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Attorneys for Defendant

IN THE SUPREME COURT OF THE STATE OF NEVADA

VERONICA JAZMIN CASTILLO, AN INDIVIDUAL;

Appellant,

vs.

ARMANDO PONS-DIAZ, AN INDVIDUAL

Respondent.

Supreme Court Case No. 82267

DOCKETING STATEMENT
CIVIL APPEALS

1. Judicial District: Eighth Department IV

   County: Clark Judge: Hon, Kerry Earley

2. **Attorney filing this docketing statement:**

   Ryan M. Venci, Esq. (702) 765-0976

   3037 East Warm Springs Road, Suite 300, Las Vegas, Nevada 89120

   Client(s): Veronica Jazmin Castillo

3. **Attorney(s) representing respondent(s):**

   Eric R. Blank, Esq., and Brian P. Nestor, Esq. (702) 222-2115

   7860 West Sahara Avenue, Suite 110, Las Vegas, Nevada 89117

   Client(s): Armando Pons-Diaz

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

□ Judgement 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	□ Other (specify)
□ Grand/Denial of injection	□ Divorce decree
□ Grant/Denial of declaratory relief	□ Original □ Modification
□ Review of agency determination	x Other disposition (specify): Court granted Respondent's Motion to Strike Request for Trial De Novo and entered a Judgment on the Arbitration Award.

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

□ Child custody

□ Venue

□ Termination of parental rights

No.

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

None.

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, consolidation or bifurcated proceedings) and their dates of disposition.

None.

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

This is a personal injury action between Plaintiff/Respondent and Defendant/Appellant. Defendant/Appellant was insured under an automobile liability policy and his insurer provided a defense. The parties submitted the matter to the court-annexed arbitration program in Clark County, Nevada, and an award was rendered in favor of Plaintiff/Respondent. Defendant/Appellant timely filed a Request for Trial de Novo. Subsequently, Plaintiff/Respondent

filed a Motion to Strike Defendant's Request for Trial de Novo. The Court granted that said motion. A judgment was then entered against Defendant/Appellant on November 24, 2020.

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

Whether the District Court properly struck Defendant/Appellant's Request for Trial de Novo and entered judgment in favor of Plaintiff/Respondent on the Arbitration Award.

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

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of court and the attorney general in accordance with NRAP 44 and NRS30.130

x N/A

□ Yes

□ No

If not, explain: Not applicable

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 decisions

□ A ballot question.

If so, explain: Not applicable.

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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 subparagraphs 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 importance or significance:

Appellant submits that this appeal is presumptively assigned to the Court of Appeals under NRAP 17(b)(5).

14. Trial. If this action proceed to trial, how many days did the trial last? Not applicable.

Was it a bench or jury trial? No applicable.

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.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: The Notice of Entry of Order on the Court's ruling on Plaintiff's Motion to Strike Defendant's Request for Trial De Novo was filed on November 5, 2020 and the Judgment on Arbitration Award was filed on November 24, 2020. Plaintiff never filed a Notice of Entry of Judgment. Nevertheless, the issue remains as to whether the Court properly granted the Motion.

17. Date of written notice of entry of judgment or order was served

Was service by:

□ Delivery

□ Mail/electronic service

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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

Not applicable

19. Date notice of appeal filed December 23, 2020

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

NRAP4(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 3(A)(b)(1) □ NRS 38.205

□ NRAP 3(A)(b)(2) □ NRS 233B.150

□ NRAP (3)(A)(b)(3) □ NRS 703.376

□ Other (specify)

(b) Explain how each authority provides a basis for appeal from judgement or order

The order granting the Motion to Strike and Judgment on Arbitration Award: NRAP 3(A)(b)(1).

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

(a) Parties:

Plaintiff: Armando Pons-Diaz

Defendant: Veronica Jazmin Castillo

(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:

Not applicable.

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

Negligence, November 5, 2020 and November 24, 2020.

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 you answered "No" to question 24, complete the following:

Not applicable.

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

Not applicable.

27. Attach filed stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims an third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross claims and/or third-party claims asserted in the action or consolidated actions below
- Any other challenged on appeal
- Notices of entry for each attached order

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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

Veronica Jazmin Castillo Name of Appellant	Ryan M. Venci, Esq. Name of counsel of record
January 26, 2021 Date	*/s/ Ryan M. Venci* Signature of counsel of record
State of Nevada, County of Clark State and country where signed	

CERTIFICATE OF SERVICE

I certify that on the 26th say of January, 2021, I served a copy of this completed docketing statement upon all counsel of record:

□ By personally serving it upon him/her, or

x By mailing it by first class with sufficient postage paid to the following address(es):

ERIC R. BLANK, ESQ.
Nevada Bar No. 6910
VERNON EVANS, ESQ.
Nevada Bar. No. 14705
ERIC BLANK INJURY ATTORNEYS
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Attorneys for Plaintiff

/s/ Star Farrow
Employee, STORM LEGAL GROUP

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COMP
ERIC R. BLANK, ESQ.
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual, Plaintiff, vs. VERONICA JAZMIN CASTILLO, an individual; and DOES I through X, inclusive, Defendants.	Case No.: A-19-789525-C Dept. No.: Department 4 **COMPLAINT**

COMES NOW, Plaintiff ARMANDO PONS-DIAZ, (hereinafter "Plaintiff") by and through his counsel, ERIC R. BLANK, ESQ., of ERIC BLANK INJURY ATTORNEYS hereby alleges and avers as follows:

PARTIES

1. All the events alleged in this Complaint took place in Clark County, Nevada.

2. Plaintiff, is, and at all times mentioned in this complaint was, a resident of Clark County, Nevada.

3. Upon information and belief, that Defendant, VERONICA JAZMIN CASTILLO was a resident of the County of Clark, State of Nevada at the time of the incident.

