

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 19 2022 11:02 a.m.

MINERVA VASQUEZ-MONTANO, AN
INDIVIDUAL; AND GIOVANNI JIMENEZ,
AN INDIVIDUAL,

Supreme Court No.: 84629 Elizabeth A. Brown
District Court Case No.: CV18-00496 Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

Appellants,

v.

CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC; AND ZACHARY KURTIS
MYKAL RANSOM,

Respondents.

1. Judicial District: 2nd Department: 7

County: Washoe Judge: Honorable Egan Walker

District Ct. Case No.: CV18-00496

2. Attorney filing this docketing statement:

Attorney: Curtis B. Coulter, Esq. Telephone: 775-324-3380

Firm: COULTER HARSH LAW

Address: 403 Hill Street
Reno, NV 89501

Client(s): Firm: Minerva Vasquez-Montano and Giovanni Jimenez

3. Attorney(s) representing respondents(s):

Attorney: Jack Angaran, Esq. Telephone: 775-827-6440

Firm: LEWIS BRISBOIS BISGAARD & SMITH

Address: 5555 Kietzke Lane, Second Floor
Reno, NV 89511

Client(s): Firm: Cemex Construction Materials Pacific LLC

4. Nature of disposition below (check all that apply):

☐ Judgment after bench Trial

☐ Dismissal:

☐ Judgment after jury verdict

☐ Lack of jurisdiction

- ☐ Summary judgment ☐ Failure to state a claim
☐ Default judgment ☐ Failure to prosecute
☐ Grant/Denial of NRCP 60(b) relief X Other: **Failure to apply NRS 7.085**
☐ Grant/Denial of injunction ☐ Divorce Decree:
☐ Grant/Denial of declaratory relief ☐ Original ☐ Modification
☐ Review of agency determination ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following? NA

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

1. Docket No. 81436
Petition for Writ of Mandamus (To Disqualify Presiding District Court Judge for Bias.)
Minerva Vasquez-Montano and Giovanni Jimenez, Petitioners, vs. The Second Judicial District Court of the State of Nevada in and for the County of Washoe, and the Honorable Kathleen M. Drakulich, District Judge, Respondents, and Cemex Construction Materials Pacific, LLC and Zachary Kurtis Mykal Ransom, Real Parties In Interest.
2. Docket No. 81124
Petition for Writ of Mandamus or, in the Alternative, for Writ of Prohibition (as a result of adverse summary judgment being issued by District Court).
Minerva Vasquez-Montano and Giovanni Jimenez, Petitioners, vs. The Second Judicial District Court of the State of Nevada in and for the County of Washoe, and the Honorable Egan K. Walker, District Judge, Respondents, and Cemex Construction Materials Pacific, LLC and Zachary Kurtis Mykal Ransom, Real Parties In Interest.
3. Docket No. 82687 (Appeal as a result of the Trial Court's failure to liquidate sanctions and rule on second motion for sanctions under NRS 7.085)
Notice of Appeal regarding the Trial Court's failure to rule on sanctions.
Minerva Vasquez-Montano and Giovanni Jimenez, Appellants vs. Cemex Construction Materials Pacific, LLC and Zachary Kurtis Mykal Ransom, Respondents.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

See, Number 6, above. The related writs and appeal are resolved.

///
///

1 **8. Nature of the action.** Briefly describe the nature of the action and the result below.

2 The underlying action was a personal injury case involving a motor vehicle crash; Settlement
3 was reached between parties on the Plaintiffs' substantive claims on or about January 8, 2021. Before
4 settlement two motions for sanctions filed by the Appellants were unresolved. The first motion for
5 sanctions was granted by the District Court, The District Court stated it would liquidate the sum of
6 sanctions at the conclusion of the case. The second motion for sanctions was against defense counsel,
7 Counsel for Respondent Cemex. The second motion for sanctions was not ruled on as of the date the
8 underlying case was settled. When the case was settled Appellants filed a Notice of Dismissal of Claims
9 with Preservation of Administrative Issues (sanctions). The second motion for sanctions was calendared
10 for oral argument. After the case settled the District Court vacated the oral argument but did not
11 liquidate sanctions as a result of granting the first motion for sanctions and did not rule on the second
12 motion for sanctions. Appellants therefore filed an appeal as a result of the District Court not ruling on
13 either sanction matter.

14 The Nevada Supreme Court dismissed the appeal of the Trial Court's failure to rule on sanctions,
15 Supreme Court No. 82687, and remanded the sanctions issues to the District Court, Case Number CV18-
16 00496. On remand the District Court did not liquidate the sanctions as a result of granting Appellants'
17 first motion for sanctions and the District Court did not analyze the facts complained of in the second
18 motion for sanctions or the statute upon which the sanctions were sought, NRS 7.085. The District Court
19 issued an order denying imposition of sanctions. That order is the final action in the underlying case
20 and is the subject on appeal.

21 **9. Issues on appeal.** State concisely the principal issues(s) in this appeal (attach separate sheets as
22 necessary):

23 The issue on appeal is 1) whether a District Court's failure to liquidate sanctions at the end of the
24 case after granting Appellants' first motion for sanctions was an abuse of discretion and 2) whether the
25 District Court's failure to comply with the legislative mandate and impose sanctions as required by
26 Nevada, NRS 7.085, after applying the facts to the statute was a manifest abuse of discretion.

27 **10. Pending proceedings in this court raised the same or similar issues.** If you are aware of any
28 proceedings presently pending before this court which raises the same or similar issues raised in this
29 appeal, list the case name and docket numbers and identify the same or similar issue raised:

Unknown

30 **11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state,
31 any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the
32 clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

33 **12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

- ☐ A substantial issue of first impression
☐ An issue of public policy
☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision
☐ A ballot question
If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17 and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their impotence or significance:

The matter pertains to interpretation of NRS 7.085 including the legislative mandate set forth in that statute and when misconduct of counsel requires imposition of sanctions. These issues are of statewide significance and pertain to issues of public importance.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

16. Date of entry of written judgment or order appealed from March 28, 2022.

If not written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served March 28, 2022.

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax – **Electronic filing**

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion and the date of filing.

- ☐ NRCP 50(b) Date of filing _____
☐ NRCP 52(b) Date of filing _____
☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions of rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev.____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion_____

(c) Date written notice of entry of order resolving tolling motion was served_____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed April 25, 2022, 28 days after notice of entry.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ X NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order.

Judge entered an Order granting Appellants' first motion for sanctions but failed to liquidate the amount of sanctions. Appellants filed a second motion for sanctions. That motion was denied without the District Court analyzing the acts complained of and the authority, NRS 7.085, upon which the motion for sanctions was asserted.

22. List all parties involved in the action or consolidated action in the district court:

(a) Parties:

Plaintiff, Minerva Vasquez-Montano

Plaintiff, Giovanni Jimenez

Defendant, Cemex Construction Materials Pacific, LLC

Defendant, Zachary Kurtis Mykal Ransom

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

A Stipulation for Dismissal of Respondent Ransom was filed with this Court on May 11, 2022.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross claims and the date of formal disposition of each claim.

Appellants, Minerva Vasquez-Montano and Giovanni Jimenez, asserted claims in the underlying action based on negligence. Their issues on appeal pertain to the failure of the District Court to liquidate sanctions after granting a motion for sanctions and denying a motion for sanctions without analyzing the facts and applicable law.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

- ☒ X Yes
☐ No

25. If your answered "No" to question 24, complete the following:

- (a) Specify the claims remaining pending below:
(b) Specify the parties remaining below:
(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
☐ Yes
☐ No

26. If your answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach filed-stamp copies of the following documents:

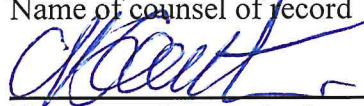
- The latest-filed complaint, counterclaims, crossclaims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motions(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order of claims.
- Notice of Dismissal and Opposition to Defendants Motion

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Minerva Vasquez-Montano and Giovanni Jimenez
Name of appellant

May 19, 2022
Date

Curtis B. Coulter, Esq.
Name of counsel of record

Signature of counsel of record

19th **CERTIFICATE OF SERVICE**

I certify that on the 19th day of May 2022, I served a copy of this competed docketing statement upon all counsel of record:

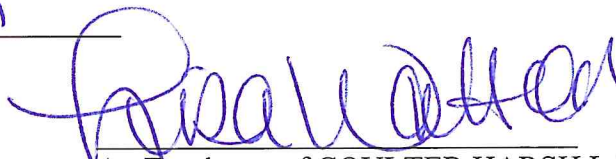
- X Mail on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope with first-class postage affixed thereto, deposited in the United States Mail, at Reno, Nevada.
- Personal delivery by causing a true copy thereof to be hand-delivered to the address or addresses set forth below.
- Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address or addresses noted below.
- Federal Express or other overnight delivery.
- Hand-delivery by Reno/Carson Messenger Service.

Addressed as follows:

Jack Angaran, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
5555 Kietzke Lane, Second Floor
Reno, Nevada 89511
Attorneys for Defendants
CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC
Attorneys for Defendants

X-Supreme Court
E-File

DATED: 5/19/22



An Employee of COULTER HARSH LAW

1 Curtis B. Coulter, Esq.
Nevada Bar #3034
2 COULTER HARSH LAW
403 Hill Street
3 Reno, Nevada 89501
4 P: 775.324.3380
F: 775.324.3381

5 *Attorneys For Plaintiffs*

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7
8 IN AND FOR THE COUNTY OF WASHOE

9 MINERVA VASQUEZ-MONTAÑO,
Individually, GIOVANNI JIMENEZ,
10 Individually,

Case No.: CV18-00496

Dept. No.: 2

11 Plaintiffs,

12 v.

CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC, ZACHARY KURTIS MIGUEL
13 RANSOM and DOES 1-10, inclusive,

14 Defendants.

15 _____ /
16 **SECOND AMENDED COMPLAINT**

17 Plaintiff MINERVA VASQUEZ-MONTAÑO, individually, GIOVANNI JIMENEZ,
18 individually, by and through their attorney, Curtis B. Coulter, Esq., hereby complain and allege
19 against Defendants as follows:

20 **I. FIRST CLAIM FOR RELIEF**

21 **(Negligence)**

22 1. Plaintiff, MINERVA VASQUEZ-MONTAÑO (hereinafter, VASQUEZ) was, at
23 all times mentioned herein, a resident of the City of RENO, County of WASHOE, State of
24 NEVADA. Said Plaintiff is represented by Curtis B. Coulter of COULTER HARSH LAW.

COULTER
HARSH LAW
403 Hill Street
Reno, Nevada 89501
(775) 324-3380
FAX (775) 324-3381

1 2. Plaintiff MINERVA VASQUEZ-MONTAÑO hereafter ("VASQUEZ") is the
2 natural mother of GIOVANNI JIMENEZ and is a resident of Washoe County Nevada and is
3 represented by Curtis B. Coulter of COULTER HARSH LAW.

4 3. Plaintiff GIOVANNI JIMENEZ, (hereinafter, JIMENEZ) was, at all times
5 mentioned herein, a resident of the City of RENO, County of WASHOE, State of NEVADA. Said
6 Plaintiff is represented by Curtis B. Coulter of COULTER HARSH LAW.

7 4. GARY SHARMAN, (hereinafter SHARMAN), was at the time of the incident
8 mentioned herein, a resident of the City of Portland, Oregon, and currently resides in LaQuinta,
9 California.

10 5. SHIRLEY NICHOLS, (hereinafter NICHOLS), was at the time of the incident
11 mentioned herein, a resident of the City of Portland, Oregon, and currently resides in LaQuinta,
12 California. Said Plaintiff is represented by Jason W. Peak of LAXALT & NOMURA, Ltd.

13 6. Upon information and belief, Plaintiffs allege that Defendant, ZACHARY
14 KURTIS MIGUEL RANSOM, is and at all times mentioned herein has been a resident of the
15 County of WASHOE, State of NEVADA.

16 7. Upon information and belief, Plaintiffs allege that Defendant, CEMEX
17 CONSTRUCTION MATERIALS PACIFIC, LLC, ("CEMEX") is an Arizona LLC. Plaintiffs
18 allege Cemex S.A.B De C.V (CEMEX SAB), is a foreign entity conducting, at all relevant times
19 herein, business in the State of Nevada.

20 8. Cemex SAB conducts business under the common name of "CEMEX" SAB.
21 CEMEX SAB is an entity traded on the New York stock exchange under symbol "CX".

22 9. The true names and capacities of Defendants named herein as DOES 1 through 10,
23 inclusive, are unknown to Plaintiffs who therefore sues these Defendants, and each of them, by
24 such fictitious names. Said DOE Defendants may be individuals, partners, joint ventures,
25

1 corporations or other entities. Plaintiffs will amend their Complaint to include the true names and
2 capacities of such Defendants when the same have been ascertained. Plaintiffs further allege that
3 DOE Defendants may have owned, operated, or had the right to control the subject cement mixer
4 truck, and/or were responsible for the safety training of mechanics who worked on the cement
5 truck and the operator of the subject vehicle operated by Defendant ZACHARY KURTIS
6 MIGUEL RANSOM at the time of the accident.

7
8 10. Defendant ZACHARY KURTIS MIGUEL RANSOM at all relevant times was an
9 agent of Defendant CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC, acting in the
10 course and scope of his employment with Defendant CEMEX CONSTRUCTION MATERIALS
11 PACIFIC, LLC.

12 11. Defendants CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC,
13 ("CEMEX"), and ZACHARY KURTIS MIGUEL RANSOM are jointly and severally liable for
14 Plaintiffs' damages, alleged herein.

15 12. Defendant CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC, is
16 vicariously liable for the injuries of the Plaintiffs under the doctrine of respondent superior.
17 Plaintiff's allege that the action of Cemex' employees that caused injury to Plaintiff's occurred by
18 employees that were allowed excision discretion whether to repair defects identified by Mr.
19 Ransom in the truck that crashed described below.

20 13. Plaintiff's allege that the actions of the Cemex' employees that caused them
21 damage were ratified by Cemex.

22 14. No Cemex employee was disciplined as a result of the Plaintiffs being injured.

23 15. Plaintiffs are informed and believe, and thereon allege that each fictitiously named
24 Defendant is responsible in some manner for the occurrences herein alleged which were
25 proximately caused by the conduct of said DOE Defendants as alleged in this Complaint. As are
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1 liable to Plaintiff's injuries, damages including punitive damages based on *respondeat superior* or
2 other forms of vicarious liability.

3 16. Plaintiffs are informed and believe and thereon allege that Defendant CEMEX
4 CONSTRUCTION MATERIALS PACIFIC, LLC is the lawful owner of the cement mixer truck
5 involved in the accident, operated by the Defendant ZACHARY KURTIS MIGUEL RANSOM,
6 on May 24, 2017. That cement truck has vehicle identification number: INKWXTEx15J103652
7 aka truck 937.

8 17. Plaintiffs are informed and believe and thereon allege that Defendant ZACHARY
9 KURTIS MIGUEL RANSOM was, at all times relevant hereto, an employee of the Defendant,
10 CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC.
11

12 18. At all relevant times, Defendant ZACHARY KURTIS MIGUEL RANSOM was
13 acting within the course and scope of his employment with Defendant CEMEX
14 CONSTRUCTION MATERIALS PACIFIC, LLC. CEMEX CONSTRUCTION MATERIALS
15 PACIFIC, LLC is vicariously liable for the negligent and intentioned acts of the Defendant
16 ZACHARY KURTIS MIGUEL RANSOM, and its other employees who foreseeably caused
17 injury to the Plaintiff's.
18

19 19. Before May 24, 2017 Cemex knew Ransom and had described the front steer tire
20 on truck 937 as "bald".

21 20. On May 24, 2017 at approximately 4:15 pm, Defendant Ransom was traveling
22 southbound on IR580 in the #3-travel lane, in Washoe County, Nevada. Defendant's cement
23 mixer truck was loaded with 10 yards of ready mix.

24 21. Defendant ZACHARY KURTIS MIGUEL RANSOM was operating the cement
25 truck 937 on May 24, 2017 without a valid commercial driver's license.
26

1 22. It was a violation of Nevada law for ZACHARY KURTIS MIGUEL RANSOM to
2 driving the cement truck on May 24, 2017.

3 23. It was foreseeable to Cemex that a person driving a commercial vehicle without a
4 valid Commercial Driver's License increase the risk that a member of the public might be injured.

5 24. On May 24, 2017, Defendant ZACHARY KURTIS MIGUEL RANSOM was not
6 lawfully driving the subject cement truck.

7 25. Defendant ZACHARY KURTIS MIGUEL RANSOM was driving the cement
8 truck on May 24, 2017 in violation of 49 CFR 383.23.

9 26. Defendant ZACHARY KURTIS MIGUEL RANSOM was driving the cement
10 truck on May 24, 2017 in violation of 49 CFR 393.75(a).

11 27. Cemex knew or should have known Mr. Ransom license had expired.

12 28. Defendant ZACHARY KURTIS MIGUEL RANSOM was driving the cement
13 truck on May 24, 2017 in violation of 49 CFR 393.209(e).

14 29. Defendant ZACHARY KURTIS MIGUEL RANSOM was driving the cement
15 truck on May 24, 2017 in violation of 49 CFR 393.207(c).

16 30. Defendant ZACHARY KURTIS MIGUEL RANSOM was driving the cement
17 truck on May 24, 2017 in violation of 49 CFR 393.48(a).

18 31. Defendant ZACHARY KURTIS MIGUEL RANSOM was driving the cement
19 truck on May 24, 2017 in violation of 49 CFR 393.207(c).

20 32. Defendant ZACHARY KURTIS MIGUEL RANSOM was driving the cement
21 truck on May 24, 2017 in violation of 49 CFR 393.205(a).

22 33. The above identified provisions of 49 CFR are safety regulations intended to
23 protect members of the public such as the Plaintiffs.

1 34. On May 24, 2017, Plaintiffs, VASQUEZ-MONTAÑO and JIMENEZ were
2 traveling southbound on IR580, generally to the left or east of cement truck 937 being driven by
3 Defendant, RANSOM in Washoe County, Nevada.

4 35. At approximately, 4:15 P.M. on May 24, 2017, Defendant, ZACHARY KURTIS
5 MIGUEL RANSOM, was driving the cement mixer truck within the course and scope of his
6 employment of Defendant, CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC, in
7 Washoe County, Nevada.

