

Supreme Court Case No.
District Court Case No. A-21-837504-C

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Jul 29 2022 03:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

AMANDA MARIE AVILA

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY
THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE
Respondent,

ANNA MARYKE GREY; CHRISTOPHER VIGIL; RAISER LLC dba UBER, a Foreign
Limited-Liability Company

Real Parties in Interest,

**PETITIONER'S APPENDIX TO WRIT OF PROHIBITION OR, IN THE
ALTERNATIVE, WRIT OF MANDAMUS**

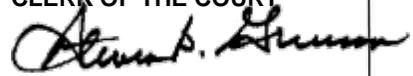
Petition from the Eighth Judicial District Court of The State of Nevada, in and for
the County of Clark, Case No. A-21-837504-C
The Honorable Adriana Escobar

McCormick, Barstow, Sheppard, Wayte & Carruth LLP
Renee M. Maxfield, Nevada Bar No. 12814
Frank A. Toddre II, Nevada Bar No. 11474
8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
Telephone: (702) 949-1100
Facsimile: (702) 949-1101

Attorneys for AMANDA MARIE AVILA

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1 **MENF**
McCormick, Barstow, Sheppard,
2 Wayte & Carruth LLP
Renee M. Maxfield
3 Nevada Bar No. 12814
renee.maxfield@mccormickbarstow.com
4 8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
5 Telephone: (702) 949-1100
Facsimile: (702) 949-1101

6 *Attorneys for Defendant Amanda Marie Avila*

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 ANNA MARYKE GREY, an Individual,
11
12 Plaintiff,

13 v.

14 AMANDA MARIE AVILA, an Individual;
CHRISTOPHER VIGIL, an Individual;
15 RAISER LLC dba UBER, a Foreign Limited-
Liability Company; DOES 1 through 20; and
16 ROE COMPANIES 1 THROUGH 40,
inclusive,

17 Defendants.

Case No.: A-21-837504-C
Dept. No.: XIV

**DEFENDANT AMANDA MARIE
AVILA'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

[HEARING REQUESTED]

18
19 COMES NOW, Defendant AMANDA MARIE AVILA, by and through her counsel of
20 record of the law firm of McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH, LLP,
21 hereby moves this Honorable Court to grant her Motion to Enforce Settlement.

22 This Motion is made and based on the papers and pleadings on file herein, the following
23 Memorandum of Points and Authorities, and such other argument to be presented at the time set for
24 hearing on this matter.

25 ///

26 ///

27 ///

28 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **INTRODUCTION**

4 This matter arises out of a motor vehicle accident that is alleged to have occurred on or about
5 January 21, 2020 between vehicles operated by Defendants Amanda Avila and Christopher Vigil,
6 who is alleged to have been acting within the course and scope of his employment with Raiser, LLC
7 d/b/a Uber. See Plaintiff's Complaint, attached hereto as **Exhibit "A."** Plaintiff Anna Maryke Grey
8 contends she was a passenger in Defendant Vigil's vehicle at the time of the accident. *Id.* Plaintiff
9 communicated his settlement demand to Defendant Avila's insurer by written correspondence dated
10 February 28, 2020, and received by Defendant's insurer on March 4, 2020. See Demand Letter,
11 attached hereto as **Exhibit "B"**; see also Declaration of Danielle McGough, attached hereto as
12 **Exhibit "C."** The demand was specifically conditioned on a response by March 30, 2020. See **Exh.**
13 **B.** Defendant Avila's insurer responded to Plaintiff's demand on March 30, 2020 at 2:29 p.m. and
14 accepted the policy limits demand. See Acceptance of Demand, attached hereto as **Exhibit "D"**;
15 see Declaration of Danielle McGough; see also Fax Confirmation, attached hereto as **Exhibit "E."**
16 Despite the timely acceptance of Plaintiff's demand, Plaintiff has now reneged on the settlement
17 reached with Defendant Avila and is now proceeding forward with this litigation even though the
18 current claim is already settled. As such, Defendant Avila has been required to file the current
19 Motion to Enforce Settlement.

20 **II.**
21 **LAW AND ARGUMENT**

22 Essentially, the issue before this Court is whether there is a binding and enforceable contract
23 in the form of a settlement agreement between the parties. Based on basic contract principles, a
24 settlement agreement was formed and Plaintiff's claim against Defendant Avila is settled. Under
25 Nevada law, basic contract principles require that for an enforceable contract to have been formed,
26 an offer must be made and acceptance of the offer is communicated, with a meeting of the minds as
27 to basic terms, and consideration. See *In re Zappos.com, Inc.*, 893 F.Supp.2d 1058 (D.Nev. 2012)
28 citing *May v. Anderson*, 121 Nev. 668 (2005). A contract is formed when the parties have agreed
to the material terms, even though the contract's exact language is not finalized until later. *May v.*

1 *Anderson*, 121 Nev. 668, 672 (2005) citing *Higbee v. Sentry Ins. Co.*, 253 F.3d 998, 998 (7th Cir.
2 2001); *see also Resnick v. Valente*, 96 Nev. 615 (1981).

3 In *May*, the Court held that the letter sent by counsel accepting a settlement offer constituted
4 a binding settlement agreement in that the “execution of a release document was not necessary to
5 enforce an otherwise valid settlement agreement.” *Id.* The Nevada Supreme Court upheld the
6 District Court’s ruling and held that the parties agreed upon the essential terms of the release, i.e.,
7 all claims. *Id.* at 674. Thus, a party cannot back out their required performance under the terms of
8 an agreement by simply refusing to sign a finalized agreement when the parties already had a
9 “meeting of the minds” as to the agreement’s material terms. *Id.* at 668.

10 Nevada law specifically acknowledges the power of parties’ attorneys to resolve litigation
11 through a settlement agreement. EDCR 7.50 states,

12 No agreement or stipulation between the parties or their attorneys will
13 be effective unless the same shall, by consent, be entered in the
14 minutes in the form of an order, or unless the same is in writing
subscribed by the party against whom the same shall be alleged, or by
the party’s attorney.

15 The failure to complete formal settlement papers does not indicate that a settlement
16 agreement was not in fact reached. *Id.*; *see also, Sadigi v. Daghighfekr*, 66 F.Supp.2d 752, 763
17 (D.S.C. 1999) citing *U.S. v. Centex-Simpson Constr. Co.*, 34 F.Supp.2d 397, 400 (N.D. W.Va.
18 1999). Indeed, although a written agreement was reached in this case, the agreement need not even
19 be in writing. *Nolte v. Southern Cal. Home Bldg. Co.*, 28 Cal.App.2d 532, 535, 82 P.2d 946 (1938).
20 At least one Court has explained:

21 It may be conceded that where the minds of the parties have met
22 respecting the terms and conditions of the more formal writing that is
23 to be executed by them, and the agreed terms of the contract thereafter
24 to be executed are certain in all respects definitely understood and
agreed upon in advance, either orally or by informal writing, there is
in such a case an obligatory contract dating from the making of the
earlier agreement.