4. That Plaintiff is unaware of the true names and capacities of Defendants sued in this Complaint as DOES I through X, inclusive, and will amend this Complaint to insert their true names

and capacities when known. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants sued in this Complaint as a Doe defendant is in some manner responsible for the acts and conduct alleged in this Complaint.

5. Upon information and belief, that, at all times relevant, each of the Defendants were acting as an agent and/or employee of each of the other Defendants and, in performing the acts and conduct alleged in this Complaint, was acting within the course and scope of such agency and/or employment.

FIRST CAUSE OF ACTION

(Negligence)

6. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 5 of the Complaint as if fully set forth herein.

7. That on or about December 15, 2017, Plaintiff was traveling southbound on Arville Street, attempting to make a right turn on Spring Mountain Road, when Defendant failed to yield when making a left turn on to Spring Mountain Road, impacting the left side of Plaintiff's vehicle.

8. As a result of the accident, Plaintiff suffered serious physical, emotional, and financial injury, as more fully set forth herein.

9. That it was the duty of Defendant VERONICA JAZMIN CASTILLO to operate her motor vehicle so as not to carelessly or negligently cause injury or damage to others lawfully operating vehicles on the roadways, but Defendant was negligent in the following particulars:

(a) Defendant VERONICA JAZMIN CASTILLO failed to keep her vehicle under proper control at all times;

(b) Defendant VERONICA JAZMIN CASTILLO was inattentive and failed to keep a proper lookout for Plaintiff who was lawfully driving on Spring Mountain Road and Arville Street in Clark County, Las Vegas, Nevada;

(c) Defendant VERONICA JAZMIN CASTILLO failed to afford Plaintiff proper and sufficient notice and warning of approach of Defendant's vehicle sufficient for Plaintiff to properly protect himself.

10. That as a direct and proximate result of the aforementioned negligence, carelessness and recklessness of Defendant, Plaintiff sustained injuries to his body, including neck and upper back, and shock and injury to his nervous system and person, all of which caused and will continue to cause Plaintiff physical, mental, and nervous pain and suffering.

11. That as a direct and proximate result of the aforementioned negligence, carelessness and recklessness of Defendant, Plaintiff was required to incur medical bills and will be required in the future to incur expenses for and to employ physicians, nurses, physical therapists, and to procure hospitalization, medicine, and general medical care and attention.

12. That as a direct and proximate result of the aforesaid negligence of Defendants, and each of them, Plaintiff's vehicle sustained significant property damage, with a resultant loss of use in an unknown amount.

13. That as a further direct and proximate result of the Defendant and Doe Defendants' negligence, Plaintiff has sustained loss of earnings and earning capacity in an amount to be determined at trial.

14. That Plaintiff has secured the services of an attorney in order to prosecute this action and Plaintiff is entitled to reasonable attorney's fees and costs incurred.

15. That as a direct and proximate result of the aforesaid negligence of the Defendant, Plaintiff has incurred all of the injuries and damages in excess of FIFTENN THOUSAND DOLLARS ($15,000.00) as alleged herein.

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WHEREFORE, Plaintiff prays for judgment as follows for each of his claims for relief:

1. General and special damages in an amount in excess of $15,000.00;
2. For reasonable attorney's fees;
3. Lost earnings and earning capacity;
4. For Plaintiff's costs;
5. For pre-judgment and post-judgment interest; and
6. For such other and further relief as the court may deem just and proper.

DATED this 15th day of February 2019.

By: */s/ Eric R. Blank*

ERIC R. BLANK
S. DENISE McCURRY
ERIC BLANK INJURY ATTORNEYS
7860 W. Sahara Avenue, Suite 110
Las Vegas, Nevada 89117
Attorneys for Plaintiff

A-19-789525-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	October 07, 2020

A-19-789525-C Armando Pons-Diaz, Plaintiff(s)
vs.
Veronica Castillo, Defendant(s)

October 07, 2020	3:00 AM	Minute Order	Plaintiff Armando Pons-Diaz Motion to Strike Defendant's Request for Trial de Novo

HEARD BY: Earley, Kerry **COURTROOM:** Chambers

COURT CLERK: Louisa Garcia

JOURNAL ENTRIES

- THIS MATTER came before the Court on Plaintiff Armando Pons-Diaz' Motion to Strike Defendant's Request for Trial de Novo, filed on July 23, 2020; the Opposition to Motion to Strike Defendant's Request for Trial de Novo, filed August 6, 2020; and Plaintiff's Reply filed on September 10, 2020.

