5501  
10 Attorneys for DIANE SANCHEZ

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DIANE SANCHEZ, )  
10 ) CASE NO. A722815  
11 Plaintiff, ) DEPT. NO. XXV  
12 vs. )  
13 )  
14 BLAS BON, individually; JOSEPH ACOSTA, ) **NOTICE OF ENTRY OF DEFAULT**  
15 individually; DOES I - X, and ROE )  
16 CORPORATIONS I - X, inclusive, )  
17 )  
18 Defendants. )

16 PLEASE TAKE NOTICE that a Default of Defendant Blas Bon was entered on March 31,  
17 2016.

18 A copy of said Default is attached hereto as Exhibit 1.

19 DATED this 22<sup>nd</sup> day of June, 2016.

20 THE POWELL LAW FIRM

21  
22 /s/ Paul Powell  
23 Paul D. Powell, Esq.  
24 Nevada Bar No. 7488  
25 6785 W. Russell Road, Suite 210  
26 Las Vegas, NV 89118  
27  
28

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Marissa Temple, Esq.  
MESSNER REEVES LLP  
5556 S. Fort Apache Road, Suite 100  
Las Vegas, Nevada 89148  
Attorneys for Defendant

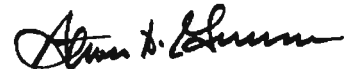
DeLawrence Templeton  
DMA Claims Services  
PO Box 142768  
Irving, Texas 75014  
*Via Certified Mail: 7015 0640 0004  
9496 0395*

An Employee of THE POWELL LAW FIRM

# EXHIBIT 1



 ORIGINAL



CLERK OF THE COURT

1 **DFLT**

2 Paul D. Powell, Esq.  
3 Nevada Bar No. 7488  
4 THE POWELL LAW FIRM  
5 6785 West Russell Road, Suite 210  
6 Las Vegas, Nevada 89118  
7 paul@TPLF.com  
8 Phone: (702) 728-5500  
9 Facsimile: (702) 728-5501  
10 Attorneys for DIANE SANCHEZ

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DIANE SANCHEZ,

10 Plaintiff,

11 vs.

12 BLAS BON, individually; JOSEPH ACOSTA,  
13 individually; DOES I - X, and ROE  
14 CORPORATIONS I - X, inclusive,

15 Defendants.

) CASE NO. A722815

) DEPT. NO. XXV

) **DEFAULT ON DEFENDANT BLAS BON**

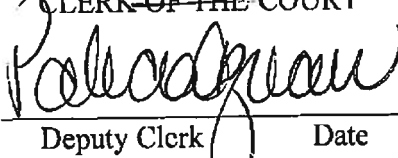
16 It appearing from the files and records in the above-entitled action that BLAS BON,  
17 Defendant herein, being duly served with a copy of the Summons and Complaint through the  
18 Department of Motor of Vehicles on November 2, 2015; that more than twenty (20) days, exclusive  
19 of the day of service, having expired since service upon the Defendant; that no answer or other  
20 appearance having been filed and no further time having been granted, the default of the above-  
21 named Defendant for failing to answer or otherwise plead to Plaintiff's Complaint is hereby entered.

22 THE POWELL LAW FIRM

23 Paul D. Powell, Esq.  
24 Nevada Bar No. 7488  
25 6785 W. Russell Road, Suite 210  
26 Las Vegas, NV 89118

CLERK OF THE COURT

By:

  
Deputy Clerk Date  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

PATRICIA AZUCENA

RPI.APP.000115

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5 (b), I hereby certify that on the 22<sup>nd</sup> day of March, 2016, the **DEFAULT ON DEFENDANT, BLAS BON** was served via electronic service to the following counsel of record:

Marissa Temple, Esq.  
MESSNER REEVES LLP  
5556 S. Fort Apache Road, Suite 100  
Las Vegas, Nevada 89148  
Attorneys for Defendant

  
An Employee of THE POWELL LAW FIRM

# EXHIBIT 17

**MOT**  
Paul D. Powell, Esq.  
Nevada Bar No. 7488  
The Powell Law Firm  
6785 W. Russell Road, Suite 210  
Las Vegas, Nevada 89118  
paul@tplf.com  
Phone: (702) 728-5500  
Facsimile: (702) 728-5501

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**Defendants.**

**PLAINTIFF'S MOTION FOR LEAVE TO  
FILE AN AMENDED COMPLAINT**

Paul D. Powell, Esq.  
Nevada Bar No. 7488  
6785 W. Russell Road, Suite 210  
Las Vegas, NV 89118

1 NOTICE OF MOTION

2 TO: Sarah Smith, Esq.  
3 MESSNER REEVES LLP  
4 5556 S. Fort Apache Road, Suite 100  
5 Las Vegas, Nevada 89148  
6 Attorneys for Defendant

7 YOU AND EACH OF YOU PLEASE TAKE NOTICE that the Plaintiff will bring on for  
8 hearing in Department 7 of the Eighth Judicial District Court of the State of Nevada, on the 04 day  
9 of OCTOBER, 2016, at the hour of 9:00A, his Motion for Leave to File Amended Complaint.

10 You are invited to submit any joinder or opposition that you may wish, and to attend and participate  
11 in the hearing.

12 DATED this 29<sup>th</sup> day of August, 2016.

13 THE POWELL LAW FIRM

14 */s/ Paul Powell*

15 \_\_\_\_\_  
16 Paul D. Powell, Esq.  
17 Nevada Bar No. 7488  
18 6785 W. Russell Road, Suite 210  
19 Las Vegas, NV 89118

20  
21 ///

22 ///

23 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Facts.**

3  
4 This is a personal injury case. On April 28, 2015, Plaintiff Diane Sanchez ("Diane") was  
5 traveling northbound on Interstate 15. Traffic in front of Diane came to a stop, so Diane came to a  
6 stop. Cross Defendant Bon was unable to stop and the front of his car clipped the back of Diane's  
7 car. Cross-Defendant Bon, in an attempt to avoid hitting Diane, veered his car to the left.

8  
9 Defendant Joseph Acosta ("Defendant Joseph") was traveling behind Cross Defendant Bon.  
10 Defendant Joseph did not stop in time, and the front of the BMW he was driving crashed into the  
11 back of Diane's car. This propelled Diane into the car in front of her (who is a non-party to this  
12 action). See Ex. 1- Traffic Accident Report ("TAR") for a complete description of the crash.

13  
14 Per the TAR, the owner of the vehicle driven by the Defendant Joseph is Wilfredoo Acosta  
15 ("Acosta"). Acosta is the father of Defendant Joseph. See Ex. 2 Defendant Joseph's Answers to  
16 Interrogatories, Answer # 15. Defendant Joseph was driving his father's car with his father's  
17 permission. Id.

18  
19 Diane filed her Complaint in this matter on August 7, 2015. See Complaint of File with this  
20 Court. Defendant Joseph filed his answer and cross-claims against Cross-Defendant Bon on  
21 December 1, 2015. See Answer and Cross Claim on File with this Court. Discovery is ongoing,  
22 with discovery cut off currently set for February 14, 2017. See JCCR on File with this Court. The  
23 last day to file motions to amend pleadings or add parties is November 15, 2016. Id.

24 **B. Law Germane to this Motion.**

25  
26 NRS 41.440 provides that:

27 Any liability imposed upon a wife, husband, son, daughter, father, mother, brother, sister  
28 or other immediate family member of a family arising out of his or her driving and  
operating a motor vehicle with the permission, express or implied, of such owner is

1 hereby imposed upon the owner of the motor vehicle, and such owner shall be jointly and  
2 severally liable with his or her wife, husband, son, daughter, father, mother, brother,  
3 sister or other immediate member of a family for any damages proximately resulting  
4 from such negligence or willful misconduct, and such negligent or willful misconduct  
shall be imputed to the owner of the motor vehicle for all purposes of civil damages.

5 NRCP 15 controls motions to amend pleadings. The following provision of NRCP 15(a) applies  
6 to amendments of pleadings after a responsive pleading has already been filed: "[A] party may  
7 amend the party's pleading only by leave of court or by written consent of the adverse party; and  
8 leave shall be freely given when justice requires." See Adamson v. Bowker, 405 P.2d 796 (Nev.  
9 1969), citing Forman v. Davis, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) "Rule 15(a)  
10 declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be  
11 heeded." A motion to amend should only be denied if there is showing of dilatory motive, undue  
12 prejudice or futility of amendment. *Id.*

13  
14 **C. Argument.**

15  
16 This is a simple Motion. Pursuant to the mandate of NRCP 15 and cases interpreting same,  
17 Sanchez must be allowed to amend her Complaint. There is no question under NRS 41.440 that  
18 Wilfredo Acosta is jointly and severally liable for all damages caused by his son's (Defendant  
19 Joseph) negligence. There is no question Defendant Joseph had permission to use the car, and there  
20 is no question Wilfredo Acosta is Joseph's father. Thus, all prongs of NRS 41.440 are met.

21  
22 There is no dilatory motive here- Sanchez is moving to add a party who appears to be jointly and  
23 severally liable for all of Defendant Joseph's damages. Amendment is not futile- NRCP 41.440  
24 places liability on immediate family members when one family member causes injury to someone  
25 else using a "family" vehicle. There is no undue delay. Discovery is still ongoing, and there is  
26 plenty of time for Wilfredo Acosta to do any additional discovery he may feel is necessary. That  
27  
28

1 said, because Wilfredo Acosta's liability is derivative and stems from his son's negligence, there  
2 shouldn't be any additional discovery that Wilfredo would need to do anyway.

3 In short, this is a timely Motion supported by evidence indicating that Wilfredo Acosta should be  
4 added as a party and as provided by NRS 41.440.  
5

6 **D. Conclusion.**

7 For the foregoing reasons, Plaintiff's Motion to Amend should be granted. Attached at Ex. 3 is a  
8 copy of the proposed Amended Complaint. For ease of reference, the amendments are in bold. If  
9 the Motion is granted, the Amended Complaint will be filed without the text of the amendments  
10 being in bold.  
11

12 DATED this 29<sup>th</sup> day of August, 2016.  
13

14 THE POWELL LAW FIRM  
15

16 */s/ Paul Powell*

17 \_\_\_\_\_  
18 Paul D. Powell, Esq.  
19 Nevada Bar No. 7488  
20 6785 W. Russell Road, Suite 210  
21 Las Vegas, NV 89118  
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Sarah Smith, Esq.  
MESSNER REEVES LLP  
5556 S. Fort Apache Road, Suite 100  
Las Vegas, Nevada 89148  
Attorneys for Defendant

An Employee of THE POWELL LAW FIRM

# EXHIBIT 18



CLERK OF THE COURT

**ACOMP**

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Attorneys for DIANE SANCHEZ

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DIANE SANCHEZ,

Plaintiff,

vs.

BLAS BON, individually; JOSEPH ACOSTA,  
individually; WILFREDO ACOSTA, individually;  
DOES I - X, and ROE CORPORATIONS I - X,  
inclusive,

Defendants.

)  
) CASE NO. A722815  
) DEPT. NO. XXV  
)  
)

) **AMENDED COMPLAINT**  
)  
)  
)  
)

Plaintiff DIANE SANCHEZ, by and through attorney of record, PAUL D. POWELL,  
ESQ., of THE POWELL LAW FIRM complains against Defendants BLAS BON, JOSEPH  
ACOSTA and WILFREDO ACOSTA, as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff DIANE SANCHEZ (hereinafter "Plaintiff") is, and at all times mentioned herein, was, a resident of the County of Clark, State of Nevada.
2. That Defendants BLAS BON, JOSEPH ACOSTA and WILFRDO ACOSTA (hereinafter "Defendants") are, and at all times mentioned herein, were, a resident of the County of Clark, State of Nevada.
3. The true names and capacities of the Defendants designated herein as Doe or Roe Corporations are presently unknown to Plaintiff at this time, who therefore sues

1 said Defendants by such fictitious names. When the true names and capacities of  
2 these defendants are ascertained, Plaintiff will amend this Complaint accordingly.

3 4. At all times pertinent, Defendants were agents, servants, employees or joint  
4 venturers of every other Defendant herein, and at all times mentioned herein were  
5 acting within the scope and course of said agency, employment, or joint venture,  
6 with knowledge and permission and consent of all other named Defendants.  
7

8 5. Defendant JOSEPH ACOSTA was, at all times mentioned herein, the operator of  
9 a 1997 BMW 52851, Nevada Plate No. 361LKK (hereinafter referred to as the  
10 "Vehicle"). The Vehicle was owned by Defendant WILFREDO ACOSTA.  
11

12 6. On April 28, 2015, in Clark County, Nevada, Defendant JOSEPH ACOSTA  
13 caused a crash with Plaintiff.  
14

15 7. As a direct and proximate result of the negligence of Defendants, Plaintiff  
16 sustained injuries to Plaintiff's shoulders, back, bodily limbs, organs and systems,  
17 all or some of which condition may be permanent and disabling, and all to  
18 Plaintiff's damage in a sum in excess of \$10,000.  
19

20 8. As a direct and proximate result of the negligence of Defendants, Plaintiff received  
21 medical and other treatment for the aforementioned injuries, and that said services,  
22 care, and treatment are continuing and shall continue in the future, all to the  
23 damage of Plaintiff.  
24

25 9. As a direct and proximate result of the negligence of Defendants, Plaintiff has been  
26 required to, and has limited occupational and recreational activities, which have  
27 caused and shall continue to cause Plaintiff loss of earning capacity, lost wages,  
28

1 physical impairment, mental anguish, and loss of enjoyment of life, in a presently  
2 unascertainable amount.

3 10. As a direct and proximate result of the negligence of Defendants, Plaintiff's  
4 vehicle was damaged and Plaintiff lost the use of that vehicle.

5 11. As a direct and proximate result of the aforementioned negligence of all  
6 Defendants, Plaintiff has been required to engage the services of an attorney,  
7 incurring attorney's fees and costs to bring this action.  
8

9 **FIRST CAUSE OF ACTION**

10 12. Plaintiff incorporates paragraphs 1 through 11 of the Complaint as though said  
11 paragraphs were fully set forth herein.

12 13. Defendants owed Plaintiff a duty of care to operate their vehicles in a reasonable  
13 and safe manner. Defendant breached that duty of care by striking Plaintiff's  
14 vehicle on the roadway. As a direct and proximate result of the negligence of  
15 Defendant, Plaintiff has been damaged in an amount in excess of \$10,000.00.  
16

17 **SECOND CAUSE OF ACTION**

18 14. Plaintiff incorporates paragraphs 1 through 14 of the Complaint as though said  
19 paragraphs were fully set forth herein.

20 15. The acts of Defendants as described herein violated the traffic laws of the State  
21 of Nevada and Clark County, constituting negligence per se, and Plaintiff has  
22 been damaged as a direct and proximate result thereof in an amount in excess of  
23 \$10,000.00.  
24  
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28

**THIRD CAUSE OF ACTION**

16. Plaintiff incorporates paragraphs 1 through 15 of the Complaint as though said paragraphs were fully set forth herein.
17. Defendant WILFREDO ACOSTA was the registered owner of the Vehicle driven by Defendant JOSEPH ACOSTA at the time of the acts plead herein.
18. Defendant JOSEPH ACOSTA had either the express or implied permission of Defendant WILFREDO ACOSTA to operate the Vehicle.
19. Defendant JOSEPH ACOSTA and Defendant WILFREDO ACOSTA are related as defined by NRS 41.440. To wit: WILFREDO ACOSTA is JOSEPH ACOSTA's father.
20. Pursuant to NRS 41.440, Defendant WILFREDO ACOSTA is jointly and severally liable for any damages proximately resulting from Defendant JOSEPH ACOSTA's negligence.
21. Pursuant to NRS 41.440, Defendant JOSEPH ACOSTA's negligence is imputed to Defendant WILFREDO ACOSTA for all purposes of civil damages.
22. As a direct and proximate cause of Defendant JOSEPH ACOSTA's negligence, Plaintiff has been damaged in an amount in excess of \$10,000.00.

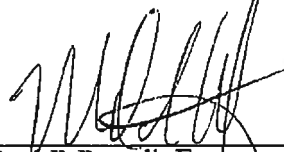
WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to or at the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays judgment against all Defendants, and each of them, as follows:

1. For general damages sustained by Plaintiff in an amount in excess of \$10,000.00;
2. For special damages sustained by Plaintiff in an amount in excess of \$10,000.00;
3. For property damages sustained by Plaintiff;

4. For reasonable attorney's fees and costs;
5. For interest at the statutory rate; and
6. For such other relief as the Court deems just and proper.

DATED this 13<sup>th</sup> day of October, 2016.

THE POWELL LAW FIRM



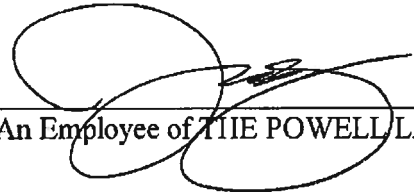
Paul D Powell, Esq.  
Nevada Bar No. 7488  
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Nevada Bar No. 7780  
6785 W. Russell Road, Suite 210  
Las Vegas, Nevada 89118

Attorneys for DIANE SANCHEZ

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5 (b), I hereby certify that on the 13<sup>th</sup>  
day of October, 2016, the **AMENDED COMPLAINT** was served via electronic service to  
the following counsel of record:

Sarah Smith, Esq.  
MESSNER REEVES LLP  
5556 S. Fort Apache Road, Suite 100  
Las Vegas, Nevada 89148  
Attorneys for Defendant



An Employee of THE POWELL LAW FIRM



# EXHIBIT 19

*Steven D. Grierson*

**JUDG**  
DENNIS M. PRINCE  
Nevada Bar No. 5092  
KEVIN T. STRONG  
Nevada Bar No. 12107  
**PRINCE LAW GROUP**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.534.7600  
Fax: 702.534.7601  
Attorneys for Plaintiff  
*Diane Sanchez*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DIANE SANCHEZ,  
Plaintiff,

Case No. A-15-722815-C  
Dept. No. XXV

**DEFAULT JUDGMENT**

vs.

BLAS BON, individually; JOSEPH  
ACOSTA, individually; WILFREDO  
ACOSTA, individually; DOES I-X and ROE  
CORPORATIONS I-X, inclusive,  
Defendants.

Plaintiff Diane Sanchez's ("Sanchez") Application for Default Judgment was brought for hearing in Department XXV of the Eighth Judicial District Court, before The Honorable Kathleen E. Delaney, on the 11th day of June, 2019, with Dennis M. Prince and Kevin T. Strong of PRINCE LAW GROUP, appearing on behalf of Plaintiff Diane Sanchez and no one appearing on behalf of Defendant Blas Bon. The Court having reviewed the application on file herein, the documents attached thereto, and being duly advised in the premises:

This matter arises from a motor vehicle collision involving four (4) cars that occurred on April 28, 2015. On August 7, 2015, Sanchez filed her Complaint for personal injuries against Defendants Blas Bon ("Bon") and Joseph Acosta. On October 13, 2016, Sanchez filed her Amended Complaint wherein she named Wilfredo Acosta as an additional defendant. On October 16, 2018, Sanchez and the Acosta Defendants filed their Stipulation and Order for Dismissal with Prejudice following their confidential settlement of Sanchez's claims.

1

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input checked="" type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

*mk*



Prince Law Group  
8816 Spanish Ridge  
Las Vegas, NV 89148

Case Number: A-15-722815-C

JUL 12 2019

RPI.APP.000132

As to Bon, Sanchez filed her Affidavit of Due Diligence on October 22, 2015 wherein the process server described his failed efforts to personally serve Bon with the Summons and Complaint at his last known address on September 22, 2015. On March 29, 2016, Sanchez filed her Amended Affidavit of Compliance wherein she confirmed that Bon was served with the Summons and Complaint through the Nevada Department of Motor Vehicles, pursuant to NRS 14.070, on November 2, 2015. On November 9, 2015, Sanchez also sent, via certified mail, copies of the Summons, Complaint, traffic accident report, and November 2, 2015 DMV letter confirming proof of service, to Bon's last known address: 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. This package went unclaimed and was returned to Sanchez on November 12, 2015. On April 1, 2016, the district court entered Default against Bon for his failure to file an answer to Sanchez's Complaint or to otherwise appear in the action within twenty (20) days of service. On March 29, 2019, Sanchez filed her Application for Entry of Default Judgment pursuant to NRCP 55(b)(2). The district court's entry of default constitutes an admission by Bon of all material facts alleged in Sanchez's Complaint. *Estate of LoMastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1068 (2008). As a result, entry of default against Bon resolves the issues of liability and causation for all claims for relief in Sanchez's Complaint. *Id.* The only outstanding issue is the extent of Sanchez's damages.

Based on the foregoing, this Court finds and enters judgment against Bon as follows:

1. On April 28, 2015, Sanchez traveled northbound on Interstate 15 in a 1995 BMW 325i in the #5 travel lane. Bon drove a 1997 Dodge Ram 2500 pickup truck, wherein he hauled two wheelbarrows in the truck bed, directly behind Sanchez. Bon negligently collided with the left side of Sanchez's rear bumper.

2. As a result of Bon's negligence, Sanchez sustained severe and life-altering injuries to her cervical spine and lumbar spine that required substantial medical treatment, including anterior artificial disc replacement surgery at L4-5 of her lumbar spine, as established by her medical records.

3. As a result of Bon's negligence, it is reasonably foreseeable that Sanchez will suffer ongoing pain, suffering, and loss of enjoyment of life. It is also reasonably foreseeable that Sanchez will

undergo future medical treatment to address her cervical and lumbar spine injuries and ongoing residual chronic pain complaints suffered as a result of Bon's negligence. Sanchez's need for future medical treatment and the associated costs for her future medical treatment are established by her medical records and opinions of her retained medical expert, David J. Oliveri, M.D. Dr. Oliveri offers these opinions to a reasonable degree of medical probability.

4. As a result of Bon's negligence, Sanchez suffered past economic damages and it is reasonably foreseeable that Sanchez will suffer future economic damages that consist of: (1) future medical expenses, (2) past and future loss of wages and employee benefits, (3) loss of past and future housekeeping and household management services, and (4) reduction in the value of life damages. The extent of Sanchez's past and future economic damages is established by the opinions of her retained economist, Stan V. Smith, Ph.D. Dr. Smith offers his opinions to a reasonable degree of economic probability. Sanchez's permanent functional capacity disability that will preclude her from working in the future is established by the opinions of Dr. Oliveri. Dr. Oliveri offers this opinion to a reasonable degree of medical probability.

Based upon the papers, pleadings, and evidence on file herein, judgment is hereby entered in favor of Plaintiff Diane Sanchez and against Defendant Blas Bon, jointly and severally, as follows:

1. Past medical special damages:	\$465,285.01
2. Future medical special damages:	\$827,038.00
3. Past and future economic wage loss and employee benefits:	\$840,260.00
4. Past and future economic loss of household services:	\$446,334.00
5. Past pain and suffering:	\$2,000,000.00
6. Future pain and suffering:	\$3,000,000.00
7. Future reduction in the value of life:	\$2,685,877.00
8. Pre-judgment interest as allowed by Nevada law on past damages:	<u>\$599,417.62</u>
<b>Total Damages:</b>	<b>\$10,864,211.63</b>

Attorneys' fees based on a contingency fee agreement of forty percent (40%) of the total judgment award in the amount of \$4,345,684.65 ( $\$10,864,211.63 * .40$ ) pursuant to *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Rep. 67, 429 P.3d 664, 670-71 (Nev. Ct. App. 2018).


A total judgment in the amount of \$15,209,896.28, plus costs in the amount of \$2,759.45, is hereby entered in favor of Plaintiff Diane Sanchez and against Defendant Blas Bon. Plaintiff Diane Sanchez shall also be entitled to interest as allowed by Nevada law from the date of entry hereof until the judgment is fully satisfied.

DATED this 19<sup>th</sup> day of July, 2019.

  
DISTRICT COURT JUDGE

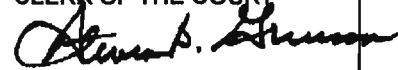
Respectfully Submitted By:

**PRINCE LAW GROUP**

  
DENNIS M. PRINCE  
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Attorneys for Plaintiff  
Diane Sanchez



# EXHIBIT 20



1 **ORDR**  
2 DENNIS M. PRINCE  
3 Nevada Bar No. 5092  
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12 Attorneys for Plaintiff  
13 *Diane Sanchez*

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

11 DIANE SANCHEZ,  
12 Plaintiff,

13 vs.

14 BLAS BON, individually; JOSEPH  
15 ACOSTA, individually; WILFREDO  
16 ACOSTA, individually; DOES I-X and ROE  
17 CORPORATIONS I-X, inclusive,  
18 Defendants.

Case No. A-15-722815-C  
Dept. No. XXV

**ORDER GRANTING PLAINTIFF'S  
MOTION PURSUANT TO NRS  
21.320 FOR JUDICIAL  
ASSIGNMENT OF CLAIMS  
AND/OR CAUSES OF ACTION  
DEFENDANT BLAS BON HAS  
AGAINST ATX PREMIER  
INSURANCE OR ANY OTHER  
APPLICABLE LIABILITY INSURER**

19 Plaintiff's Motion Pursuant to NRS 21.320 for Judicial Assignment of Claims and/or Causes  
20 of Action Defendant Blas Bon has Against ATX Premier Insurance or any other Applicable Liability  
21 Insurer was brought for hearing in Department XXV of the Eighth Judicial District Court, before The  
22 Honorable Kathleen E. Delaney, on the 20th day of August, 2019, with Kevin T. Strong of PRINCE  
23 LAW GROUP, appearing on behalf of Plaintiff Diane Sanchez, and no one appearing on behalf of  
24 Defendant Blas Bon. The Court having reviewed the pleadings and papers on file herein and being  
25 duly advised in the premises:

26 ...

27 ...

28 ...



Prince Law Group  
8816 Spanish Ridge  
Las Vegas, NV 89148

1       **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion  
2 Pursuant to NRS 21.320 for Judicial Assignment of Claims and/or Causes of Action Defendant Blas  
3 Bon has Against ATX Premier Insurance or any other Applicable Liability Insurer is **GRANTED**.

4       **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all of Defendant Blas  
5 Bon's claims of any kind whatsoever, arising in contract or tort, including, but not limited to, claims  
6 for breach of contract, breach of the duty of good faith and fair dealing, breach of the duty to settle,  
7 breach of the contractual duty to defend, and any other tort claims or claims for breach of fiduciary  
8 duties, against his insurer(s), including, but not limited to, ATX Premier Insurance, or any other  
9 insurance company or entity, shall be assigned to Plaintiff Diane Sanchez to collect upon the judgment  
10 in the amount of \$15,212,655.73, plus any post-judgment interest.

11       **IT IS SO ORDERED.**

12       DATED this 20<sup>th</sup> day of August, 2019.

  
DISTRICT COURT JUDGE

13  
14 Respectfully Submitted By:

15       **PRINCE LAW GROUP**

16  
17   
18 DENNIS M. PRINCE  
19 Nevada Bar No. 5092  
20 KEVIN T. STRONG  
21 Nevada Bar No. 12107  
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27 Attorneys for Plaintiff  
28 *Diane Sanchez*



# EXHIBIT 21

*Steven D. Grierson*

CASE NO: A-19-805351-C  
Department 13

**COMP**  
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KEVIN T. STRONG  
Nevada Bar No. 12107  
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Attorneys for Plaintiff  
Diane Sanchez

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DIANE SANCHEZ,  
Plaintiff,

CASE NO.:  
DEPT. NO.:

vs.

**COMPLAINT**

ATX PREMIER INSURANCE, a domestic  
corporation; WINDHAVEN NATIONAL  
INSURANCE COMPANY, a domestic  
corporation; DMA CLAIMS SERVICES, a  
foreign corporation; BLAS BON, an  
individual; DOES I-X and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

Plaintiff Diane Sanchez, by and through her attorneys of record, PRINCE LAW GROUP, and  
for her Complaint against Defendants ATX Premier Insurance, Windhaven National Insurance  
Company, DMA Claims Services, and Blas Bon, asserts and alleges as follows:

///



Prince Law Group  
8816 Spanish Ridge  
Las Vegas, NV 89148

I.