25 *Fly v. Cline*, 49 Cal. App. 414, 425, 193 Pac. 615 (1920).

26 Moreover, a settlement agreement is not invalid because details are not worked out when
27 those details are not essential to the proposal and do not change its terms or purpose. *See Assoc.*
28 *Fin. Serv. Co. of Hawaii, Inc. v. Mijo*, 950 P.2d 1219, 1232 (Haw. 1998). “[A]n intent to

1 memorialize a contract in a subsequent writing will not prevent a reviewing court from finding an
2 enforceable contract so long as the parties intended to be bound by the earlier documents.” *Sadighi*,
3 66 F.Supp.2d at 763 citing *Rennick v. O.P.T.I.O.N. Care, Inc.*, 77 F.3d 309, 313 (9th Cir. 1996); *see*
4 *also Dominguez Estates Co. v. Los Angeles Turf Club, Inc.*, 259 P.2d 962 (Cal. Ct. App. 1953)
5 (concluding that an oral settlement agreement was not invalid by the fact that a written agreement
6 embodying the terms of the oral agreement was contemplated but was not signed by the defendant
7 and a third-party). The purpose of EDCR 7.50 is to provide the court with “an efficient method for
8 determining genuine settlements and enforcing them.” *Resnick, supra* at 615.

9 Under *May*, and the other case as cited above, it is clear that a binding and enforceable
10 Settlement Agreement was reached in this case between Plaintiff and Defendant Avila. Here,
11 Plaintiff made an offer for Defendant’s entire policy limit to Defendant and Defendant accepted that
12 offer through her insurance carrier. The basic terms of the settlement – payment of the policy limit
13 in exchange for resolution of claims asserted, or to be asserted, against Defendant Avila – was agreed
14 to by both parties. This is evidenced by the correspondence between Defendant Avila’s insurer
15 clearly communicating her acceptance of Plaintiff’s offer. *See Exh. D*. The consideration is clearly
16 represented as payment in exchange for a release.

17 Plaintiff has now attempted to repudiate the agreement by contending Defendant did not
18 timely communicate her acceptance; however, this position is not supported by the fax confirmation
19 and letter sent in compliance with Plaintiff’s arbitrary deadline on March 30, 2020. The attempted
20 rejection of the settlement is a breach of the settlement agreement that was formed between Plaintiff
21 and Defendant Avila to resolve this claim. Under the relevant authority in the State of Nevada, this
22 case is settled with respect to the claims against Ms. Avila. Under the terms of that settlement,
23 Plaintiff is prohibited from filing the current case against Ms. Avila and, as such, is prohibited from
24 making the claims in her Complaint against Ms. Avila.

25 In sum, this Motion requires a simple analysis: offer, acceptance, and consideration. Plaintiff
26 made an offer to Defendant Avila in the amount of \$25,000, which was accepted by Defendant
27 Avila. Plaintiff’s initiation of litigation against Defendant Avila is in direct breach of the this
28

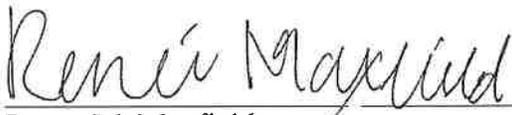
1 settlement agreement. Plaintiff's breach of the agreement is unenforceable as a settlement
2 agreement was clearly formed and is now enforceable against Plaintiff.

3
4 **III.**
CONCLUSION

5 Based on the foregoing, Defendant AMANDA MARIE AVILA respectfully requests that
6 this Honorable Court grant the instant Motion to Enforce Settlement

7 DATED this 9th day of August, 2021

8 McCORMICK, BARSTOW, SHEPPARD,
9 WAYTE & CARRUTH LLP

10 By  _____

11 Renee M. Maxfield
12 Nevada Bar No. 12814
13 8337 West Sunset Road, Suite 350
14 Las Vegas, Nevada 89113
15 Tel. (702) 949-1100

16 *Attorneys for Defendant Amanda Marie Avila*

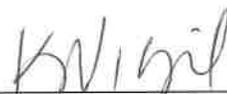
1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 9th day of August, 2021, a true and correct copy
3 of **DEFENDANT AMANDA MARIE AVILA'S MOTION TO ENFORCE SETTLEMENT**
4 **AGREEMENT** was served by electronically filing with the Clerk of the Court using the Odyssey
5 E-File & Serve system and serving all parties with an email-address on record, who have agreed to
6 receive electronic service in this action.

7 Tracy A. Eglet, Esq.
8 Robert M. Adams, Esq.
9 Jordan Eglet, Esq.
10 EGLET ADAMS
11 400 South 7th Street, Suite 400
12 Las Vegas, Nevada 89101
13 *Attorneys for Plaintiff*

Analise N. M. Tilton, Esq.
Xheni Ristani, Esq.
WOOD, SMITH, HENNING & BERMAN, LLP
2881 Business Park Court, Suite 200
Las Vegas, Nevada 89128
Attorneys for Defendant Rasier, LLC d/b/a Uber

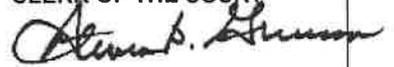
11 Jared G. Christensen, Esq.
12 Kristina Miletovic, Esq.
13 BREMER WHYTE BROWN &
14 O'MEARA LLP
15 1160 N. Town Center Drive, Suite 250
16 Las Vegas, Nevada 89144
17 *Attorneys for Defendant Christopher Vigil*

18 By 
19 Kathy L. Vigil, an Employee of
20 McCORMICK, BARSTOW, SHEPPARD,
21 WAYTE & CARRUTH LLP

22 7806903.1

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CASE NO: A-21-837504-C
Department 14

1 **COMJD**
2 **TRACY A. EGLET, ESQ.**
Nevada Bar No. 6419
3 **ROBERT M. ADAMS, ESQ.**
Nevada Bar No. 6551
4 **JORDAN EGLET, ESQ.**
Nevada Bar No. 15542
5 **EGLET ADAMS**
6 400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
7 Telephone: (702) 450-5400
8 Facsimile: (702) 450-5451
Email: eservice@egletwall.com
9 *Attorneys for Plaintiff*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

13 ANNA MARYKE GREY, an Individual,

14 Plaintiff,

15 vs.

