

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

District Court Case No.

A-19-80535

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Elizabeth A. Brown
Clerk of Supreme Court

**REAL PARTY IN INTEREST DIANE SANCHEZ'S MOTION TO DE-
DESIGNATE DOCUMENTS PETITIONERS DESIGNATED
CONFIDENTIAL AND TO ALLOW SUBMISSION OF THOSE
DOCUMENTS OR, ALTERNATIVELY, TO SUBMIT DOCUMENTS
UNDER SEAL IN SUPPORT OF ANSWER TO PETITION FOR
WRIT OF MANDAMUS, OR ALTERNATIVELY, PROHIBITION**

Real Party in Interest Diane Sanchez ("Sanchez"), by and through her
counsel of record, Dennis M. Prince and Kevin T. Strong of PRINCE LAW
GROUP, respectfully submits her *Motion to De-Designate Documents
Petitioners Designated Confidential and to Allow Submission of Those*

Documents or, Alternatively, to Submit Documents Under Seal in Support of Answer to Petition for Writ of Mandamus, or Alternatively, Prohibition.

Sanchez respectfully requests this Court to de-designate claims file notes Petitioners NationsBuilders Insurance Services, Inc. and NBIS Construction & Transport Insurance Services, Inc. (“CTIS”) (collectively “Petitioners”) designated “Confidential” pursuant to the parties’ Amended Stipulated Protective Order. *See* Amended Stipulated Protective Order, attached as **Exhibit 1**. The claims file notes at issue do not contain any proprietary information that will harm Petitioners if made part of the public record. They merely recite events regarding the handing of Sanchez’s bodily injury claim.

In their Petition for Writ of Mandamus , or Alternatively, Prohibition, Petitioners argue Sanchez abused discovery by utilizing the subject claims file notes in the companion personal injury action. *See* Writ Petition, at pp. ii-iii; pp. 14-15. The admission of the specific claims file notes will provide this Court with the context needed to evaluate the merits of Petitioners’ argument, which Sanchez vehemently contests.

Alternatively, if this Court is not willing to de-designate the claims file notes, Sanchez requests this Court to allow her to submit the notes under seal.

I. STATEMENT OF FACTS

On April 28, 2015, Blas Bon (“Bon”), a permissive driver of a pickup truck owned by non-party Hipolito Cruz (“Cruz”), negligently collided with the rear bumper of Sanchez’s car on northbound Interstate-15. *See* July 19, 2019 default judgment, at p. 2, ¶ 1, attached as **Exhibit 2**. Cruz’s pickup truck was insured under a personal auto liability insurance policy issued by ATX Premier Insurance Company (“ATX”), policy number ANV00003807. *See* ATX proof of insurance, attached as **Exhibit 3**. As a permissive driver, Bon was insured under the ATX policy at the time of the subject collision. In her Answer to the writ petition, Sanchez substantively details Petitioners’ reserved financial responsibility, management, and control over bodily injury claims arising from ATX insurance policies, including the policy that covered Bon. *See* Sanchez’s Answer to Writ Petition, at pp. 1-5.

Sanchez submitted a bodily injury claim to ATX and DMA Claims Management, Inc. (“DMA”), the third-party claims administrator hired by CTIS, which was improperly rejected. Sanchez then filed her complaint for personal injuries against Bon. Sanchez properly served Bon with the summons and complaint through the Nevada Department of Motor Vehicles (“DMV”) pursuant to NRS 14.070. *See* Mar. 29, 2016 Amended Affidavit of Compliance, attached as **Exhibit 4**. Petitioners, who retained the right to

control and satisfy the contractual duty to defend Bon under the ATX insurance policy, refused to provide Bon with a defense. As a result of Petitioners' breach of the contractual duty to defend, the district court entered a default judgment against Bon on. *See Exhibit 2*. After Sanchez obtained a valid judicial assignment of Bon's claims for relief against Petitioners, she initiated the underlying judgment enforcement/insurance bad faith action.

On November 15, 2021, the district court approved and entered the parties' Amended Stipulated Protective Order in the underlying action. *See Exhibit 1*, at p. 1. On November 19, 2021, Petitioners produced their initial disclosure of documents, nearly all of which were stamped "Confidential." On January 12, 2022, Sanchez filed a motion requesting the district court to de-designate Petitioners' claims file notes as "Confidential." The district court was unable to rule on the motion before this Court stayed the underlying proceedings.

II. LEGAL ARGUMENT

There is a strong presumption favoring public access to judicial records and documents. *Jones v. Nev. Comm'n on Judicial Discipline*, 130 Nev. 99, 109, 318 P.3d 1078, 1085 (2014). Documents filed in the Nevada Supreme Court are presumptively open to the public. *Howard v. State*, 128

Nev. 736, 738, 291 P.3d 137, 138 (2012). These are the guiding legal principles that dictate the scope and reach of stipulated protective orders, like the one entered in the underlying action.

A. Petitioners' Claims File Notes Do Not Contain the Requisite Information to Protect Them from Public View

The parties' Amended Stipulated Protective Order articulates the bases upon which a party may designate documents as "Confidential":

1. Each party to this litigation that produces or discloses any Materials, written discovery, transcripts, or trial or deposition testimony, or information the producing party believes should be subject to this Protective Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

(a) Designation as "CONFIDENTIAL": Any party may designate information as "CONFIDENTIAL" only if, **in the good faith belief of such party and its Counsel**, the unrestricted disclosure of such information could be **harmful to the business or operations of such party**.

See **Exhibit 1**, at p. 3 (emphasis added).

Protective orders are intended to "facilitate discovery by shielding from disclosure trade secrets and other confidential business information, thereby encouraging parties apprehensive about the disclosure of such information to cooperate in discovery." *Harrisonville Tel. Co. v. Ill.*

Commerce Comm’n, 472 F. Supp. 2d 1071, 1077 (S.D. Ill. 2006). The express terms of the Amended Stipulated Protective Order clarify that documents should not be designated confidential **unless** their public disclosure will harm the business or operations of the party. The claims file notes at issue document specific actions and events that transpired as part of Petitioners and DMA’s investigation, evaluation, and handling of Sanchez’s bodily injury claim. There is no information contained in the claims file notes that is proprietary to Petitioners’ business operations or otherwise constitutes a trade secret. Even a cursory review of the claims file notes reveals no information worthy of protection from public view.

An insurer’s claims file is relevant in matters involving insurance bad faith claims because it “presents virtually the only source of direct evidence with regard to the essential issue of the insurance company’s handling of the [bodily injury] claim.” *Allstate Indem. Co. v. Ruiz*, 899 So. 2d 1121, 1128 (Fla. 2005). This is precisely why claims file are routinely produced in insurance bad faith actions. *See Cedell v. Farmers Ins. Co. of Wash.*, 176 Wn.2d 686, 696, 295 P.3d 239, 244 (Wash. 2013). Because the claims file notes summarize the actions Petitioners and DMA took in response to Sanchez’s bodily injury claim, they are “indistinguishable from every other claim file” and not worthy of protection. *See Tavakoli v. Allstate Prop. &*

Cas. Ins. Co., No. C11-1587RAJ, 2012 U.S. Dist. LEXIS 195257, at *8 (W.D. Wash. May 25, 2012) (district court denied Allstate’s request to seal claims file documents because they contained no proprietary information). Sanchez respectfully requests this Court to conclude Petitioners’ claims file notes are not “Confidential” so that Sanchez can submit the specific claims file notes in support of her Answer to the writ petition.

B. Sanchez Relies on Petitioners’ Claims File Notes to Refute Their Arguments in Support of the Indefinite Stay Request

One of Petitioners’ primary contentions is that a stay of the underlying judgment enforcement/insurance bad faith action is necessary because Sanchez abused discovery by improperly using the claims file notes in the companion personal injury action. Petitioners conveniently fail to describe the substance of the claims file notes and the reasons why Sanchez utilized those claims file notes in the underlying personal injury action.

Petitioners are funding “Bon’s” appeal of various orders denying motions to set aside the default judgment pursuant to NRCP 60(b). *See* Second Amended Notice of Appeal, NVSC Case No. 81983, pleading portion only, attached as **Exhibit 5**. Petitioners’ primary argument to set aside the default judgment is that Sanchez did not exercise reasonable diligence to effectuate personal service of the summons and complaint on Bon before

she served him pursuant to NRS 14.070. In support of that argument, Petitioners misled the district court when they stated several times that Bon had no knowledge of Sanchez's personal injury lawsuit. *See* Motion to Set Aside Default Judgment, pleading portion only, at 7:14-18; 9:3-6; 10:20-21, attached as **Exhibit 6**. Petitioners produced claims file notes their employee, Cindy Blanco ("Blanco"), authored that directly refute Bon's alleged ignorance of the personal injury complaint.

One of the claims file notes confirms that on February 16, 2016, Rebecca Perez, a DMA employee, e-mailed a copy of Sanchez's personal injury complaint against Bon to Blanco. On February 18, 2016, Blanco documented in a claims file note that she reviewed Sanchez's personal injury complaint. In the same note, Blanco questioned whether a default could be entered against Bon because she inaccurately believed he was not yet served with the summons and personal injury complaint. On February 19, 2016, Blanco documented in her claims file note that she spoke with Bon by phone. Blanco confirmed, in writing, that she notified Bon that Sanchez filed a personal injury lawsuit against him. Blanco also confirmed, in writing, that she explained the lawsuit to Bon.