**PARTIES & JURISDICTION**

1. That all incidents complained of herein occurred in the County of Clark, State of Nevada.

2. At all times relevant herein, Plaintiff Diane Sanchez (hereinafter as "Ms. Sanchez") is and was a resident of the State of Nevada.

3. That the true names and capacities, whether individual, corporate, associate, or otherwise, of DOES I through X and ROES business entities, inclusive, are unknown to Ms. Sanchez, who therefore sues said Defendants by such fictitious names. Ms. Sanchez is informed and believes and upon that basis alleges that each of the Defendants designated herein as a DOE Defendant are responsible in some manner for events and happenings herein referred to and caused damages proximately thereby to Ms. Sanchez as herein alleged. Ms. Sanchez further alleges that she will ask leave of this Court to amend this Complaint to insert the true names, identities, and capacities of said DOES I through X and ROE Business Entities I-X, inclusive, when the same have been ascertained by Ms. Sanchez, together with appropriate charging allegations.

4. Based upon information and belief, Defendant ATX Premier Insurance (hereinafter as "ATX"), was a domestic corporation domiciled in the State of Florida and authorized to do the business of insurance as a property and casualty insurer in the State of Nevada since January 3, 1994.

5. Based upon information and belief, Defendant Windhaven National Insurance Company (hereinafter as "Windhaven") is a domestic corporation domiciled in the State of Florida. Windhaven purchased the assets of ATX effective October 24, 2016, thereby assuming all authorizations, obligations, liabilities, and duties owed by ATX. Windhaven is authorized to do the business of insurance as a property and casualty insurer in the State of Nevada as the successor entity to ATX. As the successor of ATX, Windhaven is liable for all debts and obligations of ATX in any and all amounts caused to Ms. Sanchez by ATX's breach of duties described herein.

6. Based upon information and belief, Defendant DMA Claims Services (hereinafter as "DMA"), is a foreign corporation domiciled in the State of Nevada and authorized to do the business of insurance claims adjustment as an independent adjuster since November 14, 2001.

7. Based upon information and belief, Defendant Blas Bon (hereinafter as “Bon”) is, and at all time mentioned herein, was, a resident of the State of Nevada.

## II.

## STATEMENT OF FACTS

8. Prior to April 15, 2015, ATX issued a personal liability policy to non-party Hipolito Cruz (hereinafter as “Cruz”), policy number ANV00003087. The policy included personal automobile liability insurance coverage. The liability insurance coverage limits are for bodily injury claims of \$15,000.00 per person and \$30,000.00 per occurrence (the “Policy”).

9. Pursuant to the terms and conditions of the Policy, ATX agreed to provide liability insurance coverage to its insureds, including coverage for those liability claims arising out of the permissive use of an insured vehicle by third parties.

10. On April 15, 2015, Bon was driving Cruz's 1997 Dodge Ram 2500 pickup truck with the express permission of Cruz. As a permissive driver of the Cruz vehicle, Bon had coverage as an insured under the ATX policy for the injuries caused to Ms. Sanchez.

11. On or about April 15, 2015, Ms. Sanchez was driving her vehicle northbound on I-15 behind non-party Donna Evans (“Evans”), in Clark County, Nevada. Bon, while operating the Cruz vehicle, negligently operated the Cruz vehicle so as to cause it to strike Ms. Sanchez’s vehicle. In addition, Ms. Sanchez’s vehicle was struck by another liable party who Ms. Sanchez subsequently resolved her claims against.

12. As a result of the subject collision, Ms. Sanchez sustained catastrophic and life altering injuries to her neck and back.

13. At the time of the subject collision, ATX had issued an automobile liability insurance policy to Cruz. Bon was driving the insured vehicle with permission from Cruz. Bon, as a permissive user of the insured vehicle was personally insured by ATX. ATX owed Bon a contractual duty to defend; a duty of good faith and fair dealing to defend, indemnify or settle Ms. Sanchez's claims when it knew of the pendency of the action; a duty to timely intervene; a duty to diligently investigate the facts and circumstances of Ms. Sanchez's accident; and a duty to settle the claim within the policy limits when it had a reasonable opportunity to do so or take action to protect the interests of its insureds.

1           14.     Prior to the accident, ATX and DMA entered into a contract wherein DMA agreed to  
2 serve as an independent adjuster for claims received by ATX. DMA assumed a duty to carry out the  
3 terms and conditions owed by ATX to Ms. Sanchez under the Policy.

4           15.     Following the accident, on May 21, 2015, Ms. Sanchez, through her counsel, reported  
5 her claim to ATX, which included her medical records, bills, and other supporting documentation.  
6 ATX assigned Ms. Sanchez's claim a claim number of DMA-0147074, signifying that DMA would  
7 serve as an independent adjuster for Ms. Sanchez's claim. Ms. Sanchez's medical specials at that time  
8 totaled in excess of \$8,000.00, and Ms. Sanchez was still undergoing treatment for her injuries.

9           16.     On June 16, 2015, Ms. Sanchez sent DMA a written demand letter pursuant to the  
10 direction of ATX that it would serve as a third-party claims administrator, offering to settle the matter  
11 concerning the subject collision for all applicable policy limits. The demand letter made clear that  
12 Ms. Sanchez would file suit if no response was received prior to June 30, 2015. DMA and ATX failed  
13 to respond to Ms. Sanchez's letter prior to June 30, 2015.

14           17.     On July 10, 2015, DMA sent Ms. Sanchez a letter acknowledging that DMA  
15 represented the interests of ATX regarding the subject collision. No further communications from  
16 DMA were received by Ms. Sanchez or appointed counsel.

17           18.     Pursuant to DMA's agreement with ATX to serve as an independent adjuster, DMA  
18 assumed certain contractual duties and obligations including, a duty to timely respond to electronic  
19 and written communications as well as a duty to investigate Ms. Sanchez's claim under Nevada law  
20 and failed to do so.

21           19.     On August 7, 2015, a Complaint was filed by Ms. Sanchez against Bon and the other  
22 defendant who hit her vehicle in the Eighth Judicial District Court, Case No. A-15-722815-C. The  
23 allegations contained in the Complaint are incorporated herein by this reference as if fully set forth  
24 herein. In the Complaint, Ms. Sanchez alleged, among other things, that (1) Defendants were  
25 negligent in causing the accident and injuries to Ms. Sanchez; and (2) Bon operated the truck owned  
26 by Cruz during the subject collision.

27           20.     Bon was properly served, under Nevada law, with the Summons, Complaint, and  
28 traffic accident report.

1           21.    On December 11, 2015, Ms. Sanchez through her counsel sent ATX a letter  
2 withdrawing her demand.

3           22.    On January 20, 2016, Ms. Sanchez through her counsel sent ATX a letter advising that  
4 Bon had been served and provided a copy of the Summons and Complaint.

5           23.    ATX and DMA failed to respond to the January 20, 2016 correspondence.

6           24.    On February 16, 2016, Ms. Sanchez again sent ATX another letter advising that Bon  
7 had not provided an Answer to Ms. Sanchez's Complaint and that a request for the Court to enter a  
8 Default would be entered if Bon failed to provide an Answer to Ms. Sanchez's Complaint.

9           25.    Bon subsequently failed to provide an Answer to Ms. Sanchez's Complaint.

10          26.    ATX and DMA failed to respond to the February 16, 2016 correspondence.

11          27.    On April 1, 2016, the district court entered Default against Bon for his failure to file  
12 an answer to Ms. Sanchez's Complaint or to otherwise appear in the action within twenty (20) days  
13 of service.

14          28.    Even after being notified of the entry of default, ATX failed and refused to investigate,  
15 provide a defense, or indemnify its insureds for this substantial loss. ATX did not hire counsel, request  
16 that the default be set aside, or undertake any steps to defend its insureds.

17          29.    Based upon the allegations set forth in the Complaint, ATX had a duty to defend its  
18 insureds against the allegations in Ms. Sanchez's Complaint under Nevada law and failed to do so.

19          30.    On October 24, 2016, ATX changed its name and began doing business as Windhaven  
20 National Insurance Company while maintaining its principal and mailing addresses. Windhaven  
21 assumed all duties and obligations owed by ATX to Ms. Sanchez under the Policy.

22          31.    On March 29, 2019, Ms. Sanchez filed an Application for Entry of Default Judgment  
23 pursuant to NRCP 55(b)(2) seeking a judicial determination of damages. A notice of the hearing was  
24 served upon Bon.

25          32.    On July 19, 2019, a Default Judgment was entered in the amount of \$10,864,211.63  
26 against Bon.

27          33.    On July 19, 2019, Ms. Sanchez filed a Motion Pursuant to NRS 21.320 for Judicial  
28 Assignment of Claims and/or Causes of Action Defendant Blas Bon has Against ATX Insurance or  
any other Applicable Liability Insurer.

1           34.     On August 20, 2019, an Order Granting Ms. Sanchez's Motion Pursuant to NRS  
2 21.320 for Judicial Assignment of Claims and/or Causes of Action Defendant Blas Bon has Against  
3 ATX Insurance or any other Applicable Liability Insurer was entered. Ms. Sanchez as the assignee  
4 has the legal right and ability to assert all claims against ATX and Windhaven to satisfy the full  
5 judgment amount based upon the breach of duties owed to Bon.

6           35.     Defendants ATX and Windhaven have failed to compensate Ms. Sanchez for all  
7 damages she incurred in excess of Bon's liability limits, to the extent of the first-party policy benefits  
8 under the policy issued by ATX. ATX and Windhaven had a duty to indemnify its insureds for the  
9 loss suffered by Ms. Sanchez under Nevada law and failed to do so.

10                               **FIRST CLAIM FOR RELIEF**

11                               ***(Breach of Contract Against Defendants ATX, Windhaven, and DMA)***

12           36.     Ms. Sanchez repeats and realleges the allegations contained in Paragraphs 1-35 as  
13 though fully set forth herein.

14           37.     A contract of insurance existed between ATX and Cruz on the date of the accident  
15 described herein. Cruz and Bon are insureds under the terms and conditions of the ATX policy.  
16 Defendants owed contractual duties to Cruz and Bon.

17           38.     At the time of the subject incident, all premiums were paid under Cruz's insurance  
18 policy. All proofs of loss were submitted under said policy, and Cruz and Bon performed all  
19 conditions required by the policy to be performed.

20           39.     Defendants ATX, Windhaven, and DMA breached their contractual duties owed to  
21 Bon by failing to defend, indemnify, investigate, or settle Ms. Sanchez's claims when it knew of the  
22 pendency of the action, failed to timely intervene, and failed to settle the claim within policy limits  
23 when it had a reasonable opportunity to do so or take action to protect the interests of its insureds.  
24 Defendants ATX, Windhaven, and DMA are legally bound by the judgment entered in Case No. A-  
25 15-722815-C, in the amount of \$10,864,211.63 and must satisfy the same.

26           40.     As a result thereof, Ms. Sanchez has been damaged in an amount in excess of  
27 \$15,000.00.

28           41.     Ms. Sanchez has been compelled to retain the services of an attorney to prosecute this  
action and is therefore entitled to reasonable attorney's fees and costs incurred herein.

1 **SECOND CLAIM FOR RELIEF**

2 ***(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Defendants ATX,***  
3 ***Windhaven, and DMA )***

4 42. Ms. Sanchez repeats and realleges the allegations contained in paragraphs 1-41 as  
5 though fully set forth herein.

6 43. That Defendants ATX, Windhaven, and DMA owed a duty of good faith and fair  
7 dealing arising out of the contract of insurance to Cruz and Bon.

8 44. Defendants ATX, Windhaven, and DMA breached their duty of good faith and fair  
9 dealing owed to Bon by failing to defend, indemnify, investigate or settle Ms. Sanchez's claims when  
10 it knew of the pendency of the action, failed to timely intervene, failed to diligently investigate the  
11 facts and circumstances of Ms. Sanchez's accident, and failed to settle the claim within the policy  
12 limits when it had a reasonable opportunity to do so or take action to protect the interests of its  
insureds.

13 45. As a result of Defendants ATX, Windhaven, and DMA bad faith refusal to defend,  
14 indemnify, investigate, intervene, or settle Ms. Sanchez's claim, Ms. Sanchez has been damaged in  
15 an amount in excess of \$15,000.00.

16 46. Defendants ATX, Windhaven, and DMA conduct was willful, wanton, malicious,  
17 oppressive and done in reckless disregard of Ms. Sanchez's rights. By reason of Defendants ATX,  
18 Windhaven, and DMA conduct and the bad faith, Ms. Sanchez is entitled to exemplary and punitive  
damages.

19 47. Ms. Sanchez has been compelled to retain the services of an attorney to prosecute this  
20 action and is therefore entitled to reasonable attorney's fees and costs incurred herein.

21 **THIRD CLAIM FOR RELIEF**

22 ***(Violation of Nevada's Unfair Claims Practices Act Against Defendants ATX,***  
23 ***Windhaven, and DMA)***

24 48. Ms. Sanchez repeats and realleges the allegations contained in Paragraphs 1-47 as  
25 though fully set forth herein.



49. Defendants ATX, Windhaven, and DMA were obligated to comply with Nevada's Unfair Claims Practices Act set forth in NRS 686A.310 plus all other applicable regulations adopted by the Nevada Insurance Commissioner.

50. Defendants ATX, Windhaven, and DMA rejected Ms. Sanchez's offer to settle her claim for the policy limit prior to Ms. Sanchez commencing litigation.

51. Defendants ATX, Windhaven, and DMA failed to diligently investigate the facts and circumstances of Ms. Sanchez's accident, fairly evaluate her claim, and act promptly and reasonably in rejecting or settling the claim.

52. By failing and refusing to defend, indemnify and/or settle Ms. Sanchez's claim, Defendants ATX, Windhaven, and DMA violated NRS 686A.310 as well as regulations adopted by the Nevada Insurance Commissioner.

53. As a result of Defendants ATX, Windhaven, and DMA violation of NRS 686A.310 and accompanying regulations, Ms. Sanchez has been damaged in an amount in excess of \$15,000.00.

54. Ms. Sanchez has been compelled to retain the services of an attorney to prosecute this action and is therefore entitled to reasonable attorney's fees and costs incurred herein.

#### **FOURTH CLAIM FOR RELIEF**

***(Action on the Default Judgment Against Defendant Blas Bon)***

55. Ms. Sanchez repeats and realleges the allegations set forth in Paragraphs 1-54 as though fully set forth herein.

56. On July 19, 2019, the Eighth Judicial District Court, Clark County, Nevada, entered a Default Judgment against Bon in the amount of \$10,864,211.63.

57. The July 19, 2019 Default Judgment was entered against Bon for his failure to file an answer to Ms. Sanchez's Complaint for personal injuries, filed on August 7, 2015, or to otherwise appear in that action within twenty (20) days of service of the Summons and Complaint for personal injuries.

58. As a direct result of the Eighth Judicial District Court's entry of the Default Judgment against Bon, all issues of liability, causation, and damages arising from Ms. Sanchez's personal injury claims are fully resolved.

1           59.     The full amount of the \$10,864,211.63 Default Judgment entered against Bon remains  
2 unsatisfied.

3           60.     As the judgment debtor, Bon is legally responsible for satisfying the full amount of the  
4 Default Judgment entered against him on July 19, 2019 and in the amount of \$10,864,211.63.

5           61.     Ms. Sanchez, as the judgment creditor, hereby reserves the right to utilize all remedies  
6 under Nevada law to collect on the July 19, 2019 Default Judgment by way of her action on the default  
7 judgment, including the Court's issuance of a writ of attachment upon the personal property of Bon  
8 pursuant to NRS 31.010 *et seq.*; the Court's issuance of a writ of garnishment upon the money, credits,  
9 effects, debts, choses in action, and other personal property of Bon pursuant to NRS 31.240 *et seq.*;  
10 replevin; or any other means of collection available to her under Nevada law.

11           62.     Ms. Sanchez has been compelled to retain the services of an attorney to prosecute this  
12 action and is therefore entitled to reasonable attorney's fees and costs incurred herein.

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# EXHIBIT 22

**KOLESAR & LEATHAM**

ATTORNEYS AT LAW

400 SOUTH RAMPART BLVD., SUITE 400  
LAS VEGAS, NEVADA 89145  
702.362.7800  
klnevada.com

January 22, 2020

***Via Facsimile: (702) 534-7601***

Dennis M. Prince, Esq.  
Kevin T. Strong, Esq.  
PRINCE LAW GROUP  
10801 W. Charleston Blvd., Suite 560  
Las Vegas, NV 89135

**Re: Diane Sanchez v. Blas Bon, et.al.**  
Eighth Judicial District Court Case No. A-15-722815-C  
Our File No. 10917-1

Dear Counsel:

In response to your correspondence of January 21, 2020, I can advise that I have been retained to represent Mr. Bon in the state court action, noted above. I am not representing the insurance company, Windhaven fka ATX, or DMA Claims, Inc., which are represented by Mr. Podesta and Mr. Schumacher, respectively. Also, as of this time, I have not been retained to represent Mr. Bon in the federal enforcement action (Case 2:19-cv-02196-RFB-VCF).

Very truly yours,

**KOLESAR & LEATHAM**  
William P. Volk, Esq.

WPV/laf

cc: John H. Podesta, Esq.  
[john.podesta@wilsonelser.com](mailto:john.podesta@wilsonelser.com)  
Robert E. Schumacher, Esq.  
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3310529 (10917-1)

RPI.APP.000150

# EXHIBIT 23



January 23, 2020

**Via Facsimile (702) 362-9472**

William P. Volk  
William D. Schuller  
KOLESAR & LEATHAM  
400 South Rampart Boulevard  
Suite 400  
Las Vegas, Nevada 89145

**Re:** *Sanchez v. Bon et al.*  
Case No. A-15-722815  
Case No. 2:19-cv-02196-RFB-VCF

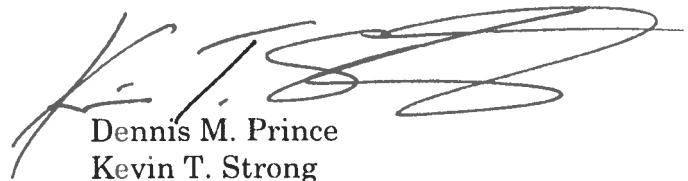
Dear Mr. Volk,

Thank you for your letter dated January 22, 2020 wherein you confirm that you have been retained to represent Mr. Bon in the state court action. Based on your retention, please advise of Mr. Bon's whereabouts so that we may serve him with the summons and complaint in the federal enforcement action (Case No. 2:19-cv-02196-RFB-VCF). Please also confirm whether you waive acceptance of service of the summons and complaint on Mr. Bon's behalf in the federal enforcement action pursuant to FRCP 4(e).

Thank you for your time and attention to this matter.

Sincerely,

**PRINCE LAW GROUP**

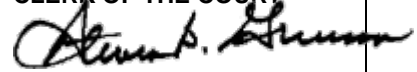


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RPI.APP.000152

**2**



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*Attorneys for Defendant Blas Bon*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DIANE SANCHEZ,  
Plaintiff,

*vs.*

BLAS BON, INDIVIDUALLY; JOSEPH  
ACOSTA, INDIVIDUALLY; WILFREDO  
ACOSTA, INDIVIDUALLY; DOES I-X AND  
ROE CORPORATIONS I-X, INCLUSIVE,  
Defendants.

Case No. A-15-722815-C

Dept. No. 25

**[Hearing Requested]**

**MOTION FOR REHEARING AND TO  
ALTER OR AMEND THE JUDGMENT AND  
ORDER DENYING RULE 60(b) RELIEF**

Defendant Blas Bon asks thabreis Court to rehear the Rule 60(b) motion and to enter an order vacating its prior order and default judgment, which are void for lack of due process. NRCP 60(b)(4), 59(e); *see also* NRCP 52(b), 54(c), 55(c). *See generally Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 926, 314 P.3d 946, 948 (2013) (“a motion to alter or amend is permitted as to any appealable order, not just final judgments”).

Hearing this motion now allows this Court to correct the constitutional error before it is reversed on appeal.



1 ARGUMENT

2 The judgment against defendant Blas Bon is void for lack of due process.  
3 First, the judgment violates Bon’s due process right to actual notice of the com-  
4 plaint through proper service under NRCP 4. Second, the judgment is unconsti-  
5 tutional because the complaint itself does not provide notice of Bon’s potential  
6 liability for a judgment for more than \$10 million in damages (ultimately more  
7 than \$15 million, with interest). As a void judgment may be vacated at any  
8 time, *Rawson v. Ninth Judicial Dist. Court*, 133 Nev., Adv. Op. 44, 396 P.3d  
9 842, 848 & n.4 (2017), this Court should correct these constitutional errors now,  
10 on rehearing, rather than awaiting a reversal by the Supreme Court.

11 I.

12 **THE DEFAULT JUDGMENT IS VOID BECAUSE IT WAS ENTERED WITHOUT**  
13 **ACTUAL SERVICE UPON THE DEFENDANT, OR EVEN A DILIGENT ATTEMPT**

14 Bon did not get proper service, either of the original complaint or the  
15 amended complaint on which the default judgment was ultimately entered.  
16 Plaintiff Diane Sanchez concedes that the summons and complaint—mailed  
17 only to a community center that was plainly not a permanent place of abode—  
18 were returned unserved, and she made *no* effort, much less a diligent one, to lo-  
19 cate Bon through the other address and place of employment he provided in the  
20 initial accident report.

21 A. Standard of Review

22 “The statutory provisions for acquiring jurisdiction over a defendant by  
23 other than personal service must be strictly pursued.” *Foster v. Lewis*, 78 Nev.  
24 330, 333, 372 P.2d 679, 680–81 (1962) (citing *State ex rel. Crummer v. Fourth*  
25 *Judicial Dist. Court*, 68 Nev. 527, 238 P.2d 1125 and *Perry v. Seventh Judicial*  
26 *Dist. Court*, 42 Nev. 284, 174 P. 1058 (1918).

27 This is because constructive service raises grave due process concerns.  
28 *Browning v. Dixon*, 114 Nev. 213, 216–18, 954 P.2d 741, 743–44 (1998). The

1 Nevada Supreme Court has so held expressly in the context of service through  
2 the DMV under NRS 14.070:

3 [T]he phrase “cannot be found” imposes an affirmative obliga-  
4 tion on a plaintiff to diligently search for a resident motorist  
5 defendant to determine whether the defendant has, in fact,  
6 departed the state or cannot be located within the state. Any  
other conclusion contravenes the plain meaning of the statute  
and *violates the principles of procedural due process*.

7 *Id.* (emphasis added) (citing *Sheriff v. Wu*, 101 Nev. 687, 689–90, 708 P.2d 305,  
8 306 (1985) (“Where a statute may be given conflicting interpretations, one ren-  
9 dering it constitutional, and the other unconstitutional, the constitutional inter-  
10 pretation is favored.”)).

11 **B. Due Process Requires Due Diligence,**  
12 **Including Reasonable Efforts to Locate a**  
13 **Defendant through the Information He Provides**

14 **1. *New NRCP 4.4 Codifies Existing***  
15 ***Due Process Requirements***

16 In 2019, the Nevada Supreme Court promulgated comprehensive amend-  
17 ments to the Nevada Rules of Civil Procedure. In many cases, those rules  
18 aimed at clarifying or codifying what previously had developed through the  
common law. *See, e.g.*, 2019 Advisory Committee Note to Rule 41.

19 So, too, with the amendments to former Rule 4, now spread across five  
20 rules (Rules 4, 4.1, 4.2, 4.3, and 4.4). In particular, Rule 4.4(b) prevents the  
21 hasty resort to service by publication or other constructive methods by requir-  
22 ing plaintiffs to exhaust certain several alternatives for locating a hard-to-find  
23 defendant, such as: “the defendant’s known, or last-known, contact information,  
24 including the defendant’s address, phone numbers, email addresses, social me-  
25 dia accounts, or any other information used to communicate with the defend-  
26 ant.” NRCP 4.4(b)(2)(A)(ii). Even then, the plaintiff must show how the alter-  
27 native service method “comports with due process.” NRCP 4.4(b)(2)(B). This  
28 provision is modeled on Rule 4.1(k) of the Arizona Rules of Civil Procedure,

1 Rule 4.4(b), and was expressly designed to “authorize[] the court to fashion a  
2 method of service *consistent with due process* when no other available service  
3 meth-od remains besides publication, which should only be used as a last re-  
4 sort.” 2019 Advisory Committee Notes to Rule 4.4 (emphasis added).

5 These alternative efforts, in other words, track what due process already  
6 requires. *See Browning v. Dixon*, 114 Nev. 213, 216–18, 954 P.2d 741, 743–44  
7 (1998) (holding that due process requires attempted service by alternative  
8 means before resorting to NRS 14.070 or service by publication under former  
9 NRCP 4(e)(1)(i)).

10 That Nevada drew from Arizona in codifying the due process requirement  
11 of alternative service is no surprise. Like Nevada, Arizona holds that alterna-  
12 tive means of service “other than personal service must be strictly construed.  
13 *Llamas v. Superior Court in & for Pima County*, 474 P.2d 459, 460 (Ariz. 1970)  
14 (citing *Miller v. Corning Glass Works*, 429 P.2d 438 (Ariz. 1967); *compare Foster*  
15 *v. Lewis*, 78 Nev. 330, 333, 372 P.2d 679, 680–81 (1962). In *Ruffino v. Lokosky*,  
16 for instance, the plaintiff’s process server conducted a skip trace and nine times  
17 attempted to serve the defendant at three different addresses before serving by  
18 publication. 425 P.3d 1108, 1110–11 (Ariz. Ct. App. 2018). As a matter of law,  
19 this was insufficient: “[D]ue process impose[s] a requirement that service by  
20 publication be the best means practicable to provide notice to the interested  
21 party.” *Id.* at 1113. In that case, that meant attempting “modern methods of  
22 communication, especially email” through alternative service, rather than  
23 through publication in a distant newspaper. *Id.*; *cf. also Llamas v. Superior*  
24 *Court in & for Pima County*, 474 P.2d 459, 460 (Ariz. 1970) (vacating as void a  
25 default judgment entered after publication when the plaintiff could have ascer-  
26 tained the defendant’s identity through mortgage documents and the phone  
27 book); *Sprang v. Petersen Lumber, Inc.*, 798 P.2d 395, 399–400 (Ariz. Ct. App.  
28 1990) (county property records ought to have been searched).

1 The Nevada Supreme Court has imposed similar due diligence require-  
2 ments on plaintiffs seeking service by publication or through the DMV under  
3 NRS 14.070. These extraordinary measures of last resort apply only when “the  
4 defendant has, in fact, departed the state or *cannot be located* within the state.”  
5 *Browning v. Dixon*, 114 Nev. 213, 216–18, 954 P.2d 741, 743–44 (1998); NRS  
6 14.070(5), (6). “Cannot” presupposes some level of impossibility or at least im-  
7 practicability: “Where other reasonable methods exist for locating the wherea-  
8 bouts of a defendant, plaintiff should exercise those methods.” *Price v. Dunn*,  
9 106 Nev. 100, 103, 787 P.2d 785, 787 (1990).

10 Three specific ways of finding a defendant that a plaintiff must ordinarily  
11 exhaust are the defendant’s employer, *Browning v. Dixon*, 114 Nev. 213, 215,  
12 954 P.2d 741, 742 (1998), information provided in a police report, *Abreu v.*  
13 *Gilmer*, 115 Nev. 308, 314, 985 P.2d 746, 749 (1999), and the defendant’s ac-  
14 quaintances, *Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990). In  
15 *Abreu*, the Supreme Court held that a plaintiff had acted diligently, in part be-  
16 cause there was no police report to assist in locating the defendant. 115 Nev. at  
17 314, 985 P.2d at 749. In *Browning*, by contrast, the defendant’s employer was  
18 known, so although the defendant moved after the accident, the plaintiff ought  
19 to have sought the defendant through inquiring at his work. 114 Nev. at 218,  
20 954 P.2d at 744. *See also Gassett v. Snappy Car Rental*, 111 Nev. 1416, 906  
21 P.2d 258 (1995) (no attempt to locate the defendant through her known attor-  
22 ney). Likewise, in *Price v. Dunn*, the plaintiff’s technical compliance with the  
23 rule did not excuse failure to exhaust reasonable means of locating and serving  
24 the defendant, including contacting the defendant’s relatives. 106 Nev. 100,  
25 787 P.2d 785 (1990).