16 AMANDA MARIE AVILA, an Individual;
17 CHRISTOPHER VIGIL, an Individual;
18 RAISER LLC dba UBER, a Foreign Limited-
19 Liability Company; DOES 1 through 20; and
20 ROE COMPANIES 1 THROUGH 40,
inclusive,

21 Defendants.

Case No.:

Dept. No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

**Arbitration Exemption Requested:
Damages Exceed \$50,000.00**

22 Plaintiff, ANNA MARYKE GREY, and by and through her attorneys, TRACY A. EGLET,
23 ESQ., ROBERT M. ADAMS, ESQ., and JORDAN A. EGLET, ESQ. of **EGLET ADAMS**,
24 hereby demands a trial by jury and complains and alleges against Defendants as follows:

25 **I.**

26 **PARTIES AND JURISDICTION**

27 1. That all incidents described herein occurred in the County of Clark, State of
28 Nevada.

EGLET ADAMS 

1 2. That upon information and belief, Defendant AMANDA MARIE AVILA is, and
2 at all times pertinent hereto was, a resident of the State of Nevada.

3 3. That upon information and belief, Defendant CHRISTOPHER VIGIL is, and at all
4 times pertinent hereto was, a resident of the State of Nevada.

5 4. That Plaintiff ANNA MARYKE GREY, is and at all times pertinent hereto was,
6 domiciled in the State of Nevada.

7 5. That upon information and belief, Defendant RAISER LLC dba UBER, is, and at
8 all times pertinent hereto was, a foreign limited liability company authorized to do, and doing
9 business in the County of Clark, State of Nevada.

10 6. That at all pertinent times hereto, Defendant CHRISTOPHER VIGIL, was an
11 employee and/or representative and/or agent of Defendant RASIER LLC dba UBER, and ROE
12 COMPANIES 1 through 40.

13 7. That at all pertinent times hereto, Defendant CHRISTOPHER VIGIL, was acting
14 within the course and scope of his employment with Defendant RASIER LLC dba UBER, and
15 ROE COMPANIES 1 through 40.

16 8. That pursuant to NRS 41.130, Defendants, including but not limited to RASIER
17 LLC dba UBER, are vicariously liable for the damages caused by their employee's actions and
18 negligence.

19 9. That Defendants named as ROE COMPANIES 1 through 40 are business entities,
20 corporations and/or limited liability companies affiliated with RAISER LLC dba UBER, who is
21 the employer(s) of CHRISTOPHER VIGIL. That the true names and capacities, of ROE
22 COMPANIES 1 through 40 are unknown to Plaintiff at this time who therefore sue said
23 Defendants by fictitious names.

24 10. That Plaintiff is informed and believes and thereon alleges that at all times
25 mentioned herein, Defendant RAISER LLC dba UBER, and ROE COMPANIES 1 through 40,
26 was acting as principal and was negligent in the selection, hiring and/or training of Defendant
27 CHRISTOPHER VIGIL, or ratifies the conduct of Defendant CHRISTOPHER VIGIL, as an
28 agent, servant, employee, employer or joint venturer.

1 AVILA failed to lower her speed at the intersection.

2 19. That Defendant AMANDA MARIE AVILA failed to stop at the stop sign at the
3 intersection of John Herbert Boulevard and Centennial Parkway in her Honda Civic vehicle
4 traveling west on Centennial Boulevard and collided with Defendant CHRISTOPHER VIGIL's
5 Ford Focus vehicle.

6 20. That Defendant AMANDA MARIE AVILA was charged with a felony driving
7 under the influence at the scene of the collision.

8 21. That Plaintiff ANNA MARYKE GREY was a fault-free passenger.

9 22. That as a direct and proximate result of the negligence of Defendants, and each of
10 them, Plaintiff ANNA MARYKE GREY sustained personal injuries, some of which conditions
11 may be permanent and disabling, and all to Plaintiff's damage in a sum of Fifteen Thousand
12 Dollars (\$15,000.00).

13 23. That a direct and proximate result of the negligence of Defendants, and each of
14 them, Plaintiff ANNA MARYKE GREY, received medical and other treatment for the
15 aforementioned injuries, and that said services, care, and treatment is continuing and shall continue
16 in the future, all to Plaintiff's damage.

17 24. That as a direct and proximate result of the negligence of Defendants, each of them,
18 Plaintiff ANNA MARYKE GREY, is entitled to recover damages for pain, suffering, anxiety,
19 disability, emotional distress, physical injuries and medical treatment, both past and future, all of
20 which are damages recoverable by her, in an amount in excess of Fifteen Thousand Dollars
21 (\$15,000.00).

22 25. That as a direct and proximate result of the negligence of Defendants, and each of
23 them Plaintiff ANNA MARYKE GREY, suffered a loss of enjoyment of life, all of which are
24 damages recoverable by Plaintiff, in an amount in excess of Fifteen Thousand Dollars
25 (\$15,000.00).

26 26. That as a direct and proximate result of the negligence of Defendants, and each of
27 them, Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused
28 and shall continue to cause her physical impairment, mental anguish, and loss of enjoyment of life,

1 in a presently unascertainable amount.

2 27. That as a direct and proximate result of the aforementioned negligence of
3 Defendants, and each of them, Plaintiff ANNA MARYKE GREY, has suffered a loss of past and
4 future household services in an amount to be proven at trial.

5 28. That as a direct and proximate result of the aforementioned negligence of
6 Defendants, and each of them, Plaintiff has been required to engage the services of an attorney,
7 incurring attorney's fees and costs to bring this action.

8 **III.**

9 **FIRST CLAIM FOR RELIEF**

10 **(Negligence Against All Defendants)**

11 29. That Plaintiff ANNA MARYKE GREY repeats and re-alleges the allegations of
12 the preceding paragraphs of the complaint as though fully set forth herein and incorporates the
13 same herein by reference.

14 30. That Defendants, and each of them, owed a duty of care to Plaintiff ANNA
15 MARYKE GREY, to operate their vehicles in a reasonable and safe manner.

16 31. That Defendants, and each of them, breached that duty of care by causing the
17 Honda Civic vehicle and Ford Focus vehicle to collide.

18 32. That Defendants, and each of them, are joint and severally liable to Plaintiff ANNA
19 MARYKE GREY, for causing the vehicle collision.

20 33. That as a direct and proximate result of the negligence of Defendants, and each of
21 them, a traffic collision occurred and Plaintiff ANNA MARYKE GREY, sustained personal
22 injuries, all or some of which conditions may be permanent and disabling, and all to her damages
23 in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

24 34. That as a direct and proximate result of the negligence of Defendants, and each of
25 them, Plaintiff ANNA MARYKE GREY, received medical and other treatment for the
26 aforementioned injuries, and that said services, care, and treatment is continuing and shall continue
27 in the future, all to Plaintiff's damage.

28

1 35. That as a direct and proximate result of the negligence of Defendants, and each of
 2 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
 3 anxiety, disability, emotional distress, physical injuries and medical treatment, both past and
 4 future, all of which are damages recoverable by her, in an amount in excess of Fifteen Thousand
 5 Dollars (\$15,000.00).