8 36. At approximately 4:15 P.M., on May 24, 2017, while traveling southbound on
9 IR580, in the travel lane #3, the left front steer tire of the subject cement mixer truck driven by
10 Defendant ZACHARY KURTIS MIGUEL RANSOM suddenly lost pressure.

11 37. The two pusher axles on the truck driven by Mr. Ransom on May 24, 2017 were
12 not being operated as stated by at least one of the manufactures who built the cement truck.

13 38. On May 24, 2017, at approximately 4:15 P.M., Defendant ZACHARY KURTIS
14 MIGUEL RANSOM failed to maintain the direction of travel of the cement mixer truck he was
15 driving, and the cement truck veered to the left into Plaintiffs' lane of travel, striking Plaintiffs'
16 vehicle, pushing Plaintiffs' (VASQUEZ-MONTAÑO and JIMENEZ) vehicle into and over the
17 concrete median barrier, causing injury to the Plaintiffs.

18 39. On or about May 24, 2017, SHARMAN and NICHOLS were traveling northbound
19 on IR580 in the #1 travel lane in the opposite direction from the vehicle being driven by
20 Defendant RANSOM.

21 40. After striking the vehicle of JIMENEZ/VASQUEZ, the cement truck collided with
22 a northbound vehicle driven by Sharman.

23 41. The cement mixer truck involved in the accident was in the exclusive possession
24 and control of the Defendants.

1 42. Left and right sides of the tread surface of the front left steer tire on the subject
2 cement truck on May 24, 2017 was "bald" as described by Mr. Ransom.

3 43. Defendant, ZACHARY KURTIS MIGUEL RANSOM, owed Plaintiffs and all
4 others the duty to use reasonable care under the circumstances to avoid injury to Plaintiff and all
5 others.

6 44. Defendant CEMEX knew it was foreseeable that tire failure on a commercial
7 vehicle might result in injury to a member of the public.

8 45. Defendant CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC owed
9 Plaintiffs and all others the duty to properly inspect and maintain its cement trucks in order to
10 avoid injury to Plaintiffs and others using the roadways.

11 46. Defendants had the duty to inspect the cement truck before and each time it was
12 operated and to create a log of the cement truck's inspection.

13 47. Defendants breached their duty to inspect the cement truck and create and maintain
14 an inspection log as required by the FMCSA.

15 48. Defendant Cemex allowed the cement truck to be loaded and driven with one or
16 more identified safety defects on and before May 24, 2017.

17 49. Defendant breached at least one or more duty owed to the Plaintiff's as alleged
18 herein.

19 50. Defendant, ZACHARY KURTIS MIGUEL RANSOM, was operating the
20 aforementioned cement mixer truck in an unsafe, reckless, and careless manner and by not
21 operating the cement truck without a license, by not properly inspecting and maintaining the
22 cement truck, thereby, allowing that truck to be operated in an unsafe condition.

23 51. It was foreseeable to each Defendant that driving truck 937 with a "bald" left front
24 steer tire might result in injury to Mr. Ransom and/or a member of the public.

1 52. The front left steer tire of the cement truck suddenly lost pressure because it was
2 known to be defective, "bald", had historically been used with that tire underinflated.

3 53. Before May 24, 2017 Defendant Ransom had more than one time spoken with a
4 Cemex' mechanic in which Mr. Ransom requested the front left tire be replaced or he expressed
5 concern whether the truck was safe to drive given the condition the left front tire.

6 54. Cemex ratified the decision of its mechanics not to replace the "bald" tire on or
7 before the May 24, 2017 crash.

8 55. Defendants failed to perform the required inspection and replace the defective tire
9 of the cement truck, thereby, breaching their duty to Plaintiffs and foreseeably creating a risk of
10 injury to Plaintiffs and other users of the roadways.

11 56. Cemex' mechanics intended, before May 24, 2017 that the left front tire on truck
12 937 should be replaced but failed to replace the tire.

13 57. On May 24, 2017 one or more of Cemex mechanics told Defendant Ransom the
14 "bald" left front tire would be "fine to drive."

15 58. As a direct and proximate result of Defendants' negligent, reckless, and intentional
16 acts, Plaintiffs were injured. Plaintiffs suffered and will continue to suffer pain, emotional
17 distress, loss of enjoyment, loss of income, and medical expenses, all to their special and general
18 damages in an amount in excess of \$15,000.00.

19 59. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered
20 damage to personal property including damage to their vehicle including loss of the value of their
21 vehicle, loss of use of their vehicle, applicable tax, and registration sums.

22 60. As a further direct and proximate result of the Defendants' reckless, careless, and
23 negligent conduct, Plaintiffs have been forced to retain the services of an attorney and have
24 incurred attorney's fees and costs associated therewith.

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1 70. As a direct and proximate result of Defendant ZACHARY KURTIS MIGUEL
2 RANSOM's breach of applicable safety laws, regulations, and licensing laws, Plaintiffs were
3 injured.

4 71. Plaintiffs were injured in an amount to be proved at trial, but in excess of
5 \$15,000.00.

6 72. At the time of the collision, Defendants knew or should have known that the
7 commercial driver's license of ZACHARY KURTIS MIGUEL RANSOM was expired.

8 73. With knowledge that the commercial driver's license of ZACHARY KURTIS
9 MIGUEL RANSOM had expired, Defendants' allowed Mr. Ransom to drive its the cement truck
10 937 that injured Plaintiffs.

11 74. Defendant, CEMEX expected to earn revenue and/or profit as a result of
12 Defendant ZACHARY KURTIS MIGUEL RANSOM operating the cement truck on May 24,
13 2017.

14 75. Defendants' conduct constitutes a wanton and willful disregard for the rights and
15 safety of the Plaintiffs.

16 76. Defendant's conduct constitutes implied malice as defined by Nevada law.

17 77. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered
18 and continue to suffer emotional distress. The amount shall be proved at trial.

19
20
21 **III. THIRD CLAIM FOR RELIEF**

22 **(Intentional Infliction of Emotional Distress)**

23 78. Plaintiffs reallege the paragraphs contained in their previous and following claims
24 for relief as if said paragraphs were set forth in full herein.

25 79. Defendant CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC failed to
26 properly inspect, maintain, log inspection of the subject cement mixer truck, and/or its

1 mechanics failed to properly train and/or supervise Defendant ZACHARY KURTIS MIGUEL
2 RANSOM and/or its mechanics in the proper use, repair and/or safety procedures of the cement
3 mixer truck, including how and when to inspect the cement truck, when repairs should be made
4 and when not to drive or allow the truck to be driven.

5 80. Defendant CEMEX failed to properly train ZACHARY KURTIS MIGUEL
6 RANSOM in the emergency operations of a commercial vehicle.

7 81. Defendants intentionally and volitionally operated the cement mixer truck with a
8 wanton and willful disregard of the rights and safety of others, including the Plaintiffs as alleged
9 herein. When the truck with known defects was driven on the public roads.

10 82. Defendants' conduct was extreme and outrageous.

11 83. Defendant's conduct was despicable.

12 84. The Defendants' conduct constitutes a reckless or callous indifference for the
13 rights and safety of Plaintiffs.

14 85. Defendants' conduct constitutes fraud, malice, or oppression as defined under
15 Nevada Law.

16 86. Defendants' conduct constitutes implied malice.

17 87. Imposition of punitive damages against the Defendants is just and proper. Said
18 damages shall be determined by the trier of fact.

19 88. The Defendants, and each of them, are jointly and severally liable for Plaintiffs'
20 damages, including punitive damages.

21 89. As a proximate and direct result of Defendants' conduct, Plaintiffs have sustained
22 the damages complained of herein.

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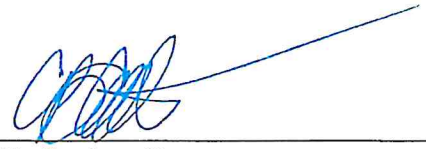
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- 5. For reasonable costs and attorney's fees; and
- 6. For such other and further relief as the Court may deem proper.

The undersigned hereby affirms that this document does not contain the Social Security Number of any person, pursuant to NRS 239B.030.

DATED: 6-10-19



Curtis B. Coulter, Esq.
Attorneys for Plaintiffs

1 CERTIFICATE OF SERVICE

2
3 Pursuant to NRCP 5 (b), I hereby certify that I am an employee of COULTER
4 HARSH LAW, and that I served a true and correct copy of SECOND AMENDED
5 COMPLAINT by:

6 _____ Mail on all parties in said action, by placing a true copy thereof enclosed in
7 a sealed envelope with first-class postage affixed thereto, deposited in the
8 _____ United States Mail, at Reno, Nevada.
9 _____ Personal delivery by causing a true copy thereof to be hand-delivered to
10 _____ the address or addresses set forth below.
11 _____ Facsimile on the parties in said action by causing a true copy thereof to be
12 _____ telecopied to the number indicated after the address or addresses noted
below.
_____ Federal Express or other overnight delivery.
_____ Hand-delivery by Reno/Carson Messenger Service.
_____ Hand-delivery.

13 Addressed as follows:

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20 CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC

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22 DATED: June 10, 2019

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10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12 MINERVA VASQUEZ-MONTANO, an
13 individual; GIOVANNI JIMENEZ, an
14 individual,
15 Plaintiffs,
16 v.
17 CEMEX CONSTRUCTION MATERIALS
18 PACIFIC, LLC; ZACHARY KURTIS
19 MYKEL RANSOM and DOES 1-10,
20 inclusive,
21 Defendants.