The claims file notes establish that both Petitioners and Bon knew Sanchez sued Bon for personal injuries. The claims file notes establish

Petitioners knew a potential for entry of a default against Bon existed, but still refused to provide him with a legal defense. This information directly contradicts the statements Petitioners made to the district court in Bon's name to help bolster their arguments to set aside the default judgment. As a result, Sanchez submitted the claims file notes in the personal injury action, *in camera*, as part of a motion she filed to correct the factual discrepancies Petitioners used Bon to perpetuate.

Petitioners also argue, in a conclusory fashion, that Sanchez violated the Amended Stipulated Protective Order when she submitted the claims file notes in the personal injury action. *See* Writ Petition, at p. ii. Subsection 10 of the Amended Stipulated Protective Order states confidential information "shall be used solely for the prosecution or defense of this action." Sanchez's judgment enforcement/insurance bad faith action against Petitioners arises from the default judgment entered by the district court in the personal injury action. Petitioners are using Bon to try to set aside that very default judgment solely to avoid potential liability for that judgment in the underlying action. Petitioners' factual misstatements were intended to convince the district court to set aside the default judgment, which would have nullified the underlying action. Therefore, Sanchez introduced the claims file notes in the personal injury action to help

preserve her ability to prosecute this judgment enforcement/insurance bad faith action. This Court's review of the relevant claims file notes, in conjunction with the arguments set forth in Sanchez's Answer, will ensure this Court receives a full and fair opportunity to evaluate the merits of Petitioners' request for extraordinary writ relief.

III. CONCLUSION

Sanchez respectfully requests this Court grant the foregoing motion, de-designate the confidentiality of Petitioners' claims file notes, and allow her to submit those notes in support of her Answer to the writ petition.

Alternatively, Sanchez requests this Court exercise its inherent authority to allow her to submit these documents under seal. *See Howard v. State*, 128 Nev. 736, 738, 291 P.3d 137, 138 (2012).

DATED this 7th day of April, 2022.

Respectfully Submitted,

/s/ Kevin T. Strong
DENNIS M. PRINCE
Nevada Bar No. 5092
KEVIN T. STRONG
Nevada Bar No. 12107
PRINCE LAW GROUP
10801 W. Charleston Boulevard
Suite 560
Las Vegas, Nevada 89135
Tel: (702) 534-7600
Fax: (702) 534-7601
Attorneys for Real Party in Interest
Diane Sanchez

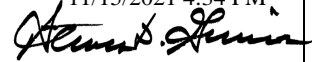
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Supreme Court of Nevada on the 7th day of April, 2022. Electronic service of the foregoing document entitled **REAL PARTY IN INTEREST DIANE SANCHEZ'S MOTION TO DE-DESIGNATE DOCUMENTS PETITIONERS DESIGNATED CONFIDENTIAL AND TO ALLOW SUBMISSION OF THOSE DOCUMENTS OR, ALTERNATIVELY, TO SUBMIT DOCUMENTS UNDER SEAL IN SUPPORT OF ANSWER TO PETITION FOR WRIT OF MANDAMUS, OR ALTERNATIVELY, PROHIBITION** shall be made in accordance with the Master Service List and the Court's eFlex electronic filing system to the following:

Joseph P. Garin
Megan H. Thongkham
LIPSON NEILSON P.C.
9900 Covington Cross Drive
Suite 120
Las Vegas, Nevada 89144
Attorneys for Petitioners
*NationsBuilders Insurance Services, Inc. and
NBIS Construction & Transport Insurance
Services, Inc.*

/s/ Kevin T. Strong
An Employee of PRINCE LAW GROUP

EXHIBIT 1


CLERK OF THE COURT

SPO
ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
JOHN F. SCHNERINGER, ESQ.
Nevada Bar No. 14268
GORDON REES SCULLY MANSUKHANI, LLP
300 South 4th Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9300
Direct Line: (702) 577-9319
Facsimile: (702) 255-2858
E-Mail: rschumacher@grsm.com
jschneringer@grsm.com

Attorneys for Defendant,
DMA CLAIMS MANAGEMENT, INC.,
erroneously sued as DMA CLAIMS INC.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DIANE SANCHEZ)	CASE NO. A-19-805351-C
)	DEPT. NO.: XIII
Plaintiff,)	
)	
v.)	PROPOSED AMENDED
)	STIPULATED PROTECTIVE
)	ORDER
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,)	
)	
Defendants.)	

IT IS HEREBY STIPULATED by and between Plaintiff Diane Sanchez, Defendant
DMA Claims Management, Inc., Defendant Nationsbuilders Insurance Services, Inc., and
Defendant NBIS Construction & Transport Insurance Services, Inc. (collectively, the "Parties" or

“parties”), through their respective counsel of record, that this Proposed Amended Stipulated Protective Order (“Protective Order”) shall govern all information and documents disclosed or produced in this case, including information and documents that may be or was disclosed or produced before this Proposed Amended Stipulated Protective Order is entered by the Court.

WHEREAS the parties to this case may be required to disclose to the other certain sensitive, personal, financial, confidential and/or proprietary information and documents relating to the subject matter of this litigation, the unauthorized use or disclosure of which is likely to cause harm to the party producing such information or contravene an obligation of confidentiality to a third person or to a court.

Accordingly, the parties hereby stipulate to and petition the Court to enter the Amended Stipulated Protective Order, pursuant to Nev. R. Civ. P. 26(c). The parties acknowledge that this Amended Stipulated Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled to treatment as confidential under applicable state or federal law. The parties further acknowledge that this Amended Stipulated Protective Order creates no entitlement to file confidential information under seal; the parties shall follow the applicable rules when seeking permission from the Court to file material under seal. The parties respectfully request that this Court enter the Amended Stipulated Protective Order on the following terms:

A. DEFINITIONS

The following Definitions shall apply in this Order:

1. The term “**Confidential Information**” will mean and include information contained or disclosed in any materials that is deemed to be Confidential Information by any party to which it belongs.

2. The term “**Materials**” will include, but is not limited to: documents; correspondence; memoranda; financial information; email; marketing plans; marketing budgets; customer information; materials that identify customers or potential customers; price lists or schedules or other matter identifying pricing; minutes; letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; forecasts; notes of conversations; desk

diaries; appointment books; videos; expense accounts; recordings; photographs; sketches; drawings; business reports; disclosures; and internet archives.

3. The term “**Counsel**” will mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff.

B. LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL INFORMATION

The following provisions shall apply in this litigation:

1. Each party to this litigation that produces or discloses any Materials, written discovery, transcripts or trial or deposition testimony, or information the producing party believes should be subject to this Protective Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

(a) Designation as “CONFIDENTIAL”: Any party may designate information as “CONFIDENTIAL” only if, in the good faith belief of such party and its Counsel, the unrestricted disclosure of such information could be harmful to the business or operations of such party.

(b) Designation as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”: Any party may designate information as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only if, in the good faith belief of such party and its Counsel, the information is among that considered to be most sensitive by the party, including but not limited to trade secret or other confidential research, development, financial, customer related data or other commercial information, or other information that is proprietary or otherwise highly confidential or sensitive in nature.

2. In the event the producing party elects to produce Materials for inspection, no marking need be made by the producing party in advance of the initial inspection. For purposes of the initial inspection, all Materials produced will be considered as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and must be treated as such pursuant to the terms of this Order. Thereafter, upon selection of specified Materials for copying by the inspecting party, the producing party must, within a reasonable time prior to producing those Materials to the inspecting party, mark the copies of those Materials that contain Confidential Information as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 3. For electronically stored information (“ESI”), if it not feasible for a party or third
2 party to mark each file or image as specified herein at the time of production, then that party or
3 third party shall designate the Material containing Confidential Information in a cover letter
4 accompanying the production of ESI. Where feasible, the designating Party or third party shall
5 mark the disk, tape, or other electronic media on which said ESI is produced as
6 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Whenever such
7 ESI is printed or copied out, every print out or copy shall be marked as “CONFIDENTIAL” or
8 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 4. Whenever a deposition taken on behalf of any party involves the disclosure of
10 Confidential Information of any party:

11 (a) the deposition or portions of the deposition must be designated as
12 containing Confidential Information subject to the provisions of this Order; such designation
13 must be made on the record whenever possible, but a party may designate portions of depositions
14 as containing Confidential Information after transcription of the proceedings; a party will have
15 until thirty (30) days after receipt of the deposition transcript to inform the other party or parties
16 to the action of the portions of the transcript to be designated “CONFIDENTIAL” or
17 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Until thirty (30) days after receipt of the
18 transcribed testimony, such testimony shall be treated by the parties as Confidential Information.

19 (b) The originals of the deposition transcripts and all copies of the deposition
20 must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY,” as appropriate, and the original or any copy ultimately presented to a court for filing
22 must not be filed unless it can be accomplished under seal, identified as being subject to this
23 Order, and protected from being opened except by order of this Court.

24 5. All Confidential Information designated as “CONFIDENTIAL” or
25 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” must not be disclosed by the receiving
26 party to anyone other than those persons designated within this Order and must be handled in the
27 manner set forth below, and in any event, must not be used for any purpose other than in
28 connection with this litigation, unless and until such designation is removed either by agreement

of the parties, or by order of the Court.