6 36. That as a direct and proximate result of the negligence of Defendants, and each of
 7 them, Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused
 8 and shall continue to cause her physical impairment, mental anguish, and loss of enjoyment of life,
 9 in a presently unascertainable amount.

10 37. That as a further direct and proximate result, Plaintiff ANNA MARYKE GREY,
 11 has suffered a loss of past and future household services in an amount to be proven at trial.

12 38. That as a direct and proximate result of the aforementioned negligence of
 13 Defendants, and each of them, Plaintiff ANNA MARYKE GREY has been required to engage the
 14 services of an attorney, incurring attorney’s fees and costs to bring this action.

IV.

SECOND CLAIM FOR RELIEF

**(Negligence *Per Se* Against Defendant CHRISTOPHER VIGIL For Violating NRS
 484B.253 and AMANDA AVILA For Violating NRS 484B.257 and NRS 484C.110)**

19 39. That Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of
 20 the complaint as though fully set forth herein, and incorporates the same herein by reference.

21 40. That at all times mentioned herein, there were in force statutes, ordinances, and
 22 regulations prohibiting the conduct exhibited by Defendants CHRISTOPHER VIGIL and
 23 AMANDA MARIE AVILA.

24 41. That Plaintiff ANNA MARYKE GREY, was a member of the class of persons for
 25 whose protection said statutes, ordinances, and regulations were enacted or promulgated.

26 42. That the acts of Defendant CHRISTOPHER VIGIL, as described herein, violated
 27 Nevada statutes, ordinances and regulations, specifically, NRS 484.253, et. seq., which constitutes
 28 negligence *per se*.

1 43. That the acts of Defendant AMANDA AVILA, as described herein, violated
2 Nevada statutes, ordinances and regulations, specifically, NRS 484B.257, et. seq., and NRS
3 484C.110, et. seq., which constitutes negligence *per se*.

4 44. That Defendants, and each of them, is liable for the damages sustained by Plaintiff
5 ANNA MARYKE GREY.

6 45. That Plaintiff ANNA MARYKE GREY, sustained injuries that were the type that
7 said statutes, ordinances, and regulations were intended to prevent.

8 46. That as a direct and proximate result of the acts of Defendants, and each of them,
9 Plaintiff ANNA MARYKE GREY, sustained personal injuries, all or some of which conditions
10 may be permanent and disabling, and all to her damages in a sum in excess of Fifteen Thousand
11 Dollars (\$15,000.00).

12 47. That as a direct and proximate result of the acts of Defendants, and each of them,
13 Plaintiff ANNA MARYKE GREY, received medical and other treatment for the aforementioned
14 injuries, and that said services, care, and treatment is continuing and shall continue in the future,
15 all to Plaintiffs damage.

16 48. That as a direct and proximate result of the negligence of Defendants, and each of
17 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
18 anxiety, disability, emotional distress, physical injuries and medical treatment, both past and
19 future, all of which are damages recoverable by her, in an amount in excess of Fifteen Thousand
20 Dollars (\$15,000.00).

21 49. That as a direct and proximate result of the acts of Defendants, and each of them,
22 Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused and shall
23 continue to cause her physical impairment, mental anguish, and loss of enjoyment of life, in a
24 presently unascertainable amount.

25 50. That as a further direct and proximate result of the aforementioned acts of
26 Defendants, and each of them, Plaintiff ANNA MARYKE GREY, has suffered a loss of past and
27 future household services in an amount to be proven at trial.

28 51. That as a direct and proximate result of the aforementioned acts of Defendants, and

1 each of them, Plaintiff has been required to engage the services of an attorney, incurring attorney's
2 fees and costs to bring this action.

3 V.

4 **THIRD CLAIM FOR RELIEF**

5 **(Negligent Entrustment of Vehicle Against Defendant RAISER LLC dba UBER)**

6 52. That Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of
7 the complaint as though fully set forth herein, and incorporates the same herein by reference.

8 53. That Defendants, and each of them, owed a duty of care to Plaintiff ANNA
9 MARYKE GREY.

10 54. That Defendant RAISER LLC dba UBER, knew or should have known that
11 Defendant CHRISTOPHER VIGIL, was inexperienced, incompetent, and/or unfit to drive the
12 subject FORD FOCUS vehicle.

13 55. That Defendants, and each of them, breached that duty to Plaintiff ANNA
14 MARYKE GREY, by knowingly entrusting a Ford Focus vehicle to an inexperienced,
15 incompetent, and/or unfit person.

16 56. That as a direct and proximate result of the acts of Defendants, and each of them, a
17 traffic collision occurred and Plaintiff ANNA MARYKE GREY, sustained personal injuries, all
18 or some of which conditions may be permanent and disabling, and all to her damages in a sum in
19 excess of Fifteen Thousand Dollars (\$15,000.00).

20 57. That as a direct and proximate result of the acts of Defendants, and each of them,
21 Plaintiff ANNA MARYKE GREY, received medical and other treatment for the aforementioned
22 injuries, and that said services, care, and treatment is continuing and shall continue in the future,
23 all to her damage.

24 58. That as a direct and proximate result of the negligence of Defendants, and each of
25 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
26 anxiety, disability, emotional distress, physical injuries and medical treatment, both past and
27 future, all of which are damages recoverable by Plaintiff ANNA MARYKE GREY, in an amount
28 in excess of Fifteen Thousand Dollars (\$15,000.00).

1 all or some of which conditions may be permanent and disabling, and all to Plaintiff ANNA
2 MARYKE GREY damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

3 66. That as a direct and proximate result of the acts of Defendants, and each of them,
4 Plaintiff ANNA MARYKE GREY, received medical and other treatment for the aforementioned
5 injuries, and that said services, care, and treatment is continuing and shall continue in the future,
6 all to Plaintiff ANNA MARYKE GREY damage.

7 67. That as a direct and proximate result of the negligence of Defendants, and each of
8 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
9 anxiety, disability, emotional distress, physical injuries and medical treatment, both past and
10 future, all of which are damages recoverable by Plaintiff ANNA MARYKE GREY, in an amount
11 in excess of Fifteen Thousand Dollars (\$15,000.00).

12 68. That as a direct and proximate result of the acts of Defendants, and each of them,
13 Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused and
14 shall continue to cause her physical impairment, mental anguish, and loss of enjoyment of life,
15 in a presently unascertainable amount.

16 69. That as a further direct and proximate result of the aforementioned acts of
17 Defendants, and each of them, Plaintiff ANNA MARYKE GREY, has suffered a loss of past and
18 future household services in an amount to be proven at trial.

19 70. That as a direct and proximate result of the aforementioned acts of Defendants,
20 and each of them, Plaintiff ANNA MARYKE GREY has been required to engage the services of
21 an attorney, incurring attorney's fees and costs to bring this action.