CASE NO.: CV18-00496

DEPT. NO.: 7

**MOTION FOR SANCTIONS AGAINST
CEMEX AND ITS COUNSEL FOR
OBSTRUCTING DISCOVERY AND
WITHOLDING MATERIAL EVIDENCE**

22 Plaintiffs hereby move for sanctions against Defendant CEMEX and its counsel as set out below.

23 **I. Introduction.** Throughout this litigation Defendant CEMEX and its counsel have engaged
24 in obstructive tactics which have permeated every aspect of this case. The obstructions violate the rules,
25 procedures and have been purposeful, harmful, and prejudicial. This motion illuminates some of the
26 conduct. Based on the severity, frequency and duration of the conduct plaintiffs seek sanctions against
27 Cemex and its counsel.

28 **II. Facts Relevant to Motion.** The crash that gives rise to this litigation occurred 5-24-17,
when the left front steer tire of a loaded cement mixer blew-out, and then violently crashed into
plaintiffs' pick-up Ex. 1. The mixer was driven by Zachary Ransom (Ransom), and owned by his
employer Cemex Construction Materials Pacific, LLC (Cemex). Pickup driver, Giovani Jimenez, age
16, and his mother Minerva Vasquez suffered physical injuries. As a result of the crash Ms. Vasquez
has had multiple spinal surgeries, suffers permanent pain and effects of a traumatic brain injury.

1 Plaintiffs' pickup was towed from the crash site on 5-24-17. The next day, 5-25-17, the national
2 law firm of Lewis Brisbois (LBBS) and claim investigators, Gallagher Basset (GB) were retained by
3 Cemex as its agents to manage the loss. Ex. 2, p 2, Ex. 3 and 4. The next day, 5-26-17, Giovanni
4 gathered some personal items from the pickup at the tow yard. Ex. 5.

5 Plaintiffs retained Mr. Coulter on 6-13-17. Ex. 6. As a result, Giovanni returned to the tow yard
6 to find the pickup; it was gone. Ex. 5. Mr. Coulter notified GB of being retained. On 7-31-17, Mary
7 Barney/GB responded to Mr. Coulter as "claims administrator for CEMEX". Ex. 7. On 8-4-17 Mr.
8 Coulter spoke to Mary Barney/GB and asked what happened to the pickup: she said it had been
9 "destroyed." Ex. 6. Ms. Barney did not reveal that less than 60 days earlier she had moved the pickup to
10 an undisclosed location at the "direction of counsel."¹ Id. and Ex. 4.

11
12 **A. Cemex Failed to Answer the Complaint in Good-Faith.** The First Amended
13 Complaint (FAC) was filed 3-13-18. Brandon Wright of LBBS signed the *Joint Answer* for both
14 defendants (May 2, 2018). See Ex. 9, signed Answer and combined document. Almost a year after being
15 retained and after "directing" the investigation of GB, Cemex through LBBS denied nearly every
16 allegation in the FAC including that Cemex owned the mixer, para 13; that Ransom was an employee of
17 Cemex, para 14; and that the minimum safety provisions of Federal Motor Carrier Safety Regulations
18 (FMSCR) exist to protect members of the public. Id. Cemex/LBBS also asserted affirmative defenses
19 that a third party caused the crash; plaintiffs were comparatively negligent; and that the statute of
20 limitations, laches and "unclean hands" barred plaintiffs' claims. See Id.

21
22 **B. Cemex's Failed to Comply with NRCP 16.1 and Discovery Requests in Good-**
23 **Faith.** More than a year after LBBS was retained, the NRCP 16.1 conference occurred, 6-16-18. After a
24 year of "directing" the investigation, Cemex made no disclosures Ex. 10 and Ex. 11. Cemex made
25 disclosures on 7-3-18 of only: 1) Plaintiffs' Complaint; 2) the Joint Answer; 3) the Driver Examination
26
27

28 ¹Cemex has never paid Ms. Vasquez for the damaged pickup. Ex. 8. Ms. Vasquez has never signed the title and never gave Cemex, LBBS or GB permission to take or move her pickup. Id.

1 Report which was part of the NHP report; and 4) 4 of the 77 NHP crash scene photographs. Ex. 12.
2 Cemex failed to make required disclosures including: Defendant Ransom's statement: "I have been
3 writing up for months that the front tire was bald and an issue." Ex. 13; Ransom's inspection reports
4 (DVIRs) which identify multiple tire safety defects including the "bald tire" (Ex. 14), and the location
5 where Mary Barney "as claims administrator" for Cemex had moved plaintiffs' pickup over a year
6 earlier.² Ex. 15.

8 Cemex was obligated, "without awaiting a discovery request" to disclose all information
9 required under Rule 16.1 including all information "discoverable under Rule 26(b)." Cemex refused to
10 disclose applicable insurance required by Rule 16.1(a)(1)(A)(v). Cemex by Mr. Wright claimed
11 insurance was "privileged." Ex. 6. Cemex did not disclose the name of any mechanic who inspected,
12 worked on or serviced the failed mixer or of any person in management responsible for mixer truck
13 safety. Cemex had not complied with NRCP 16.1.

15 In an effort to avoid a motion to compel there were meet and confer communications with
16 Brandon Wright ("Wright") of LBBS an attempt to secure compliance with NRCP 16.1. Ex. 17. Mr.
17 Wright claimed Rule 16.1 disclosure obligations had been met. Id. Mr. Wright however, refused to
18 disclose any basis for the affirmative defenses. Id.

19 Cemex through Mr. Wright responded to plaintiffs' first request for production, 8-20-18.
20 Virtually every request was objected to. Ex. 18. Examples include: Cemex/LBBS responded that it did
21 not know the meaning of the terms "investigative report and/or incident report," "Operator/User
22 Manual," "steer tire," "suspension," "inflation" or "inspection log," "retreaded," "regrooved," "broken
23 and/or damaged tire parts," "suspension parts," "repair logs," "maintenance records." See Id.
24 Cemex/Wright/LBBS also refused to disclose any factual basis for affirmative defenses when
25 responding to interrogatories on 8-20-18. Ex. 19. Objections to the interrogatories were all verified by
26

28 ² Cemex also had Goodyear examine the failed tire 6 days after the crash as part of its business practices and root cause analysis to know why the crash occurred. Cemex also did not disclose that document as required by Rule 16.1 which described multiple tire defects and old age as possible causes of the blowout Ex. 16.

1 Cemex. Id.

2 At a hearing on 8-27-18, this court directed parties, including Cemex as follows:

3 16.1 has been written, revised, re-revised, re-re-revised and it is patently clear that the purpose of
4 the discovery rules is to be wide open, far-ranging and to get the heart of the matters.³
5 Ex. 20, Tr. p 27, ln. 24- p. 28 ln. 3.

6 It was suspected Cemex had not produced a dash cam video of the crash as required by NRCP
7 16.1. A motion for an in-camera inspection was filed 10-1-18 to allow the court to determine what other
8 information Cemex was withholding. Months after 16.1 disclosures were due, Cemex by Mr. Wright
9 filed a motion to preclude disclosure of the crash video. The motion was not in good faith as the
10 existence of the video was not included in Cemex's the privilege log. See, Ex. 2 and 25.

11 Cemex and Wright refused to comply with this Court's directive and continued to play "hide-the-
12 ball" with discovery even when a specific discovery request was served. For example, on 9-6-18
13 plaintiffs served their fifth request for production in part requesting Cemex comply with Rule 16.1,
14 including production of any video of the crash, documentation of the mixer's weight, and documents
15 that may show compliance with specific minimum safety standards set out in FMCSRs. Ex. 21. On 10-
16 9-18 Cemex by Mr. Wright again objected to every request. Ex. 22. In response to request #93 where
17 Cemex was asked to produce information regarding the mixer's weight and make disclosures required
18 by NRCP 16.1, Cemex/Wright objected to the request stating: "assumes facts not in evidence, makes
19 legal allegations defendant is unable to address, and seeks documents/information that has/have already
20 been produced." Id.⁴
21
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23

24 ³ This court's directive to comply with Rule 16.1 may be construed as an order. See, Young v. Johnny Ribeiro Bldg., Inc.,
106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

25 ⁴ Cemex objected to every request for production including disclosure of the number of vehicles operating at Cemex's Reno
26 facility. (# 109). Cemex asserted inapplicable objections and at times claimed that it would not produce documents without a
27 protective order even though it had never moved for a protective order. Unfounded objections were asserted consistently by
28 Cemex. Example: Cemex was asked to admit that the person who trained Ransom to operate a mixer was authorized by
"management." Cemex objected stating that the term management was "vague and ambiguous." Ex. 23. Further, specific
discovery was sought regarding FMCSR requirements. Cemex objected to every request. Id. After Cemex refused to comply
with NRCP 16.1 and to disclosed people with relevant knowledge as request, Vasquez served RFAs asking Cemex to admit
that it knew the name, address and phone number of specific individuals believed to have discoverable information and
Cemex had specific discoverable documents. Cemex objected to every request expect one. Ex. 24.