6. Information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be viewed only by the following individuals:

- (a) Counsel (as defined in paragraph A.3., above) of the receiving party;
- (b) Independent experts and stenographic and clerical employees associated with such experts. Prior to receiving any Confidential Information of the producing party, the expert must execute a copy of the “Agreement to Be Bound by Stipulated Protective Order,” attached hereto as Exhibit A. Counsel for the receiving party must retain executed copies of such exhibits;
- (c) The Court and any Court staff and administrative personnel;
- (d) Any court reporter employed in this litigation and acting in that capacity;
- (e) Any person indicated on the face of the document to be its author or co-author, or any person identified on the face of the document as one to whom a copy of such document was sent before its production in this action;
- (d) Technical personnel of the parties with whom Counsel for the parties find it necessary to consult, in the discretion of such Counsel, in preparation for trial of this action; and
- (e) Stenographic and clerical employees associated with the individuals identified above.

7. Information designated “CONFIDENTIAL” may be viewed only by the individuals listed in paragraph 5, above, and by the additional individuals listed below:

- (a) Party principals or executives who are required to participate in policy decisions with reference to this action;
- (b) Stenographic and clerical employees associated with the individuals identified above.

8. All information that has been designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by the producing or disclosing party, and any and all reproductions of that information, must be retained in the custody of the Counsel for the receiving party, except that

1 independent experts authorized to view such information under the terms of this Order may
2 retain custody of copies such as are necessary for their participation in this litigation, but only
3 during the course of this litigation. The designation does not apply to principals, employees, or
4 other agents of the parties who received information prior to and apart from this litigation that
5 was subsequently disclosed in this litigation as being either “CONFIDENTIAL” or
6 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

7 9. Before any Materials produced in discovery, answers to interrogatories, responses
8 to requests for admissions, deposition transcripts, or other documents which are designated as
9 Confidential Information are filed with the Court for any purpose, the party seeking to file such
10 material must seek permission of the Court to file the material under seal and comply with the
11 requirements of the Nevada Rules of Civil Procedures and/or local rules. Nothing in this order
12 shall be construed as automatically permitting a party to file under seal. The party seeking leave
13 of Court shall have the burden to show it has satisfied the standard for filing under seal under the
14 applicable law. Additionally, such party seeking to file under seal shall, within the applicable
15 deadline, file a redacted, unsealed version of any motion, response or reply if such party is
16 waiting for a ruling from the Court on filing an unredacted, sealed version of the same document.
17 Further, nothing in this Order shall prevent a party from using at trial any information or
18 Materials designated as Confidential Information.

19 10. Confidential Information and Materials designated “CONFIDENTIAL” or
20 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be used solely for the prosecution or
21 defense of this action.

22 11. At any stage of these proceedings, any party may object to a designation of
23 Materials as Confidential Information. The party objecting to confidentiality must notify, in
24 writing, Counsel for the producing party of the objected-to Materials and the grounds for the
25 objection. If the dispute is not resolved consensually between the parties within fourteen (14)
26 days of receipt of such a notice of objections, the objecting party may move the Court for a
27 ruling on the objection. In the event any party files a motion challenging the designation or
28 redaction of information, the document shall be submitted to the Court, under seal, for an in-

1 camera inspection. The Materials at issue must be treated as Confidential Information, as
2 designated by the producing party, until the Court has ruled on the objection or the matter has
3 been otherwise resolved.

4 12. All Confidential Information must be held in confidence by those inspecting or
5 receiving it. To the extent the Confidential Information has not been disclosed prior to and apart
6 from this litigation, it must be used only for purposes of this action. If the Confidential
7 Information was exchanged between the parties prior to and apart from this litigation for
8 purposes of conducting their respective businesses, the parties may continue to use that otherwise
9 Confidential Information for that purpose. The parties may not distribute the Confidential
10 Information beyond those persons or entities that had received the Confidential Information prior
11 to this litigation. In addition, counsel for each party, and each person receiving Confidential
12 Information, must take reasonable precautions to prevent the unauthorized or inadvertent
13 disclosure of such information. If Confidential Information is disclosed to any person other than
14 a person authorized by this Order, the party responsible for the unauthorized disclosure must
15 immediately bring all pertinent facts relating to the unauthorized disclosure to the attention of the
16 other parties and, without prejudice to any rights and remedies of the other parties, make every
17 effort to prevent further disclosure by the party and by the person(s) receiving the unauthorized
18 disclosure.

19 13. Except as set forth in paragraph 13 below, no party will be responsible to another
20 party for disclosure of Confidential Information under this Order if the information in question is
21 not labeled or otherwise identified as such in accordance with this Order.

22 14. If a party, through inadvertence, produces any Confidential Information without
23 labeling or marking or otherwise designating it as such in accordance with this Order, the
24 producing party may give written notice to the receiving party that the Materials produced are
25 deemed Confidential Information, and that the Materials produced should be treated as such in
26 accordance with that designation under this Order. The receiving party must treat the Materials
27 as confidential, once the producing party so notifies the receiving party. If the receiving party
28 has disclosed the Materials to unauthorized person(s) before receiving the designation, the

1 receiving party must notify the producing party in writing of each such disclosure, take
2 reasonable steps to notify the unauthorized person(s) of such designation under this Order, and
3 make every effort to prevent further disclosure by the party and by the unauthorized person(s).
4 Counsel for the parties will agree on a mutually acceptable manner of labeling or marking the
5 inadvertently produced Materials as “CONFIDENTIAL” or “CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” – SUBJECT TO PROTECTIVE ORDER.

7 15. Nothing within this Order will prejudice the right of any party to object to the
8 inadvertent production of any discovery material on the grounds that the material is protected as
9 privileged or as attorney work product. If a Party at any time submits written notification that it
10 has inadvertently produced Materials that are protected from disclosure under a claim of
11 attorney-client privilege or work product doctrine, and/or other applicable privilege or immunity
12 from disclosure, including a log describing the basis for the claim of immunity or privilege for
13 each such document or thing, all persons notified shall, within three (3) business days return,
14 destroy, or sequester from further review all copies of such Materials promptly, whether or not
15 any such person agrees with the claim, and shall not further use such Materials for any purpose
16 until further order of the Court. The receiving party shall be responsible for notifying any
17 additional persons to whom they have disclosed the Materials of the producing party’s claim of
18 privilege. The return, destruction, or sequestration of any discovery item shall not in any way
19 preclude any person from moving the Court for a ruling that the Materials are not privileged or
20 otherwise immune from disclosure, but the inadvertent production of the Materials may not be
21 relied upon as grounds for seeking a ruling that the document is not privileged or otherwise
22 immune from discovery. Inadvertent disclosure does not waive the privilege or immunity.

23 16. Nothing in this Order will bar Counsel from rendering advice to their clients with
24 respect to this litigation and, in the course thereof, relying upon any information designated as
25 Confidential Information, provided that the contents of the information must not be disclosed.

26 17. This Order will be without prejudice to the right of any party to oppose
27 production of any information for lack of relevance or any other ground other than the mere
28 presence of Confidential Information. The existence of this Order must not be used by either

1 party as a basis for discovery that is otherwise improper under the Nevada Rules of Civil
2 Procedure.

3 18. Information designated Confidential pursuant to this Order also may be disclosed
4 if: (a) the party or non-party making the designation consents to such disclosure; (b) the Court,
5 after notice to all affected persons, allows such disclosure; or (c) the party to whom Confidential
6 Information has been produced thereafter becomes obligated to disclose the information in
7 response to a lawful subpoena, provided that the subpoenaed party gives prompt notice to
8 Counsel for the party which made the designation, and permits Counsel for that party sufficient
9 time to intervene and seek judicial protection from the enforcement of this subpoena and/or entry
10 of an appropriate protective order in the action in which the subpoena was issued.

11 19. Nothing in this Confidentiality Order shall limit any producing party's use of its
12 own documents or shall prevent any producing party from disclosing its own Confidential
13 Information to any person. Such disclosures shall not affect any confidential designation made
14 pursuant to the terms of this Order so long as the disclosure is made in a manner which is
15 reasonably calculated to maintain the confidentiality of the information. Nothing in this Order
16 shall prevent or otherwise restrict Counsel from rendering advice to their clients, and in the
17 course thereof, relying on examination of stamped confidential information.

18 20. Within thirty (30) days of the final termination of this action, including any and
19 all appeals, Counsel for each party must purge all Confidential Information, whether on paper or,
20 to the extent practicable, in electronic format from all machine-readable media on which it
21 resides, and must return all Confidential Information to the party that produced the information,
22 including any copies, excerpts, and summaries of that information. Confidential Information not
23 returned or destroyed shall be used only for archival purposes, solely to identify information to
24 which there is owed a continuing obligation of confidentiality under the Order, and for no other
25 purpose, other than for outside counsel to defend itself in an administrative or other proceeding
26 based on a claim or grievance of professional liability.

27 21. The restrictions and obligations set forth within this Order will not apply to any
28 information that: (a) the parties agree should not be designated Confidential Information; (b) the

parties agree, or the Court rules, is already public knowledge; (c) the parties agree, or the Court rules, has become public knowledge other than as a result of disclosure by the receiving party, its employees, or its agents, in violation of this Order.

