

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

VERONICA JAZMIN CASTILLO,

Appellant,

vs.

ARMANDO PONS-DIAZ,

Respondent.

Supreme Court Case No.: 82267

Electronically Filed  
Feb 14 2022 11:23 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Eighth Judicial District Court  
Case No. A-19-789525-C

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**RESPONDENT'S APPENDIX**

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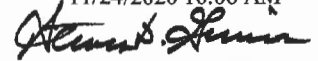
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*Attorneys for Respondent Armando Pons-Diaz*

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CLERK OF THE COURT

1 **ERIC R. BLANK, ESQ.** Nevada Bar No. 06910  
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8 *Attorneys for Plaintiff*

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

9 ARMANDO PONS-DIAZ, an individual,  
10  
11 Plaintiff,

CASE NO.: A-19-789525-C  
DEPT. NO.: 4

12 vs.

13 VERONICA JAZMIN CASTILLO, an individual;  
14 and DOES I through X, inclusive,  
15 Defendants.

**JUDGMENT ON ARBITRATION AWARD**

16  
17 **WHEREAS** this action came on for arbitration hearing on May 12, 2020, before Arbitrator F.  
18 Kelly Cawley, Esq., presiding; the issues having been duly heard; a decision and award having been  
19 rendered on June 1, 2020, and, the corresponding decision on Plaintiff's Request for Fees, Costs, and  
20 Interest having been rendered on July 14, 2020; and

21  
22 **WHEREAS** the Court Granted Plaintiff's *Motion to Strike Defendant's Request for Trial De*  
23 *Novo* after duly considering Plaintiff's Motion, Defendant's Opposition thereto, and Plaintiff's Reply  
24 to Defendant's Opposition, as reflected in the Court's October 7, 2020, minute order and the related  
25 Order filed and entered November 5, 2020; and

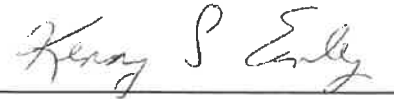
26  
27 **WHEREAS** the Honorable ADR Commissioner filed the *Notice to Prevailing Party That Final*  
28 *Judgment May Now Be Entered on Arbitration Award* on October 8, 2020:

**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



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  
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
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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 to 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

PRINT DATE: 10/07/2020

Page 1 of 5

Minutes Date: October 07, 2020

**RES001008**

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.

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.

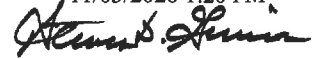
As a result, Defendant's failure to respond to Plaintiff's interrogatories and requests for production, failure to appear for her deposition (twice), failure to present any expert testimony to support the arguments about Plaintiff's medical treatment and damages, failure to appear for the Arbitration 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 7.21 and 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.



CLERK OF THE COURT

1 **ERIC R. BLANK, ESQ.** Nevada Bar No. 06910  
 2 **VERNON EVANS, ESQ.** Nevada Bar No. 14705  
 3 **ERIC BLANK INJURY ATTORNEYS**  
 4 7860 W. Sahara Avenue, Suite 110  
 5 Las Vegas, Nevada 89117  
 6 Telephone: (702) 222-2115  
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 8 *Attorneys for Plaintiff*

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

9 ARMANDO PONS-DIAZ, an individual,  
 10  
 11 Plaintiff,

12 vs.

13 VERONICA JAZMIN CASTILLO, an individual;  
 14 and DOES I through X, inclusive,  
 15 Defendants.

CASE NO.: A-19-789525-C  
 DEPT. NO.: 4

**ORDER**

**Date of Hearing:**  
**Time of Hearing:**

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

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

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

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

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

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

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

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

22 In Defendant's opposition, defense counsel concedes that he was unsuccessful in  
23 communicating with Defendant and as a result could not respond to Plaintiff's interrogatories.  
24 Defendant argues that Defendant's participation at the Arbitration Hearing was not necessary because  
25 duty and breach were conceded and the only issues that remained were causation and damages, and the  
26 Defendant has a right to a civil jury trial under the Nevada Constitution.  
27