22 **VII.**

23 **FIFTH CAUSE OF ACTION**

24 **(Vicarious Liability/Respondeat Superior Against Defendant RAISER LLC dba UBER)**

25 71. Plaintiff repeats and re-allege the allegations of the preceding paragraphs of the
26 Complaint as though fully set forth herein and incorporates the same herein by reference.

27 72. That at all times mentioned herein, Defendant CHRISTOPHER VIGIL was an
28 employee and/or agent and/or contractor of Defendant RAISER LLC dba UBER.

1 73. That upon information and belief, at the time of the Collision, Defendant
2 CHRISTOPHER VIGIL was acting within the course and scope of his employment with
3 Defendant RAISER LLC dba UBER while driving.

4 74. That upon information and belief, at the time of the Collision, Defendant
5 CHRISTOPHER VIGIL was on a business errand on behalf of Defendant RAISER LLC dba
6 UBER or furthering a business purpose of Defendant RAISER LLC dba UBER.

7 75. That upon information and belief, Defendant CHRISTOPHER VIGIL was under
8 Defendant RAISER LLC dba UBER's control at the time of the collision.

9 76. That upon information and belief, the relationship between Defendant RAISER
10 LLC dba UBER and Defendant CHRISTOPHER VIGIL is that of superior and subordinate.

11 77. That as Defendant CHRISTOPHER VIGIL's employer, Defendant RAISER LLC
12 dba UBER is vicariously liable for all of Defendant CHRISTOPHER VIGIL's actions, omissions
13 and inactions performed within the course and scope of his agency, ostensible agency, joint
14 venture, contractual or employment relationship with Defendant RAISER LLC dba UBER.

15 78. That as a direct and proximate result of the acts of Defendants, and each of them,
16 Plaintiff ANNA MARYKE GREY, is entitled to a judgment against Defendant RAISER LLC
17 dba UBER stating that it is vicariously liable for all of Defendant CHRISTOPHER VIGIL's
18 actions herein.

19 79. That as a direct and proximate result of the acts of Defendants, and each of them, a
20 collision occurred and Plaintiff ANNA MARYKE GREY, sustained personal injuries, all or some
21 of which conditions may be permanent and disabling, and all to Plaintiff ANNA MARYKE GREY
22 damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

23 80. That as a direct and proximate result of the acts of Defendants, and each of them,
24 Plaintiff ANNA MARYKE GREY received medical and other treatment for the aforementioned
25 injuries, and that said services, care, and treatment is continuing and shall continue in the future,
26 all to Plaintiff ANNA MARYKE GREY damage.

27 81. That as a direct and proximate result of the negligence of Defendants, and each of
28 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,

1 anxiety, disability, emotional distress, physical injuries and medical treatment, both past and
2 future, all of which are damages recoverable by Plaintiff ANNA MARYKE GREY, in an amount
3 in excess of Fifteen Thousand Dollars (\$15,000.00).

4 82. That as a direct and proximate result of the negligence of Defendants, and each of
5 them, Plaintiff ANNA MARYKE GREY suffered a loss of enjoyment of life, all of which are
6 damages recoverable by Plaintiff ANNA MARYKE GREY, an amount in excess of Fifteen
7 Thousand Dollars (\$15,000.00).

8 83. That as a direct and proximate result of the acts of Defendants, and each of them,
9 Plaintiff ANNA MARYKE GREY has limited recreational activities, which have caused and shall
10 continue to cause them physical impairment, mental anguish, and loss of enjoyment of life, in a
11 presently unascertainable amount.

12 84. That as a further direct and proximate result of the aforementioned acts of
13 Defendants, and each of them, Plaintiff ANNA MARYKE GREY has suffered a loss of past and
14 future household services in an amount to be proven at trial.

15 85. That as a direct and proximate result of the aforementioned acts of Defendants, and
16 each of them, Plaintiff ANNA MARYKE GREY has been required to engage the services of an
17 attorney, incurring attorney's fees and costs to bring this action.

18 **VIII.**

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
21 follows:

- 22 1. General damages in an amount in excess of \$15,000.00;
- 23 2. Compensatory damages in an amount in excess of \$15,000.00;
- 24 3. Special damages in an amount in excess of \$15,000.00;
- 25 4. Medical and incidental expenses incurred and to be incurred;
- 26 5. For punitive damages in an amount to be determined at trial;
- 27 6. Damages for past and future pain, suffering, mental anguish, and loss of enjoyment
28 of life;

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- 7. Damages for a loss of past and future household services;
- 8. Costs of suit, reasonable attorney fees, interest incurred herein; and
- 9. For such other and further relief as is just and proper.

DATED this 7TH day of July, 2021.

EGLET ADAMS

/s/Tracy A. Eglet
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
JORDAN EGLET, ESQ.
Nevada Bar No. 15542
400 South Seventh Street, Suite 400
Las Vegas, NV 89101
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff, by and through her attorney of record, EGLET ADAMS, hereby demands a jury trial of all of the issues in the above matter.

DATED this 7th day of July, 2021.

EGLET ADAMS

/s/Tracy A. Eglet

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

JORDAN EGLET, ESQ.

Nevada Bar No. 15542

400 South Seventh Street, Suite 400

Las Vegas, NV 89101

Attorneys for Plaintiff

B

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CERTIFIED MAIL /

February 28, 2020

AAA
Nicole Phillips
PO Box 24523
Oakland, CA 94623

TIME LIMIT, POLICY LIMIT DEMAND
VIA CERTIFIED MAIL
7018183000024088624

Re: Your Insured: Avila, Amanda Marie
Claim No.: 1003-65-8003
Our Client: Anna Grey
Our Case No.: 20-000031
Date of Loss: January 21, 2020

Dear Ms. Phillips:

As we discussed, our client was seriously injured by the extremely negligent behavior of your insured Amanda Avila. You have informed us that due to the nature of our client's injuries there are potential limits issue. Therefore, we are submitting our clients claim and request for policy limits prior to obtaining all the medical records. Please accept this correspondence as a demand for your insured's policy limits which includes any and all applicable policies.

LIABILITY

Our client was a passenger in an Uber vehicle when it was struck by your insured who ran a stop sign. Your insured was subsequently arrested and charged with Felony DUI resulting in substantial bodily harm.

INJURIES

Multiple fractures of the cervical spine

Fracture of the thoracic vertebral body

Subarachnoid hemorrhage

Fracture of the right rib

Lacerations to the scalp requiring stitches

Various contusions

MEDICAL SPECIALS

Enclosed please find the partial records documenting our client's injuries and 5 day stay at UMC.

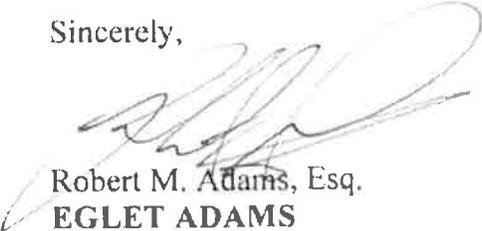
DEMAND

Our client is now willing to accept Ms. Avila's policy limits which includes any and all policies. We are also requesting that your insured complete and sign the enclosed confidential affidavit regarding insurance and assets. This includes AAA providing documentation on the limits of all policies related to this loss.