22. Transmission by e-mail or facsimile is acceptable for all notification purposes within this Order.

23. This Order may be modified by agreement of the parties, subject to approval by the Court.

24. The Court may modify the terms and conditions of this Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings.

25. After termination of this action, the provisions of this Order shall continue to be binding, except with respect to those documents and information that became a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of Confidential Information and Materials designated as confidential for enforcement of the provisions of this Order following termination of this litigation.

26. This Order shall govern pretrial proceedings only, and nothing set forth herein prohibits the use at trial of any Confidential Information or affects the admissibility of any evidence. The procedures to govern the use and disclosure of Confidential Information and the redaction of any "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation may be the subject of further agreement of the Parties or order of the Court.

DATED this 12th day of November 2021.

DATED this 12th day of November 2021.

**GORDON REES SCULLY
MANSUKHANI LLP**

PRINCE LAW GROUP

/s/ John F. Schneringer
ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
JOHN F. SCHNERINGER, ESQ.
Nevada Bar No. 14268
300 South 4th Street, Suite 1550
Las Vegas, Nevada 89101
Attorneys for Defendant,
DMA CLAIM MANAGEMENT, INC.

/s/ Kevin T. Strong
DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
KEVIN T. STRONG, ESQ.
Nevada Bar No. 12107
10801 W. Charleston Blvd., Suite 560
Las Vegas, Nevada 89135
Attorneys for Plaintiff
DIANE SANCHEZ

1 DATED this 12th day of November 2021

2 **LIPSON NEILSON P.C.**

3
4 /s/ Megan H. Thongkham

JOSEPH P. GARIN, ESQ.

5 Nevada Bar No. 6653

MEGAN H. THONGKHAM, ESQ.

6 Nevada Bar No. 12404

9900 Covington Cross Drive, Suite 120

7 Las Vegas, Nevada 89144

8 *Attorney for Defendants,*

NATIONALSBUILDERS INSURANCE SERVICES, INC. and

9 **NBIS CONSTRUCTION & TRANSPORT INSURANCE**

SERVICES, INC.

12 **ORDER**

13 **IT IS SO ORDERED.**

Dated this 15th day of November, 2021



DISTRICT COURT JUDGE

108 C6D 8D2B 2190

Mark R. Denton

District Court Judge

ABG

18 Respectfully Submitted by:

19 **GORDON REES SCULLY**

20 **MANSUKHANI LLP**

21 /s/ John F. Schneringer

22 ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

23 JOHN F. SCHNERINGER, ESQ.

Nevada Bar No. 14268

24 300 South 4th Street, Suite 1550

25 Las Vegas, Nevada 89101

Attorneys for Defendant,

26 **DMA CLAIM MANAGEMENT, INC.**

EXHIBIT A

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DIANE SANCHEZ,

Plaintiff,

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,

Defendants.

) CASE NO. A-19-805351-C
) DEPT. NO. XIII

) **AGREEMENT TO BE BOUND BY**
) **STIPULATED PROTECTIVE**
) **ORDER**

I, _____, declare and say that:

1. I am employed as _____ by
_____.

2. I have read the Stipulated Protective Order (the "Order") entered in *Diane Sanchez v. ATX Premier Insurance Company, et al*, Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-805351-C, and have received a copy of the Order.

3. I promise that I will use any and all Confidential information, as defined in the Order, given to me only in a manner authorized by the Order, and only to assist Counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such Confidential information with anyone other than the persons described in the Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the Eighth Judicial District Court for Clark County, Nevada with respect to the enforcement of the Order.

1 6. I understand that any disclosure or use of Confidential information in any manner
2 contrary to the provisions of the Protective Order may subject me to sanctions for contempt of
3 court.

4 7. I will return all Confidential Materials (as defined in the Order) to the attorney
5 who provided it to me, upon request of that attorney, and I shall not retain any copies of said
6 Materials or any information contained within Confidential Materials.

7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 Date: _____

10
11 Signature: _____

Andrea Montero

From: Kevin Strong <kstrong@thedplg.com>
Sent: Monday, November 8, 2021 4:50 PM
To: Megan Thongkham; John Schneringer
Cc: Dennis Prince; Andrew Brown; Amy Ebinger
Subject: RE: Sanchez v. NBIS, et al. - Case No. A-19-805351-C

Hi Megan,

I have reviewed your proposed revisions to the amended stipulated protective order and I accept all of them. You may affix my e-signature. Thanks.

Sincerely,

Kevin



Kevin T. Strong | Attorney
Prince Law Group
10801 West Charleston Boulevard, Suite 560
Las Vegas, Nevada 89135
P: 702.534.7600 | F: 702.534-7601
kstrong@thedplg.com | www.thedplg.com

From: Megan Thongkham <MThongkham@lipsonneilson.com>
Sent: Monday, November 8, 2021 6:53 AM
To: Kevin Strong <kstrong@thedplg.com>; John Schneringer <jschneringer@grsm.com>
Cc: Dennis Prince <dprince@thedplg.com>; Andrew Brown <abrown@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>
Subject: RE: Sanchez v. NBIS, et al. - Case No. A-19-805351-C

Hi Kevin,

I will review the supplemental JCCR and stipulation today. In the interim, attached is a copy of the amended stipulated protective order, with my revisions.

Thank you,

From: Kevin Strong <kstrong@thedplg.com>
Sent: Friday, November 5, 2021 1:17 PM
To: Megan Thongkham <MThongkham@lipsonneilson.com>; John Schneringer <jschneringer@grsm.com>
Cc: Dennis Prince <dprince@thedplg.com>; Andrew Brown <abrown@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>
Subject: Sanchez v. NBIS, et al. - Case No. A-19-805351-C

Dear Megan and John,

Attached, please find the Supplemental Joint Case Conference Report along with the Stipulation and Order to Extend Discovery Deadlines and to Continue Trial for your review. Please provide any proposed revisions. If there are none, please confirm that I may affix your respective e-signatures to these documents and file.

Megan, what is the status on the revised protective order? We need this submitted to the Court so that we can receive your clients' NRCP 16.1 Disclosures.

Thanks everyone and enjoy your weekend.

Sincerely,

Kevin



Kevin T. Strong | Attorney
Prince Law Group
10801 West Charleston Boulevard, Suite 560
Las Vegas, Nevada 89135
P: 702.534.7600 | F: 702.534-7601
kstrong@thedplg.com | www.thedplg.com

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Diane Sanchez, Plaintiff(s)

CASE NO: A-19-805351-C

7 vs.

DEPT. NO. Department 13

8 ATX Premier Insurance
9 Company, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Stipulated Protective Order was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/15/2021

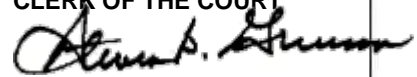
15 Kimberly Glad	kglad@lipsonneilson.com
16 Brenda Correa	bcorrea@lipsonneilson.com
17 Efile LasVegas	efilelasvegas@wilsonelser.com
18 Sean Owens	sowens@grsm.com
19 Andrea Montero	amontero@grsm.com
20 Cristina Pagaduan	cpagaduan@grsm.com
21 John Podesta	john.podesta@wilsonelser.com
22 Joseph Garin	JGarin@lipsonneilson.com
23 Wing Wong	wwong@grsm.com
24 Chris Richardson	chris.richardson@wilsonelser.com
25 Robert Schumacher	rschumacher@grsm.com

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Lisa Lee	llee@thedplg.com
Eservice Filing	eservice@thedplg.com
E-serve GRSM	WL_LVSupport@grsm.com
Megan Thongkham	mthongkham@lipsonneilson.com
Rachel Sodupe	rsodupe@thedplg.com
John Schneringer	jschneringer@grsm.com
Nicole Littlejohn	nlittlejohn@thedplg.com
Michele Stones	mstones@lipsonneilson.com

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

JUL 12 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
Total Damages:	\$10,864,211.63

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 19th day of July, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted By:

PRINCE LAW GROUP


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

EXHIBIT 3

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 To Compare

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

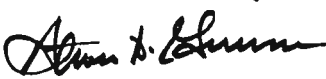
Vehicle Level Coverages for 1997 DODGE RAM 2500 XCAB 5.9L Use Previous Vehicle

Comprehensive N/A

Collision N/A

Reset all combos to "N/A"

EXHIBIT 4



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,) **AMENDED AFFIDAVIT OF**
15 individually; DOES I - X, and ROE) **COMPLIANCE**
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
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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

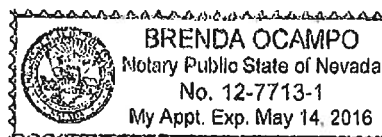
18 DATED this 29th day of March, 2015.
19

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 29th 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**
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 ROE)
CORPORATIONS I - X, inclusive,)
14)
15 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
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 13th 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 13th day of November, 2015.