THE COURT having reviewed the matter, including all points and authorities, and exhibits, and good cause appearing hereby GRANTS Plaintiff Armando Pons-Diaz Motion to Strike Defendant s Request for Trial de Novo, based on the following:

This matter arises out of a car accident that occurred on December 15, 2017. Plaintiff alleged that he was travelling southbound on Arville Street, attempting to make a right turn onto Spring Mountain Road when his vehicle was struck by Defendant s vehicle who failed to yield right of way to Plaintiff.

Plaintiff argues that Defendant failed participate in the Arbitration proceedings in good faith because Defendant failed to participate in discovery during the Arbitration phase, failed to produce documents in discovery, failed to respond to Plaintiff s Interrogatories and Requests for Production, and failed to appear at her deposition which was re-scheduled twice due to defense counsel s inability to locate defendant.

Plaintiff further argues Defendant failed to timely serve her Arbitration brief. The Arbitration Hearing in this matter was originally scheduled for March 19, 2020, and Plaintiff served his

Arbitration Brief on March 13, 2020, in accordance with the Arbitration Discovery Order. The Arbitration Hearing was rescheduled due to COVID-19 and defense counsel s firm having technology issues preventing a telephonic Arbitration Hearing. Plaintiff argues that Defendant failed to serve an Arbitration Brief in March, and although she benefitted from the hearing being re-scheduled to May, Defendant failed to serve a timely brief because it was not served until May 11, 2020, the eve before the May 12, 2020 Arbitration Hearing. The Notice of Change of Arbitration Hearing Date/Time stated that the Arbitration Brief was due by May 7, 2020.

Moreover, Plaintiff argues that Defendant did not attend the Arbitration Hearing, and did not oppose Plaintiff s Motion for Costs, Interest, and Attorney's fees. Last, Plaintiff argues that the decision to request a Trial de Novo rests solely with the client and defense counsel has not communicated with Defendant throughout the litigation thereby indicating that Defendant did not authorize the filing of the Request for Trial de Novo.

In Defendant's opposition, defense counsel concedes that he was unsuccessful in communicating with Defendant and as a result could not respond to Plaintiff s interrogatories. Defendant argues that Defendant s participation at the Arbitration Hearing was not necessary because duty and breach were conceded and the only issues that remained were causation and damages, and the Defendant has a right to a civil jury trial under the Nevada Constitution.

NAR 18 allows a party to file a request for trial de novo within 30 days after the arbitration award is served upon the parties. The party requesting trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (C) Rule 18.

Here, the Arbitration Award was entered on June 1, 2020. Defendant's Request for Trial de Novo was filed on June 30, 2020 and contained the certification statement. Therefore, THE COURT FINDS that Defendant s Request for Trial de Novo was timely.

NAR 22(A) states that the failure of a party or an attorney to defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo.

The Nevada Supreme Court has held that all sanctioning orders under NAR 22(A) must be accompanied by specific written findings of fact and conclusions of law describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation. Chamberland v. Labarbera, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994).

The Nevada Supreme Court has stated that although the Nevada Constitution provides a litigant with the right to a jury trial in civil proceedings. Nev. Const. art. 1, 3, this right can be waived by various means prescribed by law. One of those means is NAR 22, which states that the district court may sanction an arbitration participant by striking a request for a trial de novo if the participant has

not acted in good faith. Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 900 01 (2000).

The Nevada Supreme Court has equated good faith with meaningful participation in the arbitration proceedings. Gittings, 116 Nev. at 390, citing Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135, 911 P.2d 1181, 1182 83 (1996). However, the mere failure of a party to attend or call witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation. Id. at 392. It is the substance of the arbitration that is important in determining the good faith of the participants. Gittings v. Hartz, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000).

A party's failure to respond to interrogatories and requests for production, or otherwise fail to participate in discovery may be grounds for striking a trial de novo request if the failure to provide the requested discovery had an impact on the arbitration proceedings or Plaintiff s ability to present their case. Bakke v. Am. Family Mut. Ins. Co., No. 75342-COA, 2019 WL 6003341, at *2 3 (Nev. App. Nov. 13, 2019)

Plaintiff argued that he was prohibited from properly preparing for the Arbitration and from preparing for the numerous personal attacks contained in Defendant s Arbitration Brief, which was filed the day before the re-scheduled Arbitration Hearing. Plaintiff further stated that he was not able to fully prosecute his case due to Defendant s absence.

THE COURT FINDS that Defendant failed to respond to interrogatories, requests for production, or appear at her deposition, which was noticed twice.

THE COURT FURTHER FINDS that Defendant failed to produce any of the documents requested by Plaintiff during discovery.

Therefore, THE COURT FINDS the Defendant s failure to participate in discovery and failure to provide the requested discovery had a negative impact on Plaintiff s ability to adequately prepare for the arbitration proceedings and on Plaintiff s ability to present his case.

The original Arbitration Hearing was scheduled for March 19, 2020. Defendant s deposition had been re-set to March 4, 2020, the last day of discovery, due to Defendant s failure to appear at the first scheduled deposition based on counsel's inability to communicate with Defendant. On March 3, 2020, the day before Defendant s second deposition and nearly two weeks before the Arbitration Hearing, defense counsel s office emailed plaintiff's counsel stating we have been unsuccessful at reaching our client. Therefore we want to cancel the depo and will concede liability. Please cancel the deposition. Thank you.