1           **C.     Sanchez Did Not Attempt to Locate Bon through**  
2           **His Employer or the Address He Provided**  
3           **for the Vehicle He Borrowed**

4           Here, Sanchez did not satisfy due process through a diligent exhaustion of  
5 the information that Bon himself provided at the time of the accident. As de-  
6 tailed in the prior motion (at 6–7), Bon identified his employer, South West  
7 Trees (which a Google search confirms is located at 2901 S. Highland Drive, Las  
8 Vegas, Nevada 89109), and 4000 Abrams Avenue, Las Vegas, Nevada 89110 as  
9 the address of Hipolito Felipe Cruz, the owner of the car, from whom Bon had  
10 borrowed the car and who clearly knew Bon. (Ex. 1 to Default Judgment Appli-  
11 cation.)

12           Sanchez tried neither. (Default Judgment Application.) Sanchez cannot,  
13 by having a process server tick off *other* mechanical boxes like voter registration  
14 records, excuse the failure to do what any reasonable person trying to find Bon  
15 outside of litigation would do: ask his employer and the car’s owner, both who  
16 knew him and likely could have located him at the time.

17           Sanchez complains that Bon might not have *lived* at those addresses,<sup>1</sup> but  
18 that misses the point. Bon clearly did not live at the community center, either,  
19 as evidenced by the unsuccessful attempt to mail him the complaint through  
20 the DMV. But those efforts would have likely helped *locate* Bon to be person-  
21 ally served. And even if this proved difficult, Sanchez could have moved for ad-  
22 ditional time. She could have moved for service by alternative means, or as a  
23 last resort, when the summons and complaint returned unopened from the  
24 DMV, she could have moved for service by publication. She did none of these  
25 things. Because “reasonable methods exist[ed] for locating the whereabouts of  
26 [Bon], [Sanchez] should [have] exercise[d] those methods.” *See Price v. Dunn*,

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27 <sup>1</sup> Without trying, however, Sanchez cannot establish this. Co-defendant Joseph  
28 Acosta served a cross-claim on Bon at the Abrams address. (Exx. 1–2 to Motion  
to Enlarge Time.)

1 106 Nev. 100, 103, 787 P.2d 785, 787 (1990).

2 **D. The Defective Service Voids the Judgment**

3 Defective service is a due process violation. It is not something that can  
4 be cast aside, as Sanchez attempts, by pointing the finger at alleged failures by  
5 the defendant's insurance company, or excused by speculation that the defend-  
6 ant likely heard about the lawsuit through other means. *Cf. Feinstein v.*  
7 *Bergner*, 397 N.E.2d 1161, 1164–65 (N.Y. 1979) (“actual notice of the suit does  
8 not cure this defect, since notice received by means other than those authorized  
9 by statute cannot serve to bring a defendant within the jurisdiction of the  
10 court”). A defendant is entitled to service as a matter of due process, and defec-  
11 tive service renders a default judgment void. *Gassett v. Snappy Car Rental*, 111  
12 Nev. 1416, 1419, 906 P.2d 258, 261 (1995).

13 Here, Sanchez's failure to personally serve Bon or even exercise due dili-  
14 gence to locate him render the judgment void.

15 **E. The Amended Complaint Was Not Served**

16 Sanchez admits that she did not even try to give Bon notice of the  
17 amended complaint through service under Rule 4 or even under Rule 5. So the  
18 due process violation from the failure to serve the initial complaint stood uncor-  
19 rected. What's more, as stated in Bon's original motion (at 12–13), this  
20 amended complaint changed the fundamental allegations about what happened  
21 and which defendant was responsible for what. This violation of Rule 5(a) inde-  
22 pendently violated Bon's due process.

23 **F. Improper Service Is Not Excused**  
24 **by Accusations against an Insurer**

25 Sanchez improperly relies on unsubstantiated charges against ATX, an  
26 insurance company, but those accusations do not forfeit Bon's right to due pro-  
27 cess. Sanchez speculates that Bon's insurer might not have provided a defense  
28 even if Bon had been properly served. That kind of counterfactual musing,

1 however, cannot excuse ignoring the requirements of due process.

2 Bon had a right to be served with the complaint and the amended com-  
3 plaint: he could have been appointed counsel, but even if not, he could have rep-  
4 resented himself or retained counsel. Sanchez's grievances against Bon's in-  
5 surer do not justify the due process deprivation.

## 6 II.

### 7 **THE DEFAULT JUDGMENT IS VOID FOR** 8 **LACK OF NOTICE OF THE DAMAGES**

9 The default judgment entered against Bon is also void for lack of due pro-  
10 cess because it purports to award more than \$15.2 million to plaintiff, despite  
11 plaintiff's complaint and amended complaint having sought only "an amount in  
12 excess of \$10,000.00 for general damages" and an "an amount in excess of  
13 \$10,000.00 for special damages." In other words, the default judgment for \$15.2  
14 million drastically "exceeds in amount" plaintiff's request for a total of \$20,000  
15 in the operative pleadings, which could not have apprised and did not apprise  
16 Bon (or anyone else) of the actual relief at issue. The default judgment must  
17 therefore be vacated or, in the alternative, amended to reflect a maximum of  
18 \$20,000 in damages.

#### 19 **A. Nevada's General Pleading Rules for Cases in Which All** 20 **Parties Appear Must Bend to Constitutional Due Process**

21 It is true that the version of NRCP 8(a)(4) in effect in 2016 provided that,  
22 "if the pleader seeks more than \$10,000 in monetary damages, the demand for  
23 relief may request damages 'in excess of \$10,000' without further specification  
24 of the amount." In turn, NRCP 54(c) has allowed courts to determine the  
25 amount of damages when the prayer for relief is unspecified pursuant to NRCP  
26 8(a)(4). The Nevada Rules of Civil Procedure, however, cannot permit parties  
27 and courts to do what the Constitution forbids.

1           **B.     Due Process Requires Notice of the Amount**  
2           **of Damages a Plaintiff Will Seek via Default**

3                 **1.     *The Complaint Must State the Amount of Damages***  
4                 ***to Be Recovered if the Defendant Defaults***

5           More specifically, constitutional due-process requirements prohibit de-  
6           fault judgments that “differ in kind from, or exceed in amount,” the demands in  
7           the relevant pleadings. *See* Fed. R. Civ. P. 54(c) (“A default judgment must not  
8           differ in kind from, or exceed in amount, what is demanded in the pleadings.”);  
9           *see also* Amendola et al., 16D C.J.S. *Constitutional Law* § 1946 (Sept. 2020 Up-  
10          date) (“The content of [a] notice must apprise the defendant of the nature of the  
11          claim and of the relief sought. For due process purposes, the notice must inform  
12          one of the antagonist’s demands and of the consequences of a default . . . .”) (cit-  
13          ing *In re Marriage of Lippel*, 51 Cal. 3d 1160, 1166 (1990) (“It is fundamental to  
14          the concept of due process that a defendant be given notice of the existence of a  
15          lawsuit and notice of the specific relief which is sought in the complaint served  
16          upon him. The logic underlying this principle is simple: a defendant who has  
17          been served with a lawsuit has the right, in view of the relief which the com-  
18          plainant is seeking from him, to decide not to appear and defend.”); *Greenup v.*  
19          *Rodman*, 42 Cal. 3d 822, 826 (1986) (“a default judgment greater than the  
20          amount specifically demanded is void as beyond the court’s jurisdiction,” even  
21          when the defendant has actual notice of some greater amount at issue)) (other  
22          citations omitted).

23                 **2.     *Federal Courts Recognize the Due***  
24                 ***Process Limit on Rule 54(c)***

25           This has been always been the common-law rule and was retained by the  
26           federal courts even after pleading standards were relaxed in favor of “notice  
27           pleading.” *See* Fed. R. Civ. P. 54, Notes of Advisory Committee on Rules – 1937  
28           (“Note to Subdivision (c). For the limitation on default contained in the first  
          sentence, *see* 2 N.D. COMP. LAWS ANN. (1913) §7680; N.Y.C.P.A. (1937) §479.



1 *Compare* English Rules Under the Judicature Act (The Annual Practice, 1937)  
2 O. 13, r.r. 3–12.”); *see also* *Nat’l Discount Corp. v. O’Mell*, 194 F.2d 452, 455-56  
3 (6th Cir. 1952) (“Rule 54(c), Rules of Civil Procedure, provides ‘A judgment by  
4 default shall not be different in kind from or exceed in amount that prayed for  
5 in the demand for judgment.’ The rule was well settled even before the adoption  
6 of the Rules of Civil Procedure that in rendering a default judgment the Court  
7 can only give to the plaintiff such relief as was proper upon the face of the bill.”  
8 (citing *Thomson v. Wooster*, 114 U.S. 104, 113-114 (1885); *Clifton v. Tomb*, 21  
9 F.2d 893, 897 (4th Cir. 1927); *H. Wagner & Adler Co. v. Mali*, 74 F.2d 666, 669  
10 (2d Cir. 1935)).

11 In short, Rule 54(c) merely codified the constitutional due-process limita-  
12 tions for default judgments, which existed and still exist independently of Rule  
13 54(c) itself. *See* WRIGHT & MILLER, 10 FEDERAL PRACTICE AND PROCEDURE  
14 § 2663 (4th ed.) (April 2020 update) (“It would be fundamentally unfair to have  
15 the complaint lead defendant to believe that only a certain type and dimension  
16 of relief was being sought and then, should defendant attempt to limit the scope  
17 and size of the potential judgment by not appearing or otherwise defaulting, al-  
18 low the court to give a different type of relief or a larger damage award. In a  
19 similar vein, unless all the parties in interest have appeared and voluntarily lit-  
20 igated an issue not within the pleadings, the court should consider only those  
21 issues presented in the pleadings. In sum, then, a default judgment may not ex-  
22 tend to matters outside the issues raised by the pleadings or beyond the scope of  
23 the relief demanded. A judgment in a default case that awards relief that either  
24 is more than or different in kind from that requested originally is null and  
25 void[,] and defendant may attack it collaterally in another proceeding.”) (cita-  
26 tions omitted).

1                   **3.     *Most States Agree with this Due-Process Limitation***

2           Most states also follow the federal rule (almost verbatim) as a necessary  
3 result of due-process considerations. *See, e.g., Cont'l Cas. Co. v. Barlar*, 316 So.  
4 2d 690 (Ala. 1975) (applying Ala. R. Civ. P. 54(c) [substantively identical to Fed.  
5 R. Civ. P. 54(c)]: “It is obviously the purpose of the rule that a defendant after  
6 being served with a complaint and determining not to appear and defend, not be  
7 found liable after default for a different offense or amount of damages than that  
8 originally charged. Such has been the federal rule and that of other states.”)  
9 (collecting cases); *Pruitt v. Taylor*, 100 S.E.2d 841, 842–43 (N.C. 1957) (citing  
10 N.C. G.S. § 1-226 (later replaced by N.C. G.S. 1A-54(c) [substantively identical  
11 to Fed. R. Civ. P. 54(c)]): “A default judgment rendered contrary to this statu-  
12 tory provision for an amount in excess of the damages alleged and the sum  
13 prayed for in the complaint is irregular.”)); *Troutbrook Farm, Inc. v. DeWitt*, 540  
14 A.2d 18, 20 (R.I. 1988) (applying Rhode Island Superior Court Rules of Civil  
15 Procedure, Rule 54(c) [substantively identical to Fed. R. Civ. P. 54(c)] in holding  
16 that “a default judgment that exceeds the amount of demand for judgment to be  
17 null and void in its entirety.”) (citing *S. Ariz. School for Boys, Inc. v. Chery*, 580  
18 P.2d 738, 744 (Ariz. Ct. App. 1978)); *Holt v. Holt*, 672 P.2d 738, 741 (Utah 1983)  
19 (“The generally accepted rule with regard to the scope of relief granted in a de-  
20 fault judgment has been pronounced thus: ‘[A] party to a lawsuit may voluntar-  
21 ily default and in so doing rely on the relief requested in the pleadings. A de-  
22 faulting party should expect that the relief granted will not exceed or substan-  
23 tially differ from that sought in the complaint.”) (quoting *S. Ariz. School for*  
24 *Boys*, 119 Ariz. at 283).

25                   **4.     *Nevada’s Outlier Approach Is Unconstitutional***

26           In fact, Nevada is the only state within the 9th Circuit that purports to al-  
27 low default judgments in excess of the amount stated in the pleadings. *See*  
28 Alaska Rules of Court, Rule of Civil Procedure 54(c) (substantively identical to

1 Fed. R. Civ. P. 54(c)); *S. Ariz. School for Boys, Inc.*, 119 Ariz. at 283 (plaintiff  
2 cannot escape Ariz. R. Civ. P. 54(d) and 55(b)(3) [substantively identical to Fed.  
3 R. Civ. P. 54(c)], even when there is a hearing on unliquidated damages, and  
4 even where the defendant appears at the hearing to dispute those damages); *In*  
5 *re Marriage of Lippel*, 51 Cal.3d at 1166 (explaining the due-process rationale  
6 for the California default-judgment rule); *Greenup*, 42 Cal.3d at 826 (same);  
7 Colo. R. Civ. P. 54(c) (substantively identical to Fed. R. Civ. P. 54(c)); Haw. R.  
8 Civ. P. 54(c) (same); Ida. R. Civ. P. 54(c) (same); Mont. R. Civ. P. 54(c) (same);  
9 Ore. R. Civ. P. 67(C) (“A judgment for relief different in kind from or exceeding  
10 the amount prayed for in the pleadings may not be rendered unless reasonable  
11 notice and opportunity to be heard are given to any party against whom the  
12 judgment is to be entered.”); *Columbia Val. Credit Exchange, Inc. v. Lampson*,  
13 12 Wash.App. 952, 954-55 (1975) (“It is a well-settled rule that ‘one has a right  
14 to assume that the relief granted on default will not exceed or substantially dif-  
15 fer from that described in the complaint and may safely allow a default to be  
16 taken in reliance upon this assumption.”) (collecting Washington cases pre-da-  
17 ting State of Washington Superior Court Civil Rule 54(c), which is substantively  
18 identical to Fed. R. Civ. P. 54(c)).

19 Moreover, NRCP 54(c) itself provides that “[a] default judgment must not  
20 differ in kind from, or exceed in amount, what is demanded in the pleadings . . .  
21 .” It is only the following clause and the exception to that rule which is unique  
22 to Nevada and which runs afoul of the constitutional due-process requirements  
23 (and swallows the rule itself). *See id.* (“except that if the prayer is for unspeci-  
24 fied damages under Rule 8(a)(4), the court must determine the amount of the  
25 judgment.”)

26 Of course, this Nevada-specific exception suggests that an unspecified  
27 prayer for relief can be cured or “proved up” at a hearing under NRCP 55(b)(2).  
28 Such a hearing, however, cannot cure the constitutional deficiencies in the

1 pleading itself, particularly when a non-appearing defendant is not even enti-  
2 tled to (and, in this case, has not received) formal notice of that hearing. *Com-*  
3 *pare* NRCP 55(b)(2) (requiring written notice only when “the party against  
4 whom a default judgment is sought has appeared personally or by a representa-  
5 tive”); *with S. Ariz. School for Boys, Inc.*, 119 Ariz. at 283; *Silge v. Merz*, 510  
6 F.3d 157, 160-62 (2nd Cir. 2007) (rejecting argument that default judgment  
7 could exceed amount in complaint where defendant received notice of post-de-  
8 fault hearing, explaining: “While notice is one of the policy objectives underlying  
9 Rule 54(c), notice alone is insufficient to satisfy the rule. The timing and  
10 method of such notice (*i.e.*, that it come *before* the decision to default and be evi-  
11 dent from the face of the complaint) are both critical to the analysis.”) (*italics in*  
12 *original*).

13         Simply put, the constitutional due-process requirements embodied in Fed.  
14 R. Civ. P. 54(c) establish “a ceiling rather than a floor on damages.” *Smith v.*  
15 *Cummings*, 445 F.3d 1254, 1260 (10th Cir. 2006). Thus, the resulting pleading  
16 requirements are straightforward: to recover on a default judgment, a plaintiff  
17 must have pleaded *all* amounts to which she claims to be entitled, including all  
18 sums certain *and* a ceiling for all sums not capable of being made certain. If all  
19 of the damages are sums certain, then judgment can be entered by the clerk on  
20 plaintiff’s affidavit, without any need for a hearing, pursuant to NRCP 55(b)(1)  
21 (or Fed. R. Civ. P. 55(b)(1); Ariz. R. Civ. P. 55(b)(1), etc.). If, however, the  
22 amount pleaded includes other damages that are not sums certain, the plaintiff  
23 must “prove up” those damages on a motion and/or at a hearing under NRCP  
24 55(b)(2) (or Fed. R. Civ. P. 55(b)(2); Ariz. R. Civ. P. 55(b)(2), etc.). In other  
25 words, a Rule 55(b)(2) hearing is a necessary, *additional* step required before a  
26 plaintiff can reach the ceiling established in her pleadings, but it is not suffi-  
27 cient (even when the defaulted defendant is given notice of such a hearing) to  
28 establish the ceiling itself or otherwise meet the constitutional due-process and

notice requirements. *Silge*, 510 F.3d at 160-62; *S. Ariz. School for Boys, Inc.*, 119 Ariz. at 283; *Greenup*, 42 Cal.3d at 826.

**C. Plaintiff Cannot Recover a Default Judgment  
for More than \$15 Million Based on a  
Complaint that Discloses only \$20,000 in Damages**

Here, as noted above, the \$15.2-million default judgment entered against Bon drastically exceeds the \$20,000 in relief sought by plaintiff in the operative pleadings. Accordingly, and notwithstanding NRCP 8(a)(4) and 54(c), the default judgment is null and void and must be set aside under NRCP 60(b)(4) for lack of due process. Alternatively, the default judgment should be amended pursuant to NRCP 59(e) to comport with due process by limiting plaintiff's recoverable damages to the \$20,000 demanded in her operative pleadings.

**CONCLUSION**

This Court has the opportunity under Rule 60(b)(4) and Rule 59(e) to correct constitutional error before a reversal by the Supreme Court. This Court should rehear the motion to set aside the default judgment and vacate that judgment for its violation of Bon's due process.

Dated this 19th day of October, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

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## CERTIFICATE OF SERVICE

I certify that on October 19, 2020, I served the foregoing motion on counsel by the Court's electronic filing system and by courtesy email to the person and addresses listed below:

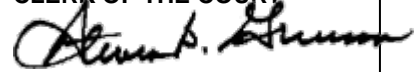
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**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

DIANE SANCHEZ,  
  
Plaintiff,

Case No. A-19-805351-C  
Dept. No. XIII

vs.

ATX PREMIER INSURANCE COMPANY  
now known as WINDHAVEN NATIONAL  
INSURANCE COMPANY, a foreign  
corporation; NATIONSBUILDERS  
INSURANCE SERVICES, INC., a foreign  
corporation; NBIS CONSTRUCTION &  
TRANSPORT INSURANCE SERVICES,  
INC., a foreign corporation; DMA  
CLAIMS MANAGEMENT, INC., a  
foreign corporation; BLAS BON, an  
individual; DOES I-X; and ROE  
CORPORATIONS I-X, inclusive,

**PLAINTIFF DIANE SANCHEZ'S  
SECOND AMENDED COMPLAINT**

Defendants.

Plaintiff DIANE SANCHEZ, by and through her attorneys of record, PRINCE  
LAW GROUP, for her Complaint against Defendants ATX PREMIER INSURANCE  
COMPANY now known as WINDHAVEN NATIONAL INSURANCE COMPANY;  
NATIONSBUILDERS INSURANCE SERVICES, INC.; NBIS CONSTRUCTION &





1 TRANSPORT INSURANCE SERVICES, INC.; DMA CLAIMS MANAGEMENT, INC.;  
2 and BLAS BON, hereby alleges and complains as follows:

3 **I.**

4 **PARTIES AND JURISDICTION**

5 1. At all times material hereto, Plaintiff DIANE SANCHEZ ("Sanchez") was  
6 and is a resident of the State of Nevada, Clark County.

7 2. Based upon information and belief, Defendant ATX PREMIER  
8 INSURANCE COMPANY now known as WINDHAVEN NATIONAL INSURANCE  
9 COMPANY ("ATX") was a foreign corporation organized and existing under the laws of  
10 the State of Florida and was authorized to do business in the State of Nevada at the  
11 time of the incident alleged herein. Based upon information and belief, WINDHAVEN  
12 NATIONAL INSURANCE COMPANY ("Windhaven") is a foreign corporation organized  
13 and existing under the laws of the State of Texas, with its principal place of business in  
14 the State of Florida, and is authorized to do business and is doing business in the State  
15 of Nevada. In approximately April of 2016, Windhaven purchased the assets of ATX,  
16 but did not assume all obligations, liabilities, or duties owed by ATX for any insurance  
policies issued by ATX before the 2016 sale.

17 3. Based upon information and belief, Defendant NATIONSBUILDERS  
18 INSURANCE SERVICES, INC. ("NBIS") is a foreign corporation organized and existing  
19 under the laws of the State of Delaware, with its principal place of business in the State  
20 of Georgia, and is authorized to do business and is doing business in the State of Nevada.

21 4. Based upon information and belief, Defendant NBIS CONSTRUCTION &  
22 TRANSPORT INSURANCE SERVICES, INC. ("CTIS") is a foreign corporation  
23 organized and existing under the laws of the State of Delaware, with its principal place  
24 of business in the State of Georgia, and is authorized to do business and is doing business  
in the State of Nevada. CTIS is an affiliated company of NBIS.

25 5. Based upon information and belief, Defendant DMA CLAIMS  
26 MANAGEMENT, INC. ("DMA") is a foreign corporation organized and existing under  
27 the laws of the State of California and is authorized to do business and is doing business  
28 in the State of Nevada.

1           6.       Based upon information and belief, Defendant Blas Bon (“Bon”) was and is  
2 a resident of the State of Nevada, Clark County, at all times material hereto.

3           7.       The true names and capacities, whether individual, corporate, associate,  
4 partnership, or otherwise, of Defendants DOES I through X, inclusive, are unknown to  
5 Sanchez, who therefore sues said Defendants by such fictitious names. Sanchez is  
6 informed and believes, and therefore alleges that each of the Defendants designated  
7 herein as DOES I through X are responsible in some manner for the events and  
8 happenings referred to herein, and in some manner, caused the injuries and damages to  
9 Sanchez as alleged herein. Sanchez will ask leave of this Court to amend her Complaint  
10 to assert the true names and capacities of said Defendants DOES I through X, inclusive,  
11 when the same have been ascertained by Sanchez, together with the appropriate  
12 charging allegations, and to join such Defendants in this action.

13           8.       The true names and capacities, whether individual, corporate, associate,  
14 partnership, or otherwise, of Defendants ROE CORPORATIONS I through X,  
15 inclusive, are unknown to Sanchez, who therefore sues said Defendants by such  
16 fictitious names. Sanchez is informed and believes, and therefore alleges that each of  
17 the Defendants designated herein as ROE CORPORATIONS I through X are responsible  
18 in some manner for the events and happenings referred to herein, and in some manner,  
19 caused the injuries and damages to Sanchez as alleged herein. Sanchez will ask leave  
20 of this Court to amend her Complaint to assert the true names and capacities of said  
21 Defendants ROE CORPORATIONS I through X, inclusive, when the same have been  
22 ascertained by Sanchez, together with the appropriate charging allegations, and to join  
23 such Defendants in this action.

24           9.       All acts complained of herein occurred in the State of Nevada.

25           10.      The motor vehicle collision described herein occurred in the State of  
26 Nevada, Clark County.

27           ...

28           ...

...

...

1 II.

2 **FACTUAL ALLEGATIONS**

3 **A. The Underlying Motor Vehicle Collision**

4 11. On December 16, 2014, ATX issued a personal automobile liability  
5 insurance policy to non-party Hipolito Cruz ("Cruz"), Policy No. ANV00003087. The  
6 policy provided liability insurance coverage limits of \$15,000.00 per person and  
7 \$30,000.00 per occurrence ("the ATX Insurance Policy").

8 12. Pursuant to the terms and conditions of the ATX Insurance Policy, ATX  
9 agreed to provide liability insurance coverage to its insured, including coverage for those  
10 liability claims arising from a third party's permissive use of the insured vehicle.

11 13. On April 28, 2015, Sanchez traveled northbound on Interstate 15 in a 1995  
12 BMW 325i sedan.

13 14. Bon drove Cruz's 1997 Dodge Ram 2500 pickup truck directly behind  
14 Sanchez on northbound Interstate 15.

15 15. Bon, while driving Cruz's 1997 Dodge Ram 2500 pickup truck, negligently  
16 collided with the back of Sanchez's 1995 BMW 325i sedan while she slowed down for  
17 traffic.

18 16. At the time of the April 28, 2015 motor vehicle collision, Bon drove Cruz's  
19 1997 Dodge Ram 2500 pickup truck with the express permission of Cruz. As a  
20 permissive driver of Cruz's pickup truck, Bon was covered under the relevant ATX  
21 Insurance Policy.

22 17. Following the collision with Bon, Sanchez's BMW 325i sedan was struck  
23 from behind by another vehicle. Sanchez subsequently resolved her claim against the  
24 driver of this other vehicle.

25 **B. The Applicable ATX Insurance Policy**

26 18. The term dates of the ATX Insurance Policy issued to Cruz and covering  
27 Bon at the time of the April 28, 2015 motor vehicle collision spanned from December  
28 16, 2014 through June 16, 2015.

19. At the time of the April 28, 2015 motor vehicle collision, the ATX Insurance  
Policy issued to Cruz was in full force and effect. As a permissive driver, Bon was

1 insured under the ATX Insurance Policy when the April 28, 2015 collision occurred. As  
2 a result, ATX owed Bon a contractual duty to defend; a duty of good faith and fair dealing  
3 to defend, indemnify, or settle Sanchez's claims prior to and during the pendency of the  
4 action; a duty to timely intervene; a duty to diligently investigate the facts and  
5 circumstances surrounding the collision; and a duty to settle Sanchez's claim within  
6 policy limits when it had a reasonable opportunity to do so, or to otherwise take action  
7 to protect the interests of Bon, its insured.

8 20. ATX was the licensed insurer and underwriter of the applicable automobile  
9 liability insurance policy that covered Bon at the time of the April 28, 2015 motor vehicle  
10 collision.

11 21. As early as February 22, 2013, NBIS served as the parent company of ATX.

12 22. On April 1, 2015, ATX, CTIS, AutoTex MGA, Inc. ("AutoTex"), and Safe  
13 Auto Insurance Company ("Safe Auto") entered into their Amended and Restated Claims  
14 Handling Agreement. See Amended and Restated Claims Handling Agreement,  
15 attached as **Exhibit "1."**

16 23. The Amended and Restated Claims Handling Agreement, in addition to  
17 confirming Safe Auto's acquisition of one hundred percent (100%) of the stock of  
18 AutoTex, outlined specific definitional guidelines regarding the treatment of ongoing  
19 business obligations before the stock sale to Safe Auto that are relevant to this action:

20 (A) **Pre-close Policy.** **Pre-close Policy** means any policy  
21 which was issued on or before the closing date of the sale  
22 of **AutoTex**, or which may be validly reinstated after such  
23 closing date by the policyholder during a reinstatement  
24 period. It also means any new policy written or renewed  
25 on or after the closing date which: (1) resides in the state of  
26 Arizona; (2) is produced by the LA Franchise Agency or its  
27 affiliates in any state; or (3) has been certified under the  
28 financial responsibility laws and regulations of any state.

See **Exhibit "1."**

24 24. The Amended and Restated Claims Handling Agreement affirmed that  
25 policies issued by ATX (referred to as "Company" in the agreement) before the March 2,  
26 2015 stock sale of AutoTex to Safe Auto remained with CTIS:  
27  
28

1           **WHEREAS, CTIS** wishes to assume the rights and  
2 obligations hereunder to administer **Pre-close Policies**  
as the **Pre-close Policy Claims Administrator**.

3           **WHEREAS, CTIS** is in the business of providing claims  
4 services on behalf of Insurance companies and is willing to  
provide such services on behalf of **Company** on all **Pre-**  
5 **close Policies** in accordance with the terms and  
conditions set forth herein, and as set forth in any agreed  
6 to Addenda attached to and made part of this Agreement.