You now have the opportunity to settle in the amount of your insured's policy limits. If settlement is not achieved within thirty days from the date of this letter, my client will seek full compensation from your client regardless of the limits of liability coverage. This demand must be accepted in writing by 5:00 p.m., March 30, 2020 or this offer is withdrawn.

Please contact me or my assistant Thomas Rossnagel to resolve this matter.

Sincerely,



Robert M. Adams, Esq.
EGLET ADAMS

RMA:tr

Enclosure: Affidavit

C

C

1 **DECLARATION OF DANIELLE McGOUGH**

2 I, Danielle McGough, declare as follows:

3 1. I am over 18 years of age, I am a manager for CSAA, and I have personal knowledge
4 of the matter I testify about herein.

5 2. If called as a witness, I would and could competently testify to all facts stated herein
6 from my personal knowledge except where stated upon information and belief and, as to these matters,
7 I am informed and believe them to be true. I am submitting this Declaration in support of Defendant's
8 Motion to Enforce Settlement.

9 3. On March 4, 2020, CSAA received a policy limits demand from Plaintiff's counsel,
10 Eglet Adams, which was dated February 28, 2020. Plaintiff's demand requested acceptance in writing
11 by 5:00 p.m. on March 30, 2020.

12 4. On March 30, 2020 at 2:28 p.m., claims adjuster, Nicole Phillips, drafted a letter to
13 Eglet Adams accepting Anna Grey's policy limits demand. The acceptance letter was sent via
14 facsimile to counsel at (702) 450-5451 on March 30, 2020 at 2:29 p.m.

15 5. CSAA's system defaults to dating mailed correspondence the next day to be mailed by
16 the mailing center. If correspondence is to be emailed or faxed, the adjuster has to manually change
17 the date to the reflect the date of service; otherwise, per CSAA's computer system, the letter will
18 default to the next day.

19 6. Due to an inadvertent error, the claim adjuster mistakenly forgot to manually change
20 the date of the acceptance letter to the date of actual service, March 30, 2020, although the letter was
21 sent to counsel via facsimile the same day, March 30, 2020.

22 7. That, to my knowledge, there was no equipment malfunction or error in CSAA's
23 facsimile machine that delayed sending the March 30, 2020 correspondence, which was sent via fax
24 on March 30, 2020 at 2:29 p.m. based on the system-generated date and time stamped facsimile
25 confirmation.

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1 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
2 true and correct and that this Declaration was executed by me on August 9, 2021, at Las Vegas,
3 Nevada.

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6 Danielle McGough
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P.O. Box 24523
Oakland, CA 94623-1523
Phone 888.335.2722
Fax 877.548.1610

March 31, 2020

EGLET LAW GROUP
400 S 7TH ST
STE 400
LAS VEGAS, NV 89101-6941

Re: Insured: BLANCA AVILA
Claim No.: 1003-65-8003
Date of Loss: January 21, 2020
Your Client: Anna Grey

Dear Eglet Law Group:

Enclosed is our Release for your bodily injury claim prepared in the amount of our insureds limits of \$25,000.00 which is the agreed settlement for the above referenced matter.

Please have your client sign the release in the presence of a notary and have the signature notarized. Once we receive the properly executed release and well as the final hospital lien, we will promptly forward payment, made payable to you and your client, directly to you.

Thank you for your cooperation. Should you have any questions about your client's claim, or if we can assist you in completing the enclosed forms, please let me know.

Sincerely,

Nicole Phillips

Nicole Phillips
Claims Representative
Phone: 702-790-5344

Enclosures

E

E

Claim: 1003-65-8003

Pol: NVSS211615757Ins: BLANCA AVILADoL: 01/21/2020Adj: Paul Stevens (West /Midwest LIT-Stubblefield)

Type	Related To	User	Event Time Stamp	Event Time Stamp in User's Time Zone	Description	Link
Document	(4) 3rd PartyBodil Injury - Anna Grey	System User	03/30/2020 2:29 PM	03/30/2020 2:29 PM	Document : Release of Claim Cover Letter - Sent in regards to Medical Payments and Independent	

User: Deyla Swanson

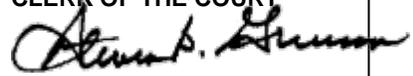
Page 4

Aug 6, 2021 2:07 PM

Claim: 1003-65-8003

Pol: NVSS211615757Ins: BLANCA AVILADoL: 01/21/2020Adj: Paul Stevens (West /Midwest LIT-Stubblefield)

Type	Related To	User	Event Time Stamp	Event Time Stamp in User's Time Zone	Description	Link
					Medical Examinations; Sent Via : Fax To: 702-450-5451	



1 **OPPS**
2 ROBERT T. EGLET, ESQ.
3 Nevada Bar No. 3402
4 TRACY A. EGLET, ESQ.
5 Nevada Bar No. 6419
6 DANIELLE C. MILLER, ESQ.
7 Nevada Bar No. 9127
8 **EGLET ADAMS**
9 400 South Seventh Street, Suite 400
10 Las Vegas, Nevada 89101
11 Telephone: (702) 450-5400
12 Facsimile: (702) 450-5451
13 Email: eservice@egletwall.com
14 Attorneys for Plaintiff

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 ANNA MARYKE GREY, an Individual,
18
19 Plaintiff,
20
21 vs.
22 AMANDA MARIE AVILA, an Individual;
23 CHRISTOPHER VIGIL, an Individual;
24 RAISER LLC dba UBER, a Foreign Limited-
25 Liability Company; DOES 1 through 20; and
26 ROE COMPANIES 1 THROUGH 40,
27 inclusive,
28 Defendants.

CASE NO.: A-21-837504-C
DEPT. NO.: XIV

PLAINTIFF'S OPPOSITION TO
DEFENDANT AMANDA MARIE
AVILA'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT

Date of Hearing: October 19, 2021
Time of Hearing: 10:00 a.m.

29 COMES NOW Plaintiff, ANNA MARYKE GREY, and by and through her attorneys of
30 record, Robert T. Eglet, Esq., Tracy A. Eglet, Esq., and Danielle C. Miller, Esq. of the law firm of
31 EGLET ADAMS, and hereby submits *Plaintiff's Opposition To Defendant Amanda Marie Avila's*
32 *Motion To Enforce Settlement Agreement.*

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The Opposition is based on the following points and authorities as well as any other argument heard at the time of the hearing on this matter.

Dated this 23rd day of August, 2021.