Moreover, Defendant's Arbitration Brief stated that it was anticipated that the named Parties will testify at the arbitration hearing. (Id. at p. 7). However, Defendant did not appear at the Arbitration Hearing.

THE COURT FINDS that defense counsel s last minute concession of liability on the last day of discovery as a means to vacate the deposition of Defendant, who had already failed to respond to Plaintiff s discovery requests caused unnecessary burden and expense to Plaintiff. Plaintiff was unable to adequately conduct discovery due to Defendant s failure to respond to interrogatories and requests for production. This was exacerbated by Defendant s failure to appear for her deposition, which also caused Plaintiff to incur additional costs, and caused Plaintiff s counsel to spend unnecessary time preparing for Defendant s deposition, twice. The lack of any type of testimony under oath from Defendant prevented Plaintiff from addressing statements made in Defendant s recorded statement or obtaining information from Defendant about the subject accident and relevant to Plaintiff s claims.

THE COURT FURTHER FINDS that Defendant s Arbitration Brief consisted mainly of attacks on Plaintiff s credibility citing contradictions in Plaintiff s discovery responses and deposition testimony. However, Defendant prevented Plaintiff from being able to conduct this type of analysis as Defendant did not respond to interrogatories, did not appear for her deposition, and did not attend the Arbitration hearing. Plaintiff had no opportunity to elicit any testimony from Defendant whatsoever.

THE COURT FURTHER FINDS that Defendant s Arbitration Brief explicitly called Plaintiff a liar stating [b]ecause he has lied and been evasive, and because his case is reliant on the credibility of the oral representations made to his treatment providers Therefore, testimony about the accident was a necessary part of Plaintiff s case. However, Plaintiff did not have the ability to elicit testimony from Defendant about the nature and extent of the impact, the speed at which she was traveling, whether she applied the brakes, or whether Defendant herself sustained any injuries from the subject collision so as to address the attacks on Plaintiff s testimony. Plaintiff was provided with Defendant s recorded statement, but had no opportunity to obtain any testimony from Defendant under oath and did not have the ability to cross-examine Defendant about the basis for her statements concerning Plaintiff s veracity as contained in her brief.

Therefore, THE COURT FINDS that Plaintiff s inability to conduct any discovery or elicit any testimony from Defendant negatively impacted Plaintiff s case such that Defendant did not meaningfully participate in the Arbitration proceedings resulting in bad faith participation.

There may be many valid reasons why a party would not wish to expend money at the arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point out discrepancies in a person s claim of injury without such testimony, or without presentation of countervailing medical evidence. Gittings v. Hartz, 116 Nev. 386, 392, 996 P.2d 898, 902 (2000)

Defendant did not provide any expert testimony in support of her challenge to Plaintiff s injuries and treatment. Defendant s Arbitration Brief called for the Arbitrator to make a "Common Sense

Evaluation" stating that "the arbitrator is not bound by case law to award Plaintiff his entire claimed medical specials, merely because Defendant has not retained a medical expert at this juncture of the case." (Defendant s Arbitration Brief, p. 6).

THE COURT FURTHER FINDS that although standing alone a lack of medical experts is not a sufficient basis to strike a Request for Trial de Novo, in this matter Plaintiff received no discovery from Defendant leaving counsel s arguments in the late-filed Arbitration Brief as the only evidence regarding Plaintiff s medical treatment contained in the proceedings record. Therefore, although defense counsel argued that causation and damages were the only issues to be decided after counsel conceded liability on the last day of discovery in order to avoid Defendant s re-noticed deposition, Defendant produced no evidence during the Arbitration proceedings that provided a basis for Plaintiff to ascertain what causation and damages defenses were being presented.

THE COURT FURTHER FINDS that Defendant's failure to oppose Plaintiff's Motion for Attorney's Fees, Costs, and Interest provided further evidence to lack of meaningful participation in the Arbitration proceedings.

As a result, Defendant's failure to respond to Plaintiff's interrogatories and requests for production, failure to appear for her deposition (twice), failure to present any expert testimony to support the arguments about Plaintiff s medical treatment and damages, failure to appear for the Arbitration Hearing, and failure to oppose Plaintiff's Motion for Attorney's Fees and Costs demonstrate a pattern lacking meaningful participation in the Arbitration proceeding resulting in a lack of a good faith defense of this case such that sanctions pursuant to NAR 22(A) are warranted.

Based on the foregoing, THE COURT FINDS that Defendant VERONICA JAZMIN CASTILLO failed to meaningfully participate in the Arbitration proceedings and failed to defend this case in good faith; pursuant to NAR 22(A) such failure shall constitute a waiver of the right to trial de novo.

Therefore, Plaintiff Armando Pons-Diaz' Motion to Strike Defendant's Request for Trial de Novo is hereby GRANTED.

Plaintiff s counsel is to prepare the Order in accordance with this Minute Order pursuant to EDCR 7.21and in compliance with Administrative Order 20-17.