7       **See Exhibit “1.”**

8           25. The express terms of the Amended and Restated Claims Handling  
9 Agreement confirmed that NBIS and CTIS retained control over policies issued by ATX  
10 before March 2, 2015. The ATX policy that covered Bon at the time of the April 28, 2015  
11 motor vehicle collision went into effect on December 16, 2014. By definition, the ATX  
Insurance Policy that gives rise to Sanchez’s claims was a “Pre-close Policy” that  
12 remained under the control and financial responsibility of NBIS and CTIS.

13           26. On April 1, 2015, CTIS (the “Company”) and DMA (the “Claims  
14 Administrator”) memorialized and executed their “Claims Administration Agreement”  
15 whereby DMA agreed to “perform claims adjustment and administrative services for  
16 certain claims and losses arising out of policies issued by affiliated companies of the  
17 Company.” *See* Claims Administration Agreement, at Bates no. PLTF001627, attached  
as **Exhibit “2.”**

18           27. ATX was an affiliated company of CTIS that issued policies for which DMA  
19 expressly agreed to “perform claims adjustment and administrative services for certain  
20 claims and losses arising out of” the policies. *Id.* Therefore, ATX was a third-party  
21 beneficiary of the “Claims Administration Agreement.” Alternatively, ATX and DMA  
22 entered into a contract wherein DMA agreed to serve as a third-party claims  
23 administrator and adjuster for bodily injury claims arising from liability insurance  
24 policies issued by ATX.

25           28. The “Claims Administration Agreement” specifically defined various  
26 “Claims Adjusting Services for DMA to perform for the benefit of CTIS.

27 . . .

28 . . .

- 1) Review all Company's claims and loss reports; and
- 2) Receive from Company coverage information for the applicable policy for the claim or loss reported. If authorized by Company, where coverage is in question, draft reservation of rights letters to be reviewed by the Company prior to sending to the insured. When Claims Administrator is advised by Company that no coverage exists, draft declination letters, which are to be reviewed by the Company as required, prior to sending to the insured. When appropriate, advise interested parties of the extent of coverage; and
- 3) If instructed by the Company, establish records for incidents or occurrences reported by the insured that are not claims but may become claims at a later date; and
- 4) Establish and adequately reserve each Qualified Claim and Feature, and code such claim in accordance with Company's statistical data requirements. Claims Administrator shall adopt and agree upon guidelines for reserving Features that comply with Company's guidelines and are consistent with industry standards; and
- 5) Conduct a prompt and detailed investigation of each Qualified Claim. Company and Claims Administrator shall adopt and agree upon guidelines for referring claims investigation to field investigators and adjusters that comply with Company's guidelines and are consistent with industry standards; and
- ...
- 7) Assure that there is sufficient evidence and documentation gathered and in the Company's claims system on a Qualified Claim, to allow the adjuster to properly evaluate the merits of the claim; and
- 8) Provide, in accordance with the Company's procedures and authority, an initial report and periodic reports on the status of each Qualified Claim in excess of the reporting level or otherwise reportable; and
- ...
- 10) Respond immediately to any inquiry, complaint or request received from an insurance department or any other regulatory agency in compliance with written instructions, if any, provided by the

Company. Respond promptly to any inquiry, complaint or request received from a client, claimant, agent, broker, or other interested party in connection with the Claims Adjusting Services; and

...

15) Adjust, settle or otherwise resolve claims in accordance with authority levels granted; and

16) Pay or recommend payment where appropriate, all Qualified Claims and Allocated Loss Adjustment Expenses, on a timely basis and in accordance with Authority granted by the Company.

See **Exhibit “2,”** at Bates nos. PLTF001629-PLTF001630.

29. The express terms of the Claims Management Agreement detail the extensive control CTIS retained over DMA’s administration of claims arising from insurance policies issued by ATX.

30. In approximately April of 2016, Windhaven purchased ATX from NBIS. Windhaven did not purchase or assume control over any ATX liability insurance policies issued before the sale, including the subject ATX Insurance Policy.

31. In a matter before the Nevada federal district court entitled *Hayes v. ATX Premier Insurance Company et al.*, Case No. 2:18-cv-01938-GMN-NJK, counsel for ATX and NBIS stated in briefing filed with the district court that NBIS retained financial responsibility for claims relating to insurance policies that were issued prior to the sale of ATX to Windhaven.

32. In the *Hayes* matter, counsel for ATX and NBIS also stated in briefing filed with the district court, that CTIS is an affiliated company of NBIS and engaged in claims services.

33. NBIS and CTIS assumed all contractual obligations arising from ATX insurance policies issued before the sale of ATX to Windhaven in 2016, including the ATX Insurance Policy that covered Bon at the time of the April 28, 2015 motor vehicle collision.

34. NBIS and/or CTIS assumed the indemnity obligations of ATX and is financially responsible for damages arising from Sanchez’s claim against the ATX

1 Insurance Policy that covered Bon at the time of the April 28, 2015 motor vehicle  
2 collision.

3 35. As an NBIS affiliate, CTIS performed claims management, claims  
4 handling, and claims administration oversight duties for the benefit of ATX pursuant to  
5 the "Claims Management Agreement" by and between CTIS and DMA wherein DMA  
6 agreed to serve as a third-party claims administrator and adjuster for bodily injury  
7 claims arising from automobile liability insurance policies issued by ATX, including the  
8 subject ATX Insurance Policy.

9 36. ATX and/or NBIS and/or CTIS together with DMA jointly managed,  
10 investigated, evaluated, adjusted, and performed other claims handling tasks regarding  
11 Sanchez's bodily injury claim against the ATX Insurance Policy that covered Bon at the  
12 time of the April 28, 2015 motor vehicle collision.

13 37. As a third-party claims administrator and adjuster, DMA's remuneration  
14 from ATX and/or NBIS and/or CTIS was based upon the volume of third-party bodily  
15 injury claims for which DMA performed an investigation, evaluation, or any other claims  
16 adjusting or handling duties and responsibilities that DMA was contracted to perform  
17 for the benefit of ATX and/or NBIS and/or CTIS.

18 38. As a third-party claims administrator and adjuster, DMA's remuneration  
19 from ATX and/or NBIS and/or CTIS was based on the percentage of claim savings ATX  
20 and/or NBIS and/or CTIS received as a direct result of the investigation, evaluation, or  
21 any other claims adjusting or handling duties and responsibilities that DMA was  
22 contracted to perform for the benefit of ATX and/or NBIS and/or CTIS.

23 39. As a third-party claims administrator and adjuster, DMA shared a common  
24 pecuniary interest with ATX and/or NBIS and/or CTIS to reduce costs arising from  
25 claims and to pay reasonable amounts on claims necessary to optimize the financial  
26 interests of ATX and/or NBIS and/or CTIS.

27 **C. Sanchez's Bodily Injury Claim Against Bon**

28 40. On May 21, 2015, Sanchez, through her counsel, faxed and mailed a letter  
notifying ATX of her bodily injury claim. Sanchez enclosed her medical records, bills,  
and other supporting documentation with the letter. ATX and/or CTIS and/or DMA



1 assigned claim number DMA0147074 to Sanchez's bodily injury claim. This claim  
2 number signified that DMA was to serve as the third-party administrator and adjuster  
3 of Sanchez's bodily injury claim on behalf of ATX and under the express supervision and  
4 control of CTIS pursuant to their "Claims Administration Agreement."

5 41. On June 16, 2015, Sanchez, through her counsel, faxed and mailed a letter  
6 to DMA wherein she offered to settle her bodily injury claim for all applicable policy  
7 limits under the ATX policy that covered Bon. At that time, Sanchez's past medical  
8 expenses totaled \$7,818.00 and she was recommended to undergo a cervical fusion  
9 surgery. Sanchez included a copy of the traffic accident report and her medical records  
10 and bills, including the record outlining her future surgical recommendation, with the  
11 June 16, 2015 offer letter. Sanchez's policy limits offer remained open until June 30,  
12 2015. Sanchez clearly articulated her intent to file a lawsuit against Bon if she did not  
13 receive a response to her offer by June 30, 2015.

14 42. ATX and/or NBIS and/or CTIS and/or DMA failed to timely respond to  
15 Sanchez's June 16, 2015 offer letter.

16 43. On July 10, 2015, DMA sent a letter to Sanchez's counsel acknowledging  
17 that DMA represented the interests of ATX for the April 28, 2015 motor vehicle collision.  
18 DMA requested additional time to complete its investigation of Sanchez's bodily injury  
19 claim because of its supposed need to gather information necessary to determine  
20 liability. The information DMA allegedly required to reach this determination was a  
21 statement from the vehicle drivers involved in the crash and photos of the vehicles  
22 involved in the crash. DMA made this request even though Sanchez provided a copy of  
23 the traffic accident report and her medical records and bills to DMA as part of her June  
24 16, 2015 demand.

25 44. On July 17, 2015, one week after its initial letter, DMA sent another letter  
26 to Sanchez's counsel. DMA stated that after completing a thorough investigation of the  
27 facts and circumstances surrounding the April 28, 2015 motor vehicle collision,  
28 Sanchez's bodily injury claim was denied because its insured, Bon, was not the  
proximate cause of the crash and therefore, was not legally liable for Sanchez's damages.  
DMA never confirmed that it actually obtained the information referenced in its July

1 10, 2015 letter as part of its investigation and ultimate denial of Sanchez's bodily injury  
2 claim.

3 45. Sanchez never received any further oral or written communications from  
4 ATX and/or NBIS and/or CTIS and/or DMA.

5 **D. Sanchez's Personal Injury Lawsuit Against Bon**

6 46. On August 7, 2015, Sanchez filed her complaint for personal injuries in the  
7 Eighth Judicial District Court, Clark County ("Nevada state district court"), Case No.  
8 A-15-722815-C. The allegations contained within her personal injury complaint are  
9 incorporated by reference as though fully set forth herein. In her personal injury  
10 complaint, Sanchez set forth several allegations that included: (1) Bon negligently drove  
11 his vehicle, which caused the motor vehicle collision and Sanchez's resulting injuries;  
12 and (2) Bon drove the truck owned by Cruz at the time of the motor vehicle collision.

13 47. The factual allegations set forth in Sanchez's personal injury complaint  
14 triggered ATX's duty to defend Bon, its insured, pursuant to Nevada law.

15 48. Sanchez properly served Bon with her summons and personal injury  
16 complaint in accordance with Nevada law.

17 49. On December 11, 2015, Sanchez, through her counsel, sent a letter advising  
18 DMA and ATX of her withdrawal of the policy limits demand sent on June 16, 2015.

19 50. On January 20, 2016, Sanchez, through her counsel, mailed a letter to ATX  
20 and DMA advising that Bon was served with the summons and Sanchez's personal  
21 injury complaint via the Nevada Department of Motor Vehicles ("DMV"). Copies of the  
22 personal injury complaint, the affidavit of compliance, and a letter dated November 2,  
23 2015 from the DMV confirming service of the summons and personal injury complaint  
24 were included in the January 20, 2016 letter to ATX and DMA. Sanchez's counsel  
25 specifically requested DMA and/or ATX to file an answer to the personal injury  
26 complaint as soon as possible or else Sanchez would request the Nevada state court to  
27 enter a default against Bon.

28 51. ATX and/or NBIS and/or CTIS and/or DMA failed to respond to the  
January 20, 2016 letter.

1           52.     On February 16, 2016, Sanchez, through her counsel, mailed another letter  
2 to ATX and DMA advising that Bon still had not yet filed an answer to Sanchez's  
3 personal injury complaint. Sanchez's counsel clarified that if Bon did not file his answer  
4 by February 23, 2016, a request for the Nevada state court to enter a default against  
5 Bon would be made by Sanchez.

6           53.     From February 17, 2016 through March 31, 2016, ATX and/or NBIS and/or  
7 CTIS and/or DMA: (1) never responded to Sanchez's February 16, 2016 letter and (2)  
8 never filed an answer to Sanchez's personal injury complaint on behalf of Bon.

9           54.     Bon never filed an answer to Sanchez's personal injury complaint in Case  
10 No. A-15-722815-C.

11           55.     On April 1, 2016, the Nevada state court entered a default against Bon in  
12 the personal injury action, Case No. A-15-722815-C.

13           56.     On June 22, 2016, Sanchez filed her notice of entry of default against Bon  
14 in the personal injury action, Case No. A-15-722815-C, and mailed a copy of it to ATX  
15 and DMA, via certified mail.

16           57.     ATX and/or NBIS and/or CTIS and/or DMA took no further action in  
17 response to the entry of default against the Bon.

18           58.     Even after Sanchez notified ATX and DMA of the entry of default against  
19 Bon, ATX and/or NBIS and/or CTIS and/or DMA failed and refused to investigate,  
20 provide Bon, ATX's insured, with a defense, or indemnify Bon against the substantial  
21 losses Sanchez incurred as a result of the April 28, 2015 motor vehicle collision. ATX  
22 and/or NBIS and/or CTIS and/or DMA failed to retain counsel to represent the interests  
23 of Bon or undertake any other steps to defend him against Sanchez's allegations set  
24 forth in her personal injury complaint.

25           59.     On March 29, 2019, Sanchez filed an application for entry of a default  
26 judgment pursuant to NRCP 55(b)(2) in the personal injury action, Case No. A-15-  
27 722815-C. Sanchez sought a judicial determination from the Nevada state district court  
28 of the damages she suffered as a result of Bon's negligence.

1           60.     The Nevada state district court's April 1, 2016 entry of default constituted  
2 an admission by Bon of all material facts alleged in Sanchez's personal injury complaint  
3 as a matter of Nevada law.

4           61.     Bon was notified of the hearing for Sanchez's application for entry of a  
5 default judgment.

6           62.     On July 19, 2019, the Nevada state district court entered a default  
7 judgment against Bon in the amount of \$15,212,655.73, inclusive of attorney's fees and  
8 costs, in the personal injury action, Case No. A-15-722815-C.

9           63.     On July 19, 2019, Sanchez filed a motion for judicial assignment of Bon's  
10 claims or causes of action against ATX or any other applicable liability insurer or entity  
11 pursuant to NRS 21.320 in the personal injury action, Case No. A-15-722815-C.

12           64.     On August 20, 2019, the Nevada state district court entered an order  
13 granting Sanchez's motion for judicial assignment of Bon's claims or causes of action  
14 against ATX, or any other insurance company or entity.

15           65.     On September 8, 2020, the Nevada state district court granted Sanchez's  
16 motion to clarify its August 20, 2019 Order and confirmed that its judicial assignment  
17 of Bon's claims or causes of action included those claims or causes of action against any  
18 third-party claims administration, third-party claims adjuster, or other applicable  
19 insurer, administrator, or entity.

20           66.     Sanchez, as the judicial assignee of Bon's claims or causes of action, has  
21 the legal right and ability to assert all claims against ATX and/or NBIS and/or CTIS  
22 and/or DMA to satisfy the entire default judgment amount based upon their respective  
23 breaches of the duties owed to Bon.

24           67.     ATX and/or NBIS and/or CTIS failed to compensate Sanchez for all the  
25 damages she incurred in excess of Bon's automobile liability insurance policy limits for  
26 third-party claims under the ATX Insurance Policy that was issued in December of 2014  
27 and covered Bon at the time of the April 28, 2015 motor vehicle collision. ATX and/or  
28 NBIS and/or CTIS had a duty to indemnify Bon, as its insured, for the loss suffered by  
Sanchez under Nevada law and failed to satisfy this duty.

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1 **FIRST CLAIM FOR RELIEF**

2 ***(Breach of Contract against Defendants ATX, NBIS, CTIS, and DMA)***

3 68. Sanchez hereby incorporates, by reference, each and every allegation set  
4 forth in Paragraphs 1 through 67 of this Complaint as though fully set forth herein.

5 69. A contract of insurance existed between ATX and Cruz on the date of the  
6 April 28, 2015 motor vehicle collision described herein. As a permissive driver, Bon was  
7 the insured under the express terms and conditions of the ATX Insurance Policy. ATX  
8 owed contractual duties to Bon as the insurer.

9 70. At the time of the April 28, 2015 motor vehicle collision, all premiums were  
10 paid under Cruz's ATX Insurance Policy. All proofs of loss were submitted under said  
11 policy and Cruz and/or Bon performed all conditions required to be performed by the  
12 policy.

13 71. NBIS assumed all of ATX's indemnity obligations for claims arising from  
14 ATX insurance policies issued before the sale of ATX to Windhaven in April of 2016. The  
15 ATX Insurance Policy that covered Bon at the time of the April 28, 2015 motor vehicle  
16 collision was issued on December 16, 2014. NBIS is financially responsible for all  
17 damages arising from Sanchez's claims in this Complaint.

18 72. CTIS performed claims management, claims handling, and claims  
19 administration oversight duties for the benefit of ATX pursuant to the "Claims  
20 Management Agreement" by and between CTIS and DMA wherein DMA agreed to serve  
21 as a third-party claims administrator and adjuster for bodily injury claims arising from  
22 automobile liability insurance policies issued by ATX, including the subject ATX  
23 Insurance Policy.

24 73. ATX and/or NBIS and/or CTIS together with DMA jointly managed,  
25 investigated, evaluated, adjusted, and performed other claims handling tasks regarding  
26 Sanchez's bodily injury claim against the ATX Insurance Policy that covered Bon at the  
27 time of the April 28, 2015 motor vehicle collision.

28 74. ATX and/or NBIS and/or CTIS and/or DMA each possessed a joint financial  
interest to act for the benefit of each other by satisfying the duty to investigate, evaluate,

1 adjust, and perform other claims handling and/or administrative tasks as joint  
2 venturers.

3 75. ATX and/or NBIS and/or CTIS and/or DMA breached their respective  
4 contractual duties to defend, indemnify, investigate, or settle Sanchez's claim when each  
5 of them had notice of Sanchez's bodily injury claim and her subsequent personal injury  
6 action, and failed to take any actions necessary to protect Bon's interests. Specifically,  
7 ATX and/or NBIS and/or CTIS and/or DMA failed to conduct any type of substantive  
8 investigation or evaluation of Sanchez's bodily injury claim necessary to settle or resolve  
9 her bodily injury claim before she filed her personal injury lawsuit.

10 76. After Sanchez filed her personal injury lawsuit in Nevada state court and  
11 provided ample notice to ATX and DMA of the same, ATX and/or NBIS and/or CTIS  
12 and/or DMA failed to tender a defense on behalf of Bon against the allegations set forth  
13 in the personal injury complaint, failed to retain an attorney to represent the interests  
14 of Bon, failed to timely intervene in the personal injury action, and failed to settle  
15 Sanchez's personal injury claim within policy limits when it had a reasonable  
16 opportunity to do so, or to otherwise take any and all necessary actions to protect the  
17 interests of its insured, Bon.

18 77. As a result of the actions and/or inactions of ATX and/or NBIS and/or CTIS  
19 and/or DMA, each of them are legally bound by the default judgment entered in the  
20 Nevada state court action, Case No. A-15-722815-C, in the amount of \$15,212,655.73,  
21 inclusive of attorney's fees and costs and are obligated to satisfy the same.

22 78. As a result of ATX and/or NBIS and/or CTIS and/or DMA's breaches of their  
23 respective contractual duties, Sanchez, as assignee of Bon, has suffered damages in an  
24 amount in excess of \$15,000.00, the exact amount of which will be proven at trial.

25 79. Sanchez has been compelled to retain counsel to prosecute this action and  
26 is therefore entitled to recover attorneys' fees and costs.

27 ...

28 ...

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1 **SECOND CLAIM FOR RELIEF**

2 ***(Breach of the Implied Covenant of Good Faith and Fair Dealing Against ATX,***  
3 ***NBIS, CTIS, and DMA)***

4 80. Sanchez hereby incorporates, by reference, each and every allegation set  
5 forth in Paragraphs 1 through 79 of this Complaint as though fully set forth herein.

6 81. There was an implied covenant in the ATX Insurance Policy that covered  
7 Bon whereby ATX and/or NBIS and/or CTIS was obligated to act in good faith and deal  
8 fairly with Bon. ATX and/or NBIS and/or CTIS owed this duty of good faith and fair  
9 dealing to Bon implied in the ATX Insurance Policy that covered Bon at the time of the  
10 April 28, 2015 motor vehicle collision.

11 82. As joint venturers tasked to perform claims management, claims  
12 handling, and claims administration duties and tasks for the benefit of ATX and/or NBIS  
13 and/or CTIS, DMA and/or each of them were obligated to act in good faith and deal fairly  
14 with Bon in relation to Sanchez's bodily injury claim arising from the ATX Insurance  
15 Policy that covered Bon at the time of the April 28, 2015 motor vehicle collision.

16 83. ATX and/or NBIS and/or CTIS and/or DMA had a special relationship with  
17 Bon as the insured at the time of the April 28, 2015 motor vehicle collision and Sanchez's  
18 bodily injury claim arising from that collision. This special relationship between ATX  
19 and/or NBIS and/or CTIS and/or DMA and Bon was akin to a fiduciary relationship.

20 84. The nature of the fiduciary-like relationship required ATX and/or NBIS  
21 and/or CTIS and/or DMA to adequately protect Bon's interests.

22 85. At all material times hereto, ATX and/or NBIS and/or CTIS and/or DMA  
23 each had a duty to give equal consideration to Bon's interests.

24 86. As the assignee of Bon's claims for relief and/or causes of action against  
25 ATX and/or NBIS and/or CTIS and/or DMA, Sanchez possesses all legal authority to  
26 pursue all of Bon's claims for relief and/or causes of action for breach of the implied  
27 covenant of good faith and fair dealing against each of them.

28 87. ATX and/or NBIS and/or CTIS and/or DMA knowingly and deliberately  
breached their respective implied covenants of good faith and fair dealing by failing to  
defend, indemnify, investigate, or settle Sanchez's bodily injury claim when each of them

1 had notice of Sanchez's bodily injury claim and her subsequent personal injury action,  
2 and failed to take any actions necessary to protect Bon's interests. Specifically, ATX  
3 and/or NBIS and/or CTIS and/or DMA failed to conduct any type of substantive  
4 investigation or evaluation of Sanchez's bodily injury claim necessary to settle or resolve  
5 her bodily injury claim before she filed her personal injury lawsuit.

6 88. After Sanchez filed her personal injury lawsuit in the Nevada state  
7 district court and provided ample notice to ATX and DMA of the same, ATX and/or NBIS  
8 and/or CTIS and/or DMA knowingly and deliberately failed to tender a defense on behalf  
9 of Bon against the allegations set forth in the personal injury complaint, failed to retain  
10 an attorney to represent the interests of Bon, failed to timely intervene in the personal  
11 injury action, and failed to settle Sanchez's personal injury claim within policy limits  
12 when it had a reasonable opportunity to do so, or to otherwise take any and all necessary  
actions to protect the interests of its insured, Bon.

13 89. As a proximate result of ATX and/or NBIS and/or CTIS and/or DMA's  
14 respective breaches of the implied covenant and good faith and fair dealing and bad faith  
15 refusal to defend, indemnify, investigate, evaluate, or settle Sanchez's bodily injury  
16 claim, Sanchez, as assignee of Bon, has suffered damages in an amount in excess of  
17 \$15,000.00, the exact amount of which will be proven at trial.

18 90. ATX and/or NBIS and/or CTIS and/or DMA intentionally and willfully,  
19 with malice, oppression, and fraud, failed to conduct a fair, objective, and reasonable  
20 investigation and evaluation of Sanchez's bodily injury claim to satisfy the duties they  
21 owed to Bon.

22 91. ATX and/or NBIS and/or CTIS and/or DMA intentionally and willfully,  
23 with malice, oppression, and fraud, refused to give equal consideration to Bon's interests  
24 by taking affirmative actions to gather facts necessary to conduct a fair, objective, and  
reasonable investigation and evaluation of Sanchez's bodily injury claim.

25 92. ATX and/or NBIS and/or CTIS and/or DMA intentionally and willfully,  
26 with malice, oppression, and fraud, failed to settle Sanchez's bodily injury claim within  
27 Bon's ATX Insurance Policy's limits without any factual basis.  
28



1           93.     ATX and/or NBIS and/or CTIS and/or DMA intentionally and willfully,  
2 with malice, oppression, and fraud, placed its own interests above Bon's interests by  
3 refusing to settle Sanchez's bodily injury claim within policy limits resulting from the  
4 failure to conduct a fair, objective, and reasonable investigation and evaluation of  
5 Sanchez's bodily injury claim.

6           94.     By reason of ATX and/or NBIS and/or CTIS and/or DMA's intentional and  
7 willful bad faith conduct, Sanchez is entitled to recover punitive or exemplary damages.

8           95.     Sanchez has been compelled to retain counsel to prosecute this action and  
9 is therefore entitled to recover attorneys' fees and costs.

### 10                               **THIRD CLAIM FOR RELIEF**

#### 11                   ***(Violation of the Nevada Unfair Claims Practices Act, NRS 686A.310, NAC 12                   686A et seq. Against ATX, NBIS, CTIS, and DMA)***

13           96.     Sanchez hereby incorporates, by reference, each and every allegation set  
14 forth in Paragraphs 1 through 95 of this Complaint as though fully set forth herein.

15           97.     ATX and/or NBIS and/or CTIS and/or DMA were obligated to satisfy the  
16 provisions outlined in the Nevada Unfair Claims Practices Act set forth in NRS  
17 686A.310, plus all other applicable regulations adopted by Nevada Administrative Code  
18 § 686A et seq.

19           98.     ATX and/or NBIS and/or CTIS and/or DMA failed to acknowledge and act  
20 reasonably promptly to Sanchez's June 16, 2015 letter wherein she offered to resolve her  
21 bodily injury claim against Bon for the statutory minimum \$15,000.00 automobile  
22 liability insurance policy limits available under the ATX Insurance Policy.

23           99.     ATX and/or NBIS and/or CTIS and/or DMA failed to acknowledge and act  
24 reasonably promptly to Sanchez's January 20, 2016 and February 16, 2016 letters  
25 wherein she advised that Bon was served with the summons and personal injury  
26 complaint, requested ATX and/or DMA to file an answer on behalf of Bon, and stated  
27 that if an answer was not filed, she would request the Nevada state court to enter a  
28 default against Bon.

          100.     ATX and/or NBIS and/or CTIS and/or DMA failed to effectuate a prompt,  
fair, and equitable settlement of Sanchez's bodily injury claim on behalf of Bon by

1 willfully and deliberately ignoring Sanchez's June 16, 2015 offer to tender Bon's  
2 minimum automobile liability insurance policy limit of \$15,000.00 available under the  
3 ATX Insurance Policy covering Bon. ATX and/or NBIS and/or CTIS and/or DMA knew  
4 that liability was not in dispute when Sanchez made her June 16, 2015 offer because  
5 she provided a copy of the traffic accident report and ATX and/or NBIS and/or CTIS  
6 and/or DMA failed to take any additional steps to investigate the cause of the April 28,  
7 2015 motor vehicle collision.

8 101. ATX and/or NBIS and/or CTIS and/or DMA failed to inform Bon of  
9 Sanchez's June 16, 2015 settlement offer for policy limits and failed to communicate to  
10 Bon about the contractual duty to defend him against the allegations set forth in  
11 Sanchez's personal injury complaint.

12 102. ATX and/or NBIS and/or CTIS and/or DMA deliberately and willfully  
13 rejected Sanchez's bodily injury claim for Bon's minimum automobile liability insurance  
14 policy limit of \$15,000.00 in direct contravention of Bon's interests prior to the  
15 commencement of Sanchez's personal injury lawsuit.

16 103. ATX and/or NBIS and/or CTIS and/or DMA failed to diligently investigate  
17 the facts and circumstances surrounding the April 28, 2015 motor vehicle collision  
18 involving the insured, Bon, and Sanchez, to aid in its investigation and evaluation of  
19 Sanchez's bodily injury claim necessary to complete a thorough and adequate  
20 investigation of Sanchez's bodily injury claim within 30 days.