1 Cemex did not produce documentation of the load on the mixer at the time of the crash pursuant to
2 NRCP 16.1 and objected to specific requests for that detail. Therefore, the mixer's total weight was
3 unknown. Documentation of the mixer's weight was needed to determine if the truck was operating
4 within the lawful load limit. Cemex by Mr. Wright objected, stating the Load Ticket was not
5 discoverable, overly broad, burdensome and that the Load Ticket was "confidential/protected." See, Ex.
6 22, #104 and Ex. 25. Plaintiffs' counsel showed Mr. Wright Load Tickets from a local contractor who
7 received them as a "receipt" when Cemex delivered ready mix, Ex. 6. Cemex then amended the
8 privilege log withdrawing the "false" claim of privilege and produced the Load Tickets. Ex. 6 and 25.
9 The load on the crashed mixer showed the mixer's weight illegally exceeded Nevada's road weight
10 limit.⁵ Ex. 6. Load Tickets for other dates show Mr. Ransom routinely drove the mixer overweight. Id.
11 Overweight can cause tire failure.
12

13
14 Cemex continued to withhold nonprivileged discoverable information. Cemex failed to disclose its
15 parent company (who likely directed Cemex policy and practices) as required by NRCP 7.1;⁶ Cemex
16 misrepresented facts when answering the FAC; it asserted bad faith responses to discovery; and used
17 unfounded affirmative defenses as a bargaining chip. Ex. 6. Cemex continuously thwarted discovery,
18 withheld discoverable information and asserted objections lacking good faith. See, motion 11-16-18.⁷
19

20 **C. Cemex/LBBS Obstructed Discoverable Deposition Testimony.**

21 Punitive damages were sought based on Cemex's continuous operation of a truck with known
22 safety defects and violations of minimum safety standards. Driver, Ransom reported for months that the
23

24 ⁵ Discovery revealed that Cemex routinely places overweight mixers on Nevada roads including Ransom's mixer. Ex. 6.

25 ⁶ NRCP 7.1 requires, at the "first appearance" disclosure of any parent entity traded owning 10% or more of the party's stock,
26 or state that there is no such entity. Cemex by Mr. Wright represented on 5-2-18, that a publicly traded company **did not own**
27 over 10% of defendant Cemex Pacific. Ex. 26. After showing Mr. Wright Cemex was a subsidiary of a publicly traded entity
28 Cemex he eventually filed an amended 7.1 disclosure on 2-1-19 stating that a publicly traded entity **did own** over 10% of
defendant Cemex. Ex. 6 and Ex. 26. But, Cemex/LBBS/Wright did not disclose the name of the parent, publicly traded
company as required by Rule 7.1. Ex. 27. The parent company name should have been obvious to LBBS as Mike Egan,
General Counsel and Executive Vice President for "Cemex USA" aka "Cemex Inc." traded as "CX" (Ex. 35) appeared at a
pretrial conference on November 21, 2018, p 8 ln 13-18.

⁷ On 1-2-19 this court issued an order granting plaintiffs' motion for sanctions against Cemex for its refusal disclose
insurance as required by Rule 16.1: "the amount of monetary sanction or other sanctions which may apply to improper
conduct during the case will be determined at the conclusion of this case."

1 tire that failed and caused the crash was “bald and was an issue.” Ex. 13. Ransom continued to drive the
2 truck and Cemex continued to load the truck, allowing it on the road, often overweight, until the bald
3 tire foreseeably failed. Ex. 1, Ex. 13 and Ex. 14.

4 Depositions were taken to understand Cemex’s financial issues and how maintenance of vehicles
5 and compliance with safety regulations were practiced. Cemex designated Kelly Nelson from its parent
6 company’s Board of Directors to testify about financial matters.⁸ At the deposition Cemex’s lead
7 attorney, Jack Angaran objected to virtually every question asked⁹ and used a strategy to interfere with
8 the deposition by not preparing the 30(b)(6) witness.¹⁰ Mr. Angaran frequently instructed the witness not
9 to answer even when a privilege did not apply.¹¹ Id.

11 Cemex claimed that its mechanics did thorough inspections of the mixer and the failed tire.
12 When the deposition of mechanic Mead was taken Mr. Angaran used obstructive tactics and asserted
13 unfounded objections.¹² Ex. 29.

15 Safety was a core issue. Mr. Angaran interfered with Cemex’s national safety director’s
16 deposition by asserting repetitive, often out-of-context objections. Ex. 30. Mr. Ransom had been telling
17 Cemex for months that the tire on his mixer was “bald and was an issue.” Ex. 13. The Lead Mechanic

19 ⁸ This witness was deposed before the court made a finding of fact regarding punitive damages.

20 ⁹ NRCP 30(c)(2) Objections. An objection at the time of the examination — whether to evidence, to a party’s conduct, to
21 the officer’s qualifications, to the manner of taking the deposition, or to any other aspect of the deposition — must be noted
22 on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated
23 concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when
24 necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).
25 Rule 30(d)(2) Sanction. The court may impose an appropriate sanction — including the reasonable expenses and attorney
26 fees incurred by any party — on a person who impedes, delays, or frustrates the fair examination of the deponent.

27 ¹⁰ Cemex had a duty to make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6)
28 depositions and to prepare them to fully and unevasively answer questions about the designated subject matter.” Great Am.
Ins. Co. of New York v. Vegas Const. Co., 251 F.R.D. 534, 538–39 (D. Nev. 2008).

The transcript shows the witness was not prepared, answered evasively and that objections to virtually every question was
interjected by Cemex’s counsel.

¹¹ An example of the interference; the witness was asked if she had gathered documents that she believed were responsive to
the deposition notice. MR. ANGARAN: “Objection, argumentative, misstates the witness’ testimony, asked and answered,
vague and ambiguous.” p 48 ln 1-6; When asked if she had 100 percent of the information requested for the deposition. MR.
ANGARAN: “Objection, argumentative.” p 49 ln 11-14.

¹² For example, the witness was asked if he learned it was a matter of safety to follow manufacturer’s specifications. MR.
ANGARAN: “Objective, argumentative, lack of foundation.” P 36 ln 16-23. The witness was asked if he learned of Cemex’s
tire age policy orally or the result of a document. MR. ANGARAN: “Objection, misstates-the witness’ testimony and
argumentative, learning of a policy after the crash.” p.153 ln. 12- p. 154 ln 14. Counsel used “suggestive” objections.

1 was deposed. Ex. 31. Mr. Angaran used obstructive objections¹³ to obstruct and preclude a fair
2 examination. He did the same during the driver's deposition. Ex. 32.

3 Testimony of Cemex's management was important to understand its corporate culture and
4 practices. At the General Manager's deposition Mr. Angaran again thwarted the deposition process by
5 asserting obstructive and unfounded objections. Ex. 33. This Court recognized that the defense tactics
6 and/or strategies implemented by Mr. Angaran occurred with the "purpose and goal" "to frustrate the
7 purposes of the deposition."¹⁴

8
9 **D. Cemex Converted Plaintiff's Pick-up Without Consent or Title and Failed to**
10 **Disclose its Location.** In the third week of May 2019¹⁵ (two years after the crash), while preparing for
11 trial, Giovanni returned to the tow yard, again looking for the pickup. Ex. 5. Mr. Coulter investigated
12 further and learned, that two years earlier Gallagher Bassett had caused the pick-up to be moved to
13 AIIA, and that the pickup had not been "destroyed" as Mary Barney had represented to him on 8-4-17.
14 Ex. 6 and Ex. 15. GB/LBBS/Cemex never disclosed Cemex had taken and moved the pickup.

15
16 The AIIA records were needed to know who caused the pickup to be moved, and when Mr.
17 Wright was asked to waive the waiting period before the subpoena was served, he refused. Ex. 6 and Ex.
18 34, p 4 ("Please serve the subpoena so the 7 day 'waiting period' can run."). The subpoenaed was
19 served. AIIA records show that on 6-2-17, Mary Barney of GB, hired by Cemex, authorized the tow
20 charge. Ex. 15, IAAI 011. Anderson Towing moved the pickup. Ex. 15, IAAI 007. The pickup arrived
21 at AIIA on 6-6-17. Mary Barney caused plaintiffs' pickup to be moved. Ex. 15, IAAI 009.

22
23 After learning Cemex's agent had caused the pickup to be taken, moved, and stored, Mr. Wright
24 was asked if Cemex would release the vehicle. Ex. 6 and 34. Mr. Wright refused. Id. Despite AIIA

25
26 ¹³ For example, the lead mechanic was asked if he became aware of a tire age policy after the crash. MR. ANGARAN:
27 "Objection, argumentative, lack of foundation, incomplete hypothetical." p 47 ln 3-13. He was asked if a tire that indicated
underinflation posed a risk of failure. MR. ANGARAN: "Objection, lack of foundation, incomplete hypothetical, calls for
speculation based on the question asked." p 51 ln 21- p 52 ln 1.

28 ¹⁴ See Transcript, 8-12-19 p 57 ln 20-p 58 ln 17 (quoting the court re deposition of Kelly Nelson).

¹⁵ Plaintiffs discovered where Cemex moved the pickup after the expert disclosure deadline. Cemex/LBBS never disclosed the location where the pickup had been moved.