28 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

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

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

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9 accompanied by specific written findings of fact and conclusions of law describing what type of  
10 conduct was at issue and how that conduct rose to the level of failed good faith participation.  
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12 The Nevada Supreme Court has stated that although the Nevada Constitution provides a litigant  
13 with the right to a jury trial in civil proceedings. Nev. Const. art. 1, 3, this right can be waived by  
14 various means prescribed by law. One of those means is NAR 22, which states that the district court  
15 may sanction an arbitration participant by striking a request for a trial de novo if the participant has not  
16 acted in good faith. Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 900 01 (2000).

17 The Nevada Supreme Court has equated good faith with meaningful participation in the  
18 arbitration proceedings. Gittings, 116 Nev. at 390, citing Casino Properties, Inc. v. Andrews, 112 Nev.  
19 132, 135, 911 P.2d 1181, 1182 83 (1996). However, the mere failure of a party to attend or call  
20 witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation.  
21 Id. at 392. It is the substance of the arbitration that is important in determining the good faith of the  
22 participants. Gittings v. Hartz, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000).

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

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

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

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

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

12 The original Arbitration Hearing was scheduled for March 19, 2020. Defendant's deposition  
13 had been re-set to March 4, 2020, the last day of discovery, due to Defendant's failure to appear at the  
14 first scheduled deposition based on counsel's inability to communicate with Defendant. On March 3,  
15 2020, the day before Defendant's second deposition and nearly two weeks before the Arbitration  
16 Hearing, Defense counsel's office emailed Plaintiff's counsel stating they had been unsuccessful at  
17 reaching their client (the Defendant), and therefore conceded liability and asked to cancel the  
18 deposition that day. Moreover, Defendant's Arbitration Brief stated that it was anticipated that the  
19 named Parties will testify at the arbitration hearing. (Id. at p. 7). However, Defendant did not appear at  
20 the Arbitration Hearing.  
21

22 **THE COURT FINDS** that Defense counsel's last minute concession of liability on the last  
23 day of discovery as a means to vacate the deposition of Defendant, who had already failed to respond  
24 to Plaintiff's discovery requests caused unnecessary burden and expense to Plaintiff. Plaintiff was  
25 unable to adequately conduct discovery due to Defendant's failure to respond to interrogatories and  
26 requests for production. This was exacerbated by Defendant's failure to appear for her deposition,  
27 which also caused Plaintiff to incur additional costs, and caused Plaintiff's counsel to spend  
28 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

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

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

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

18  
19 **THE COURT THEREFORE FINDS** that Plaintiff's inability to conduct any discovery or  
20 elicit any testimony from Defendant negatively impacted Plaintiff's case such that Defendant did not  
21 meaningfully participate in the Arbitration proceedings resulting in bad faith participation.

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

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

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

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

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

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

3  
4           DATED this \_\_\_\_\_ day of October, 2020.

Dated this 5th day of November, 2020



**DISTRICT COURT JUDGE**

**DEA DAE CC53 BEFC**

**Kerry Earley**

**District Court Judge**

5  
6  
7  
8  
9  
10 Respectfully submitted by:

Approved as to Form and Content by:

11  
12 /s/: Vernon Evans

NOT SIGNED

13 ERIC R. BLANK, ESQ.  
14 VERNON EVANS, ESQ.  
15 **ERIC BLANK INJURY ATTORNEYS**  
16 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*



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Armando Pons-Diaz, Plaintiff(s) CASE NO: A-19-789525-C  
7 vs. DEPT. NO. Department 4  
8 Veronica Castillo, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/5/2020

15 F. Kelly Cawley	kelly@cawleylaw.com
16 Eric Blank	service@ericblanklaw.com
17 Kristina Marzec	kmarzec@ericblanklaw.com
18 Kristin Orque	korque@purdyandanderson.com
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