21 104. By failing and refusing to defend, indemnify, and/or settle Sanchez's claim,  
22 ATX and/or NBIS and/or CTIS and/or DMA violated the express provisions of NRS  
23 686A.310 and regulations adopted by Nevada Administrative Code § 686A *et seq.*

24 105. As a proximate result of ATX and/or NBIS and/or CTIS and/or DMA's  
25 respective violations of the Nevada Unfair Claims Practices Act set forth in NRS  
26 686A.310, plus all other applicable regulations adopted by Nevada Administrative Code  
27 § 686A *et seq.*, Sanchez, as assignee of Bon, has suffered damages in an amount in excess  
28 of \$15,000.00, the exact amount of which will be proven at trial.

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1 **FOURTH CLAIM FOR RELIEF**

2 ***(Action on the Default Judgment Against Defendant Blas Bon)***

3 106. Sanchez hereby incorporates, by reference, each and every allegation set  
4 forth in Paragraphs 1 through 105 of this Complaint as though fully set forth herein.

5 107. On July 19, 2019, the Nevada state district court entered a default  
6 judgment against Bon in the amount of \$15,212,655.73, inclusive of attorney's fees and  
7 costs, in Case No. A-15-722815-C.

8 108. The July 19, 2019 Default Judgment was entered against Bon for his  
9 failure to file an answer to Sanchez's personal injury complaint, filed on August 7, 2015,  
10 or to otherwise appear in the personal injury action within 20 days of service of the  
11 summons and personal injury complaint.

12 109. As a direct result of the Nevada state district court's entry of a default  
13 judgment against Bon, all issues of liability, causation, and damages arising from  
14 Sanchez's personal injury claims are fully resolved.

15 110. The full amount of the \$15,212,655.73 default judgment entered against  
16 Bon remains unsatisfied.

17 111. As the judgment debtor, Bon is legally responsible for satisfying the full  
18 amount of the default judgment entered against him on July 19, 2019 by the Nevada  
19 state court in the amount of \$15,212,655.73.

20 112. Sanchez, as the judgment creditor, hereby reserves the right to utilize all  
21 remedies under Nevada law to collect on the July 19, 2019 default judgment by way of  
22 her action on the default judgment, including the Court's issuance of a writ of  
23 attachment upon the personal property of Bon pursuant to NRS 31.010 *et seq.*; the  
24 Court's issuance of a writ of garnishment upon the money, credits, effects, debts, choses  
25 in action, and other personal property of Bon pursuant to NRS 31.240 *et seq.*; replevin;  
26 or any other means of collection available to her under Nevada law.

27 113. Sanchez has been compelled to retain the services of an attorney to  
28 prosecute this action and is therefore entitled to reasonable attorney's fees and costs  
incurred herein.

...

114. Sanchez timely pursues this claim for action on the default judgment against Bon in accordance with NRS 11.190(1)(a).

**III.**

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Diane Sanchez prays for judgment against Defendants, and each of them, as follows:

1. Satisfaction of the July 19, 2019 default judgment in the amount of \$15,212,655.73, plus post-judgment interest;

2. General Damages for a sum in excess of Fifteen Thousand Dollars and 00/100 Cents (\$15,000.00);

3. Special damages for a sum in excess of Fifteen Thousand Dollars and 00/100 Cents (\$15,000.00);

4. Punitive damages for a sum in excess of Fifteen Thousand Dollars and 00/100 Cents (\$15,000.00);

5. For attorneys' fees, costs of suit, and pre-judgment and post-judgment interest incurred herein; and

6. Such other and further relief as this Court deems just and proper.

DATED this 1<sup>st</sup> day of June, 2021.

Respectfully Submitted,

**PRINCE LAW GROUP**

/s/ Kevin T. Strong  
DENNIS M. PRINCE  
Nevada Bar No. 5092  
KEVIN T. STRONG  
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Suite 560  
Las Vegas, Nevada 89135  
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Attorneys for Plaintiff  
*Diane Sanchez*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of **PRINCE LAW**  
3 **GROUP**, and that on the 1<sup>st</sup> day of June, 2021, I caused the foregoing document entitled  
4 **PLAINTIFF DIANE SANCHEZ'S SECOND AMENDED COMPLAINT** to be served  
5 upon those persons designated by the parties in the E-Service Master List for the above-  
6 referenced matter in the Eighth Judicial District Court E-Filing System in accordance  
7 with the mandatory electronic service requirements of Administrative Order 14-2 and  
8 the Nevada Electronic Filing and Conversion Rules.  
9

10 Robert E. Schumacher  
11 Wing Yan Wong  
12 **GORDON REES SCULLY MANSUKHANI, LLP**  
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18 *DMA Claims Management, Inc.*

19 John H. Podesta  
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24 Tel: (702) 727-1400  
25 Fax: (702) 727-1401  
26 Attorneys for Defendant  
27 *ATX Premier Insurance now known as*  
28 *Windhaven National Insurance Company*

23 /s/ Amy Ebinger  
24 An Employee of Prince Law Group

# **EXHIBIT “1”**

## AMENDED AND RESTATED CLAIMS HANDLING AGREEMENT

This Amended and Restated Claims Handling Agreement ("**Agreement**") entered into and effective March 22, 2013, and amended April 1, 2015 12:01 am, is made and entered into by and between ATX Premier Insurance Company ("**Company**"; NBIS Construction & Transport Insurance Services, Inc. ("**CTIS**"; or, "**Pre-close Policy Claims Administrator**"; AutoTex MGA, Inc. ("**AutoTex**"; or, "**Former Administrator**"; and Safe Auto Insurance Company ("**SafeAuto**"; or, "**Post-close Policy Claims Administrator**"), collectively "**Administrator**". **SafeAuto**; **AutoTex**; **CTIS**; and, **Company** are each hereinafter referred to as a "**Party**" and collectively as the "**Parties**".

**WHEREAS**, **Company** has the authority to issue insurance policy(ies) to insureds and is responsible for claims settlement on those policies;

**WHEREAS**, NationsBuilders Insurance Services, Inc. ("**NBIS**"), the current parent company of AutoTex and **Company**, has, contemporaneously with the execution of this Agreement, closed a certain Stock Purchase Agreement (executed on March 2, 2015, "**SPA**") with Safe Auto Insurance Group, Inc. (the acquirer of AutoTex and parent company of **SafeAuto**) whereby Safe Auto Insurance Group, Inc. has acquired one hundred percent (100%) of the stock of **AutoTex**;

**WHEREAS**, pursuant to the terms and conditions of the aforementioned stock purchase agreement, Safe Auto Insurance Group, Inc. and NBIS have agreed to certain definitional guidelines regarding the ongoing treatment of business which was produced by AutoTex prior to the closing of the transaction and business which will be produced by AutoTex after the closing of such transaction, and which are applicable to the administration of this Agreement going forward and to which the Parties agree to incorporate herein:

- (A) **Pre-close Policy**. **Pre-close Policy** means any policy which was issued on or before the closing date of the sale of **AutoTex**, or which may be validly reinstated after such closing date by the policyholder during a reinstatement period. It also means any new policy written or renewed on or after the closing date which: (1) resides in the state of Arizona; (2) is produced by the LA Franchise Agency or its affiliates in any state; or (3) has been certified under the financial responsibility laws and regulations of any state.
- (B) **Post-close Policy**. **Post-close Policy** means any new or renewal policy term written after the closing date and not included in the definition of **Pre-close Policy**.

**WHEREAS**, **CTIS** wishes to assume the rights and obligations hereunder to administer **Pre-close Policies** as the **Pre-close Policy Claims Administrator**;

**WHEREAS**, **CTIS** is in the business of providing claims services on behalf of Insurance companies and is willing to provide such services on behalf of **Company** on all **Pre-close Policies** in accordance with the terms and conditions set forth herein, and as set forth in any agreed to Addenda attached to and made a part of this Agreement;

**WHEREAS**, the Parties acknowledge that the role of **CTIS** as the **Pre-close Policy Claims Administrator** will terminate and cease to exist, subject to those provisions of this Agreement which may otherwise remain in effect, upon the expiration of the last claim from any **Pre-close Policy**.

**WHEREAS**, **SafeAuto** is a property and casualty insurer licensed to conduct business in States of Arkansas, Arizona, Nevada and Texas and, wishes to assume the rights and obligations hereunder to administer **Post-close Policies** as the **Post-close Policy Claims Administrator**;

**WHEREAS**, **Company** has reviewed and accepted the qualifications of **SafeAuto** and **CTIS**, and wishes to authorize them to provide the to provide the services set forth herein;

# **EXHIBIT “2”**



## **CLAIMS ADMINISTRATION AGREEMENT**

by and between

NBIS Construction and Transport Insurance Services, Inc.  
(hereinafter the "Company")

and

DMA Claims Management, Inc.  
(hereinafter the "Claims Administrator")

Effective Date: April 1, 2015

WHEREAS, the Company desires to employ Claims Administrator to perform claims adjustment and administrative services for certain claims and losses arising out of policies issued by affiliated companies of the Company;

WHEREAS, the parties desire to enter into a Claims Administration Agreement (hereinafter, the "Agreement") that will outline their primary duties and obligations with respect to this engagement;

NOW THEREFORE, in consideration of mutual promises and agreements, the parties agree as follows:

### **I. DEFINITIONS**

A. The term "Allocated Loss Adjustment Expense" as used herein shall mean all claims adjustment costs and expenses incurred in connection with the investigation, adjustment and settlement or defense of a claim for benefits. Allocated Loss Adjustment Expenses are limited to reasonable, customary and necessary expenses. Such expenses shall include, but shall not be limited to, the following:

- 1) attorneys fees and disbursements; and
- 2) fees to court reporters; and
- 3) all court costs, court fees and court expenses; and
- 4) costs of automobile and property appraisals and re-inspections; and

- 5) costs of any required investigations by claims adjusters in the field; and
- 6) costs of interpreters; and
- 7) fees for database searches; and
- 8) fees for service of process; and
- 9) costs of surveillance and detective services; and
- 10) costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, diagrams; and
- 11) costs for employing experts for their advice, opinions or testimony concerning claims under investigation or in litigation or for which a declaratory judgment is sought; and
- 12) costs for independent medical examination and/or evaluation for rehabilitation and/or to determine the extent of the Company' liability; and
- 13) costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceedings; and
- 14) costs for copies of any public records and/or medical records; and
- 15) costs of depositions and court - reported and/or recorded statements; and
- 16) costs and expenses of subrogation when referred to outside attorneys or other vendors; and
- 17) costs of engineers, handwriting experts and/or any other type of expert used in the preparation of litigation and/or used on a one-time basis to resolve disputes; and
- 18) charges for medical cost containment services, i.e., utilization review, pre-admission authorization, hospital bill audit, provider bill audit and medical case management incurred only with the prior approval of the Company.
- 19) any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss or to the protection or perfection of the subrogation rights of the Company.

B. The term "Qualified Claim" shall mean a claim assigned by Company to Claims Administrator.

- C. The term "Feature" shall mean any separate coverage exposure within a claim. For example, one claim might have a Collision feature and one or more Bodily Injury or Property Damage features.
- D. The term "Claims Adjusting Services" as used herein shall mean the furnishing by the Claims Administrator to the Company of the following services in compliance with the terms of the applicable insurance policy, the laws and regulations of the applicable state(s), and industry-wide standards:
- 1) Review all Company's claims and loss reports; and
  - 2) Receive from Company coverage information for the applicable policy for the claim or loss reported. If authorized by Company, where coverage is in question, draft reservation of rights letters to be reviewed by the Company prior to sending to the insured. When Claims Administrator is advised by Company that no coverage exists, draft declination letters, which are to be reviewed by the Company as required, prior to sending to the insured. When appropriate, advise interested parties of the extent of coverage; and
  - 3) If instructed by the Company, establish records for incidents or occurrences reported by the insured that are not claims but may become claims at a later date; and
  - 4) Establish and adequately reserve each Qualified Claim and Feature, and code such claim in accordance with Company's statistical data requirements. Claims Administrator shall adopt and agree upon guidelines for reserving Features that comply with Company's guidelines and are consistent with industry standards; and
  - 5) Conduct a prompt and detailed investigation of each Qualified Claim. Company and Claims Administrator shall adopt and agree upon guidelines for referring claims investigation to field investigators and adjusters that comply with Company's guidelines and are consistent with industry standards; and
  - 6) Adjust Qualified Claims for Property and/or Physical Damage by obtaining itemized estimates and/or appraisals of damage; and
  - 7) Assure that there is sufficient evidence and documentation gathered and in the Company's claims system on a Qualified Claim, to allow the adjuster to properly evaluate the merits of the claim; and
  - 8) Provide, in accordance with the Company's procedures and authority, an initial report and periodic reports on the status of each Qualified Claim in excess of the reporting level or otherwise reportable; and

- 9) Perform all necessary administrative work in connection with Qualified Claims; and
- 10) Respond immediately to any inquiry, complaint or request received from an insurance department or any other regulatory agency in compliance with written instructions, if any, provided by the Company. Respond promptly to any inquiry, complaint or request received from a client, claimant, agent, broker, or other interested party in connection with the Claims Adjusting Services; and
- 11) Process each Qualified Claim utilizing industry-wide standard forms where applicable; and
- 12) Attend, where appropriate and approved by the Company, mediation, arbitration, court-related or other dispute resolution hearings and/or conferences; and
- 13) Maintain files for all Qualified Claims in the Company's claims system, that may include, where necessary, a) defense of claims; b) other litigation (such as subrogation, contribution or indemnity); c) other proceedings; d) claims handling activities; and e) expense control and disbursements; and
- 14) Pursue all reasonable possibilities of subrogation, contribution or indemnity on behalf of the Company; and
- 15) Adjust, settle or otherwise resolve claims in accordance with authority levels granted; and
- 16) Pay or recommend payment where appropriate, all Qualified Claims and Allocated Loss Adjustment Expenses, on a timely basis and in accordance with authority granted by the Company; and
- 17) Pursue recovery of third party liability deductibles; and
- 18) Maintain closed claim files in accordance with state regulations and/or Company requirements.

E. The term "Claims Files" shall mean all information and documentation in written, electronic, photographic, or audio form gathered as part of the Claims Adjusting Services.

## **II. SERVICES**

- A. In consideration of service fees paid by the Company as set forth in the Compensation Schedule attached hereto and made part of this Agreement, Claims Administrator agrees to provide Claims Adjusting Services with respect to all Qualified Claims, including those in excess of the Claims Administrator's authority level.
- B. Claims exceeding the authority level are to be immediately reported by email to the Company. Claims Administrator shall seek the Company's prior written approval on all Qualified Claim settlements in excess of the authority level. With respect to those Qualified Claims in excess of the authority level, Claims Administrator shall calculate and recommend reserves, and then, upon approval by the Company, post such reserves. However, ultimate determination of settlement and reserve amounts shall be retained by the Company.
- C. Claims Administrator warrants and represents that: 1) it shall perform all Claims Adjusting Services that are necessary and appropriate directly or through licensed independent claims adjusters; and 2) it and/or its employees hold all adjuster licenses as required by law to perform the designated services; and 3) it and its employees and persons under contract to Claims Administrator will at all times observe the requirements of laws and regulations of each state in the territory in which it operates, specifically including but not limited to the privacy laws, fair claims practices acts, and fair trade practices acts.
- D. If a Summons and Complaint is filed on a Qualified Claim, the Claims Administrator shall transfer that claim and all its Features back to the Company and shall no longer be responsible for the further handling of that claim.

### **III. TERM AND TERMINATION**

- A. This Agreement shall be effective April 1, 2015, and shall be in effect until cancelled by either party with ninety (90) days' notice.
- B. In the event any license necessary to conduct the Claims Administrator's business expires or terminates, for any reason, the Claims Administrator shall immediately notify the Company and this Agreement shall automatically terminate as of the date of such license's expiration or termination unless, within one week from the date the Company receives notice of the license expiration or termination from the Claims Administrator, the Company agrees, in writing, to modify the provisions of this paragraph so as to allow the Agreement to continue.
- C. This Agreement may be terminated immediately upon written notice to either party if there has been an event of fraud, abandonment, insolvency, or gross or willful misconduct on the part of the other party.

- D. Notwithstanding the foregoing, if the Claims Administrator shall commit any material breach of the terms of this Agreement, or fail to comply with any material instruction or direction by the Company, the Company may, in its sole discretion, immediately upon notice, suspend or terminate any or all authority of the Claims Administrator. Upon receipt of such notice, the Claims Administrator shall thereupon cease to exercise such power or powers in accordance with such notice.
- E. Notwithstanding the foregoing, if the Company shall commit any material breach of the terms of this Agreement, or fail to fulfill its obligations under the Agreement, Claims Administrator may immediately upon notice, suspend and/or terminate all claims handling under this Agreement.
- F. If the Agreement is terminated as per the provisions above, the Claims Administrator shall transfer all open Features to the Company at termination. The Company shall pay Claims Administrator all service fees earned up to the date of termination according to the Compensation Schedule attached hereto. Any time and expenses incurred by the Claims Administrator in the return of such files will be billed to the Company, with supporting documentation for such billing, and the Company shall pay such billing to the Claims Administrator within thirty (30) days from billing date.

#### **IV. DUTIES AND OBLIGATIONS OF CLAIMS ADMINISTRATOR**

- A. Claims Administrator shall maintain all industry standard claim information necessary in the jurisdictions in which Claims Administrator performs Claims Adjusting Services.
- B. Claims Administrator shall comply with reasonable requests of the Company to achieve compliance with applicable state insurance statutes and regulations regarding the creation and maintenance of a Special Investigative Unit for the business of this Agreement.
- C. Claims Administrator shall cooperate with requests of the Company to achieve compliance with the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) relative to Company's obligation to assure that illicit transactions involving target countries and Specifically Designated Nationals are not processed. To the extent that the Claims Administrator incurs out-of-pocket costs for such compliance that solely benefits the Company, the Company will reimburse prior approved expenses.
- D. Claims Administrator shall comply with the Company's Privacy Policy under the Gramm-Leach-Bliley Act of 1999, as set forth below:

NBIS does not disclose any nonpublic personal information about individual policyholders or claimants to any affiliate or any non-affiliate third party other than those permitted by law and only for the purpose of transacting the business of the policyholder's insurance coverage or claim.

Claims Administrator shall fulfill any obligation of the Company to provide claimants with a copy of the Privacy Policy of the Company as may be required by law.

- E. Claims Administrator shall at all times be an independent contractor and shall not for any purpose be deemed to be or hold itself out to be an employee of or affiliated with the Company.
- F. In any state that levies a tax on the services provided by Claims Administrator to Company, Claims Administrator shall prepare an accounting of the tax owed as required by law and submit an invoice for this tax to Company. Once Company has paid the invoice, Claims Administrator shall forward the tax to the appropriate state agency.

#### **V. DUTIES AND OBLIGATIONS OF COMPANY**

- A. Company will provide all information relevant to particular claims to Claims Administrator in order for Claims Administrator to fulfill its duties and obligations as set out in this Agreement, including applicable policy and coverage information and coverage confirmation status.
- B. Company has ultimate authority and responsibility for authorizing claims payment and settlement of claims under this Agreement.
- C. Company will provide to Claims Administrator access to Company's claims system and policy and coverage information as required by Claims Administrator to perform its authorized duties under this Agreement.
- D. Company shall be responsible for the payment of all Allocated Loss Adjustment Expenses relating to the Qualified Claims and the Claim Adjusting Services provided by Claims Administrator.

#### **VI. INSURANCE AND INDEMNIFICATION**

- A. As a condition precedent and an ongoing obligation throughout the term of this Agreement, Claims Administrator shall, no less than annually, provide the Company with evidence of a policy of insurance providing Errors and Omissions insurance coverage for services performed pursuant to this Agreement, from an

insurance carrier acceptable to the Company, with a Limit of Liability no less than \$1,000,000 per claim and \$1,000,000 in the aggregate. Claims Administrator shall immediately notify the Company in the event of any cancellation, non-renewal, or reduction of coverage on any such policy.

- B. Claims Administrator agrees to defend the Company from any and all claims, suits or demands asserted by anyone against the Company, as a result of any errors or omissions of Claims Administrator, its officers, directors, employees or successors. If the Company becomes legally obligated to pay damages due to the errors or omissions of Claims Administrator, Claims Administrator agrees to indemnify the Company and to reimburse the Company for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Company, including but not limited to attorneys fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Company as a result thereof. Claims Administrator agrees to cooperate with the Company in the investigation and defense of any such claims.
- C. The Company agrees to defend the Claims Administrator from any and all claims, suits or demands asserted by anyone against the Claims Administrator, as a result of any errors or omissions of Company, its officers, directors, employees or successors. If the Claims Administrator becomes legally obligated to pay damages due to the errors or omissions of Company, Company agrees to indemnify the Claims Administrator and to reimburse the Claims Administrator for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Claims Administrator, including but not limited to attorneys fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Claims Administrator as a result thereof. Company agrees to cooperate with the Claims Administrator in the investigation and defense of any such claims.
- D. Claims Administrator does not agree to defend or indemnify any claims, suits or demands where the alleged errors or omissions concern parties other than Claims Administrator or its officers, directors, employees, successors, representatives or agents, such as matters of underwriting or policy administration.

## **VII. MISCELLANEOUS PROVISIONS**

- A. This Agreement shall be interpreted in accordance with the laws of the state of Georgia. Any cause of action brought arising out of the rights or obligations of this Agreement shall be brought in Atlanta, Georgia.
- B. Any forbearance or failure by the Company or Claims Administrator to enforce any right, provision, or power established under this Agreement or by operation of law shall not operate as a modification or waiver of such right, provision or



power, and the Company or Claims Administrator may, at any time, pursue all rights or remedies available to it to enforce all terms and conditions of this Agreement.

- C. This Agreement represents the full and complete understanding of the parties as to the subject matter herein, superseding all previous agreements, whether written or verbal. This Agreement may be modified or altered only by written amendment to this Agreement signed by duly authorized representatives of the parties.
- D. Claims Administrator understands and agrees that it shall retain liability for any loss or damage arising out of any work performed by any subcontractor retained by Claims Administrator to perform its duties under this Agreement.
- E. Claims Administrator understands and agrees that it shall retain liability for any loss or damage directly or indirectly caused by or arising out of Claims Administrator's access or use of Company's claims and policy systems.
- F. To be validly given, all notices, requests, consents, and other communications arising out of this Agreement must be in writing and mailed, postage paid, to the address of the party provided for in this Agreement. As an ongoing obligation throughout the term of this Agreement, each party shall notify the other of any change of address.
- G. This Agreement shall not become effective until signed by a duly authorized representative of both the Company and Claims Administrator.
- H. Headings on titles to the several sections herein are for identification purposes only and shall not be construed as forming a part hereof.
- I. In the event that any section, sub-section, or provision of this Agreement is declared by statute or by a court of competent jurisdiction to be illegal or void, such section, sub-section, or provision shall be deemed severed from the Agreement, and all other sections, sub-sections, terms, conditions and provisions shall remain in full force and effect.
- J. During the course of this Agreement, the parties will have access to proprietary, confidential information of each other. The parties will protect such information and treat it as strictly confidential, and shall not provide it to any third party or utilize it in any fashion outside of the scope of this Agreement, except as expressly authorized in writing by the parties or as required by law. The Claims Administrator agrees to adhere to all reasonable confidentiality policies as adopted from time to time by the Company regarding the protection of the Company's information.

For purposes of this Agreement, "proprietary information" means any non-public information regarding or relating to the business operations, technology, insureds,

customers, employees, business methods and other non-public information about Company and/or Claims Administrator. Such non-public business and technical information collectively constitutes trade secrets. For purposes of this Agreement, "confidential information" shall include, without limitation, information concerning insureds or prospective insureds, claimants, and employees and agents of Company and employees, methods, claims administrative procedures, metrics and other work practices of Claims Administrator.

K. The Company, its authorized agents, officers and employees, and Claims Administrator mutually agree that until one (1) year after termination of this Agreement, they will not solicit, recruit or hire the other party's officers, employees, contractors or agents.

L. Any notice under this Agreement shall be sent, postage prepaid, to the addresses provided below:

If to the Company: NBIS Construction & Transport Insurance Service, Inc.  
800 Overlook, 2859 Paces Ferry Road  
Atlanta, GA 30339  
(770) 257-1130  
E-mail: akirkner@nbis.com  
Attention: Arthur P. Kirkner, Vice President - Claims

If to the Claims Administrator: DMA Claims Management, Inc.  
P.O. Box 26004  
Glendale, CA 91222-6004  
(323) 342-6800  
(323) 342-6850  
Attn: Thomas J. Reitze, President

M. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be addressed first by mediation between the parties. The costs of mediation shall be borne by both parties. If not resolved by mediation, the matter shall be addressed and settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All parties to this Agreement and their authorized agents, officers and employees agree that during the dispute resolution process and afterwards, they will not at any time disparage, defame or hold up to public embarrassment or ridicule the other parties involved.

NBIS Construction and Transport  
Insurance Services, Inc.

By: [Signature]  
Its: Vice President of Insurance  
Date: 5/15/2015

DMA CLAIMS MANAGEMENT, INC.

By: Thomas Seitz  
Its: PRESIDENT  
Date: 5/9/15

## **ADDENDUM TO CLAIMS ADMINISTRATION AGREEMENT**

This Addendum incorporates by reference that certain Claims Administration Agreement effective April 1, 2015 (hereinafter referred to as the "Agreement"), by and between the Company as identified in the Agreement, and the Claims Administrator as identified in the Agreement.

Claims Administrator will receive the following compensation from Company for its services:

1. For Property Damage, Collision or Comprehensive features that are open and being handled by Claims Administrator as of April 1, 2015, \$75 per feature. Payable when the feature closes.
2. For Bodily Injury features that are open as of April 1, 2015, and are assigned to Claims Administrator by Company to handle to conclusion, \$375 per feature. \$187.50 is earned on assignment, and \$187.50 is earned when the feature is closed.
3. For new features opened after April 1, 2015, \$500 per Bodily Injury feature and \$250 per Property Damage, Collision or Comprehensive feature, with a cap of \$800 per accident regardless of the number of features arising out of the accident. Regarding Bodily Injury features, \$250 is earned on assignment, and \$250 is earned when the feature is closed.
4. \$75 for incident-only claims where no investigation is warranted.
5. For First Notices of Loss, \$12.50 per First Notice of Loss taken.
6. For administrative services including but not limited to bank and check stock setup, positive pay setup, FileHandler claims system setup, creation of Quality Control reports and testing, and setup of other required reports, \$200 per hour.
7. For one administrative employee of Claims Administrator who is assigned to this program, Claims Administrator will receive the employee's actual salary plus 20%.

8. For administration and maintenance of the FileHandler claims system, \$1,000 per month.
9. Twenty-five percent (25%) of Net Subrogation Recoveries, earned when the recoveries are received. Net Subrogation recoveries are the gross amounts recovered through subrogation efforts by the claims Administrator on behalf of the Company, less any outside costs involved in the recovery process such as attorney fees.
10. \$105 per vehicle appraisal, \$115 per vehicle appraisal for a total loss, and actual cost outside of the DMA appraisal network, all earned upon completion.
11. \$35 per desk review of an auto damage estimate, earned upon completion.
12. \$45 per damaged auto assigned to Claims Administrator's shop network, earned upon assignment.

All ALAE is passed through to the Company for payment and is not included in this fee per feature. Any feature that goes into litigation is to be returned by Claims Administrator to Company.

At the end of each month Claims Administrator will prepare an invoice itemizing the services rendered as described in 1 through 12 above, and will send the invoice to the Company by email. The Company will pay the invoice within 20 days of receipt.

NBIS Construction and Transport  
Insurance Services, Inc.

By: [Signature]

Its: [Signature]

Date: 5/15/2015

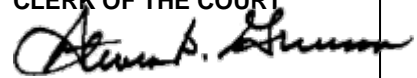
DMA CLAIMS MANAGEMENT, INC.

By: Thomas Seitz

Its: PRESIDENT

Date: 5/9/15

4



1 **OMD**  
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3 Nevada Bar No. 5092  
4 KEVIN T. STRONG  
5 Nevada Bar No. 12107  
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13 Attorneys for Plaintiff  
14 Diane Sanchez

8  
9 **EIGHTH JUDICIAL DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 DIANE SANCHEZ,  
12  
13 Plaintiff,

Case No. A-19-805351-C  
Dept. No. XIII

14 vs.