**CLERK'S NOTE: This Minute Order has been electronically served to all registered parties for Odyssey File & Serve.

Electronically Filed
11/5/2020 2:09 PM
Steven D. Grierson
CLERK OF THE COURT

ERIC R. BLANK, ESQ.
Nevada Bar No. 006910
ERIC BLANK INJURY ATTORNEYS
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual, Plaintiff, vs. VERONICA JAZMIN CASTILLO, an individual; and DOES I through X, inclusive, Defendants.	CASE NO.: A-19-789525-C DEPT. NO.: 4 **NOTICE OF ENTRY OF ORDER**

TO: ALL INTERESTED PARTIES AND COUNSEL OF RECORD

PLEASE TAKE NOTICE that the ORDER attached hereto as Exhibit 1 was entered in the above-captioned matter on November 5, 2020.

DATED this 5th day of November, 2020.

By: */s/: Eric R. Blank*
ERIC R. BLANK, ESQ.
ERIC BLANK INJURY ATTORNEYS
7860 W. Sahara Avenue, Suite 110
Las Vegas, Nevada 89117
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this date, I filed and served the foregoing ORDER on the following parties and all parties on the Odyssey e-service list, by the selected means:

Travis Akin, Esq.
Nevada Bar No. 13059
STORM LEGAL GROUP
3057 E. Warm Springs Rd., Suite 400
Las Vegas, Nevada 89120
Takin@keyinsco.com
Attorney for Defendant

☒ **Odyssey eFileNV**
☐ **FACSIMILE**
☐ **U.S. MAIL**

DATED this 5th Day of November, 2020

/s/: Kristina M. Marzec
An Employee of Eric Blank Injury Attorneys

EXHIBIT 1

EXHIBIT 1

Electronically Filed
11/05/2020 1:20 PM
CLERK OF THE COURT

ERIC R. BLANK, ESQ. Nevada Bar No. 06910
VERNON EVANS, ESQ. Nevada Bar No. 14705
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual, Plaintiff, vs. VERONICA JAZMIN CASTILLO, an individual; and DOES I through X, inclusive, Defendants.	CASE NO.: A-19-789525-C DEPT. NO.: 4 **ORDER** **Date of Hearing:** **Time of Hearing:**

THIS MATTER having come before the Court on Plaintiff Armando Pons-Diaz' *Motion to Strike Defendant's Request for Trial de Novo*, filed on July 23, 2020; the *Opposition to Motion to Strike Defendant's Request for Trial de Novo*, filed August 6, 2020; and Plaintiff's *Reply to Defendant's Opposition to Motion to Strike Defendant's Request for Trial De Novo* filed on September 10, 2020;

With ERIC R. BLANK, ESQ. and VERNON EVANS, ESQ. of ERIC BLANK INJURY ATTORNEYS, appearing as counsel for Plaintiff, and, TRAVIS AKIN, ESQ. of STORM LEGAL GROUP, appearing as counsel for Defendant VERONICA JAZMIN CASTILLO (hereinafter referred to as "Defendant");

The Court having reviewed the matter, including exhibits, all points and authorities, and for good cause appearing, hereby GRANTS *Plaintiff Armando Pons-Diaz Motion to Strike Defendant's Request for Trial de Novo*, based on the following:

This matter arises out of a car accident that occurred on December 15, 2017. Plaintiff alleged that he was travelling southbound on Arville Street, attempting to make a right turn onto Spring

Mountain Road when his vehicle was struck by Defendant s vehicle who failed to yield right of way to Plaintiff.

Plaintiff argues that Defendant failed participate in the Arbitration proceedings in good faith because Defendant failed to participate in discovery during the Arbitration phase, failed to produce documents in discovery, failed to respond to Plaintiff's Interrogatories and Requests for Production, and failed to appear at her deposition which was re-scheduled twice due to defense counsel's inability to locate defendant.

Plaintiff further argues Defendant failed to timely serve her Arbitration brief. The Arbitration Hearing in this matter was originally scheduled for March 19, 2020, and Plaintiff served his Arbitration Brief on March 13, 2020, in accordance with the Arbitration Discovery Order. The Arbitration Hearing was rescheduled due to COVID-19 and defense counsel's firm having technology issues preventing a telephonic Arbitration Hearing. Plaintiff argues that Defendant failed to serve an Arbitration Brief in March, and although she benefitted from the hearing being rescheduled to May, Defendant failed to serve a timely brief because it was not served until May 11, 2020, the eve before the May 12, 2020 Arbitration Hearing. The Notice of Change of Arbitration Hearing Date/Time stated that the Arbitration Brief was due by May 7, 2020.

Moreover, Plaintiff argues that Defendant did not attend the Arbitration Hearing, and did not oppose Plaintiff s Motion for Costs, Interest, and Attorney's fees. Last, Plaintiff argues that the decision to request a Trial de Novo rests solely with the client and defense counsel has not communicated with Defendant throughout the litigation thereby indicating that Defendant did not authorize the filing of the Request for Trial de Novo.

In Defendant's opposition, defense counsel concedes that he was unsuccessful in communicating with Defendant and as a result could not respond to Plaintiff's interrogatories. Defendant argues that Defendant's participation at the Arbitration Hearing was not necessary because duty and breach were conceded and the only issues that remained were causation and damages, and the Defendant has a right to a civil jury trial under the Nevada Constitution.

NAR 18 allows a party to file a request for trial de novo within 30 days after the arbitration award is served upon the parties. The party requesting trial de novo must certify that all arbitrator fees

and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (C) Rule 18. Here, the Arbitration Award was entered on June 1, 2020. Defendant's Request for Trial de Novo was filed on June 30, 2020 and contained the certification statement. Therefore, the Court finds that Defendant's Request for Trial de Novo was timely.