1 documentation of the facts, Mr. Wright affirmatively represented: **“neither CEMEX nor Gallagher**
2 **Bassett (whom I don’t represent) have ownership, custody, or control of your client’s vehicle.”** Ex.
3 34 p 4. Mr. Wright denied GB “caused” the pickup to be moved to AIIA. Ex. 6. and Ex. 34 p 3, Wright
4 also denied that Cemex had “constructive possession” of the vehicle. Ex. 34. Mr. Wright refused to
5 further discuss whether Cemex would release the pickup to the plaintiffs. Ex. 34, p 2.
6

7 The court was then notified Cemex had taken and not disclose critical evidence. Cemex’s
8 counsel, Mr. Angaran invented an excuse that plaintiffs had “forgotten” about the pickup and plaintiffs’
9 had not disclosed it. Ex. 34, Tr. 8-12-19, p 61 In 18-24. When asserting “We Forgot” excuse Mr.
10 Angaran did not disclose the efforts taken by plaintiffs and their counsel to learn the status and location
11 of the pickup detailed above and in Ex. 2, 3, 4, 5, 6 and 8. Cemex’s statement that counsel “forgot”
12 about the pickup was a strategy to redirect the court’s attention from the activities of GB directed by
13 LBBS which were claimed to be “privileged” secret “litigation strategy” “directed by counsel.” Ex. 2
14 and 4. The fabricated excuse was asserted by LBBS who “directed” the activities of Mary Barney.
15

16 In asserting the “We Forgot” excuse: Mr. Angaran did not disclose 1) plaintiffs’ requested 16.1
17 compliance; 2) Mary Barney affirmatively represented to Mr. Coulter on August 4, 2017 that the pickup
18 had been destroyed when asked about the pickup and 3) that Mary Barney’s and GB’s communication
19 with LBBS were claimed to be privileged because they were “directed by counsel” Ex. 2, 4 and 15.
20

21 The acts of Mary Barney as evidenced in the AIIA documents, Ex. 15, should be compared to
22 Cemex’s privilege log, Ex. 2. By looking at the dates in both documents the activities of LBBS and GB
23 can be generally tracked. Cemex by Mr. Wright claims those activities are “privileged.” See Ex. 2, 4 and
24 15. LBBS directed the activities of GB. Ex. 4. The pickup was moved in June 2017 by GB.

25 Plaintiffs’ counsel reasonably relied upon the affirmative statement by Mary Barney that the
26 vehicle had been “destroyed.” While she may not have had a duty to speak to plaintiffs’ counsel, when
27 she did speak she had the duty to speak truthfully to avoid making a misrepresentation about the status
28

1 of the pickup. At least one Cemex agent, GB, knew plaintiffs' pickup had been taken even if LBBS
2 denies it was complicit and recants that GB's actions were "directed by counsel" as confirmed by Mr.
3 Wright in Ex. 4. The knowledge and action of Cemex's agent, Ms. Barney/GB is imputed to Cemex.^{16 17}

4 **III. Cemex's Obstructive Conduct Has Unnecessarily Increased the Cost of Litigation and**
5 **Prejudiced the Plaintiffs.**

6 During litigation Cemex consistently failed to disclose "nonprivileged matter that is relevant to
7 [its] claims or defenses." Rule 16.1 and 26(b). Cemex's tactics and strategies delayed, frustrated, and
8 increased the cost of litigation. The full scope of Cemex's purposeful non-compliance is not fully
9 known. Cemex's "litigation strategy" includes taking the pickup began a year before litigation was
10 commenced. See Ex. 2, Cemex converted¹⁸ plaintiffs' pickup without consent or disclosure to the
11 plaintiffs. Ex. 2, 6, 8 and 15. Comparing the dates in Ex. 2 and Ex. 15 confirms that "litigation
12 "strategies" include moving the pickup moved to AIIA a year before the suit was filed. Id. Plaintiffs'
13 pickup had not been "destroyed" as Mary Barney represented to Mr. Coulter on 8-4-17. Ex. 6. GB acted
14 at the "direction of counsel," Ex. 4. GB caused the pickup to be moved to AIIA. Ex. 15. Neither Mary
15 Barney, GB, LBBS nor Cemex ever disclosed Cemex had seized the pickup and GB moved it to AIIA.
16 Ex. 2, 3, 4, 6, 8, 15, 34.

17 Long before learning GB had taken and moved plaintiffs' pickup Mr. Coulter spoke to Mr.
18 Wright at LBBS and requested 16.1 disclosure of the GB file. Mr. Wright responded:

19 **That said, the privilege log reflects that LBBS was retained the day after the subject accident**

20
21
22
23
24 ¹⁶ "Knowledge of an agent [GB/LBBS] is imputed to the principal [Cemex]." Collegium Fund v. Deutsche Bank, 443 P.3d
25 550 (Nev. 2019). Bass-Davis v. Davis, 122 Nev. 442, 453, 134 P.3d 103, 110 (2006) (The law of agency typically will allow
the court to impute sanctions to a party for its agent's actions. Here, therefore, the negligence associated with losing the
evidence is properly imputed to the franchisees [principals]).

26 ¹⁷ The crash occurred on May 24, 2017. The next day, May 25, 2017 Cemex hired LBBS and Gallagher Basset as its "third
27 party claims administrator" to manage the claims arising from crash. Ex. 3. LBBS communicated with "Senior Resolution
Manager," Mary Barney of GB on May 25, 2017. Ex. 2. Wright admits GB's activities were "directed by counsel" for
Cemex. Ex. 4. Mary Barney of GB caused the pickup to be removed from the tow yard and secreted at AIIA. Ex. 2, 15 and
34. GB remained involved for months after suit was filed. Ex. 2.

28 ¹⁸ "Conversion is a distinct act of dominion wrongfully exerted over personal property in denial of, or inconsistent with, title
or rights therein or in derogation, exclusion or defiance of such rights." Edwards v. Emperor's Garden Rest., 122 Nev. 317,
328, 130 P.3d 1280, 1287 (2006).

1 making the “claims notes” after retention privileged (as indicated in the privilege log). Any
2 investigation that occurred [by GB] in the days after retention [5-25-17] was directed by
3 counsel [LBBS] and thus, also privileged (as reflected in the privilege log¹⁹[Ex.2]).

4 Ex. 4, emphasis added.

5 Mr. Wright’s affirmatively represented that LBBS “directed” the investigation activities of GB.
6 In June 2017 Mary Barney caused the pickup to be moved to AIIA. Ex. 15. LBBS directed her. If Mary
7 Barney’s actions were not part of Cemex’s “litigation strategy” her communications, actions, tow
8 receipts, instructions, emails to AIAA, etc., involving GB’s taking, towing, and “storing” the pickup
9 away from Reno would *not* have been claimed to be “privileged” as asserted by Mr. Wright. Ex. 4.

10 If Cemex/LBBS had provided the mandatory NRCP 16.1 disclosures and disclosed the “non-
11 privileged” activity of Ms. Barney, plaintiffs would have narrowed and simplified the discovery in the
12 case without frequent requests for court intervention. Ex. 6. Also, plaintiffs would have known the
13 pickup was not “destroyed” so reconstruction and biomedical experts could have examined the pickup to
14 have the foundation for testimony about the number of impacts, severity of impacts, angles of impacts
15 and forces sustained by the plaintiffs in the pickup during the crash as required which would corroborate
16 the injuries claimed. Ex. 6.²⁰

17 Examination of the pickup would have also allowed such experts to know the severity and depth
18 of intrusion by the mixer into the passenger area where Ms. Vasquez was seated. See, Hallmark v.
19 Eldridge, 124 Nev. 492, 189 P.3d 646 (2008).²¹ Plaintiffs were precluded from evaluating their pickup
20 which GB moved at the “direction of counsel,” in June 2017. See Ex. 2, 3, 4, 6 and 15.

21 Cemex’s “hide-and-seek” and “catch-me-if-you-can” game has permeated this proceeding.

22
23
24 ¹⁹ Cemex asserted in its privilege log, Ex. 2 that GB’s activities were “Attorney/Client” “Work Product/Mental Impressions”
25 privileged and not “relevant or reasonably calculated to lead the discovery of discoverable evidence” Id. GB’s activities were
26 also privileged “litigation strategy.” “directed” by LBBS. Id., and see Ex. 4.

27 ²⁰ [T]here is a common-sense correlation between the nature of the impact and the severity of the injuries . . . [Citations
28 omitted.] Rish v. Simao, 132 Nev. 189, 198, 368 P.3d 1203, 1210 (2016).

²¹ Hallmark stands for the well-established proposition that expert testimony, biomechanical or otherwise, must have a
sufficient foundation before it [the expert testimony] may be admitted into evidence.
Rish at 189, 196, 368 P.3d 1203, 1208 (2016). Photographs in conjunction with examination of the damaged vehicle provides
adequate foundation for the expert testimony. Id at 198, 368 P.3d 1203, 1210 (2016). The angles of impact would not be
determined without examining the vehicles. Therefore, such experts lack adequate foundation to testify. See Hallmark at 497,
189 P.3d 646, 649 (2008).