15 ATX PREMIER INSURANCE COMPANY  
16 now known as WINDHAVEN NATIONAL  
17 INSURANCE COMPANY, a foreign  
18 corporation; NATIONSBUILDERS  
19 INSURANCE SERVICES, INC., a foreign  
20 corporation; NBIS CONSTRUCTION &  
21 TRANSPORT INSURANCE SERVICES,  
22 INC., a foreign corporation; DMA CLAIMS  
23 MANAGEMENT, INC., a foreign  
24 corporation; BLAS BON, an individual;  
25 DOES I-X; and ROE CORPORATIONS I-  
26 X, inclusive,

27 Defendants.

**PLAINTIFF DIANE SANCHEZ'S  
OPPOSITION TO DEFENDANTS  
NATIONSBUILDERS INSURANCE  
SERVICES, INC. AND NBIS  
CONSTRUCTION & TRANSPORT  
INSURANCE SERVICES, INC.'S  
MOTION TO DISMISS SECOND  
AMENDED COMPLAINT, OR IN  
THE ALTERNATIVE, MOTION TO  
STAY PROCEEDINGS**

Hearing Date: August 23, 2021  
Hearing Time: 9:00 a.m.

24 Plaintiff DIANE SANCHEZ, by and through her counsel of record, Dennis M.  
25 Prince and Kevin T. Strong of PRINCE LAW GROUP, hereby submits her *Opposition to*  
26 *Defendants Nationsbuilders Insurance Services, Inc. and NBIS Construction &*  
27 *Transport Insurance Services, Inc.'s Motion to Dismiss Second Amended Complaint, or*  
28 *in the Alternative, Motion to Stay Proceedings.*



1 This Opposition is based on the pleadings and papers on file in this action, the  
2 Memorandum of Points and Authorities set forth herein, the exhibits attached hereto,  
3 and any argument this Court wishes to entertain at the hearing of this matter.

4 DATED this 5th day of August, 2021.

5 **PRINCE LAW GROUP**

6  
7  
8  
9 /s/ Kevin T. Strong  
10 DENNIS M. PRINCE  
11 Nevada Bar No. 5092  
12 KEVIN T. STRONG  
13 Nevada Bar No. 12107  
14 10801 West Charleston Boulevard  
15 Suite 560  
16 Las Vegas, Nevada 89135  
17 Tel: (702) 534-7600  
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19 Attorneys for Plaintiff  
20 *Diane Sanchez*  
21  
22  
23  
24  
25  
26  
27  
28





# MEMORANDUM OF POINTS AND AUTHORITIES

## I.

### INTRODUCTION

Within the first two pages of Defendants NationsBuilders Insurance Services, Inc. (“NBIS”) and NBIS Construction & Transport Insurance Services, Inc.’s (“CTIS”) Motion to Dismiss, it is obvious that their arguments and claims are rooted in fiction and obfuscation. Plaintiff Diane Sanchez (“Sanchez”) obtained a valid default judgment against Defendant ATX Premier Insurance Company’s (“ATX”) insured, Blas Bon (“Bon”) in Case No. A-15-722815-C (“the personal injury action”). The district court in the personal injury action concluded, on three separate occasions, that Bon was properly served with the summons and personal injury complaint. Sanchez had no knowledge that Bon was allegedly homeless as NBIS and CTIS claim. Of course, ATX and its third-party claims administrator, Defendant DMA Claims Management, Inc. (“DMA”) were well aware of the fact that Bon was served with the personal injury complaint and given every opportunity to tender a defense on his behalf. Yet, no action was taken on Bon’s behalf by: (1) ATX; (2) DMA; (3) NBIS, the parent company of ATX; or (4) CTIS, an affiliate of NBIS. At the time, CTIS was responsible for overseeing the claims adjustment and administrative services performed by DMA for insurance policies “issued by affiliated companies of [CTIS].” *See* Claims Administration Agreement between CTIS and DMA, attached as **Exhibit “1.”**

NBIS and CTIS’s suggestion that Bon initiated the appeal of the order denying the motion to set aside the default judgment has no basis in reality. Once Sanchez commenced this insurance bad faith and judgment enforcement action implicating the financial interests of ATX, NBIS, and CTIS, “Bon” miraculously sought to set aside the default judgment. NBIS and CTIS are now using Bon’s party status in the personal injury action to set aside the default judgment solely to protect their own financial interests, not Bon’s interests. Afterall, NBIS and CTIS have yet to produce any proof that they have been in contact with Bon or that Bon’s whereabouts are known.

Notably, this Court has already denied DMA’s request to stay this matter because of “Bon’s” pending appeal in the personal injury litigation. *See* 3/25/21 Order Denying

1 DMA Claims Management, Inc.'s Motion to Dismiss or, Alternatively, Motion to Stay,  
2 at p. 2. Indeed, Sanchez's alleged damages resulting from NBIS and CTIS's collective  
3 bad faith conduct remain valid, irrespective of the pending appeal that NBIS and CTIS  
4 have initiated to further their own interests. Perfecting an appeal of an order denying  
5 a motion to set aside a default judgment has no legal impact on the finality of that  
6 default judgment because it was never timely appealed. Moreover, there is no stay in  
7 the underlying personal injury case, which means Sanchez is not forbidden from seeking  
8 collection on the default judgment through this enforcement action.

9 NBIS and CTIS's request for a stay based on the Texas State Court's entry of its  
10 Order Appointing Liquidator, Permanent Injunction and Notice of Automatic Stay  
11 ("Liquidation Order") against Windhaven National Insurance Company ("Windhaven")  
12 is similarly unavailing. As Sanchez has detailed to this Court on numerous occasions,  
13 the Liquidation Order has no bearing on this matter because Windhaven did not assume  
14 financial responsibility or control over the underlying ATX insurance policy at issue.  
15 NBIS and CTIS should be keenly aware that Windhaven's financial condition has no  
16 bearing on this matter as their representatives attended the NRAP 16 settlement  
17 conference addressing the appeal in the personal injury action. Nobody on behalf of  
18 Windhaven attended. Accordingly, the Liquidation Order provides no basis for a stay of  
19 this litigation.

20 Finally, NBIS and CTIS's request for dismissal pursuant to NRCP 12(b)(5) is  
21 without merit. Sanchez articulates detailed factual allegations demonstrating that  
22 NBIS assumed financial responsibility and control over claims arising from ATX  
23 insurance policies issued before ATX was sold to Windhaven. These allegations are  
24 based directly on reliable documentation and representations made by NBIS's attorney  
25 in a similar insurance bad faith case. Further, Sanchez refers specifically to a Claims  
26 Administration Agreement between CTIS and DMA demonstrating that CTS performed  
27 claims management, handling, and administration duties for the benefit of ATX and its  
28 parent company, NBIS. All of those facts sufficiently detail a joint venture amongst  
these entities necessary to establish liability for breach of contract and breach of the  
implied covenant of good faith and fair dealing. As the entity that admittedly retained

1 indemnity obligations for claims arising from liability insurance policies issued by ATX  
2 before its sale to Windhaven, NBIS should be treated as a liability insurer for purposes  
3 of this action. This further validates all of Sanchez's claims for relief asserted against  
4 NBIS and CTIS.

5 The conspicuous absence of any documentary information to refute Sanchez's  
6 allegations demonstrates that Sanchez should be permitted to proceed with her claims  
7 and conduct discovery to substantiate NBIS and CTIS's roles, responsibilities, and  
8 culpability. NBIS and CTIS's failure to satisfy their burden to show Sanchez has not  
9 stated plausible claims for relief pursuant to the liberal notice-pleading standard set  
10 forth in NRCP 8(a) warrants this Court's denial of their Motion in its entirety. All of  
11 Sanchez's claims for relief are not only based on substantially detailed facts, but are also  
12 legally viable and ripe.

## 13 II.

### 14 STATEMENT OF FACTS

15 Naturally, NBIS and CTIS distort the underlying facts surrounding Sanchez's  
16 pre-litigation bodily injury claim as well as the underlying facts of the personal injury  
17 action. To ensure this Court is accurately and fully apprised of the relevant facts,  
18 Sanchez provides a detailed recitation of the relevant facts below.

#### 19 A. Bon Negligently Caused a Motor Vehicle Collision, Sanchez Sustained 20 Severe Bodily Injuries, and Sanchez Made a Bodily Injury Claim to ATX 21 and DMA

22 On April 28, 2015, a motor vehicle collision involving four cars occurred on  
23 Interstate-15 in Las Vegas, Nevada. *See* Default Judgment, *Sanchez v. Bon, et al.*, Case  
24 No. A-15-722815-C, at 1:23-15; p. 2, ¶ 1, attached as **Exhibit "2."** Bon drove a 1997  
25 Dodge Ram 2500 pickup truck directly behind Sanchez that carried two wheelbarrows  
26 in the truck bed. *Id.* at p. 2, ¶ 1. Bon negligently collided with the left side of Sanchez's  
27 rear bumper. *Id.*; *see also*, Sanchez's Second Amended Complaint ("SAC"), at p. 2, ¶ 14.<sup>1</sup>

---

28 <sup>1</sup> A third vehicle driven by non-party Joseph Acosta also struck the rear bumper of  
Sanchez's vehicle. *See Exhibit "2,"* at 1:24-27. Sanchez sued Joseph Acosta and later,  
Wilfredo Acosta, who was the owner of Joseph Acosta's vehicle. *Id.* Sanchez resolved  
her claims against the Acosta Defendants. *Id.*

1 As a result of the subject collision, Sanchez suffered catastrophic injuries to her cervical  
2 spine and lumbar spine. See **Exhibit “2,”** at p. 2, ¶ 2. These extensive injuries  
3 necessitated substantial medical treatment, including anterior artificial disc  
4 replacement surgery at the L4-5 level of Sanchez’s lumbar spine. *Id.*

5 Before Sanchez filed her personal injury lawsuit, she made a bodily injury claim  
6 with Bon’s insurer, ATX. See SAC, at pp. 9-10, ¶ 40. At the time of the subject collision,  
7 ATX issued a personal automobile liability insurance policy to non-party Hipolito Cruz  
8 (“Cruz”) that covered the Dodge pickup truck driven by Bon. *Id.* at pp. 4-5, ¶ 19. The  
9 ATX policy was in full force and effect at the time of the subject collision because the  
10 term of the policy ran from December 16, 2014 through June 16, 2015. *Id.* at p. 4, ¶ 18.  
11 The applicable liability insurance coverage limits under the ATX policy were \$15,000.00  
12 per person and \$30,000.00 per occurrence. *Id.* at p. 4, ¶ 11. Bon was insured under the  
13 ATX policy when the collision occurred because he was a permissive driver of Cruz’s  
14 pickup truck. *Id.* at pp. 4-5, ¶ 19. This fact has never been disputed. On May 21, 2015,  
15 Sanchez, through her counsel, reported her claim to ATX, via letter. *Id.* at pp. 9-10, ¶  
16 40. Sanchez included her medical records and bills for all treatment she underwent at  
17 that time. *Id.* A claim number of DMA-0147074 was already assigned to Sanchez’s  
claim when she sent the May 21, 2015 letter. *Id.*

18 **B. NBIS and CTIS Retained Financial Responsibility and Control Over All**  
19 **Claims Arising from Liability Insurance Policies Issued by ATX Before**  
**ATX was sold to Windhaven**

20 At the time of Sanchez’s claim, a contractual relationship existed between ATX  
21 and DMA whereby DMA provided services as a third-party claims adjuster for any  
22 claims made under policies issued by ATX. See SAC, at p. 6, ¶ 27. DMA was  
23 contractually obligated to carry out the duties ATX owed to Bon under the express terms  
24 of the policy. *Id.* A contractual relationship also existed between DMA and CTIS  
25 whereby DMA was obligated, on behalf of CTIS, to perform a variety of “claims adjusting  
26 services” for “claims and losses arising out of policies issued by affiliated companies of  
27 [CTIS].” *Id.* at pp. 6-7, ¶¶ 26-29; see also, **Exhibit “1,”** at pp. 1, 3-7. One of those  
28 affiliated companies was ATX because NBIS and/or CTIS retained control over ATX

1 policies, which included indemnity, administrative, and handling obligations. *See* SAC,  
2 at pp. 8-9, ¶¶ 31-35.

3 As early as February 22, 2013, NBIS was the parent company of ATX. *Id.* at p. 5,  
4 ¶ 21; *see also*, Official Order of the Texas Commissioner of Insurance, attached as an  
5 exhibit to Plaintiff's Motion to Amend Complaint to Add ATX Premier Insurance  
6 Company and NationsBuilders Insurance Services, Inc. as Defendants, *Hayes v. ATX*  
7 *Premier Ins. Co.*, Case No. 2:18-cv-01938-GMN-NJK, at bates no. NBIS0065, ¶ 5,  
8 attached as **Exhibit "3."** On April 1, 2015, ATX, CTIS, AutoTex MGA, Inc. ("AutoTex"),  
9 and Safe Auto Insurance Company ("Safe Auto") entered into their Amended and  
10 Restated Claims Handling Agreement. *See* SAC, at p. 5, ¶¶ 22-24; *see also*, Amended  
11 and Restated Claims Handling Agreement excerpt, attached as an exhibit to Plaintiff's  
12 Motion to Amend Complaint to Add ATX Premier Insurance Company and  
13 NationsBuilders Insurance Services, Inc. as Defendants, *Hayes v. ATX Premier Ins. Co.*,  
14 Case No. 2:18-cv-01938-GMN-NJK, attached as **Exhibit "4."** The Amended and  
15 Restated Claims Handling Agreement outlines specific "definitional guidelines"  
16 regarding the treatment of ongoing business obligations before the stock sale to Safe  
Auto that are relevant to this action:

17 (A) **Pre-close Policy.** **Pre-close Policy** means any policy  
18 which was issued on or before the closing date of the sale  
19 of **Auto Tex**, or which may be validly reinstated after such  
20 closing date by the policyholder during a reinstatement  
21 period. It also means any new policy written or renewed  
on or after the closing date which: (1) resides in the state of  
Arizona; (2) is produced by the LA Franchise Agency or its  
affiliates in any state; or (3) has been certified under the  
financial responsibility laws and regulations of any state,

22 *See* SAC, at p. 5, ¶ 23; *see also*, **Exhibit "4."**

23 The Amended and Restated Claims Handling Agreement confirms that policies  
24 issued by ATX before the March 2, 2015 stock sale of AutoTex to Safe Auto remained  
25 with CTIS:

26 **WHEREAS, CTIS** wishes to assume the rights and  
obligations hereunder to administer **Pre-close Policies** as  
27 the **Pre-close Policy Claims Administrator**;

28 **WHEREAS, CTIS** is in the business of providing claim  
services on behalf of insurance companies and is willing to

1 provide such services on behalf of **Company** on all **Pre-**  
2 **close Policies** in accordance with the terms and  
conditions set forth herein; and as set forth in any agreed  
3 to Addenda attached to and made part of this Agreement;

4 *See* SAC, at pp. 5-6, ¶ 24; *see also*, **Exhibit “4.”**

5 The Amended and Restated Claims Handling Agreement defines ATX as  
6 “Company” under the contract. *See* SAC, at p. 5, ¶ 24; *see also*, **Exhibit “4.”** As such,  
7 the express terms of the agreement confirm NBIS and CTIS retained distinct  
8 management and control over insurance policies issued by ATX before March 2, 2015.  
9 *Id.* The ATX policy covering Bon went into effect on December 16, 2014. *See* SAC, at p.  
10 4, ¶ 18. By definition, the ATX automobile liability insurance policy giving rise to  
11 Sanchez’s claims in this action was a “Pre-close Policy” that has always remained under  
the control of NBIS and CTIS. *See* **Exhibit “4.”**

12 NBIS eventually sold ATX to Windhaven in approximately April of 2016. *See*  
13 *Windhaven™ Insurance Acquires ATX Premier; Ready to Grow Local Agent Business*  
14 *Countrywide*, April 5, 2016, attached as **Exhibit “5.”** The Texas Insurance  
15 Commissioner’s Order approving the acquisition references only that “Windhaven will  
16 acquire control of ATX through the purchase of 100% of the issued and outstanding  
17 common capital stock of ATX for \$7,500,000 cash.” *See* 3/3/16 Official Order of the Texas  
18 Commissioner of Insurance approving acquisition of ATX, at p. 1, ¶ 2, attached as  
19 **Exhibit “6.”** This Order does not articulate that Windhaven also assumed or reserved  
20 financial responsibility and control over any of ATX’s liabilities, including pre-sale  
21 liability insurance policies issued. *See generally*, **Exhibit “6.”** There is evidence or  
22 documentation that has ever been disclosed to confirm Windhaven assumed any  
23 financial responsibility or control over any ATX liability insurance policies as part of its  
24 acquisition of ATX. No such evidence actually exists given the representations  
25 previously made by attorney John Podesta (“Podesta”), who represented ATX and NBIS  
26 in a Nevada federal district court action styled as *Hayes v. ATX Premier Ins. Co.*, Case  
27 No. 2:18-cv-01938-GMN-NJK. As Sanchez has articulated to this Court on several  
28 occasions, the *Hayes* matter involved claims arising from an ATX insurance policy that  
was issued in 2014. *See* Third Amended Complaint, *Hayes v. ATX Premier Ins. Co.*, Case

1 No. 2:18-cv-01938-GMN-NJK, at pp. 1-2, ¶ 1, attached as **Exhibit “7.”** Podesta made  
2 representations in dispositive motion practice in the *Hayes* action addressing NBIS’s  
3 financial responsibilities:

4 In the context of this case, NBIS **retained financial**  
5 **responsibility for claims relating to policies that**  
6 **were issued prior to the sale of ATX in 2015** [sic].

7 See ATX and NBIS’s Opposition to Plaintiff’s Motion for Summary Judgment, *Hayes v.*  
8 *ATX Premier Ins. Co.*, Case No. 2:18-cv-01938-GMN-NJK, pleading portion only, at  
9 7:18-19, attached as **Exhibit “8”** (emphasis added).

10 Podesta confirmed NBIS’s role as indemnitor and also detailed the role that CTIS  
11 played regarding claims arising from ATX policies issued in 2014 in a summary  
12 judgment motion filed in *Hayes* on November 7, 2019:

13 NBIS is a holding company that, as part of the sale of ATX,  
14 **agreed to indemnify ATX for losses associated with**  
15 **pre-sale policies, akin to a reinsurer to insurance**  
16 **companies.**

17 . . .

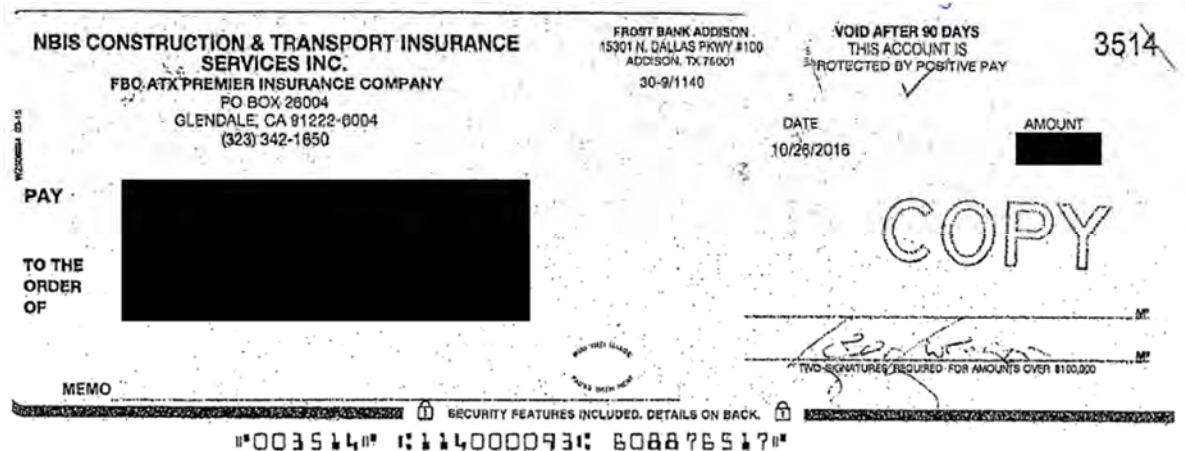
18 While NBIS-affiliated companies engage in **claim**  
19 **oversight activities** – notably NBIS Construction and  
20 Transport Services (“CTIS”) – it is a completely separate  
21 company from NBIS.

22 See ATX and NBIS’s Motion for Summary Judgment or in the alternative Motion for  
23 Partial Summary Judgment, *Hayes v. ATX Premier Ins. Co.*, Case No. 2:18-cv-01938-  
24 GMN-NJK, pleading portion only, at 3:18-20, 4:17-19, attached as **Exhibit “9”**  
25 (emphasis added).

26 The representations made by Podesta solidify that Windhaven’s purchase of ATX  
27 in 2016 did not include the assumption of financial responsibility or control over any  
28 pre-sale insurance policies issued by ATX. This is precisely what happened when NBIS  
sold AutoTex to Safe Auto. See **Exhibit “4.”** As a result, Windhaven never assumed  
any contractual or indemnity obligations arising from the way Sanchez’s bodily injury  
claim was investigated, evaluate, or adjusted by ATX, DMA, NBIS, or CTIS. In fact,  
CTIS issued a settlement check **for the benefit of ATX** in the *Hayes* matter dated  
October 26, 2016, over six months after Windhaven purchased ATX:

. . .

. . .



See 10/26/16 check issued by CTIS, attached as an exhibit to Plaintiff's Motion to Amend Complaint to Add ATX Premier Insurance Company and NationsBuilders Insurance Services, Inc. as Defendants, *Hayes v. ATX Premier Ins. Co.*, Case No. 2:18-cv-01938-GMN-NJK, attached as **Exhibit "10."**

This settlement check was tendered in relation to a claim arising from the ATX policy issued in 2014 to the owner of the car in *Hayes*, the same year that ATX issued the subject policy in Bon. See **Exhibit "7,"** at p. 2, ¶¶ 2-3. Sanchez's factual allegations set forth in her Second Amended Complaint are predicated on these facts, which NBIS and CTIS conveniently do not acknowledge.

**C. Sanchez Submitted Her Policy Limits Demand, Which was Untimely Rejected Without any Basis**

On June 16, 2015, Sanchez made a two-week time limit demand for Bon's policy limits to DMA and ATX. See SAC, at p. 10, ¶ 41. At the time of the demand, Sanchez's past medical expenses for her treatment were approximately \$8,000.00, which was already very close to the \$15,000.00 minimum policy limit. *Id.* By that time, Sanchez was also recommended to undergo a cervical fusion surgery in the future. *Id.* Sanchez included a copy of the traffic accident report and her medical records and bills, including the record outlining her future surgical recommendations, with her demand letter. *Id.* Neither ATX, nor DMA, advised Sanchez that additional time was needed to respond to her policy limits demand before the June 30, 2015 deadline. NBIS and CTIS's suggestion that her policy limits demand was unreasonable now rings hollow.

On July 10, 2015, DMA sent Sanchez a letter acknowledging it represented the interests of ATX regarding the subject collision. *Id.* at p. 10, ¶ 43. It was not until that



1 time that DMA requested additional time to complete its investigation of Sanchez's  
2 bodily injury claim because it allegedly needed to gather additional information to  
3 determine liability. *Id.* On July 17, 2015, one week after its initial letter, DMA advised  
4 Sanchez that her bodily injury claim was denied because its insured, Bon, was not the  
5 proximate cause of the crash and therefore, was not legally liable for Sanchez's damages.  
6 *Id.* at p. 10, ¶ 44. This was a completely baseless reason to disclaim coverage and  
7 outright reject Sanchez's policy limits demand. After that date, Sanchez received no  
8 further oral or written communication from ATX, DMA, NBIS, or CTIS. *Id.* at p. 11, ¶  
9 45. ATX, DMA, NBIS, and CTIS never even responded to Sanchez's numerous letters  
10 advising them that she filed and served her personal injury complaint on Bon. *Id.* at p.  
11 11, ¶ 58.

12 **D. Sanchez Filed Her Personal Injury Complaint, Properly Served Bon with**  
13 **the Summons and Complaint Under Nevada Law, and Directly Notified**  
14 **and Advised ATX and DMA of Those Developments**

15 On August 7, 2015, Sanchez filed her complaint for personal injuries against Bon.  
16 *See* SAC, at p. 11, ¶ 46. There is no dispute Sanchez used diligent efforts to serve Bon  
17 with the summons and personal injury complaint. The district court concluded, on  
18 **three separate occasions**, that Sanchez properly served Bon with the summons and  
19 personal injury complaint as a matter of Nevada law:

20 As to Bon, Sanchez filed her Affidavit of Due Diligence on  
21 October 22, 2015 wherein the process server described his  
22 failed efforts to personally serve Bon with the Summons  
23 and Complaint at his last known address on September 22,  
24 2015. On March 29, 2016, Sanchez filed her Amended  
25 Affidavit of Compliance wherein she confirmed that Bon  
26 was served with the Summons and Complaint through the  
27 Nevada Department of Motor Vehicles, pursuant to NRS  
28 14.070, on November 2, 2015. On November 9, 2015,  
Sanchez also sent, via certified mail, copies of the  
Summons, Complaint, traffic accident report, and  
November 2, 2015 DMV letter confirming proof of service  
to Bon's last known address: 3900 Cambridge Street, Suite  
106, Las Vegas, Nevada 89119. This package went  
unclaimed and was returned to Sanchez on November 12,  
2015. On April 1, 2016, the district court entered Default  
against Bon for his failure to file an answer to Sanchez's  
Complaint or to otherwise appear in the action within  
twenty (20) days of service.

*See* **Exhibit "2,"** at 2:3-13.

1           **THE COURT FURTHER FINDS** that Plaintiff properly  
2 served her Complaint on Defendant Blas Bon through the  
3 Nevada Department of Motor Vehicles pursuant to NRS  
4 14.070. **Plaintiff exercised due diligence** to locate and  
5 personally serve Bon before effectuating service through  
6 the DMV. . . . The efforts made to locate Bon **were**  
7 **reasonably diligent and justified service of**  
8 **Sanchez's Complaint through the DMV.**

9           *See* 9/19/20 Order Denying Bon's Motion to Set Aside Default Judgment, Case No. A-15-  
10 722815-C, at 2:10-20, attached as **Exhibit "11"** (emphasis added).

11           Court does not see a sufficient basis here that due diligence  
12 was lacking. There was [from] the Court's [perspective]  
13 appropriate due diligence.

14           *See* 11/24/20 Minute Order denying Bon's Motion for Rehearing and to Alter or Amend  
15 the Judgment and Order Denying Rule 60(b) Relief, attached as **Exhibit "12."**

16           Contrary to NBIS and CTIS's assertion, Sanchez was unaware that Bon was  
17 allegedly homeless at the time she attempted to effectuate personal service of the  
18 summons and personal injury complaint. This constitutes the same failed attempt made  
19 by DMA to excuse ATX and DMA's respective failures to take any action to safeguard  
20 the interests of Bon by defending him against Sanchez's personal injury lawsuit. NBIS  
21 and CTIS conveniently fail to acknowledge Sanchez notified and furnished proof to ATX  
22 and DMA, on multiple occasions, that she filed and served her personal injury lawsuit  
23 against Bon. It was at that time that NBIS, CTIS, ATX, or DMA should have challenged  
24 the validity of service, not several years later. NBIS and CTIS are sadly mistaken if  
25 they believe this action is the proper venue to litigate the merits of service to somehow  
26 invalidate the default judgment. NBIS and CTIS's blatant mischaracterization of the  
27 service issue is simply an act of desperation designed to avoid responsibility for the  
28 consequences of their own bad faith conduct.<sup>2</sup>

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25           <sup>2</sup> NBIS and CTIS's reference that Sanchez did not serve Bon with her Amended  
26 Complaint in the personal injury action is similarly irrelevant to these proceedings.  
27 Pursuant to NRCP 5(a)(2), "no service is required on a party who is in default for failing  
28 to appear," unless the amended pleading asserts a new claim for relief against that  
party. Sanchez's Amended Complaint did not assert a new claim for relief against Bon.  
This underscores the tenuous positions NBIS and CTIS have taken to try to set aside a  
default judgment in their own self-interests.