NAR 22(A) states that the failure of a party or an attorney to defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo.

The Nevada Supreme Court has held that all sanctioning orders under NAR 22(A) must be accompanied by specific written findings of fact and conclusions of law describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation. Chamberland v. Labarbera, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994).

The Nevada Supreme Court has stated that although the Nevada Constitution provides a litigant with the right to a jury trial in civil proceedings. Nev. Const. art. 1, 3, this right can be waived by various means prescribed by law. One of those means is NAR 22, which states that the district court may sanction an arbitration participant by striking a request for a trial de novo if the participant has not acted in good faith. Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 900 01 (2000).

The Nevada Supreme Court has equated good faith with meaningful participation in the arbitration proceedings. Gittings, 116 Nev. at 390, citing Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135, 911 P.2d 1181, 1182 83 (1996). However, the mere failure of a party to attend or call witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation. Id. at 392. It is the substance of the arbitration that is important in determining the good faith of the participants. Gittings v. Hartz, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000).

A party's failure to respond to interrogatories and requests for production, or otherwise fail to participate in discovery may be grounds for striking a trial de novo request if the failure to provide the requested discovery had an impact on the arbitration proceedings or Plaintiff s ability to present their case. Bakke v. Am. Family Mut. Ins. Co., No. 75342-COA, 2019 WL 6003341, at *2 3 (Nev. App. Nov. 13, 2019).

Plaintiff argued that he was prohibited from properly preparing for the Arbitration and from preparing for the numerous personal attacks contained in Defendant's Arbitration Brief, which was filed the day before the re-scheduled Arbitration Hearing. Plaintiff further stated that he was not able to fully prosecute his case due to Defendant's absence.

THE COURT FINDS that Defendant failed to respond to interrogatories, requests for production, or appear at her deposition, which was noticed twice.

THE COURT FURTHER FINDS that Defendant failed to produce any of the documents requested by Plaintiff during discovery.

THE COURT THEREFORE FURTHER FINDS the Defendant's failure to participate in discovery and failure to provide the requested discovery had a negative impact on Plaintiff's ability to adequately prepare for the arbitration proceedings and on Plaintiff's ability to present his case.

The original Arbitration Hearing was scheduled for March 19, 2020. Defendant's deposition had been re-set to March 4, 2020, the last day of discovery, due to Defendant's failure to appear at the first scheduled deposition based on counsel's inability to communicate with Defendant. On March 3, 2020, the day before Defendant's second deposition and nearly two weeks before the Arbitration Hearing, Defense counsel's office emailed Plaintiff's counsel stating they had been unsuccessful at reaching their client (the Defendant), and therefore conceded liability and asked to cancel the deposition that day. Moreover, Defendant's Arbitration Brief stated that it was anticipated that the named Parties will testify at the arbitration hearing. (Id. at p. 7). However, Defendant did not appear at the Arbitration Hearing.

THE COURT FINDS that Defense counsel's last minute concession of liability on the last day of discovery as a means to vacate the deposition of Defendant, who had already failed to respond to Plaintiff s discovery requests caused unnecessary burden and expense to Plaintiff. Plaintiff was unable to adequately conduct discovery due to Defendant's failure to respond to interrogatories and requests for production. This was exacerbated by Defendant's failure to appear for her deposition, which also caused Plaintiff to incur additional costs, and caused Plaintiff's counsel to spend unnecessary time preparing for Defendant's deposition, twice. The lack of any type of testimony under oath from Defendant prevented Plaintiff from addressing statements made in Defendant's recorded

statement or obtaining information from Defendant about the subject accident and relevant to Plaintiff's claims.

THE COURT FURTHER FINDS that Defendant's Arbitration Brief consisted mainly of attacks on Plaintiff's credibility, citing contradictions in Plaintiff s discovery responses and deposition testimony. However, Defendant prevented Plaintiff from being able to conduct this type of analysis as Defendant did not respond to interrogatories, did not appear for her deposition, and did not attend the Arbitration hearing. Plaintiff had no opportunity to elicit any testimony from Defendant whatsoever.

THE COURT FURTHER FINDS that Defendant's Arbitration Brief explicitly called Plaintiff a liar, stating [b]ecause he has lied and been evasive, and because his case is reliant on the credibility of the oral representations made to his treatment providers. Therefore, testimony about the accident was a necessary part of Plaintiff's case. However, Plaintiff did not have the ability to elicit testimony from Defendant about the nature and extent of the impact, the speed at which she was traveling, whether she applied the brakes, or whether Defendant herself sustained any injuries from the subject collision so as to address the attacks on Plaintiff's testimony. Plaintiff was provided with Defendant s recorded statement, but had no opportunity to obtain any testimony from Defendant under oath and did not have the ability to cross-examine Defendant about the basis for her statements concerning Plaintiff's veracity as contained in her brief.

THE COURT THEREFORE FINDS that Plaintiff's inability to conduct any discovery or elicit any testimony from Defendant negatively impacted Plaintiff s case such that Defendant did not meaningfully participate in the Arbitration proceedings resulting in bad faith participation.