28 NOTARY PUBLIC

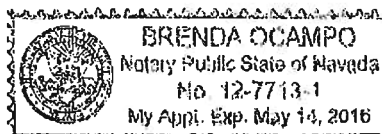


EXHIBIT 2

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

VERIFIED MAIL

Las Vegas, N. M. 89108



2015 0640 0004 9496 0326



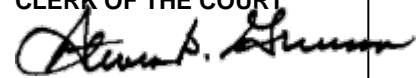
☐ ~~Wanted~~
☐ Deceased
☐ No Receipt
☐ No Such Number
☐ Attempted
☐ Refused
☒ ~~Unknown~~
☐ Not Known
☐ No Address
☐ Undeliverable as

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3900 Cambridge Street
H

Las Vegas, N. M. 89109

EXHIBIT 5



Electronically Filed
Oct 27 2021 03:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 **ANOA**
2 WILLIAM P. VOLK, (SBN 6167)
3 HOLLEY DRIGGS
4 400 S. Fourth Street
5 Suite 300
6 Las Vegas, Nevada 89101
7 (702) 791-0308
8 WVolk@NevadaFirm.com

9 DANIEL F. POLSENBERG (SBN 2376)
10 JOEL D. HENRIOD (SBN 8492)
11 ABRAHAM G. SMITH (SBN 13,250)
12 LEWIS ROCA ROTHGERBER CHRISTIE LLP
13 3993 Howard Hughes Parkway, Suite 600
14 Las Vegas, Nevada 89169-5996
15 (702) 949-8200
16 DPolsenberg@LewisRoca.com
17 JHenriod@LewisRoca.com
18 ASmith@LewisRoca.com

19 *Attorneys for Defendant Blas Bon*

20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 DIANE SANCHEZ,
23
24 Plaintiff,

25 *vs.*

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

Case No. A-15-722815-C

Dept. No. 25

**SECOND AMENDED
NOTICE OF APPEAL**

SECOND AMENDED NOTICE OF APPEAL

Please take notice that defendant Blas Bon hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Order Denying Defendant Blas Bon's Motion to Set Aside Default Judgment, filed September 19, 2020, notice of entry of which was served electronically on September 21, 2020 (Exhibit A);

3. “Order Denying Defendant Blas Bon’s Motion for Rehearing and to Alter or Amend the Judgment and Denying Rule 60(b) Relief,” filed on September 16, 2021, notice of entry of which was served electronically on September 20, 2021 (Exhibit B);

4. “Amended 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 Company, Any Other Applicable Liability Insurer, Any Third-Party Claims Administrator, Any Third-Party Adjuster, or Any Other Insurance Entity,” filed September 16, 2021, notice of entry of which was served electronically on September 21, 2021 (Exhibit C); and

5. All judgments, rulings and interlocutory orders made appealable by the foregoing.

Dated this 21st day of October, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

WILLIAM P. VOLK, (SBN 6167)
HOLLEY DRIGGS
400 S. Fourth Street, Suite 300
Las Vegas, Nevada 89101
(702) 791-0308

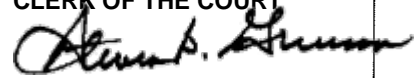
Attorneys for Defendant Blas Bon

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Dennis M. Prince
Kevin T. Strong
PRINCE LAW GROUP
10801 West Charleston Boulevard
Suite 560
Las Vegas, Nevada 89135
E-mail: eservice@thedplg.com

/s/ Emily D. Kapolnai
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT 6



1 **MSAD**

2 WILLIAM P. VOLK, ESQ.

3 Nevada Bar No. 006157

4 WILLIAM D. SCHULLER, ESQ.

5 Nevada Bar No. 011271

6 **KOLESAR & LEATHAM**

7 400 South Rampart Boulevard, Suite 400

8 Las Vegas, Nevada 89145

9 Telephone: (702) 362-7800

10 Facsimile: (702) 362-9472

11 E-Mail: wvolk@klnevada.com

12 wschuller@klnevada.com

13 Attorneys for Defendant,

14 BLAS BON

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 * * *

18 DIANE SANCHEZ,

19 Plaintiff,

20 vs.

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

24 Defendants.

CASE NO. A-15-722815-C

DEPT NO. XXV

HEARING REQUESTED

**MOTION TO SET ASIDE DEFAULT
JUDGMENT**

25 JOSEPH ACOSTA, individually; and
26 WILFREDO ACOSTA, individually,

27 Cross-Claimants,

28 vs.

BLAS BON, individually,

Cross-Defendant.

Defendant BLAS BON ("Bon"), by and through his attorneys at Kolesar & Leatham, hereby moves to set aside the \$15.2 million default judgment the Court entered in favor of Plaintiff DIANE SANCHEZ ("Sanchez") on July 19, 2019 ("Default Judgment").

///

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 This Motion is made and based upon NRCP 1, NRCP 55, NRCP 60, NRS 14.070, the
2 following Memorandum of Points and Authorities, the pleadings and papers on file herein, and
3 any argument presented at the time of hearing on this matter.

4 DATED this 17th day of January, 2020.

5 **KOLESAR & LEATHAM**

6
7 By 

8 WILLIAM P. VOLK, ESQ.

Nevada Bar No. 006157

9 WILLIAM D. SCHULLER, ESQ.

Nevada Bar No. 011271

10 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

11 Attorneys for Defendant,
12 BLAS BON

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

A. Pleadings & Motion to Enlarge Time

On August 7, 2015, Sanchez filed the Diane Sanchez Complaint ("Complaint"), which alleges negligence and negligence *per se* against Bon and Defendant JOSEPH ACOSTA ("Joseph"). The gravamen of the Complaint is that Bon caused a motor vehicle accident with Sanchez, during which Joseph also negligently crashed into Sanchez's vehicle. *Id.* at ¶ 6. Defendant Joseph Acosta's Answer to Plaintiff's Complaint and Cross-Claim Against Blas Bon ("Cross-Claim"), filed December 1, 2015, seeks contribution and indemnity against Bon. On March 3, 2016, Joseph served Bon with the Cross-Claim. *See* Defendant/Cross-Claimant Joseph Acosta's Motion to Enlarge Time to Perfect Service of Cross Claim Against Cross-Defendant Blasbon ("Motion to Enlarge Time"), filed March 7, 2017, at Ex. 1.

On October 13, 2016, Sanchez filed the Amended Complaint, which alleges negligence and negligence *per se* against unspecified Defendants and additionally alleges imposition of liability pursuant to NRS 41.440 against Defendant WILFREDO ACOSTA ("Wilfredo"). Defendants Joseph Acosta and Wilfredo Acosta's Answer to Plaintiffs' Amended Complaint and Cross-Claim Against Bon ("Amended Cross-Claim"), filed November 9, 2016, again seeks contribution against Bon. On March 7, 2017, Joseph filed the Motion to Enlarge Time, which the Court subsequently granted, allowing an additional 60 days for Joseph to serve Bon. *See* Court Minutes of April 11, 2017. Sanchez did not move to enlarge the time for service of the Amended Complaint on Bon.

B. Attempted Service of Complaint

On October 20, 2015, Sanchez filed an Affidavit of Due Diligence, attaching a Declaration of Diligence of process server Michael E. Clarke ("Clarke"), which states that he attempted to serve the Summons and Complaint on Bon on October 19, 2015 as follows:

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

11 See Plaintiff Diane Sanchez's Application for Entry of Default Judgment ("Default Judgment
12 Application"), a true and correct copy of which is attached hereto as **Exhibit A** (without
13 documents relating to future medical treatment/expenses (Ex. 8) and economic damages (Ex. 9)),
14 at Ex. 4.

15 On March 29, 2016, Sanchez filed an Amended Affidavit of Compliance,¹ which states in
16 pertinent part as follows:

17 That on or about October 27, 2015 [Paul D. Powell, Esq.] caused
18 to be served upon the Director of the Department of Motor
19 Vehicles of the State of Nevada at Carson City, Nevada, via United
20 States Mail, a copy of the Complaint on file herein, a copy of the
21 Summons issued following the filing of the Complaint, a copy of the
22 Declaration of Diligence, together with the statutory fee of
23 \$5.00, all in accordance with N.R.S. 14.070. Said documents were
24 received by the Department of Motor Vehicles on November 2,
25 2015 as evidenced by the letter from the Department of Motor
26 Vehicles attached hereto as **Exhibit 2**, acknowledging receipt of
27 said Complaint and Summons.

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

See Default Judgment Application, Ex. A hereto, at Ex. 5 (emphasis in original).

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¹ The Affidavit is incorrectly dated March 29, 2015.

1 **C. Default & Default Judgment**

2 On April 1, 2016, the Court filed the Default on Defendant Blas Bon (“Default”), which
3 states that Bon was duly served through the DMV on November 2, 2015. **Over two months**
4 **later**, on June 22, 2016, Sanchez filed the Notice of Entry of Default. **Over 33 months later**, on
5 March 29, 2019, Sanchez moved for a default judgment. *See* Default Judgment Application, Ex.
6 B hereto. On June 11, 2019, the Court held a hearing on the Default Judgment Application.
7 Plaintiff’s Supplement to Application for Entry of Default Judgment (“Supplement to
8 Application”), filed July 9, 2019, includes the Unsworn Declaration in Lieu of Affidavit Pursuant
9 to NRS 53.045 of David J. Oliveri, M.D.² and the Unsworn Declaration in Lieu of Affidavit
10 Pursuant to NRS 53.045 of Stan V. Smith, Ph.D.³ A true and correct copy of the Supplement to
11 Application is attached hereto as **Exhibit B** (without Oliveri Declaration exhibits).