1 It comes as no surprise that NBIS and CTIS overlook the chances that its  
2 affiliated insurer, ATX, and its contracted third-party claims administrator, DMA, had  
3 to preserve Bon's interests, of which they were duty-bound to perform. On January 20,  
4 2016, Sanchez mailed a letter to ATX and DMA advising Bon was served with the  
5 summons and personal injury complaint via the Nevada Department of Motor Vehicles.  
6 See SAC, at p. 11, ¶ 50. Sanchez enclosed copies of the summons and personal injury  
7 complaint with this letter. *Id.* DMA and ATX failed to respond to the letter and took no  
8 action to tender a defense on behalf of Bon in the personal injury action. *Id.* at p. 11, ¶  
9 51. On February 16, 2016, Sanchez sent yet another letter to ATX and DMA advising  
10 Bon still had not yet filed an answer to the personal injury complaint. *Id.* at p. 12, ¶ 52.  
11 Sanchez further advised if Bon did not file an answer to the personal injury complaint,  
12 she would request the district court to enter a default against Bon, the insured. *Id.*  
13 Once again, DMA and ATX failed to respond to this letter or otherwise make an  
14 appearance on behalf of Bon to defend him against Sanchez's personal injury complaint.  
15 *Id.* at p. 12, ¶¶ 53-54. The district court did not even enter a default against Bon until  
16 April 1, 2016, which means DMA and ATX had over a month and a half from the  
17 February 16, 2016 letter to provide a defense for Bon and still failed to take that  
18 necessary action. *Id.* at p. 12, ¶ 55. Sanchez even notified ATX and DMA that a default  
19 was entered against Bon and provided them with a copy of the same. *Id.* at p. 12, ¶¶ 56-  
20 57. Once again, no action was undertaken by ATX, DMA, NBIS, or CTIS at that time to  
21 request the district court to set aside the default or to defend Bon in any way. *Id.*

22 **E. ATX and/or DMA, and/or NBIS, and/or CTIS's Breach of Contract and**  
23 **Breach of the Implied Covenant of Good Faith and Fair Dealing Caused**  
24 **Entry of a Default Judgment**

25 Due notice of the personal injury action was provided to Bon, ATX, and DMA, who  
26 admittedly represented ATX, CTIS, and NBIS's interests regarding the subject collision  
27 and Sanchez's bodily injury claim. See SAC, at p. 9, ¶¶ 35-39; p. 12, ¶ 58. ATX and/or  
28 NBIS, and/or CTIS, and/or DMA breached their respective contractual duties to defend  
and breached their respective duties to make reasonable settlement decisions in bad  
faith. *Id.* at p. 15, ¶ 75, pp. 16-17, ¶ 87. As a result, the Nevada state court entered a

1 default judgment against Bon in the amount of \$15,212,655.73, inclusive of attorney's  
2 fees and costs. See **Exhibit "2,"** at p. 4.

3 **F. The District Court Judicially Assigned Bon's Claims Against ATX, DMA,**  
4 **NBIS, and CTIS to Sanchez and Sanchez Commenced this Action**

5 Following entry of the default judgment against Bon, the district court granted  
6 Sanchez's Motion for Judicial Assignment of Bon's claims and causes of action against  
7 ATX and any other liability insurer or entity. See SAC, at p. 13, ¶ 64. Subsequently,  
8 the district court granted Sanchez's motion to clarify its judicial assignment order and  
9 made clear that its judicial assignment of Bon's claims included those against any third-  
10 party claims administrator, third-party claims adjuster, or any other applicable insurer,  
11 administrator, or entity. *Id.* at p. 13, ¶ 65.

12 Sanchez initiated her insurance bad faith and judgment enforcement action in  
13 2019. After Windhaven removed this matter to federal court, the federal court remanded  
14 the case back to this Court on November 5, 2020. Shortly thereafter, this Court granted  
15 Sanchez's Motion for Leave to File Second Amended Complaint to Name ATX, NBIS,  
16 and CTIS, and to Voluntarily Dismiss Windhaven, Without Prejudice.

17 **G. NBIS and CTIS's Recent Efforts to Set Aside the Default Judgment**  
18 **Entered Against Bon**

19 Now that Bon's claims for relief have been judicially assigned to Sanchez, it comes  
20 as no surprise that now NBIS and CTIS have decided to take actions in the personal  
21 injury action to preserve their own financial interests under the guise of protecting Bon.  
22 Specifically, CTIS paid for counsel to file a motion to set aside the default judgment  
23 entered against Bon:

24 Kevin:

25 I want to clarify that it was **NBIS Construction and**  
26 **Transport Insurance Services, Inc.** that retained my  
27 office. They are obviously **part of the NBIS family of**  
28 **companies.** I should have been more precise about that  
point.

See 4/29/20 e-mail from attorney William Volk ("Volk"), attached as **Exhibit "13"**  
(emphasis added).

1 Five minutes before Volk sent this e-mail, Podesta was forced to clarify Volk's  
2 earlier e-mail regarding the entity that hired Volk:

3 And we see the reason that defense lawyers are kept in the  
4 dark about how things really work. Sorry, Bill. Mr. Volk's  
5 **retention was by NBIS Construction and Transport  
Insurance Services, Inc., for the benefit of ATX  
Premier Insurance Co.,** who then utilized DMA Claims  
6 as the claims administrator.

7 *See* 4/29/20 e-mail from Podesta, attached as **Exhibit "14"** (emphasis added).

8 Podesta sent this e-mail **after** the March 25, 2200 Liquidation Order was entered  
9 against Windhaven, which further refutes the notion that this matter should be stayed.  
10 The NBIS/CTIS entities continue to use Bon to further their own self-interests and act  
11 for the benefit of ATX by pursuing various legal avenues to avoid the default judgment  
12 that was entered against Bon in the personal injury action. The NBIS/CTIS entities  
13 first hired Volk to file a motion to set aside the default judgment, which the district court  
14 denied on September 19, 2020. *See* **Exhibit "11."** Following the denial of that motion,  
15 NBIS/CTIS hired appellate counsel to file a motion for rehearing and to alter or amend  
16 the judgment and order denying Rule 60(b) relief, which the Court also denied. *See*  
17 **Exhibit "12."** NBIS/CTIS also simultaneously filed a notice of appeal on behalf of  
18 "Bon." *See* 10/20/20 Notice of Appeal, attached as **Exhibit "15."** It is certainly  
19 predictable that the only actions taken by NBIS/CTIS on Bon's behalf occurred when  
20 their financial interests became implicated. It is also confounding that NBIS/CTIS seek  
21 to stay this matter on account of the Liquidation Order entered against Windhaven  
22 when Windhaven, an insolvent insurer, lacks the money to fund NBIS and CTIS's feeble  
23 attempt to avoid the default judgment. The Second Amended Complaint makes it plain  
24 that Sanchez has no viable claim to submit pursuant to the Liquidation Order because  
25 Windhaven is not financially responsible for Sanchez's claim arising from a pre-sale ATX  
26 insurance policy.

### 27 **III.**

### 28 **LEGAL ARGUMENT**

NBIS and CTIS first contend this matter should be stayed pending adjudication  
of the appeal they have effectuated in the personal injury action and the lifting of the

1 Liquidation Order. Both of these arguments are not persuasive because they are based  
2 on two legally flawed premises: (1) that the default judgment is somehow not final; and  
3 (2) that the Liquidation Order applies to these proceedings. NBIS and CTIS set forth  
4 even weaker arguments requesting the dismissal of Sanchez's claims against them  
5 because she has failed to state a claim upon which relief may be granted. Sanchez  
6 provides detailed allegations in her Second Amended Complaint to establish NBIS and  
7 CTIS's roles and involvement as joint venturers with ATX and DMA as it relates to the  
8 mishandling of Sanchez's bodily injury claim and her personal injury lawsuit. It is ironic  
9 that NBIS and CTIS wish to hold Sanchez to a more exacting pleading standard even  
10 though NBIS and CTIS possess all of the documents that most certainly validate  
11 Sanchez's claims. For the reasons set forth below, NBIS and CTIS's requests for  
12 dismissal or a stay are not meritorious and warrant a complete denial of their Motion.

12 **A. Standard of Review Governing Dismissal Under NRCP 12(b)(5)**

13 NRCP 12(b)(5) states that a claim may be dismissed for "failure to state a claim  
14 upon which relief can be granted." *Simpson v. Mars Inc.*, 113 Nev. 188, 190 (1997). The  
15 standard of review to dismiss a claim under NRCP 12(b)(5) is rigorous. *Sanchez v. Wal-*  
16 *Mart Stores, Inc.*, 125 Nev. 818, 823 (2009). The district court "must construe the  
17 pleading liberally and draw every fair inference in favor of the nonmoving party" and  
18 "**all factual allegations of the complaint must be accepted as true.**" *Simpson*,  
19 113 Nev. at 190 (emphasis added.) "A complaint will not be dismissed for failure to state  
20 a claim unless it appears **beyond a doubt** that the plaintiff could prove no set of facts  
21 which, if accepted by the trier of fact, would entitle him or her to relief." *Id.* (emphasis  
22 added.)

23 "Because Nevada is a notice-pleading jurisdiction, our courts liberally construe  
24 pleadings to place into issue matters which are fairly noticed to the adverse party." *Hay*  
25 *v. Hay*, 100 Nev. 196, 198 (1984). In asserting a claim for relief, the pleading "shall  
26 contain (1) a short and plain statement of the claim showing that the pleader is entitled  
27 to relief, and (2) a demand for judgment for the relief the pleader seeks." Nev. R. Civ. P.  
28 8(a); *Swartz v. Adams*, 93 Nev. 240, 245 (1977). It "shall be simple, concise, and direct,"  
and no technical forms of pleading are required. Nev. R. Civ. P. 8(e)(1). Nevada pleading

1 requirements do not necessitate the legal theory relied upon to be correctly identified.  
2 *Swartz*, 93 Nev. at 245. The pleading of legal or factual conclusions is sufficient so long  
3 as the pleading gives fair notice of the nature and basis of the claim. *Crucil v. Carson*  
4 *City*, 95 Nev. 583, 585 (1979). Discovery may later disclose the facts needed to support  
5 these conclusions, but for pleading purposes, conclusions alone are sufficient to  
6 withstand review under NRCP 12(b)(5). *Id.* The rationale behind the liberal pleading  
7 requirements of NRCP 8 centers on providing notice to the defendant of the tortious or  
8 wrongful conduct alleged, which is consistent with Nevada's status as a notice-pleading  
9 state. *Western States Constr. v. Michoff*, 108 Nev. 931, 936 (1992).

10 **B. NBIS and CTIS Fail to Articulate any Legitimate Basis to Justify**  
11 **Entering a Stay in this Action**

12 A trial court has the discretion to stay an action pending resolution of separate  
13 proceedings that may impact a case. *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d  
14 857, 863 (9th Cir. 1979). This discretion "is appropriately used when the resolution of  
15 another matter will have a direct impact on the issues before the court, substantially  
16 simplifying the issues presented." *Dowkin v. City & Cty. of Honolulu*, Case No. 10-00097  
17 LEK-RLP, 2014 U.S. Dist. LEXIS 138375, at \*16 (D. Haw. Sep. 30, 2014) (*citing*  
18 *Mediterranean Enters. v. Ssangyong Corp.*, 708 F.2d 1458 (9th Cir. 1983)). NBIS and  
19 CTIS do not articulate how resolution of the appeal in the personal injury matter will  
20 have a direct impact by simplifying the issues before this Court. Instead, they rely on  
21 inapposite caselaw to somehow legitimize their contention that the underlying default  
22 judgment is not final for purposes of this action. This argument failed when DMA first  
23 presented it to this Court and nothing has changed to warrant a stay on this basis now.

24 ***1. The outcome of "Bon's appeal" does not impact the finality of the***  
25 ***default judgment to justify a stay***

26 A point lost upon NBIS and CTIS is that by securing a judicial assignment of  
27 Bon's rights, Sanchez has stepped into the shoes of Bon to enforce the default judgment  
28 against Defendants to aid her collection efforts. Even though the default judgment  
remains final and valid, NBIS and CTIS never posted a supersedeas bond or other bond  
or security that is required to stay the personal injury action pursuant to NRCP 62(d).

1 Yet, NBIS and CTIS somehow believe they are entitled to a stay in this action. Because  
2 there has been no bond posted in the personal injury action, Sanchez remains free, as a  
3 judgment creditor, to pursue collection efforts to satisfy the default judgment. This is a  
4 direct action to collect upon the final default judgment that is no different than any other  
5 method of collection available to a judgment debtor under Nevada law. *See Gallegos v.*  
6 *Malco Enters. of Nev.*, 127 Nev. 579, 583 (2011) (“[A] district court may assign a  
7 judgment debtor’s right of action to a judgment creditor in execution of a judgment . . .”).  
8 Because the personal injury action and resulting default judgment are not subject to a  
9 stay, NBIS and CTIS cannot use this action to thwart Sanchez’s collection efforts by  
10 requesting a stay.

11 NBIS and CTIS also rely on the same failed premise that their convenient attempt  
12 to use Bon to avoid financial responsibility for the default judgment through an appeal  
13 negates the finality of the default judgment. This is legally incorrect because of the  
14 prevailing circumstances giving rise to the appeal in the personal injury action.

15 The default judgment was entered against Bon on July 19, 2019. *See Exhibit*  
16 **“2.”** On January 17, 2020, nearly six months or 180 days after the default judgment  
17 was entered, NBIS and/or CTIS, used Bon to file a motion to set aside the default  
18 judgment pursuant to NRCP 60(b). NBIS and/or CTIS took this action solely to avoid  
19 financial responsibility for the resulting default judgment, not to protect or otherwise  
20 serve the interests of Bon. NRCP 60(c) addresses the interplay between filing a Rule  
21 60(b) motion and the finality of the judgment entered:

22 ***(c) Timing and Effect of that Motion***

23 . . .

24 ***(2) Effect on Finality.*** The motion **does not affect the**  
25 **judgment’s finality or suspend its operation.**  
26 (emphasis added).

27 NBIS and/or CTIS only used Bon to file a motion to set aside the default judgment,  
28 which was denied well after August 19, 2019, the deadline to appeal the default  
judgment. *See Nev. R. App. P. 4(a)(1)*. This is precisely why an order denying a motion  
seeking relief pursuant to NRCP 60(b) is independently appealable and the only



1 substantive order on appeal before the Nevada Supreme Court. *See Holiday Inn*  
2 *Downtown v. Barnett*, 103 Nev. 60, 63 (1987); *see also, Miller v. Freeman*, No. 75291,  
3 2018 Nev. Unpub. LEXIS 332, at \*1 (Apr. 16, 2018) (“unpublished decision”) (“[A]n order  
4 denying a motion seeking NRCP 60(b) relief is independently appealable). Therefore,  
5 the finality of the default judgment was not impacted when the district court denied  
6 NBIS and CTIS’s NRCP 60(b) motion to set aside and is not now impacted by their  
7 appeal of that order.

8 Even NBIS and CTIS’s subsequent filing of a motion to alter or amend the  
9 judgment pursuant to NRCP 59(e) on October 19, 2020 has not impacted the finality of  
10 the default judgment. A party must file his notice of appeal after entry of a written  
11 judgment or order no later than 30 days after the date such judgment or order is entered.  
12 Nev. R. App. P. 4(a)(1). NRCP 59(e) allows a party to file a motion to alter or amend a  
13 judgment no later than 28 days after service of written notice of entry of judgment.  
14 Motions filed with the district court pursuant to NRCP 59 toll the time period for a party  
15 to file their notice of appeal of a judgment or order. *See Nev. R. App. P. 4(a)(4); see also,*  
16 *Winston Prods. Co. v. Deboer*, 122 Nev. 517, 519-20 (2006). However, NBIS and CTIS  
17 failed to timely toll the 30-day time period to appeal the default judgment because their  
18 NRCP 59(e) motion was never filed until over a year after the 30-day time period to  
19 appeal the default judgment expired. Therefore, the pending appeal addresses **only**: (1)  
20 the order denying the motion to set aside the default judgment and (2) the order denying  
21 the motion to alter or amend the order denying Rule 60(b) relief, **not the default**  
22 **judgment**. The default judgment entered against Bon remains final. Accordingly,  
23 Sanchez can proceed with her claims for breach of contract, breach of the implied  
24 covenant of good faith and fair dealing, and violation of Nevada’s Unfair Claims  
25 Practices Act.

26 NBIS and CTIS’s reliance on *Branch Banking & Tr. Co. v. Nev. Title Co.*, Case  
27 No. 2:10-CV-1970 JCM (RJJ), 2011 U.S. Dist. LEXIS 40948 (D. Nev. Ap. 13, 2011) is not  
28 persuasive. In *Branch Banking*, the district court determined the bad faith claim was  
not ripe because the policy stated the insurer shall have no liability until there was a  
final disposition of all appeals, not just because an appeal was pending. 2011 U.S. Dist.

1 LEXIS 40948, at \*10-11. There is no such similar policy language here that NBIS and  
2 CTIS identify. NBIS and CTIS's reliance on *Smenza v. Nevada Medical Liability Ins.*  
3 *Co.*, 104 Nev. 666, 668 (1988) is similarly unavailing. In *Smenza*, the Court determined  
4 a legal malpractice claim did not accrue because the judgment in the action in which the  
5 alleged malpractice took place was timely appealed and, as a result, no damages were  
6 sustained. 104 Nev. at 185-86. As Sanchez demonstrates above, she has established  
7 her damages because the finality of the default judgment is not impacted in any way by  
8 the pending appeal. Therefore, her damages are established and allow her to maintain  
9 this bad faith action against all Defendants, including NBIS and CTIS.

10 ***2. The Liquidation Order entered against Windhaven is Not Applicable***

11 NBIS and CTIS's attempt to use the Liquidation Order entered against  
12 Windhaven to avoid litigating this matter is laughable. NBIS and CTIS know that  
13 Windhaven did not assume any financial responsibility or control over any ATX  
14 automobile liability insurance policies that were previously issued as part of its  
15 acquisition of ATX. NBIS's counsel affirmatively made these representations to the  
16 Nevada federal district court in *Hayes* less than two years ago. Those statements  
17 constitute judicial admissions of fact that are binding on NBIS and CTIS. *See Purgess*  
18 *v. Sharrock*, 33 F.3d 132, 144 (2d. Cir. 1994) ("A court can appropriately treat statements  
19 in briefs as binding judicial admissions of fact"); *see also, Baxter v. MBA Group Ins. Trust*  
20 *Health & Welfare Plan*, 958 F. Supp. 2d 1223, 1233 (W.D. Wash. 2013) (*citing Gospel*  
21 *Missions of Am v. City of L.A.*, 328 F.3d 548, 557 (9th Cir. 2003)). NBIS and CTIS  
22 retained financial responsibility and control over any claims arising from ATX's pre-sale  
23 insurance policies. If the opposite were true, NBIS and CTIS would have provided the  
24 appropriate documentation to prove it. No such documents exist. This is precisely why  
25 representatives from NBIS and/or CTIS attended the NRAP 16 settlement conference  
26 in the personal injury action. *See Declaration of Kevin T. Strong*, at p. 2, ¶ 6, attached  
27 as **Exhibit "16."** NBIS and/or CTIS also offered money in excess of the minimum  
28 \$15,000.00 policy limits available under the relevant ATX policy that covered Bon. *Id.*  
at p. 2, ¶ 7. This directly negates the applicability of the Liquidation Order entered  
against Bon as well as the relevant provisions of the Nevada Insurance Guaranty

1 Association, which governs claims arising from policies underwritten by insolvent  
2 insurers:

3 The obligation of the Association to pay a covered claim is  
4 limited to the payment of:

5 . . .

6 **(3) The limit specified in a policy or \$300,000, *whichever***  
7 ***is less*, for each occurrence for any covered claim other**  
8 **than a covered claim specified in subparagraph (1) or (2).**

9 *See Nev. Rev. Stat. 687A.060(1)(a)(3) (emphasis added).*

10 Windhaven is not a party to this litigation. ATX's status as a party to this  
11 litigation does not alter or change the Court's analysis because Windhaven never  
12 assumed financial responsibility or control over ATX insurance policies issued before the  
13 acquisition, including the ATX policy that covered Bon. As a result, Sanchez has no  
14 viable claim to even present to the Texas Liquidator. There has been no documentary  
15 evidence disclosed to refute this fact or the substantive factual allegations set forth in  
16 Sanchez's Second Amended Complaint. This further negates the legitimacy of NBIS and  
17 CTIS's request for a stay under any scenario.

18 **C. Sanchez States Plausible Claims for Relief Against NBIS and CTIS Given**  
19 **The Detailed Facts Alleged in Her Second Amended Complaint**

20 NBIS and CTIS conveniently ignore the factual allegations supporting her claims  
21 for breach of contract and bad faith while simultaneously seeking to hold her to an overly  
22 detailed and exacting pleading standard that contravenes Nevada law. NBIS and CTIS  
23 also overlook that the existence of a contractual relationship is not a prerequisite to  
24 pursue claims for breach of contract and insurance bad faith. *Albert H. Wohlers & Co.*  
25 *v. Bartgis*, 114 Nev. 1249, 1262 (1998). *Wohlers* involved an insured's claims for breach  
26 of contract and bad faith against her health insurer, Allianz Life Insurance Company of  
27 North America and Wohlers, the administrator of the policy. *Id.* at 1252. The claims  
28 stemmed from Allianz and Wohlers's failure to provide coverage for certain costs  
incurred by the insured during her hospital stay based on a new policy term that was  
not told to the insured. *Id.* At trial, the insured was awarded extensive damages by the  
jury. *Id.* One of the issues on appeal centered on whether the law supported the jury's

1 determination that Wohlers was liable for breach of contract and bad faith even though  
2 it was not a party to the insurance contract. *Id.* at 1262.

3 The Nevada Supreme Court recognized an exception to the general rule that only  
4 parties to a contract are liable for claims arising from the contract:

5 However, according to a well-established exception to this  
6 general rule, where a claims administrator is **engaged in**  
7 **a joint venture with an insurer, the administrator**  
8 **may be held liable for its bad faith in handling the**  
9 **insured's claim**, even though the organization is not  
10 technically a party to the insurance policy.

11 *Wohlers*, 114 Nev. at 1262 (emphasis added).

12 The *Wohlers* Court concluded that Wohlers and Allianz were involved in a joint  
13 venture sufficient to expose Wohlers to liability on all contract claims and bad faith  
14 claims. *Id.* The *Wohlers* Court specifically relied on evidence that showed Wohlers  
15 performed various administrative tasks for Allianz that included billing and collecting  
16 premiums and paying and adjudicating claims to establish the presence of a joint  
17 venture relationship. *Id.*

18 Sanchez does not attempt “to end-run the lack of contractual privity” in her  
19 Second Amended Complaint. *See* Motion, at 12:5-6. Rather, she sets forth, in  
20 substantial detail, how NBIS, the parent company of ATX, and CTIS, its affiliate,  
21 retained financial responsibility and control over all ATX insurance policies issued prior  
22 to the sale of ATX to Windhaven. *See* SAC, at pp. 5-6, ¶¶ 21-25. Sanchez details how  
23 CTIS, an affiliated company of NBIS, executed a “Claims Administration Agreement  
24 whereby DMA agreed to perform claims adjustment and administrative services for  
25 claims and losses arises from policies issued by affiliated companies. *Id.* at p. 6, ¶ 26.  
26 ATX was one of those affiliated companies because Windhaven did not “purchase or  
27 assume control over any ATX liability insurance policies issued before the sale, including  
28 the subject ATX Insurance Policy.” *Id.* at p. 8, ¶ 30. Even NBIS and ATX’s counsel in  
the *Hayes* federal court action admitted NBIS “retained financial responsibility for  
claims relating to insurance policies that were issued prior to the sale of ATX to  
Windhaven” and “agreed to indemnify ATX.” *Id.* at p. 8, ¶ 31; *see also*, **Exhibit “9,”** at  
3:18-20, 4:17-19. In turn, CTIS tendered a settlement check “for the benefit of ATX.”

1 See **Exhibit “10.”** NBIS and CTIS have taken actions consistent with the obligations  
2 they assumed under the ATX insurance policies. Therefore, DMA performed claims  
3 adjusting services for the benefit of both NBIS, as the parent company and indemnitor  
4 for policies issued by ATX, and CTIS, the entity that reserved extensive control over  
5 DMA’s administration of claims arising from ATX policies. Suggesting NBIS, CTIS,  
6 ATX, and DMA did not possess a joint financial interest to act for the benefit of each  
7 other through their joint management, investigation, evaluation, adjustment, and  
8 handling of bodily injury claims defies all logic and commonsense.

9 NBIS and CTIS’s characterization of Sanchez’s factual allegations as “vague and  
10 insufficient to survive a motion to dismiss” is similarly unavailing. See Motion, at 12:11-  
11 12. To support this assertion, NBIS and CTIS rely on the federal court’s heightened  
12 pleading standard that is wholly inconsistent with Nevada’s well-established notice  
13 pleading standard. NBIS and CTIS also overlook that a joint venture does not have to  
14 be extensive to hold them responsible for breach of contract and insurance bad faith.  
15 *Wohlers*, 114 Nev. at 1262 (citing *Farr v. Transamerica Occidental Life Ins. Co.*, 699 P.2d  
16 376, 386 (Ariz. Ct. App. 1984)). In *Farr*, which the *Wohlers* Court solely relied upon, the  
17 Arizona Court of Appeals noted that all of the features of a joint venture, such as profit  
18 and loss sharing, need not be present to establish claims for breach of contract and bad  
19 faith. 699 P.2d at 386. Yet, NBIS and CTIS somehow expect Sanchez to plead, with  
20 particularity, their various administrative responsibilities, and profit-sharing details  
21 when not a single document has yet to be produced by any entity in this action. Not only  
22 is this expectation completely unreasonable, but it also discounts the nature of the  
23 allegations made in Sanchez’s Second Amended Complaint based on the limited amount  
24 of information in her possession. Sanchez’s Second Amended Complaint details the  
25 interrelationship between NBIS, CTIS, ATX, and DMA based on their respective  
26 financial and administrative roles for claims arising from ATX policies with precision.  
27 Viewing those factual allegations and the reasonable inferences therefrom in a light  
28 most favorable to Sanchez sufficiently defeats NBIS and CTIS’s request for dismissal  
pursuant to NRCP 12(b)(5).

1 NBIS and CTIS's request for dismissal of Sanchez's third claim for violation of  
2 Nevada's Unfair Claims Practices Act is premature. The *Wohlers* Court concluded that  
3 liability for a violation of Nevada's Unfair Claims Practices Act is limited to insurers or  
4 a company as defined by NRS 686A.330(2). 114 Nev. at 1264. "Company means a person  
5 engaged in the business of entering into agreements . . . ." Nev. Rev. Stat. 686A.330(2).

6 Agreement means a contract between a person and an  
7 insured or prospective insured under which the person  
8 agrees to pay a premium in advance on behalf of the  
insured or prospective insured in exchange for repayment  
of the amount advanced with interest or for some other  
consideration.

9 Nev. Rev. Stat. 686A.330(1).

10 Here, Sanchez alleges "NBIS and/or CTIS assumed the indemnity obligations of  
11 ATX and is financially responsible for damages arising from Sanchez's claim against the  
12 ATX Insurance Policy that covered Bon at the time of the April 28, 2015 motor vehicle  
13 collision." See SAC, at pp. 8-9, ¶ 34. NBIS should be treated as an insurer because it  
14 assumed ATX's indemnity obligations as part of its retention of all insurance policies  
15 underwritten by ATX before it was sold to Windhaven. NBIS's counsel admitted this to  
16 be true. See **Exhibit "9,"** at 3:18-20. It is logical to infer that, as the entity that assumed  
17 indemnity obligations, NBIS also received any premiums that continued to be paid by  
18 ATX insureds post-sale. Under this factual scenario, NBIS also qualifies as a "Company"  
19 subject to liability for a violation of Nevada's Unfair Claims Practices Act. *Wohlers*, 114  
20 Nev. at 1264.