There may be many valid reasons why a party would not wish to expend money at the arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point out discrepancies in a person's claim of injury without such testimony, or without presentation of countervailing medical evidence. Gittings v. Hartz, 116 Nev. 386, 392, 996 P.2d 898, 902 (2000).

Defendant did not provide any expert testimony in support of her challenge to Plaintiff's injuries and treatment. Defendant's Arbitration Brief called for the Arbitrator to make a "Common Sense Evaluation" stating that "the arbitrator is not bound by case law to award Plaintiff his entire

claimed medical specials, merely because Defendant has not retained a medical expert at this juncture of the case." (Defendant s Arbitration Brief, p. 6)

THE COURT FURTHER FINDS that standing alone, a lack of medical experts is not a sufficient basis to strike a Request for Trial de Novo, however in this matter Plaintiff received no discovery from Defendant. This left counsel's arguments in the late-filed Arbitration Brief as the only evidence regarding Plaintiff's medical treatment contained in the proceedings record. Therefore, although defense counsel argued that causation and damages were the only issues to be decided after counsel conceded liability on the last day of discovery in order to avoid Defendant's re-noticed deposition, Defendant produced no evidence during the Arbitration proceedings that provided a basis for Plaintiff to ascertain what causation and damages defenses were being presented.

THE COURT FURTHER FINDS that Defendant's failure to oppose Plaintiff's Motion for Attorney's Fees, Costs, and Interest provided further evidence to lack of meaningful participation in the Arbitration proceeding. As a result, Defendant's failure to respond to Plaintiff's interrogatories and requests for production, failure to appear for her deposition (twice), failure to present any expert testimony to support the arguments about Plaintiff s medical treatment and damages, failure to appear for the Arbitration Hearing, and failure to oppose Plaintiff's Motion for Attorney's Fees and Costs demonstrate a pattern lacking meaningful participation in the Arbitration proceeding resulting in a lack of a good faith defense of this case such that sanctions pursuant to NAR 22(A) are warranted.

THE COURT FINDS that Defendant VERONICA JAZMIN CASTILLO failed to meaningfully participate in the Arbitration proceedings and failed to defend this case in good faith; pursuant to NAR 22(A) such failure shall constitute a waiver of the right to trial de novo.

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff Armando Pons-Diaz' Motion to Strike Defendant's Request for Trial de Novo is hereby GRANTED.

DATED this _____ day of October, 2020.

Dated this 5th day of November, 2020

Kerry S Earley

DISTRICT COURT JUDGE

DEA DAE CC53 BEFC
Kerry Earley
District Court Judge

Respectfully submitted by:	Approved as to Form and Content by:
/s/: Vernon Evans	NOT SIGNED
ERIC R. BLANK, ESQ. VERNON EVANS, ESQ. **ERIC BLANK INJURY ATTORNEYS** 7860 W. Sahara Avenue, Suite 110 Las Vegas, Nevada 89117 *Attorney for Plaintiff*	TRAVIS AKIN, ESQ. **STORM LEGAL GROUP** 3057 E. Warm Springs Rd., Suite 400 Las Vegas, Nevada 89120 *Attorney for Defendant*

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Armando Pons-Diaz, Plaintiff(s)	CASE NO: A-19-789525-C
vs.	DEPT. NO. Department 4
Veronica Castillo, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 11/5/2020

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Leslie Salas	lsalas@keyinsco.com
Travis Akin	TAkin@keyinsco.com
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Electronically Filed
11/24/2020 10:06 AM
CLERK OF THE COURT

ERIC R. BLANK, ESQ. Nevada Bar No. 06910
BRIAN P. NESTOR, ESQ. Nevada Bar No. 13551
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Telephone: (702) 222-2115
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual, Plaintiff, vs. VERONICA JAZMIN CASTILLO, an individual; and DOES I through X, inclusive, Defendants.	CASE NO.: A-19-789525-C DEPT. NO.: 4

JUDGMENT ON ARBITRATION AWARD

WHEREAS this action came on for arbitration hearing on May 12, 2020, before Arbitrator F. Kelly Cawley, Esq., presiding; the issues having been duly heard; a decision and award having been rendered on June 1, 2020, and, the corresponding decision on Plaintiff's Request for Fees, Costs, and Interest having been rendered on July 14, 2020; and

WHEREAS the Court Granted Plaintiff's *Motion to Strike Defendant's Request for Trial De Novo* after duly considering Plaintiff's Motion, Defendant's Opposition thereto, and Plaintiff's Reply to Defendant's Opposition, as reflected in the Court's October 7, 2020, minute order and the related Order filed and entered November 5, 2020; and

WHEREAS the Honorable ADR Commissioner filed the *Notice to Prevailing Party That Final Judgment May Now Be Entered on Arbitration Award* on October 8, 2020:

FOR GOOD CAUSE APPEARING, the Court hereby enters Judgment on the Arbitration Award as follows:

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff, ARMANDO PONS-DIAZ, recover from the Defendant, VERONICA JAZMIN CASTILLO, the sum of $15,000.00, in addition to awarded attorney fees in the amount of $3,000.00, costs in the amount of $1,741.95, and pre-judgment interest in the amount of $949.11, for the total awarded sum of **$20,691.06,** with post-judgment interest to accrue at the rate of $3.18 per day until satisfied.

Dated this ____ Day of _____, 2020.