12 On July 19, 2019, the Court issued the Default Judgment against Bon in the amount of
13 **\$15,209,896.28** (plus \$2,759.45 in costs). Sanchez filed the Notice of Entry of Default Judgment
14 on July 19, 2019. A true and correct copy of the Notice of Entry of Default Judgment is attached
15 hereto as **Exhibit C**.

16 **D. Dismissal of Co-Defendants**

17 On October 16, 2018, the Court issued a Stipulation and Order for Dismissal With
18 Prejudice, executed by counsel for Sanchez and Joseph and Wilfredo. On February 7, 2019, the
19 Court issued a Civil Order to Statistically Close Case by reason of the stipulated judgment.

20 **E. Computation of Damages**

21 The Request for Exemption from Arbitration, served December 21, 2015, sets forth
22 Sanchez’s medical specials at over **\$81,027.02**. *See* Commissioner’s Decision on Request for
23 Exemption, filed January 15, 2016. Notably, Plaintiff’s Initial Early Case Conference Disclosure
24 of Witnesses and Documents Pursuant to NRCP 16.1, served almost two months later on
25 February 11, 2016, sets forth Sanchez’s total medical damages at only **\$26,876.42**. *See* Joint
26 Case Conference Report, filed February 17, 2016, at Ex. 1. The Default Judgment Application

27 _____
² Dr. Oliveri is Sanchez’s retained physical medicine and rehabilitation physician and life care planner.

28 ³ Dr. Smith is Sanchez’s retained economist.

1 filed March 29, 2019 requested the following damages:

- 2 • Past Medical Damages \$465,285.01;
- 3 • Future Medical Damages \$827,038.00;
- 4 • Past & Future Lost Wages \$840,260.00;
- 5 • Past & Future Lost Household Services \$446,334.00;
- 6 • Future Reduction in Value of Life \$2,685,877.00;
- 7 • Past Pain & Suffering \$2,000,000.00;
- 8 • Future Pain & Suffering \$3,000,000.00;
- 9 • Prejudgment Interest TBD; and
- 10 • Attorney's Fees and Costs TBD

11 **Total: \$10,264,794.01**

12 *See Ex. A hereto at pp. 20-21.*

13 **II. FACTUAL BACKGROUND**

14 1. The subject motor vehicle accident ("Accident") took place on April 28, 2015 in
15 Clark County, Nevada. *See Amended Complaint at ¶ 6.*

16 2. The State of Nevada Traffic Accident Report ("Accident Report") lists Bon's
17 address as 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119 ("Cambridge Address").

18 *See Default Judgment Application, Ex. A hereto, at Ex. 1, p. 3.*

19 3. The Accident Report lists Bon's date of birth and phone number and notes that he
20 has a Nevada driver's license. *Id.*

21 4. The Accident Report lists the owner of the vehicle Bon was driving at the time of
22 the Accident as Hipolito Felipe Cruz ("Cruz") and Cruz's address as 4000 Abrams Avenue, Las
23 Vegas, Nevada 89110 ("Abrams Address"). *Id.*

24 5. The Accident Report notes that Nevada Highway Patrol cited both Bon and
25 Joseph for violation of NRS 484B.127.⁴ *Id.* at pp. 3, 7.

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27 _____
28 ⁴ "The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." NRS 484B.127(1).

6. The Voluntary Statement of Bon to Nevada Highway Patrol lists Bon's residence as the Abrams Address and Bon's employer as "South West Trees." *See* Default Judgment Application, Ex. A hereto, at Ex. 1.

7. South West Tree Company is located at 2901 S. Highland Drive, Las Vegas, Nevada 89109.

8. Joseph served the Cross-Claim on Bon at the Abrams Address and attempted to serve the Amended Cross-Claim on Bon at the Abrams Address. *See* Motion to Enlarge Time at Ex. 1, Ex. 2.

9. Clark County owns 3900 Cambridge Street, which is an office building zoned for offices and professional and business services. *See* Real Property Parcel Record for APN 162-15-702-011, a true and correct copy of which is attached hereto as **Exhibit D**.

10. Counsel for Sanchez and Cruz's insurer, DMA Claims Services, exchanged letters regarding the underlying claim on several occasions prior to the Default, including on June 16, 2015; July 10, 2015;⁵ July 17, 2015;⁶ and August 8, 2015, true and correct copies of which are attached hereto as **Exhibit E**.

11. The Certificate of Service for the Notice of Entry of Default states that counsel for Sanchez served same on Bon at the Cambridge Address via certified mail and on DeLawrence Templeton at DMA Claims Services via certified mail. *See* Default Judgment Application, Ex. A hereto, at Ex. 6.

12. The Certificate of Service for the Notice of Entry of Default Judgment states that counsel for Sanchez served same on Bon at the Cambridge Address via U.S. Postal Service; Sanchez's counsel did not serve DMA Claims Services. *See* Ex. C hereto.

13. At the April 11, 2017 hearing before the Court, counsel for Joseph stated that "Bon is very much aware of the case." *See* Court Minutes, a true and correct copy of which is attached hereto as **Exhibit F**.

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⁵ The July 10 letter to Sanchez's counsel was sent without a handwritten or digital signature.

⁶ The July 17 letter to Sanchez's counsel was sent without a handwritten or digital signature.

1 14. Paul D. Powell, Esq. represented Sanchez as lead counsel in the instant litigation,
2 from the time of filing the Complaint through the stipulated dismissal of Joseph and Wilfredo;
3 and Dennis M. Prince, Esq. represented Sanchez as lead counsel from the time of filing the
4 Default Judgment Application to present.

5 15. Messner Reeves LLP represented Joseph and Wilfredo in the instant litigation,
6 from the time of answering the Complaint through stipulated dismissal.

7 16. Sanchez never set forth a legal basis for an attorney's fee award in requesting a
8 default judgment. *See* Default Judgment Application, Ex. A hereto, generally; Supplement to
9 Application, Ex. B hereto, generally.

10 III. LEGAL ARGUMENT

11 A. Legal Standard for Setting Aside a Default Judgment

12 As a prefatory matter, a trial court is required to consider the underlying public policy of
13 deciding a case on the merits whenever possible. *Moseley v. Eighth Judicial Dist. Court ex rel.*
14 *Cty. of Clark*, 124 Nev. 654, 665-67, 188 P.3d 1136, 1144-45 (2008); *see also Scrimmer v. Eighth*
15 *Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1196 (2000)
16 ("good public policy dictates that cases be adjudicated on their merits") (citations omitted).
17 Keeping that sound public policy in mind, pursuant to NRCP 55(c), "[t]he court may set aside an
18 entry of default for good cause, and it may set aside a final default judgment under Rule 60(b)."
19 A party may move to set aside a default judgment for the following reasons:

20 (1) **mistake, inadvertence, surprise, or excusable neglect;**

21 (2) newly discovered evidence that, with reasonable diligence,
22 could not have been discovered in time to move for a new trial
under Rule 59(b);

23 (3) fraud (whether previously called intrinsic or extrinsic),
misrepresentation, or misconduct by an opposing party;

24 (4) the judgment is void;

25 (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 no longer equitable; or

26 (6) **any other reason that justifies relief.**

27
28 NRCP 60(b) (emphasis added). A motion based on NRCP 60(b) must be brought "within a

reasonable time” and for reason (1), no more than six months after the proceeding or service of the written notice of entry of the default judgment. NRCP 60(c)(1). The primary purpose of Rule 60(b) is to redress any injustice that may have resulted and as such, it should be liberally construed to effectuate such purpose. *Nevada Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987) (citation omitted).

The court may also set aside a default judgment against a defendant who was not personally served and who has not appeared if such motion is filed within six months of service of the notice of entry. NRCP 60(d)(2). Regardless of the basis for the motion, in setting aside a default judgment, the trial court is vested with broad discretion and barring an abuse of that discretion, its determination will not be disturbed on appeal. *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018) citing *Cook v. Cook*, 112 Nev. 179, 181–82, 912 P.2d 264, 265 (1996).

B. The Court Should Set Aside the Default Judgment.

Bon moves to set aside the Default Judgment on three separate grounds: 1) surprise and excusable neglect under NRCP 60(b)(1); 2) particular circumstances which justify relief under NRCP 60(b)(6); and 3) Sanchez’s improper service on Bon under NRCP 60(d)(2). The instant Motion is timely as Sanchez filed the Notice of Entry of Default Judgment less than six months ago (on July 19, 2019).

1. Surprise & Excusable Neglect

Pursuant to NRCP 60(b)(1), “the court may relieve a party or its legal representative from a final judgment, order, or proceeding for...mistake, inadvertence, **surprise, or excusable neglect**” (emphasis added). *Surprise* is “[a]n occurrence for which there is no adequate warning or that affects someone in an unexpected way.” SURPRISE, Black's Law Dictionary (11th ed. 2019). And *excusable neglect* is “[a] failure – which the law will excuse – to take some proper step at the proper time (esp. in neglecting to answer a lawsuit) not because of the party’s own carelessness, inattention, or willful disregard of the court’s process, but because of some unexpected or unavoidable hindrance...” NEGLECT, Black's Law Dictionary (11th ed. 2019). In ruling on whether relief under NRCP 60(b)(1) is appropriate, the court must consider several

1 factors: (1) whether there was a prompt application to remove the judgment; (2) presence or
2 absence of intent to delay the proceedings; (3) the moving party's knowledge of procedural
3 requirements (or lack thereof); (4) the movant's good (or bad) faith; and (5) the public policy in
4 favor of resolving cases on the merits. *Kahn v. Orme*, 108 Nev. 510, 513, 835 P.2d 790, 792-93
5 (1992) *citing Yochum v. Davis*, 98 Nev. 484, 486-87, 653 P.2d 1215, 1216-17 (1982) (additional
6 citation omitted); *see also* Rodriguez, 134 Nev. at 657, 428 P.3d at 257 *citing Yochum*
7 (additional citation omitted).