1 Obstructive and unfounded objections were asserted by Mr. Angaran at depositions and by Mr. Wright
2 in response to written discovery, answering the FAC and in asserting affirmative defenses. Ex. 6 (for a
3 description of Cemex's defense game see paragraph 9). Cemex and LBBS did not comply with Rules:
4 NRCP 7.1 (parent company disclosure); NRCP 8 (answer and affirmative defenses); NRCP 11
5 (signature certifies accuracy after investigation); NRCP 16.1 (mandatory disclosures), NRCP 26
6 (discovery responses are "complete and correct as of the time of signature"); NRCP 30 (objections
7 intended to impede, delay, or frustrate the fair examination of the deponent); NRCP 33 (asserting
8 unfounded objections to interrogatories including refusing to disclose any factual basis for affirmative
9 defenses); NRCP 36 (asserting objections to requests for admissions which "impedes, delays, or
10 frustrates the fair examination of the deponent"²²); and NRCP 37 ("Evasive or Incomplete Disclosure,
11 Answer, or Response").²³ Cemex's taking the pickup was a "litigation strategy" to preclude plaintiff
12 from obtaining "discovery" which is a tactic used to plaintiffs' detriment throughout this case . Ex. 2, 4,
13 5, 6, 8, 9, 11, 12, 15, 17, 18, 19, 21, and 23 – 35.

14
15
16 Ms. Vasquez never signed the title or any document allowing Cemex to take her pickup. Ex. 8.
17 Barney/GB acted at the "direction of counsel," LBBS starting 5-25-17. Ex. 4. GB moved the pickup in
18 June 2017. Ex. 15. Cemex/LBBS claim GB's actions are privileged: "litigation strategy." Ex. 2 and 4.

19 Mr. Angaran "knew" Cemex had plaintiff's pickup and that Cemex failed to disclose it. Ex. 35, p
20 61 In 18-24. Cemex's non-disclosure of the pickup fits like a glove with Cemex's hide and seek
21 litigation strategy. If Cemex denies GB took and moved with pickup (Ex. 15) without consent or
22 disclosure to Ms. Vasquez (Ex. 8), her son or plaintiffs' counsel or if LBBS recants that it "directed"
23 GB's activities (Ex. 4) then the court is asked to conduct an in-camera view of the GB/LBBS/Cemex
24 communications pertaining to GB's activities, the pickup, AIIA, tow charges and all documents listed on
25
26

27
28 ²² The hide-and-seek and obstruction tactic used by Cemex to defeat discovery exemplifies the extent of evasion and
obstruction utilized by Cemex to defeat the plaintiffs attempt to gain information. The objections are akin to Mary Barney's
statement that the pickup had been "destroyed."

²³ Provisions of NRCP are called out by LBBS's conduct. See Rules 3.1, 3.4, and 4.1.

1 privilege log (Ex. 2) before ruling on this motion.^{24 25}

2 **IV. Authority to Sanction and to Remedy Prejudice Based on Discovery Abuses, and**
3 **Misrepresentation, and Concealment of Material Evidence.**

4 There are consequences for not participating in good faith during litigation.

5 **Rule 11(c)(3) Sanctions** are available to the court:

6 On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show
7 cause why conduct specifically described in the order has not violated Rule 11(b).²⁶

8 **Rule 16.1 Sanctions.** The court has authority to impose sanctions as the result of a failure or
9 refusal to provide discovery. Rule 16.1(e)(3) provides:

10 Other Grounds for Sanctions. If an attorney fails to reasonably comply with any provision of this
11 rule, or if an attorney or a party fails to comply with an order entered under Rule 16.3, the court,
12 on motion or on its own, *should* impose upon a party or a party's attorney, or both, appropriate
13 sanctions in regard to the failure(s) as are just, including the following:

14 (A) any of the sanctions available under Rules 37(b) and 37(f); or

15 (B) an order prohibiting the use of any witness, document, or tangible thing that
16 should have been disclosed, produced, exhibited, or exchanged under Rule 16.1(a).

17 **Rule 26(g)(3) Sanctions:**

18 Sanction for Improper Certification. If a certification violates this rule without substantial
19 justification, the court, on motion or on its own, *must* impose an appropriate sanction on the
20 signer, the party on whose behalf the signer was acting, or both. The sanction may include an
21 order to pay the reasonable expenses, including attorney fees, caused by the violation.

22 **Rule 33(b)(4) Sanctions for Improper Objections to Interrogatories**

23 Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any
24 ground not stated in a timely objection is waived unless the court, for good cause, excuses the
25 failure. The interrogating party may move for an order under Rule 37(a) with respect to any
26 objection to or other failure to answer an interrogatory.

27 **Rule 37 Sanctions**

28 Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any

23 ²⁴ In fashioning a standard for determining when in camera review is appropriate, we begin with the observation that "in
24 camera inspection ... is a smaller intrusion upon the confidentiality of the attorney-client relationship than is public
25 disclosure." [Citations omitted.] We, therefore, conclude that a lesser evidentiary showing is needed to trigger in camera
26 review than is required ultimately to overcome the privilege. [Citation omitted.] The threshold we set, in other words, need
27 not be a stringent one. We think that the following standard strikes the correct balance. Before engaging in in camera review
28 to determine the applicability of the crime-fraud exception, "the judge should require a showing of a factual basis adequate to
support a good faith belief by a reasonable person," Caldwell v. District Court, 644 P.2d 26, 33 (Colo.1982), that in camera
review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies.

United States v. Zolin, 491 U.S. 554, 572, 109 S. Ct. 2619, 2630-31, 105 L. Ed. 2d 469 (1989).

²⁵ An in-camera review of allegedly privileged communications may occur to determine whether those communications fall
within the crime-fraud exception. United States v. Zolin, 491 U.S. 554, 565, 109 S. Ct. 2619, 2627, 105 L. Ed. 2d 469 (1989).

²⁶ Plaintiffs are not moving for sanctions under NRCP 11. The court, however, may apply rule 11 on its own initiative.

1 ground not stated in a timely objection is waived unless the court, for good cause, excuses the
2 failure. The interrogating party may move for an order under Rule 37(a) with respect to any
objection to or other failure to answer an interrogatory. **Rule 37(a)(4).**

3 (c) Failure to Disclose, to Supplement an Earlier Response, or to Admit. (1) Failure to Disclose
4 or Supplement. If a party fails to provide information or identify a witness as required by Rule
16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that
5 information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure
was substantially justified or is harmless. In addition to or instead of this sanction, the court, on
6 motion and after giving an opportunity to be heard: (A) may order payment of the reasonable
expenses, including attorney fees, caused by the failure; (B) may inform the jury of the party's
7 failure; and (C) may impose other appropriate sanctions, including any of the orders listed in Rule
37(b)(1). Rule 37(c).

8 Additionally, NRS 7.085 requires sanctions as a result of LBBS's conduct:
9

10 **NRS 7.085. Attorney who Files, Maintains, Defends or Extends Civil Actions.**

11 1. If a court finds that an attorney has:

12 (a) Filed, maintained or defended a civil action or proceeding in any court in this State and
such action or defense is not well-grounded in fact or is not warranted by existing law or by an
argument for changing the existing law that is made in good faith; or

13 (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in
this State, the court *shall* require the attorney personally to pay the additional costs, expenses and
attorney's fees reasonably incurred because of such conduct.

14 2. The court *shall* liberally construe the provisions of this section in favor of awarding costs,
15 expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the
court award costs, expenses and attorney's fees pursuant to this section and impose sanctions
16 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish
for and deter frivolous or vexatious claims and defenses because such claims and defenses
17 overburden limited judicial resources, hinder the timely resolution of meritorious claims and
increase the costs of engaging in business and providing professional services to the public.
18

19 Additionally, this Court has Inherent Authority to Impose Sanctions:

20 [C]ourts have "inherent equitable powers to dismiss actions or enter default judgments for ...
abusive litigation practices." [Citation omitted.] Litigants and attorneys alike should be aware that
21 these powers may permit sanctions for discovery and other litigation abuses not specifically
proscribed by statute.

22 Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

23 **V. CONCLUSION AND RELIEF REQUESTED**

24 CEMEX's conduct has affected the integrity and orderly administration of these proceedings.

25 Cemex and its counsel have violated numerous rules adopted for the just, speedy, and inexpensive
26 determination of this action. The court admonished Cemex/LBBS and later found Mr. Wright violated

27

1 NRCP 16.1. Cemex/LBBS thereafter continued to obstruct discovery and withhold material evidence.²⁷
2 Cemex did not responded to discovery in good faith, interfered with depositions, and failed to make
3 Rule 16.1 disclosures. Cemex, unlawfully and volitionally took material relevant evidence and then
4 asserted that the actions of its agent, who took the pickup, were privileged. Mr. Angaran then asserted
5 the invented statement that plaintiffs had “forgotten” the pickup. Plaintiffs did not “forget” about the
6 pickup, the most important piece of evidence in the case. Plaintiffs have suffered irreparable prejudice
7 because of the obstructive conduct and “litigation strategies” of Cemex and its agents. Ex. 6.

9 **A. Relief Sought.** Had it not been for the deceptive statement by Mary Barney on
10 August 4, 2017, which was reasonably relied on by plaintiffs’ counsel, and if her actions were not
11 claimed “privileged” and “directed by counsel” the prejudice caused by withholding the pickup would
12 not exist. The interference with discovery, discussed above would still have been part of Cemex’s
13 litigation strategy. Plaintiffs did not retain biomechanical and reconstruction experts, because under
14 Hallmark they could not lay foundation for such experts to testify without the pickup. Plaintiffs’ spent
15 \$51,125.05 to rebut Cemex’s experts.