EGLET ADAMS

/s/ Danielle C. Miller, Esq.
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE C. MILLER, ESQ.
Nevada Bar No. 9127
400 South 7th Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

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**DECLARATION OF DANIELLE C. MILLER, ESQ. IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT AMANDA MARIE AVILA'S MOTION TO
ENFORCE SETTLEMENT AGREEMENT**

STATE OF NEVADA)
)
COUNTY OF CLARK) SS:

I, DANIELLE C. MILLER, ESQ., declare under penalty of perjury that the foregoing is true and correct:

1. Declarant is over the age of eighteen (18), a citizen of the United States of America, an attorney licensed to practice law in the State of Nevada, and an Associate with the law firm of EGLET ADAMS, counsel for Plaintiff in this matter. Therefore, I have personal knowledge of the following and if called as a witness I could, and would, competently testify as follows:

2. That attached hereto as *Exhibit 1* is a true and correct copy of Plaintiff's Time Limit-Policy Limit Demand, dated February 28, 2020.

3. That attached hereto as *Exhibit 2* is a true and correct copy of Correspondence from Nicole Phillips, Claims Representative at AAA Insurance, dated March 31, 2020.

4. That attached hereto as *Exhibit 3* is a true and correct copy of Correspondence from Nicole Phillips, Claims Representative at AAA Insurance, dated April 21, 2020.

I declare under penalty of perjury, pursuant to NRS 53.045, that the foregoing is true and correct.

Executed this 23rd day of August, 2021 in Las Vegas, Nevada.

/s/ Danielle C. Miller, Esq.
DANIELLE C. MILLER, ESQ.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendant Amanda Maria Avila (“Avila”) has filed a Motion to Enforce Settlement Agreement (“Motion to Enforce”) asserting that there is a binding and enforceable settlement agreement between Plaintiff and Avila, and that Plaintiff is in breach of the settlement agreement by filing the foregoing lawsuit. In support of Avila’s argument, Avila contends that there was an offer, acceptance, and consideration, therefore, the parties have a binding and enforceable settlement agreement.

Avila’s argument fails for several reasons. First, Avila failed to timely accept Plaintiff’s offer, thereby terminating Avila’s power of acceptance. Second, even if Avila had timely accepted, there was no meeting of the minds as Plaintiff attached material conditions to the offer that Avila failed to accept. Third, in response to Plaintiff’s offer, Avila made a counteroffer and in so doing, Plaintiff’s offer was no longer open to acceptance. Nevada case law is clear that a valid contract *cannot* exist when material terms are lacking or are insufficiently certain and definite. Because there was no meeting of the minds as the parties had not agreed to the material terms of the settlement agreement, no contract was formed. Accordingly, Plaintiff respectfully requests that the Court deny Avila’s Motion to Enforce.

II.

FACTUAL AND PROCEDURAL BACKGROUND

On January 21, 2020, Plaintiff was a passenger in Defendant Christopher Vigil’s (“Vigil”) Ford Focus. *See* Plaintiff’s Complaint, dated July 7, 2021, ¶¶ 15-16.¹ At the time of the collision, Vigil was operating his vehicle within the course and scope of his employment with Defendant Rasier LLC d/b/a Uber. *Id.* at ¶ 7. As Vigil proceeded to make a left-hand turn at the three-way

¹ Plaintiff respectfully requests that this Court take judicial notice of its entire docket herein. It is well established that this Court can take judicial notice of matters contained within its own files. NRS 47.140(8); *Geary v. State*, 112 Nev. 1434, 1437 (1996); *Hampton v. Washoe County*, 99 Nev. 819, 822 (1983); *See also In re Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 intersection of John Herbert Boulevard and Centennial Parkway to go eastbound on Centennial
 2 Parkway, Defendant Amanda Maria Avila (“Avila”), traveling westbound on Centennial
 3 Boulevard in a Honda Accord, failed to lower her speed, and failed to stop at the intersection,
 4 causing her vehicle to strike Vigil’s Ford Focus. *Id.* at ¶¶ 18-19. Avila was charged with felony
 5 driving under the influence. *Id.* at ¶ 20. The factual allegations in the Complaint establish that
 6 Avila was at fault for the collision. *Id.* at ¶¶ 18-21. As a result of the collision, Plaintiff sustained
 7 significant injuries, including injuries to her cervical spine and a traumatic brain injury. *Id.* at ¶¶
 8 22-28.

9 At the time of the collision, Avila held an automobile insurance policy with AAA Insurance
 10 (“AAA”). *See* Def. Mot., *Ex. C, Danielle McGough’s Declaration*. On February 28, 2020,
 11 Plaintiff’s counsel made a time limit-policy limit demand to AAA. *See* Plaintiff’s Time Limit-
 12 Policy Limit Demand, dated February 28, 2020, attached hereto as ***Exhibit 1***. The offer was open
 13 from February 28, 2020, to March 30, 2020, and was expressly and unambiguously contingent on
 14 AAA timely delivering three (3) documents, including payment, to Plaintiff by 5:00 p.m. on March
 15 30, 2020. *Id.* Specifically, the demand was contingent upon AAA providing (1) an affidavit of no
 16 other insurance or assets; (2) checks for the policy limits of all applicable insurance policies; and
 17 (3) the declarations pages with the limits of all policies related to this loss. *Id.* AAA was required
 18 to accept the demand, in writing, by 5:00 p.m. on March 30, 2020, or Plaintiff’s offer was
 19 withdrawn. *Id.*

20 At 7:09 p.m. on March 31, 2020, the day ***after*** Plaintiff’s time limit-policy limit demand
 21 expired, AAA sent written acceptance of Plaintiff’s policy-limit demand and provided a Release
 22 for Plaintiff’s signature. *See* Correspondence from Nicole Phillips, Claims Representative at AAA
 23 Insurance, dated March 31, 2020, attached hereto as ***Exhibit 2***. The proposed settlement failed to
 24 materialize, however, because AAA rejected the demand by failing to provide an affidavit of no
 25 other insurance or assets from its insured, by failing to provide payment, and by failing to provide
 26 the declarations pages of all policies related to this loss, thereby failing to meet ***all*** the conditions
 27 of the offer while the offer was still open, i.e., by the March 30, 2020 deadline. *See Exs. 1 and 2.*
 28

1 AAA’s failure to meet the conditions of the offer while the offer was open is further
 2 evidenced by AAA’s letter, nearly a month *later*, on April 20, 2020, in which AAA finally
 3 provided a copy of its insured’s declarations page. *See* Correspondence from Nicole Phillips,
 4 Claims Representative at AAA Insurance, attached hereto as *Exhibit 3*. *Further* evidence of
 5 AAA’s failure to meet the conditions of the offer is AAA’s acknowledgment that it was still
 6 awaiting a signed affidavit of no additional insurance or assets from its insured, which would be
 7 provided once it was received. *Id.* In this case, it is indisputable that there was no meeting of the
 8 minds as Plaintiff attached material conditions to her offer that Avila did not accept. Thus, there
 9 is no settlement agreement (i.e., a contract) between the parties and Avila’s Motion to Enforce
 10 must be denied.