8 Here, even assuming *arguendo* that Bon was aware of the Default filed on April 1, 2016,
9 he would have been surprised to learn that Sanchez did not seek to obtain the Default Judgment
10 until **three years later** (on March 29, 2019). *See, e.g., Bruno v. Schoch*, 94 Nev. 712, 714, 582
11 P.2d 796, 797 (1978) (in suit against putative father for breach of promise to contribute to child's
12 support, default judgment should have been vacated where mother did not seek default judgment
13 against the putative father until almost 11 months after entry of default). Additionally, given the
14 extent of the damage to the vehicles involved in the Accident and the fact that Sanchez did not
15 seek medical attention at the scene, Bon would have been surprised to learn that Sanchez
16 subsequently alleged **over \$10.2 million in damages** and was ultimately awarded **over \$15.2**
17 **million**. Separately, as set forth in detail *infra*, the lack of proper service on Bon constitutes
18 surprise and/or excusable neglect, thus necessitating setting aside the Default Judgment.

19 The *Yochum* factors weigh in Bon's favor as he is acting promptly to remove the
20 judgment via the instant Motion. There was no intent to delay the proceedings as Bon was
21 unaware of the proceedings. Bon lacked knowledge of procedural requirements as he was
22 unrepresented during the entirety of the litigation. Bon is moving in good faith to set aside the
23 Default Judgment. And finally, as always, public policy favors resolving cases on the merits.

24 2. Particular Circumstances Justify Relief

25 Pursuant to NRCP 60(b)(6), "the court may relieve a party or its legal representative from
26 a final judgment, order, or proceeding for...any other reason that justifies relief." Rule 60(b)
27 was amended in March of 2019 to include subsection 6. As such, there does not appear to be any
28 case law interpreting this catchall provision for setting aside a final judgment. However, the

underlying facts and procedural posture preceding the Default Judgment in the instant litigation demonstrate a sound reason that justifies relief. The following facts, when viewed collectively, justify relief in favor of Bon:

- Other than Bon, all the parties – Sanchez, Joseph, and Wilfredo – had the adequate representation of counsel throughout the litigation.
- While Sanchez settled with Joseph and Wilfredo, the amount of the settlement (if any) was not deducted from the Default Judgment.
- Sanchez’s damages ballooned from a relatively modest \$81,027.02 pre-Default to an astonishing \$10,264,794.01 post-Default.
- Bon never had the opportunity retain his own experts or to cross-examine Sanchez’s experts, Dr. Oliveri and Dr. Smith, as to the significant damages alleged.
- There was no legal basis for the \$4,345,684.65 in attorney’s fees the Court awarded Sanchez in the Default Judgment.⁷
- Bon’s liability remains questionable as the Accident involved four vehicles and both Bon and Joseph were cited for “following too closely.”⁸
- The Amended Complaint, which was filed prior to the Default Judgment Application, does not include any charging allegations specific to Bon.⁹

In short, allowing the Default Judgment to stand would run counter to both Nevada’s laudable public policy of deciding cases on the merits and NRCP 60(b)’s salutary purpose of redressing injustice resulting from a final judgment.

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⁷ See Ex. C hereto, Default Judgment at p. 4, ll. 3-5 (“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).”). In *O’Connell*, the Nevada Court of Appeals held that an award of attorney’s fees on the basis of a contingency fee agreement was appropriate where plaintiff obtained a more favorable verdict at trial than her offer of judgment pursuant to NRCP 68. 134 Nev. at 551-52, 429 P.3d at 666. Here, Sanchez did not serve an offer of judgment on Bon and Sanchez’s causes of action do not provide for attorney’s fees as a measure of damages.

⁸ See Default Judgment Application, Ex. A hereto, at Ex. 1, pp. 3, 7.

⁹ Compare Complaint at ¶ 6 (“That on April 28, 2015, in Clark County, Nevada, [Bon] caused a crash with Plaintiff. During the same sequence of events, [Joseph] also negligently crashed into Plaintiff.”) with Amended Complaint at ¶ 6 (“On April 28, 2015, in Clark County, Nevada, [Joseph] caused a crash with Plaintiff.”).

3. *Sanchez's Improper Service on Bon*

Pursuant to NRCP 60(d)(2), the court has the power to “set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service.” Indeed, “[a] default judgment not supported by proper service of process is void and must be set aside.” *Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998) (emphasis added) *citing Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1420, 906 P.2d 258, 261 (1995); *see also Michel v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 117 Nev. 145, 17 P.3d 1003 (2001) (faulty service of process provided good cause to set aside default judgment).

a. Sanchez Did Not Attempt to Serve Amended Complaint on Bon.

The first issue with service stems from the fact that Sanchez filed the Amended Complaint (October 13, 2016) between the time the Court issued the Default (April 1, 2016) and the time the Court issued the Default Judgment (July 19, 2019). In other words, Bon’s default was entered on the original Complaint, but the Court subsequently entered default judgment on the Amended Complaint. Under Nevada law, an amended complaint supersedes the original complaint and renders it nugatory. *Associated Aviation Underwriters, Inc. v. Vegas Jet, L.L.C.*, 106 F. Supp. 2d 1051, 1054 (D. Nev. 2000) *citing Rondono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984) (“The amended complaint in this case was a distinct pleading which superseded the original complaint.”) and *McFadden v. Ellsworth Mill & Mining Co.*, 8 Nev. 57, 60 (1872) (“The amended complaint is in itself a full, distinct, and complete pleading, and entirely supersedes the original.”).

Sanchez’s Amended Complaint is the operative pleading and Sanchez had to serve Bon with same in order to enter judgment on that pleading. Pursuant to NRCP 5(a)(2), while service is usually not required on a party who is in default, “a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4” (emphasis added). The Complaint alleges “[t]hat on April 28, 2015, in Clark County, Nevada, **[Bon] caused a crash with Plaintiff**” and that “[d]uring the same sequence of events, [Joseph] also negligently crashed into Plaintiff.” *Id.* at ¶ 6 (emphases added). The Amended Complaint substitutes Joseph for Bon

1 as to the negligent act, alleging that “[o]n April 28, 2015, in Clark County, Nevada, **[Joseph]**
2 **caused a crash with Plaintiff.**” *Id.* at ¶ 6 (emphases added). No mention whatsoever is made as
3 to Bon’s actions (or failure to act). As to negligence, the Amended Complaint alleges that
4 “Defendant [singular] breached that duty of care by striking Plaintiff’s vehicle on the roadway.”
5 *Id.* at ¶ 13. The parties are left to guess as to which Defendant Sanchez is referring to. As to
6 negligence *per se*, Sanchez alleges that “[t]he acts of Defendants **as described herein** violated
7 the traffic laws of the State of Nevada and Clark County, constituting negligence *per se*...” *Id.* at
8 ¶ 15 (emphasis added). Again, Bon’s acts are not described anywhere in the Amended
9 Complaint.¹⁰ As such, there is an unknown theory of negligence against Bon and thus “a new
10 claim for relief” requiring service pursuant to NRCP 5(a)(2).

11 Therefore, the Court must set aside the void Default Judgment because it is not supported
12 by proper service of process.

13 b. Sanchez Did Not Meet NRS 14.070’s Service Requirements.

14 The second issue with service involves the specific requirements set forth in NRS 14.070,
15 which Sanchez attempted to utilize in serving Bon. NRS 14.070 provides a method for the
16 service of process on operators of automobiles involved in accidents over Nevada’s public roads,
17 streets, or highways. The operator is deemed to have appointed the Director of the Department
18 of Motor Vehicles as attorney for service of process in any action resulting in damage or loss to
19 person or property. NRS 14.070(1). Service is completed through the deposit of a copy of the
20 process and the payment of the statutory fee to the Director as well as delivery by registered or
21 certified mail of a copy of the process to the defendant at the address supplied in the accident
22 report or the best available address. NRS 14.070(2). A return receipt signed by the defendant, or
23 a return of the United States Postal Service stating the defendant refused to accept delivery or
24 could not be located, or that the address is insufficient, along with the plaintiff’s affidavit of
25

26 ¹⁰ NRCP 8(a) requires that a pleading stating a claim for relief must include “a short and plain statement of the claim
27 showing that the pleader is entitled to relief.” While Nevada is a notice-pleading jurisdiction, the complaint must
28 “set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has
adequate notice of the nature of the claim and relief sought.” *W. States Const., Inc. v. Michoff*, 108 Nev. 931, 936,
840 P.2d 1220, 1223 (1992) (citations omitted).

1 compliance, should be attached to the original process and returned and filed in the action in
2 which it was issued. *Id.* The provisions of this statute apply to resident motorists who “cannot
3 be found within [Nevada] following a crash which is the subject of [the] action for which process
4 is served pursuant to this section.” NRS 14.070(6). Sanchez failed to meet several of the service
5 requirements set forth in NRS 14.070.