17 Given the passage of time, pervasive deception and violations of the very rules created for the
18 “just, speedy, and inexpensive determination” of the action the court should impose sanctions. The range
19 includes: 1) striking Cemex’s answer and entering default, 2) allowing Cemex to cross examine but not
20 call a witness, 3) striking Cemex’s experts, 4) striking Cemex’s causation and liability experts, 5)
21 striking Cemex’s lay liability witnesses, or any other appropriate remedy.

23 Plaintiffs do have a preference in what sanction should be levied. Before deciding on sanctions
24 the court is asked to conduct an in-camera review of the GB/LBBS/Cemex communications to
25 determine the scope of the activities “directed by counsel” in relation to the withholding evidence,
26 pickup, crash video, etc. The court will then know if *only* Mary Barney/GB was involved in taking the
27

28 ²⁷ By taking and not disclosing the pickup it was affectively “destroyed” because it was unavailable. Ex. 35.

1 pickup. If so, the Plaintiffs ask the court to strike defendants' trucking liability, bio-mechanical, and
2 accident-reconstruction experts. If LBBS and or Cemex also knew the pickup had been taken and/or
3 moved to AIIA then Cemex's answer should be stricken and default entered. In camera view will allow
4 the court to know and make an informed decision about sanction. Imposing a monetary sanction will be
5 insignificant to the multibillion-dollar company, Cemex. Ex 37. Mr. Angaran and Mr. Wright should be
6 sanctioned pursuant to NRS 7.085 in the amount of the costs expended by plaintiffs in rebutting the
7 biomechanical and reconstruction experts (\$51,125.05). Ex 6. The court must impose sanctions under
8 NRS 7.085 because they "filed, maintained, and defended" the action based on unreasonable and
9 vexatious conduct.

11 Discovery long ago closed, allowing plaintiffs to now hire liability experts will cause additional
12 expense and financial hardship.²⁸ Plaintiffs have already incurred the expense of the rebuttal experts.
13 They were also forced to pay half the storage cost of the pickup. The months and years that have passed
14 under Cemex's/LBBS's litigation strategy cannot be recovered. The severity and duration of the
15 obstructive conduct by Cemex and its counsel require sanctions be imposed.

17 If the court is not inclined to impose sanctions it will effectively ratify the obstructive conduct of
18 Cemex and its agents GB and LBBS and not remedy the unrepairable prejudice suffered by plaintiffs.

19 **AFFIRMATION:** The undersigned does hereby affirm that, pursuant to NRS 239B.030, the above
20 document does not contain the Social Security Number of any person.

22 DATED: November 19, 2020.

23 /s/ Curtis B. Coulter
24 Curtis B. Coulter, Esq., *Attorney for Plaintiffs*

26
27
28 ²⁸ It is probable it the court strikes Cemex's liability experts that it may not allow plaintiffs to call such experts. Since LBBS previously represented Mr. Ransom, the defendants' joint experts may be stricken by the court. Mr. Ransom may seek recourse against LBBS if he suffers any prejudice but because punitive damages have been stricken and because he was acting within the course and scope of his employment with Cemex he will not suffer prejudice.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of COULTER HARSH LAW,
and that I served a true and correct copy of foregoing document by:

 X Mail on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope with first-class postage affixed thereto, deposited in the United States Mail, at Reno, Nevada.
 Personal delivery by causing a true copy thereof to be hand-delivered to the address or addresses set forth below.
 Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address or addresses noted below.
 Federal Express or other overnight delivery.
 Hand-delivery by Reno/Carson Messenger Service.
 X E-flex.

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CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC

DATED: November 19, 2020.

 /s/ Diana L. Sims
An employee of Coulter Harsh Law

LIST OF EXHIBITS

| | | |
|----|--|-----|
| 1 | | |
| 2 | 1. NHP Crash Report and Select Photos | 23 |
| 3 | 2. Privileged Log regarding Gallagher Bassett and Mary Barney | 29 |
| 4 | 3. Mary Barney/ GB letter, agent for Cemex and GB web info | 5 |
| 5 | 4. LBBS is agent for Cemex day after crash, GB was “ directed by counsel ,” and claimed privileged. | 2 |
| 6 | 5. Giovanni Jimenez Declaration | 2 |
| 7 | 6. Curtis B. Coulter Declaration, Counsel for Plaintiffs | 15 |
| 8 | 7. GB acknowledgment of attorney retention, 7/31/17 | 1 |
| 9 | 8. Minerva Vasquez Declaration | 2 |
| 10 | 9. Answer to FAC, and combination signed by Mr. Wright | 26 |
| 11 | 10. Defendant Demand for ECC documents, 6/19/2018 | 6 |
| 12 | 11. 16.1 JCCR report filed 6/27/2018 | 10 |
| 13 | 12. Defendant Rule 16.1 Disclosure of Witness and Documents | 8 |
| 14 | 13. Ransom’s Statement Tire was Bald an issue for Months | 1 |
| 15 | 14. Ransom Mixer Inspection Reports (DVIRs) | 20 |
| 16 | 15. IAAI Documents showing Barney/GB moved Pickup on 6/5/2017 | 15 |
| 17 | 16. 5/30/17 Goodyear Tire Inspection Identifying Tire Defects and Age | 8 |
| 18 | 17. Email chain, requesting 16.1 compliance and affirmative defenses. 7/11/18-7/17/18 | 5 |
| 19 | 18. Cemex Response to 1st RFP objecting to every request | 48 |
| 20 | 19. Cemex Objects to Interrogatories re basis of affirmative defenses, etc. | 7 |
| 21 | 20. Transcript, 08/27/2018 | 5 |
| 22 | 21. Vasquez 5th RFP to Cemex requesting compliance with 16.1, crash video, mixer weight, etc. | 11 |
| 23 | 22. Cemex’s responded to 5th RFP objecting to 16.1 compliance, disclosure of video & weight docs. | 20 |
| 24 | 23. Cemex Response to RFA (management) is vague and ambiguous | 4 |
| 25 | 24. Cemex objected to 1st RFA that it knew name/address of witness/ had discoverable docs. 10/22/2018 | 10 |
| 26 | 25. Revised Privilege log Re: Load Ticket removing fictitious “proprietary” objection | 5 |
| 27 | 26. 7.1 Disclosure | 3 |
| 28 | 27. Amended but incomplete 7.1 Disclosure | 3 |
| | 28. PMK Financial- Nelson Deposition with objections by Mr. Angaran- FILED UNDER SEAL | 72 |
| | 29. Mead (Mechanic) Deposition with objections by Mr. Angaran | 68 |
| | 30. Rodriguez (National Safety Director) Deposition with objections by Mr. Angaran | 111 |
| | 31. Longfield (Lead Mechanic) Deposition with objections by Mr. Angaran | 65 |
| | 32. Ransom (Driver) Deposition with objections by Angaran | 11 |
| | 33. Skulick (Management) Deposition | 66 |
| | 34. Emails with LBBS regarding pickup LBBS “GB did not cause the pickup to be moved on that CEMEX had constructive possession.” | 5 |
| | 35. Transcript- 08/12/2019 | 3 |
| | 36. Michael Egan, Cemex’s US, General Counsel and member of Board of Directors. | 1 |
| | 37. Cemex 1st Quarter 2020 Financial Results | 15 |

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*Attorneys for Defendant Cemex
Construction Materials Pacific, LLC*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MINERVA VASQUEZ-MONTAÑO, an
individual; GIOVANNI JIMENEZ, an
individual; Plaintiffs,

CASE NO. CV18-00496

Dept. No.: 7

vs.

CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC, ZACHARY KURTIS
MYKAL RANSOM and DOES 1-10,
inclusive,

Defendants.

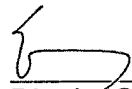
**ORDER DENYING PLAINTIFFS' MOTION FOR SANCTIONS
AGAINST CEMEX AND ITS COUNSEL FOR OBSTRUCTING DISCOVERY AND
WITHHOLDING MATERIAL EVIDENCE; AND DENYING SANCTIONS ON PLAINTIFFS'
PRIOR MOTION FOR SANCTIONS**

The Court having considered Plaintiffs' *Motion for Sanctions Against Cemex and Its Counsel for Obstructing and Withholding Material Evidence* filed on November 19, 2020, CEMEX's Opposition to Plaintiffs' Motion, and Plaintiffs' Reply, as well as all related pleadings and papers on file herein, the applicable law, and the oral argument of counsel on March 17, 2022, and having considered the Court's prior order of January 2, 2019, which reserved a decision on monetary sanctions based upon Plaintiffs' first motion for sanctions, and having considered the entire history of this case and the conduct of all parties and counsel, and good cause appearing,

1 IT IS HEREBY ORDERED and ADJUDGED that the Court, in the exercise of its
2 discretion, DECLINES to award any monetary amount or other sanctions on its *Order*
3 granting *Plaintiffs' First Motion for Sanctions Against Defendant Cemex: NRCP 16.1*
4 *Insurance* entered on January 2, 2019, and

5 IT IS FURTHER HEREBY ORDERED and ADJUDGED that the Court, in the
6 exercise of its discretion, DENIES, in its entirety, Plaintiffs' *Motion for Sanctions Against*
7 *Cemex and Its Counsel for Obstructing and Withholding Material Evidence* filed on
8 November 19, 2020.

9 DATED this 28 day of March, 2022.

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12 By 
13 District Court Judge
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