Dated this 24th day of November, 2020

Kerry P Earley

49A 21A C781 F45F
Kerry Earley
District Court Judge

Respectfully submitted by:

/s/: Eric R. Blank

ERIC R. BLANK, ESQ.
BRIAN P. NESTOR, ESQ.
ERIC BLANK INJURY ATTORNEYS
7860 W. Sahara Avenue, Suite 110
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Arbitrator

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual, Plaintiff, vs. VERONICA JAZMIN CASTILLO, an individual; and DOES I through X, inclusive. Defendant.	Case No. : A-19-789525-C Dept. No. : IV

ARBITRATION AWARD

TO: Eric R. Blank, Esq., Vernon Evans, Esq., ERIC BLANK INJURY ATTORNEYS, attorney for Plaintiff;

TO: Mark Anderson, Esq., Travis Akin, Esq., STORM LEGAL GROUP, attorney for Defendant.

The Arbitration Hearing in this matter was held via teleconference on May 12, 2020. Present at the Arbitration Hearing were the Plaintiff, ARMANDO PONS-DIAZ, the Plaintiff's attorney, Vernon Evans, Esq., ERIC BLANK INJURY ATTORNEYS, and the Defendant's attorney, Travis Akin, Esq., STORM LEGAL GROUP. Having considered the pre-hearing statements, the arbitration briefs, the testimony, the exhibits offered for consideration, the arguments by the parties, and based upon the evidence presented at the arbitration hearing, I hereby find in favor of the Plaintiff, ARMANDO PONS-DIAZ, and against the Defendant, VERONICA JAZMIN CASTILLO, and award the Plaintiff

damages in the amount of $15,500.00.

DATED this 1st day of June, 2020.

F. KELLY CAWLEY, ESQ.
Nevada Bar No. 002377
2620 Regatta Dr., Suite 102
Las Vegas, NV 89128
Arbitrator

NOTICE

Pursuant to N.A.R. 18(A), you are hereby notified you have thirty (30) days from the date you are served with this document within which to file a written Request for Trial de Novo with the Clerk of the Court and serve the ADR Commissioner and all other parties.

Pursuant to N.A.R. 18(D), the Trial de Novo shall proceed in accordance with the Nevada Short Trial Rules, unless a party timely files a Demand for Removal from the Short Trial Program as provided in N.S.T.R. 5.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2020, the foregoing ARBITRATION AWARD was served upon the following by electronic mail through the Eighth Judicial District Court's electronic filing and service system to the following:

Eric R. Blank, Esq., Vernon Evans, Esq.,
ERIC BLANK INJURY ATTORNEYS
Attorneys for Plaintiff

Mark Anderson, Esq., Travis Akin, Esq.,
STORM LEGAL GROUP
Attorney for Defendant

/s/ F. Kelly Cawley
F. Kelly Cawley, Esq.

LAW OFFICES OF F. KELLY CAWLEY, ESQ.
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Arbitrator

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual, Plaintiff, vs. VERONICA JAZMIN CASTILLO, an individual; and DOES I through X, inclusive. Defendant.	Case No. : A-19-789525-C Dept. No. : IV

ARBITRATOR'S DECISION ON REQUEST FOR FEES/COSTS/INTEREST

TO: Eric R. Blank, Esq., Vernon Evans, Esq., ERIC BLANK INJURY ATTORNEYS, attorney for Plaintiff;

TO: Mark Anderson, Esq., Travis Akin, Esq., STORM LEGAL GROUP, attorney for Defendant.

An Arbitration Award was served in this matter on June 1, 2020. The Plaintiff timely filed an application for attorney's fees, costs and/or interest. There was not an opposition to the application.

The undersigned finds that the analysis required under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 F.2d 31 (1969) and/or *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), was satisfied. The factors addressed by that/those case(s), prerequisite to an award of attorney's fees, was set forth in the moving points and authorities with specificity. Accordingly, an award of attorney's fees to the Plaintiff in the amount of $3,000.00, is warranted.

The undersigned finds that the Plaintiffs complied with the requirements of *Cadle v. Woods v. Erickson*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054-1055 (2015). The Plaintiff is awarded costs in

the amount of $1,741.95.

The undersigned further awards the Plaintiff pre-judgement interest in the amount of $949.11.

DATED this 14th day of July, 2020.

F. KELLY CAWLEY, ESQ.
Nevada Bar No. 002377
2620 Regatta Dr., Suite 102
Las Vegas, NV 89128
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2020, the foregoing ARBITRATOR'S DECISION ON REQUEST FOR FEES/COSTS/INTEREST was served upon the following by electronic mail through the Eighth Judicial District Court's electronic filing and service system to the following:

Eric R. Blank, Esq., Vernon Evans, Esq.,
ERIC BLANK INJURY ATTORNEYS,
Attorneys for Plaintiff

Mark Anderson, Esq., Travis Akin, Esq.,
STORM LEGAL GROUP,
Attorney for Defendant

/s/ F. Kelly Cawley
F. Kelly Cawley, Esq.

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Telephone: (702) 384-4407

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Armando Pons-Diaz, Plaintiff(s)	CASE NO: A-19-789525-C
vs.	DEPT. NO. Department 4
Veronica Castillo, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 11/24/2020

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