6 i. Source of Address

7 As a prefatory matter, the Affidavit of Compliance and the Amended Affidavit of
8 Compliance are defective in that neither states the source of the Cambridge Address, which
9 Sanchez utilized as Bon’s “best known address.” *See* Default Judgment Application, Ex. A
10 hereto, at Ex. 5. The affidavit of compliance by plaintiff must state the source of the address
11 relied on by the plaintiff, and the affidavit must be based on facts and not mere conclusions.
12 *Mitchell v. Second Judicial Dist. Court*, 82 Nev. 377, 381, 418 P.2d 994, 997 (1966). When
13 notice is sent to the *best address* available to the plaintiff, “[a] sworn statement as to source will
14 serve to establish the good faith of the plaintiff to give actual notice and will, to some extent,
15 diminish the possibility of fraud.” *Id.*, 82 Nev. at 381, 418 P.2d at 997. Therefore, Sanchez’s
16 attempted service via NRS 14.070 is deficient.

17 ii. Affirmative Duty to Search

18 In interpreting statutory service through the DMV, Nevada has held that “substitute
19 service pursuant to NRS 14.070(2) is efficacious only if the plaintiff first demonstrates that, after
20 due diligence, the resident defendant cannot be found within the state.” *Browning*, 114 Nev. at
21 217, 954 P.2d at 743. In *Browning*, the Nevada Supreme Court concluded that the phrase *cannot*
22 *be found* imposes “an affirmative obligation on a plaintiff to diligently search” for a resident
23 motorist defendant to determine whether the defendant has, in fact, departed the state or cannot
24 be located within the state. *Browning*, 114 Nev. at 216-17, 954 P.2d at 743. The *Browning*
25 Court noted that “[a]ny other conclusion contravenes the plain meaning of the statute and
26 violates the principles of procedural due process.” *Id. citing Sheriff v. Wu*, 101 Nev. 687, 689-
27 90, 708 P.2d 305, 306 (1985) (“Where a statute may be given conflicting interpretations, one
28 rendering it constitutional, and the other unconstitutional, the constitutional interpretation is

1 favored.”); *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (“words
2 in a statute should be given their plain meaning unless this violates the spirit of the act”).

3 For example, in *Price v. Dunn*, the Nevada Supreme Court concluded that, despite the
4 plaintiff’s attempts to discover the defendant’s address through the telephone book, inquiries at
5 the power company, and a conversation with the defendant’s stepmother, “her actual efforts, as a
6 matter of law, fall short of the due diligence requirement to the extent of depriving [the
7 defendant] of his fundamental right to due process.” *Browning*, 114 Nev. at 218, 954 P.2d at 744
8 quoting *Price*, 106 Nev. 100, 102-03, 787 P.2d 785, 786-87 (1990). Similarly, in *Gassett*, the
9 Nevada Supreme Court concluded that plaintiff’s attempts to locate the defendant solely through
10 one visit to an old address and service via publication, despite knowledge of defendant’s counsel,
11 failed to demonstrate due diligence and thus, the default judgment was void. 111 Nev. at 1420,
12 906 P.2d at 261. Because “[w]here other reasonable methods exist for locating the whereabouts
13 of a defendant, plaintiff should exercise those methods.” *Browning*, 114 Nev. at 218, 954 P.2d at
14 744 quoting *Price*, 106 Nev. at 103, 787 P.2d 787.

15 Here, Sanchez’s attempted service through the DMV presupposes that a diligent effort
16 has been made to locate Bon. However, the process server’s Declaration of Diligence fails to
17 identify the person who told him the Cambridge Address was Bon’s mailing address. *See*
18 Default Judgment Application, Ex. A hereto, at Ex. 4. There was no attempt to contact Cruz, the
19 owner of the vehicle Bon was driving, despite the fact that Cruz’s address was set forth in the
20 Accident Report. *See* Default Judgment Application, Ex. A hereto, at Ex. 1. Nor was there an
21 attempt to contact DMA, despite the fact that Sanchez’s counsel had previously corresponded
22 with DMA in June, July, and August of 2015. *See* Correspondence, Ex. E hereto.

23 Clarke, Sanchez’s process server, only attempted service once, at the Cambridge
24 Address, which is an office building where family services/faith ministries are located. *See*
25 Default Judgment Application, Ex. A hereto, at Ex. 4. Clarke did not attempt service the Abrams
26 Address or Bon’s place of work, despite knowledge of both. *See* Default Judgment Application,
27 Ex. A hereto, at Ex. 1. Unlike Joseph, Sanchez did not move for additional time to serve Bon.
28 Additionally, Clarke provided no backup documentation regarding the purported searches of the

1 Clark County Assessor's Office, Clark County voter registration, "local phone search,"
2 registered vehicle search through Nevada DMV, and "Premium Finder." And Clarke provided
3 no description as to what "Premium Finder" entails.

4 Therefore, Sanchez did not satisfy the duty to search diligently for Bon in Nevada prior to
5 resorting to statutory service.

6 iii. Proof of Mailing

7 Another deficiency is apparent given that service requires "a return receipt signed by the
8 defendant or a return of the United States Postal Service stating that the defendant refused to
9 accept delivery or could not be located, or that the address was insufficient." NRS 14.070(2).
10 Bon did not sign a return receipt as he did not receive the certified mail containing the Summons
11 and Complaint. The U.S. Postal Service returned the certified mail Sanchez sent to the
12 Cambridge Address as "Unclaimed." See Default Judgment Application, Ex. A hereto, at Ex. 5.
13 There is no indication that: 1) Bon refused to accept delivery or could not be located; or 2) that
14 the Cambridge Address was insufficient. Indeed, the *Return to Sender* stamp on the envelope
15 could have indicated as much, as it includes the following additional options, none of which
16 were checked:

- 17 • Undeliverable as Addressed;
- 18 • Moved, Left No Address;
- 19 • Refused;
- 20 • Attempted, Not Known;
- 21 • No Such Street;
- 22 • No Such Number;
- 23 • No Receptacle;
- 24 • Deceased; and
- 25 • Vacant.

26 Therefore, service is also insufficient because Sanchez did not meet this additional
27 requirement.

28 ///

iv. Relations with Opposing Counsel

Finally, Nevada Rule of Professional Conduct 3.5A states that “[w]hen a lawyer knows or reasonably should know the identity of a lawyer representing an opposing party, he or she should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer’s intention to proceed.” Sanchez’s counsel communicated directly with DMA on several occasions. *See* Correspondence, Ex. E hereto. Additionally, the Certificate of Service for the Notice of Entry of Default indicates that the filing was served via certified mail to DeLawrence Templeton at DMA Claims Services. *See* Default Judgment Application, Ex. A hereto, at Ex. 6. Thus, while Bon was not yet represented by counsel *per se*, Sanchez certainly violated the spirit of NRPC 3.5A in causing the Default to be entered against Bon without first inquiring of DMA’s intention to retain counsel for Bon.

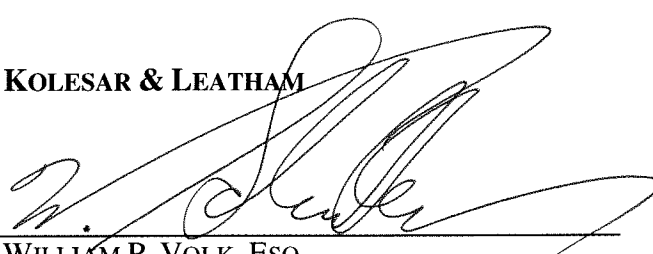
IV. CONCLUSION

Based on the foregoing, the Court should set aside the Default Judgment and order a trial on the merits.

DATED this 17th day of January, 2020.

KOLESAR & LEATHAM

By


WILLIAM P. VOLK, ESQ.
Nevada Bar No. 006157
WILLIAM D. SCHULLER, ESQ.
Nevada Bar No. 011271
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Attorneys for Defendant,
BLAS BON

CERTIFICATE OF SERVICE

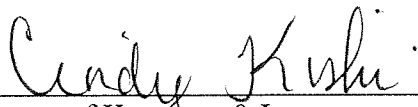
I hereby certify that I am an employee of Kolesar & Leatham, and that on the 17th day of January, 2020, I caused to be served a true and correct copy of the foregoing **MOTION TO SET ASIDE DEFAULT JUDGMENT** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed below.

Party: Diane Sanchez - Plaintiff
E Service eservice@egletlaw.com

Other Service Contacts

Bernita Lujan .	blujan@messner.com
Dana Marcolongo .	dana@tplf.com
Jenny Marimberga .	jenny@tplf.com
Kimberly Shonfeld .	kshonfeld@messner.com
Lauren Pellino .	lpellino@tplf.com
Lindsay Reid .	lindsay@tplf.com
Michael Meyer .	cmeyer@messner.com
Michael T. Nixon .	mnixon@messner.com
Renee Finch .	rfinch@messner.com
Eservice Filing	eservice@thedplg.com
Liz Flores	Lflores@egletlaw.com
Lisa M Lee	llee@thedplg.com
Tracey Zastrow	tzastrow@messner.com


An Employee of KOLESAR & LEATHAM