21 Although CTIS characterizes itself as a claims administrator, Sanchez properly  
22 alleges CTIS may also have assumed ATX's indemnity obligations. Specifically, CTIS  
23 was the named payee "for the benefit of ATX Premier Insurance Company" that  
24 tendered a settlement check in the *Hayes* federal action for a claim arising from a 2014  
25 ATX insurance policy. See SAC, at pp. 8-9, ¶¶ 34-35; see also, **Exhibit "10."** This creates  
26 a logical inference that CTIS also, or in conjunction with NBIS, retained the indemnity  
27 obligations arising from pre-sale ATX insurance policies. At this early stage of litigation,  
28 Sanchez should be permitted to conduct detailed discovery addressing the connection  
between NBIS and CTIS as it relates to the handling and administration of claims

1 arising from policies issued by ATX. An early dismissal of Sanchez's well-founded claims  
2 against NBIS and CTIS will unfairly hinder those discovery efforts, particularly when  
3 NBIS and CTIS downplay the significance of their alleged involvement in this case.  
4 Based on the Nevada's liberal pleading standard, NBIS and CTIS fail to satisfy the  
5 burden required to show Sanchez fails to state claims upon which relief can be granted  
6 pursuant to NRCP 12(b)(5).

7 **IV.**

8 **CONCLUSION**

9 Based on the foregoing facts, law, and analysis, Plaintiff Diane Sanchez  
10 respectfully requests this Court to **DENY** Defendants Nationsbuilders Insurance  
11 Services, Inc. and NBIS Construction & Transport Insurance Services, Inc.'s Motion to  
12 Dismiss Second Amended Complaint, or in the Alternative, Motion to Stay Proceedings  
in its entirety.

13 DATED this 5th day of August, 2021.

14 **PRINCE LAW GROUP**

15  
16  
17 /s/ Kevin T. Strong  
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28 *Diane Sanchez*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of **PRINCE LAW**  
3 **GROUP**, and that on the 5th day of August, 2021, I caused the foregoing document  
4 entitled **PLAINTIFF DIANE SANCHEZ'S OPPOSITION TO DEFENDANTS**  
5 **NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS**  
6 **CONSTRUCTION & TRANSPORT INSURANCE SERVICES, INC.'S MOTION**  
7 **TO DISMISS SECOND AMENDED COMPLAINT, OR IN THE ALTERNATIVE,**  
8 **MOTION TO STAY PROCEEDINGS** to be served upon those persons designated by  
9 the parties in the E-Service Master List for the above-referenced matter in the Eighth  
10 Judicial District Court E-Filing System in accordance with the mandatory electronic  
11 service requirements of Administrative Order 14-2 and the Nevada Electronic Filing  
12 and Conversion Rules.

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27 /s/ Kevin T. Strong  
28 An Employee of PRINCE LAW GROUP



# EXHIBIT 1

## **CLAIMS ADMINISTRATION AGREEMENT**

by and between

NBIS Construction and Transport Insurance Services, Inc.  
(hereinafter the "Company")

and

DMA Claims Management, Inc.  
(hereinafter the "Claims Administrator")

Effective Date: April 1, 2015

WHEREAS, the Company desires to employ Claims Administrator to perform claims adjustment and administrative services for certain claims and losses arising out of policies issued by affiliated companies of the Company;

WHEREAS, the parties desire to enter into a Claims Administration Agreement (hereinafter, the "Agreement") that will outline their primary duties and obligations with respect to this engagement;

NOW THEREFORE, in consideration of mutual promises and agreements, the parties agree as follows:

### **I. DEFINITIONS**

A. The term "Allocated Loss Adjustment Expense" as used herein shall mean all claims adjustment costs and expenses incurred in connection with the investigation, adjustment and settlement or defense of a claim for benefits. Allocated Loss Adjustment Expenses are limited to reasonable, customary and necessary expenses. Such expenses shall include, but shall not be limited to, the following:

- 1) attorneys fees and disbursements; and
- 2) fees to court reporters; and
- 3) all court costs, court fees and court expenses; and
- 4) costs of automobile and property appraisals and re-inspections; and

- 5) costs of any required investigations by claims adjusters in the field; and
- 6) costs of interpreters; and
- 7) fees for database searches; and
- 8) fees for service of process; and
- 9) costs of surveillance and detective services; and
- 10) costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, diagrams; and
- 11) costs for employing experts for their advice, opinions or testimony concerning claims under investigation or in litigation or for which a declaratory judgment is sought; and
- 12) costs for independent medical examination and/or evaluation for rehabilitation and/or to determine the extent of the Company' liability; and
- 13) costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceedings; and
- 14) costs for copies of any public records and/or medical records; and
- 15) costs of depositions and court - reported and/or recorded statements; and
- 16) costs and expenses of subrogation when referred to outside attorneys or other vendors; and
- 17) costs of engineers, handwriting experts and/or any other type of expert used in the preparation of litigation and/or used on a one-time basis to resolve disputes; and
- 18) charges for medical cost containment services, i.e., utilization review, pre-admission authorization, hospital bill audit, provider bill audit and medical case management incurred only with the prior approval of the Company.
- 19) any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss or to the protection or perfection of the subrogation rights of the Company.

B. The term "Qualified Claim" shall mean a claim assigned by Company to Claims Administrator.

- C. The term "Feature" shall mean any separate coverage exposure within a claim. For example, one claim might have a Collision feature and one or more Bodily Injury or Property Damage features.
- D. The term "Claims Adjusting Services" as used herein shall mean the furnishing by the Claims Administrator to the Company of the following services in compliance with the terms of the applicable insurance policy, the laws and regulations of the applicable state(s), and industry-wide standards:
- 1) Review all Company's claims and loss reports; and
  - 2) Receive from Company coverage information for the applicable policy for the claim or loss reported. If authorized by Company, where coverage is in question, draft reservation of rights letters to be reviewed by the Company prior to sending to the insured. When Claims Administrator is advised by Company that no coverage exists, draft declination letters, which are to be reviewed by the Company as required, prior to sending to the insured. When appropriate, advise interested parties of the extent of coverage; and
  - 3) If instructed by the Company, establish records for incidents or occurrences reported by the insured that are not claims but may become claims at a later date; and
  - 4) Establish and adequately reserve each Qualified Claim and Feature, and code such claim in accordance with Company's statistical data requirements. Claims Administrator shall adopt and agree upon guidelines for reserving Features that comply with Company's guidelines and are consistent with industry standards; and
  - 5) Conduct a prompt and detailed investigation of each Qualified Claim. Company and Claims Administrator shall adopt and agree upon guidelines for referring claims investigation to field investigators and adjusters that comply with Company's guidelines and are consistent with industry standards; and
  - 6) Adjust Qualified Claims for Property and/or Physical Damage by obtaining itemized estimates and/or appraisals of damage; and
  - 7) Assure that there is sufficient evidence and documentation gathered and in the Company's claims system on a Qualified Claim, to allow the adjuster to properly evaluate the merits of the claim; and
  - 8) Provide, in accordance with the Company's procedures and authority, an initial report and periodic reports on the status of each Qualified Claim in excess of the reporting level or otherwise reportable; and

- 9) Perform all necessary administrative work in connection with Qualified Claims; and
- 10) Respond immediately to any inquiry, complaint or request received from an insurance department or any other regulatory agency in compliance with written instructions, if any, provided by the Company. Respond promptly to any inquiry, complaint or request received from a client, claimant, agent, broker, or other interested party in connection with the Claims Adjusting Services; and
- 11) Process each Qualified Claim utilizing industry-wide standard forms where applicable; and
- 12) Attend, where appropriate and approved by the Company, mediation, arbitration, court-related or other dispute resolution hearings and/or conferences; and
- 13) Maintain files for all Qualified Claims in the Company's claims system, that may include, where necessary, a) defense of claims; b) other litigation (such as subrogation, contribution or indemnity); c) other proceedings; d) claims handling activities; and e) expense control and disbursements; and
- 14) Pursue all reasonable possibilities of subrogation, contribution or indemnity on behalf of the Company; and
- 15) Adjust, settle or otherwise resolve claims in accordance with authority levels granted; and
- 16) Pay or recommend payment where appropriate, all Qualified Claims and Allocated Loss Adjustment Expenses, on a timely basis and in accordance with authority granted by the Company; and
- 17) Pursue recovery of third party liability deductibles; and
- 18) Maintain closed claim files in accordance with state regulations and/or Company requirements.

E. The term "Claims Files" shall mean all information and documentation in written, electronic, photographic, or audio form gathered as part of the Claims Adjusting Services.

## **II. SERVICES**

- A. In consideration of service fees paid by the Company as set forth in the Compensation Schedule attached hereto and made part of this Agreement, Claims Administrator agrees to provide Claims Adjusting Services with respect to all Qualified Claims, including those in excess of the Claims Administrator's authority level.
- B. Claims exceeding the authority level are to be immediately reported by email to the Company. Claims Administrator shall seek the Company's prior written approval on all Qualified Claim settlements in excess of the authority level. With respect to those Qualified Claims in excess of the authority level, Claims Administrator shall calculate and recommend reserves, and then, upon approval by the Company, post such reserves. However, ultimate determination of settlement and reserve amounts shall be retained by the Company.
- C. Claims Administrator warrants and represents that: 1) it shall perform all Claims Adjusting Services that are necessary and appropriate directly or through licensed independent claims adjusters; and 2) it and/or its employees hold all adjuster licenses as required by law to perform the designated services; and 3) it and its employees and persons under contract to Claims Administrator will at all times observe the requirements of laws and regulations of each state in the territory in which it operates, specifically including but not limited to the privacy laws, fair claims practices acts, and fair trade practices acts.
- D. If a Summons and Complaint is filed on a Qualified Claim, the Claims Administrator shall transfer that claim and all its Features back to the Company and shall no longer be responsible for the further handling of that claim.

### **III. TERM AND TERMINATION**

- A. This Agreement shall be effective April 1, 2015, and shall be in effect until cancelled by either party with ninety (90) days' notice.
- B. In the event any license necessary to conduct the Claims Administrator's business expires or terminates, for any reason, the Claims Administrator shall immediately notify the Company and this Agreement shall automatically terminate as of the date of such license's expiration or termination unless, within one week from the date the Company receives notice of the license expiration or termination from the Claims Administrator, the Company agrees, in writing, to modify the provisions of this paragraph so as to allow the Agreement to continue.
- C. This Agreement may be terminated immediately upon written notice to either party if there has been an event of fraud, abandonment, insolvency, or gross or willful misconduct on the part of the other party.

- D. Notwithstanding the foregoing, if the Claims Administrator shall commit any material breach of the terms of this Agreement, or fail to comply with any material instruction or direction by the Company, the Company may, in its sole discretion, immediately upon notice, suspend or terminate any or all authority of the Claims Administrator. Upon receipt of such notice, the Claims Administrator shall thereupon cease to exercise such power or powers in accordance with such notice.
- E. Notwithstanding the foregoing, if the Company shall commit any material breach of the terms of this Agreement, or fail to fulfill its obligations under the Agreement, Claims Administrator may immediately upon notice, suspend and/or terminate all claims handling under this Agreement.
- F. If the Agreement is terminated as per the provisions above, the Claims Administrator shall transfer all open Features to the Company at termination. The Company shall pay Claims Administrator all service fees earned up to the date of termination according to the Compensation Schedule attached hereto. Any time and expenses incurred by the Claims Administrator in the return of such files will be billed to the Company, with supporting documentation for such billing, and the Company shall pay such billing to the Claims Administrator within thirty (30) days from billing date.

#### **IV. DUTIES AND OBLIGATIONS OF CLAIMS ADMINISTRATOR**

- A. Claims Administrator shall maintain all industry standard claim information necessary in the jurisdictions in which Claims Administrator performs Claims Adjusting Services.
- B. Claims Administrator shall comply with reasonable requests of the Company to achieve compliance with applicable state insurance statutes and regulations regarding the creation and maintenance of a Special Investigative Unit for the business of this Agreement.
- C. Claims Administrator shall cooperate with requests of the Company to achieve compliance with the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) relative to Company's obligation to assure that illicit transactions involving target countries and Specifically Designated Nationals are not processed. To the extent that the Claims Administrator incurs out-of-pocket costs for such compliance that solely benefits the Company, the Company will reimburse prior approved expenses.
- D. Claims Administrator shall comply with the Company's Privacy Policy under the Gramm-Leach-Bliley Act of 1999, as set forth below:

NBIS does not disclose any nonpublic personal information about individual policyholders or claimants to any affiliate or any non-affiliate third party other than those permitted by law and only for the purpose of transacting the business of the policyholder's insurance coverage or claim.

Claims Administrator shall fulfill any obligation of the Company to provide claimants with a copy of the Privacy Policy of the Company as may be required by law.

- E. Claims Administrator shall at all times be an independent contractor and shall not for any purpose be deemed to be or hold itself out to be an employee of or affiliated with the Company.
- F. In any state that levies a tax on the services provided by Claims Administrator to Company, Claims Administrator shall prepare an accounting of the tax owed as required by law and submit an invoice for this tax to Company. Once Company has paid the invoice, Claims Administrator shall forward the tax to the appropriate state agency.

#### **V. DUTIES AND OBLIGATIONS OF COMPANY**

- A. Company will provide all information relevant to particular claims to Claims Administrator in order for Claims Administrator to fulfill its duties and obligations as set out in this Agreement, including applicable policy and coverage information and coverage confirmation status.
- B. Company has ultimate authority and responsibility for authorizing claims payment and settlement of claims under this Agreement.
- C. Company will provide to Claims Administrator access to Company's claims system and policy and coverage information as required by Claims Administrator to perform its authorized duties under this Agreement.
- D. Company shall be responsible for the payment of all Allocated Loss Adjustment Expenses relating to the Qualified Claims and the Claim Adjusting Services provided by Claims Administrator.

#### **VI. INSURANCE AND INDEMNIFICATION**

- A. As a condition precedent and an ongoing obligation throughout the term of this Agreement, Claims Administrator shall, no less than annually, provide the Company with evidence of a policy of insurance providing Errors and Omissions insurance coverage for services performed pursuant to this Agreement, from an



insurance carrier acceptable to the Company, with a Limit of Liability no less than \$1,000,000 per claim and \$1,000,000 in the aggregate. Claims Administrator shall immediately notify the Company in the event of any cancellation, non-renewal, or reduction of coverage on any such policy.

- B. Claims Administrator agrees to defend the Company from any and all claims, suits or demands asserted by anyone against the Company, as a result of any errors or omissions of Claims Administrator, its officers, directors, employees or successors. If the Company becomes legally obligated to pay damages due to the errors or omissions of Claims Administrator, Claims Administrator agrees to indemnify the Company and to reimburse the Company for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Company, including but not limited to attorneys fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Company as a result thereof. Claims Administrator agrees to cooperate with the Company in the investigation and defense of any such claims.
- C. The Company agrees to defend the Claims Administrator from any and all claims, suits or demands asserted by anyone against the Claims Administrator, as a result of any errors or omissions of Company, its officers, directors, employees or successors. If the Claims Administrator becomes legally obligated to pay damages due to the errors or omissions of Company, Company agrees to indemnify the Claims Administrator and to reimburse the Claims Administrator for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Claims Administrator, including but not limited to attorneys fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Claims Administrator as a result thereof. Company agrees to cooperate with the Claims Administrator in the investigation and defense of any such claims.
- D. Claims Administrator does not agree to defend or indemnify any claims, suits or demands where the alleged errors or omissions concern parties other than Claims Administrator or its officers, directors, employees, successors, representatives or agents, such as matters of underwriting or policy administration.

## **VII. MISCELLANEOUS PROVISIONS**

- A. This Agreement shall be interpreted in accordance with the laws of the state of Georgia. Any cause of action brought arising out of the rights or obligations of this Agreement shall be brought in Atlanta, Georgia.
- B. Any forbearance or failure by the Company or Claims Administrator to enforce any right, provision, or power established under this Agreement or by operation of law shall not operate as a modification or waiver of such right, provision or

power, and the Company or Claims Administrator may, at any time, pursue all rights or remedies available to it to enforce all terms and conditions of this Agreement.

- C. This Agreement represents the full and complete understanding of the parties as to the subject matter herein, superseding all previous agreements, whether written or verbal. This Agreement may be modified or altered only by written amendment to this Agreement signed by duly authorized representatives of the parties.
- D. Claims Administrator understands and agrees that it shall retain liability for any loss or damage arising out of any work performed by any subcontractor retained by Claims Administrator to perform its duties under this Agreement.
- E. Claims Administrator understands and agrees that it shall retain liability for any loss or damage directly or indirectly caused by or arising out of Claims Administrator's access or use of Company's claims and policy systems.
- F. To be validly given, all notices, requests, consents, and other communications arising out of this Agreement must be in writing and mailed, postage paid, to the address of the party provided for in this Agreement. As an ongoing obligation throughout the term of this Agreement, each party shall notify the other of any change of address.
- G. This Agreement shall not become effective until signed by a duly authorized representative of both the Company and Claims Administrator.
- H. Headings on titles to the several sections herein are for identification purposes only and shall not be construed as forming a part hereof.
- I. In the event that any section, sub-section, or provision of this Agreement is declared by statute or by a court of competent jurisdiction to be illegal or void, such section, sub-section, or provision shall be deemed severed from the Agreement, and all other sections, sub-sections, terms, conditions and provisions shall remain in full force and effect.
- J. During the course of this Agreement, the parties will have access to proprietary, confidential information of each other. The parties will protect such information and treat it as strictly confidential, and shall not provide it to any third party or utilize it in any fashion outside of the scope of this Agreement, except as expressly authorized in writing by the parties or as required by law. The Claims Administrator agrees to adhere to all reasonable confidentiality policies as adopted from time to time by the Company regarding the protection of the Company's information.

For purposes of this Agreement, "proprietary information" means any non-public information regarding or relating to the business operations, technology, insureds,

customers, employees, business methods and other non-public information about Company and/or Claims Administrator. Such non-public business and technical information collectively constitutes trade secrets. For purposes of this Agreement, "confidential information" shall include, without limitation, information concerning insureds or prospective insureds, claimants, and employees and agents of Company and employees, methods, claims administrative procedures, metrics and other work practices of Claims Administrator.

K. The Company, its authorized agents, officers and employees, and Claims Administrator mutually agree that until one (1) year after termination of this Agreement, they will not solicit, recruit or hire the other party's officers, employees, contractors or agents.

L. Any notice under this Agreement shall be sent, postage prepaid, to the addresses provided below:

If to the Company: NBIS Construction & Transport Insurance Service, Inc.  
800 Overlook, 2859 Paces Ferry Road  
Atlanta, GA 30339  
(770) 257-1130  
E-mail: akirkner@nbis.com  
Attention: Arthur P. Kirkner, Vice President - Claims

If to the Claims Administrator: DMA Claims Management, Inc.  
P.O. Box 26004  
Glendale, CA 91222-6004  
(323) 342-6800  
(323) 342-6850  
Attn: Thomas J. Reitze, President

M. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be addressed first by mediation between the parties. The costs of mediation shall be borne by both parties. If not resolved by mediation, the matter shall be addressed and settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All parties to this Agreement and their authorized agents, officers and employees agree that during the dispute resolution process and afterwards, they will not at any time disparage, defame or hold up to public embarrassment or ridicule the other parties involved.

NBIS Construction and Transport  
Insurance Services, Inc.

By: [Signature]  
Its: Vice President of Insurance  
Date: 5/15/2015

DMA CLAIMS MANAGEMENT, INC.

By: Thomas Seitz  
Its: PRESIDENT  
Date: 5/9/15

## **ADDENDUM TO CLAIMS ADMINISTRATION AGREEMENT**

This Addendum incorporates by reference that certain Claims Administration Agreement effective April 1, 2015 (hereinafter referred to as the "Agreement"), by and between the Company as identified in the Agreement, and the Claims Administrator as identified in the Agreement.

Claims Administrator will receive the following compensation from Company for its services:

1. For Property Damage, Collision or Comprehensive features that are open and being handled by Claims Administrator as of April 1, 2015, \$75 per feature. Payable when the feature closes.
2. For Bodily Injury features that are open as of April 1, 2015, and are assigned to Claims Administrator by Company to handle to conclusion, \$375 per feature. \$187.50 is earned on assignment, and \$187.50 is earned when the feature is closed.
3. For new features opened after April 1, 2015, \$500 per Bodily Injury feature and \$250 per Property Damage, Collision or Comprehensive feature, with a cap of \$800 per accident regardless of the number of features arising out of the accident. Regarding Bodily Injury features, \$250 is earned on assignment, and \$250 is earned when the feature is closed.
4. \$75 for incident-only claims where no investigation is warranted.
5. For First Notices of Loss, \$12.50 per First Notice of Loss taken.
6. For administrative services including but not limited to bank and check stock setup, positive pay setup, FileHandler claims system setup, creation of Quality Control reports and testing, and setup of other required reports, \$200 per hour.
7. For one administrative employee of Claims Administrator who is assigned to this program, Claims Administrator will receive the employee's actual salary plus 20%.

8. For administration and maintenance of the FileHandler claims system, \$1,000 per month.
9. Twenty-five percent (25%) of Net Subrogation Recoveries, earned when the recoveries are received. Net Subrogation recoveries are the gross amounts recovered through subrogation efforts by the claims Administrator on behalf of the Company, less any outside costs involved in the recovery process such as attorney fees.
10. \$105 per vehicle appraisal, \$115 per vehicle appraisal for a total loss, and actual cost outside of the DMA appraisal network, all earned upon completion.
11. \$35 per desk review of an auto damage estimate, earned upon completion.
12. \$45 per damaged auto assigned to Claims Administrator's shop network, earned upon assignment.

All ALAE is passed through to the Company for payment and is not included in this fee per feature. Any feature that goes into litigation is to be returned by Claims Administrator to Company.

At the end of each month Claims Administrator will prepare an invoice itemizing the services rendered as described in 1 through 12 above, and will send the invoice to the Company by email. The Company will pay the invoice within 20 days of receipt.

NBIS Construction and Transport  
Insurance Services, Inc.

By: [Signature]

Its: [Signature]

Date: 5/15/2015

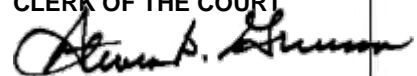
DMA CLAIMS MANAGEMENT, INC.

By: Thomas Seitz

Its: PRESIDENT

Date: 5/9/15

# EXHIBIT 2



**JUDG**

DENNIS M. PRINCE  
Nevada Bar No. 5092  
KEVIN T. STRONG  
Nevada Bar No. 12107  
**PRINCE LAW GROUP**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.534.7600  
Fax: 702.534.7601  
Attorneys for Plaintiff  
*Diane Sanchez*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DIANE SANCHEZ,  
  
Plaintiff,

Case No. A-15-722815-C  
Dept. No. XXV

**DEFAULT JUDGMENT**

vs.

BLAS BON, individually; JOSEPH  
ACOSTA, individually; WILFREDO  
ACOSTA, individually; DOES I-X and ROE  
CORPORATIONS I-X, inclusive,  
  
Defendants.

Plaintiff Diane Sanchez's ("Sanchez") Application for Default Judgment was brought for hearing in Department XXV of the Eighth Judicial District Court, before The Honorable Kathleen E. Delaney, on the 11th day of June, 2019, with Dennis M. Prince and Kevin T. Strong of PRINCE LAW GROUP, appearing on behalf of Plaintiff Diane Sanchez and no one appearing on behalf of Defendant Blas Bon. The Court having reviewed the application on file herein, the documents attached thereto, and being duly advised in the premises:

This matter arises from a motor vehicle collision involving four (4) cars that occurred on April 28, 2015. On August 7, 2015, Sanchez filed her Complaint for personal injuries against Defendants Blas Bon ("Bon") and Joseph Acosta. On October 13, 2016, Sanchez filed her Amended Complaint wherein she named Wilfredo Acosta as an additional defendant. On October 16, 2018, Sanchez and the Acosta Defendants filed their Stipulation and Order for Dismissal with Prejudice following their confidential settlement of Sanchez's claims.

1



Prince Law Group  
8816 Spanish Ridge  
Las Vegas, NV 89148

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input checked="" type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

mk

RPI.APP.0002472 2019



As to Bon, Sanchez filed her Affidavit of Due Diligence on October 22, 2015 wherein the process server described his failed efforts to personally serve Bon with the Summons and Complaint at his last known address on September 22, 2015. On March 29, 2016, Sanchez filed her Amended Affidavit of Compliance wherein she confirmed that Bon was served with the Summons and Complaint through the Nevada Department of Motor Vehicles, pursuant to NRS 14.070, on November 2, 2015. On November 9, 2015, Sanchez also sent, via certified mail, copies of the Summons, Complaint, traffic accident report, and November 2, 2015 DMV letter confirming proof of service, to Bon's last known address: 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. This package went unclaimed and was returned to Sanchez on November 12, 2015. On April 1, 2016, the district court entered Default against Bon for his failure to file an answer to Sanchez's Complaint or to otherwise appear in the action within twenty (20) days of service. On March 29, 2019, Sanchez filed her Application for Entry of Default Judgment pursuant to NRCP 55(b)(2). The district court's entry of default constitutes an admission by Bon of all material facts alleged in Sanchez's Complaint. *Estate of LoMastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1068 (2008). As a result, entry of default against Bon resolves the issues of liability and causation for all claims for relief in Sanchez's Complaint. *Id.* The only outstanding issue is the extent of Sanchez's damages.

Based on the foregoing, this Court finds and enters judgment against Bon as follows:

1. On April 28, 2015, Sanchez traveled northbound on Interstate 15 in a 1995 BMW 325i in the #5 travel lane. Bon drove a 1997 Dodge Ram 2500 pickup truck, wherein he hauled two wheelbarrows in the truck bed, directly behind Sanchez. Bon negligently collided with the left side of Sanchez's rear bumper.

2. As a result of Bon's negligence, Sanchez sustained severe and life-altering injuries to her cervical spine and lumbar spine that required substantial medical treatment, including anterior artificial disc replacement surgery at L4-5 of her lumbar spine, as established by her medical records.

3. As a result of Bon's negligence, it is reasonably foreseeable that Sanchez will suffer ongoing pain, suffering, and loss of enjoyment of life. It is also reasonably foreseeable that Sanchez will

undergo future medical treatment to address her cervical and lumbar spine injuries and ongoing residual chronic pain complaints suffered as a result of Bon's negligence. Sanchez's need for future medical treatment and the associated costs for her future medical treatment are established by her medical records and opinions of her retained medical expert, David J. Oliveri, M.D. Dr. Oliveri offers these opinions to a reasonable degree of medical probability.

4. As a result of Bon's negligence, Sanchez suffered past economic damages and it is reasonably foreseeable that Sanchez will suffer future economic damages that consist of: (1) future medical expenses, (2) past and future loss of wages and employee benefits, (3) loss of past and future housekeeping and household management services, and (4) reduction in the value of life damages. The extent of Sanchez's past and future economic damages is established by the opinions of her retained economist, Stan V. Smith, Ph.D. Dr. Smith offers his opinions to a reasonable degree of economic probability. Sanchez's permanent functional capacity disability that will preclude her from working in the future is established by the opinions of Dr. Oliveri. Dr. Oliveri offers this opinion to a reasonable degree of medical probability.

Based upon the papers, pleadings, and evidence on file herein, judgment is hereby entered in favor of Plaintiff Diane Sanchez and against Defendant Blas Bon, jointly and severally, as follows:

1. Past medical special damages:	\$465,285.01
2. Future medical special damages:	\$827,038.00
3. Past and future economic wage loss and employee benefits:	\$840,260.00
4. Past and future economic loss of household services:	\$446,334.00
5. Past pain and suffering:	\$2,000,000.00
6. Future pain and suffering:	\$3,000,000.00
7. Future reduction in the value of life:	\$2,685,877.00
8. Pre-judgment interest as allowed by Nevada law on past damages:	\$599,417.62
<b>Total Damages:</b>	<b>\$10,864,211.63</b>

Attorneys' fees based on a contingency fee agreement of forty percent (40%) of the total judgment award in the amount of \$4,345,684.65 ( $\$10,864,211.63 * .40$ ) pursuant to *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Rep. 67, 429 P.3d 664, 670-71 (Nev. Ct. App. 2018).

A total judgment in the amount of \$15,209,896.28, plus costs in the amount of \$2,759.45, is hereby entered in favor of Plaintiff Diane Sanchez and against Defendant Blas Bon. Plaintiff Diane Sanchez shall also be entitled to interest as allowed by Nevada law from the date of entry hereof until the judgment is fully satisfied.

DATED this 19<sup>th</sup> day of July, 2019.

  
DISTRICT COURT JUDGE

Respectfully Submitted By:

**PRINCE LAW GROUP**

  
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*Diane Sanchez*