11 **II.**

12 **LEGAL ARGUMENT**

13 **A. Nevada Contract Law For An Enforceable Contract**

14 Because a settlement agreement is a contract, its construction and enforcement are
 15 governed by principles of contract law. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257
 16 (2005). *Id.* Basic contract principles require, for an enforceable contract, an offer and acceptance,
 17 meeting of the minds, and consideration. *Id.* With respect to contract formation, preliminary
 18 negotiations do not constitute a binding contract unless the parties have agreed to *all material*
 19 *terms*. *Id.* A valid contract cannot exist when material terms are lacking or are insufficiently
 20 certain and definite. *Id.* In the case of a settlement agreement, a court cannot compel compliance
 21 when material terms remain uncertain. *Id.* The court must be able to ascertain what is required of
 22 the respective parties. *Id.*

23 In contract law, a condition precedent is an act that must be performed before a contract
 24 comes into existence. *Serpa v. Darling*, 107 Nev. 299, 303, 810 P.2d 778, 781 (1991). *See also*
 25 *Sala & Ruthe Realty v. Campbell*, 89 Nev. 483, 487, 515 P.2d 394, 396 (1973) (“This is . . . a case
 26 where no valid contract could possibly have come into existence until the condition precedent was
 27 accomplished.”). “Mutuality of obligation requires that unless both parties to a contract are bound,
 28

1 neither is bound.” *Serpa*, 107 Nev. at 303-05, 810 P.2d at 781. *See also Sala & Ruthe Realty*, 89
 2 Nev. at 487, 515 P.2d at 396 (1973).

3 For almost 150 years, Nevada courts have consistently and uniformly recognized that “[a]
 4 condition precedent *must be strictly performed* in every particular in order to entitle the party
 5 whose duty it is to perform it to enforce the contract against the other party[.]” *See Virginia & T.*
 6 *R.R. v. County Comm’rs of Lyon County*, 6 Nev. 68, 72 (1870) (emphasis added) (internal citation
 7 omitted). Moreover, irrespective of performance, a contract cannot exist without a meeting of the
 8 minds. “[A]n enforceable settlement agreement cannot exist when the parties have not agreed to
 9 the essential terms of the release because these provisions constitute a material term of the
 10 settlement contract.” *See May v. Anderson*, 121 Nev. at 673-74, 119 P.3d at 1258.

11 It is a well-established rule that the burden of showing, by clear and satisfactory evidence,
 12 a contract which it is sought to have specifically enforced, rests upon the party who is seeking its
 13 enforcement. *Forsyth V. Heward*, 41 Nev. 305, 315, 170 P. 21, 24 (1918). In the present case,
 14 Avila has failed to meet her burden that there is a binding and enforceable settlement agreement
 15 between Plaintiff and Avila, therefore, Avila’s Motion to Enforce must be denied.

16 **1. By The Rules Of Contract Formation, Plaintiff Made An Offer, Which Avila**
 17 **Rejected.**

18 Avila asserts that the parties have a “binding and enforceable Settlement Agreement”
 19 because Plaintiff made an offer for Avila’s entire policy limit, and Avila accepted that offer
 20 through her insurance carrier. *See Def. Mot.*, at 4:9-12. Avila then contends that there was an
 21 offer, acceptance, and consideration in the form of \$25,000 to be paid to Plaintiff. *Id.* at 4:25-27.
 22 Avila incorrectly concludes that “a settlement agreement was clearly formed” when these events
 23 occurred. *Id.* at 5:1-2.

24 Avila’s chronology of the events in this case simply ignores the fundamentals of contract
 25 formation. Avila contends that she accepted Plaintiff’s offer by the 5:00 p.m., March 30, 2020
 26 deadline, which, she claims, is supported by a fax confirmation dated March 30, 2020 at 2:29 p.m.
 27 *See Def. Mot.*, at 2:12-16, and *Exs. C, D, and E*. Avila’s argument fails in its entirety as the
 28

1 acceptance letter is clearly dated March 31, 2020, a day *after* Plaintiff’s offer expired, and was not
 2 faxed until 7:09 p.m. *on* March 31, 2020. *Id.*

3 Equally important, Avila failed to comply with the material terms and conditions precedent
 4 included in Plaintiff’s offer and consequently, no contract was ever formed. *See Ex. 1.* As
 5 explained above, under Nevada law, for an enforceable contract to have been formed, the parties
 6 must have agreed to the *material terms* of the agreement. Here, no contract was formed because
 7 Avila never complied with the material terms of Plaintiff’s demand by delivering the required
 8 documents by the stated deadline. *Id.* Plaintiff’s demand unambiguously identified these material
 9 terms as conditions precedent to any agreement, hence, Avila’s non-acceptance (and non-
 10 performance) prevented formation of a contract on Plaintiff’s terms. *See Serpa*, 107 Nev. at 303-
 11 05, 810 P.2d at 781. *See also Sala & Ruthe Realty*, 89 Nev. at 487, 515 P.2d at 396 (1973).

12 Avila’s assertion that a contract is created when there is merely an offer, acceptance, and
 13 consideration, is incorrect as a matter of law because the conditions Avila identifies are *necessary*
 14 to contract formation but by themselves, are *insufficient* for such formation. *See May v. Anderson*,
 15 121 Nev. at 672, 119 P.3d at 1257 (“Basic contract principles require, for an enforceable contract,
 16 an offer and acceptance, *meeting of the minds*, and consideration.”) (emphasis added). Thus, even
 17 if an offer, acceptance, and consideration are present, if the parties never agreed upon the *material*
 18 *terms*, no contract exists. Conveniently, Avila’s Motion fails to address whether there was a
 19 meeting of the minds. The reason Avila’s Motion fails to address this critical factor for contract
 20 formation is because there *was* no meeting of the minds seeing that the parties never agreed upon
 21 the material terms of the agreement. Thus, no contract exists.

22 **2. Avila’s Rejection Of Plaintiff’s Offer And Counteroffer**

23 Pursuant to Nevada law, to be effective, an acceptance must agree to the material terms of
 24 an offer. *Pravorne v. McLeod*, 79 Nev. 341, 346, 383 P.2d 855 (1963). As the Nevada Supreme
 25 Court has stated, echoing every first-year law school contracts course:

26 It is the law that when A offers B to enter into a contract on certain terms, and B
 27 declines to accept those terms but offers a counter-proposition, *the original offer*
 28 *loses its effect, and is thereafter only open to acceptance by B when renewed by*
A.

1 *Id.* (emphasis added). *See Heffern v. Vernarecci*, 544 P.2d 1197, 1198, 92 Nev. 68, (Nev.
 2 1976) (where essential terms of a proposal are accepted with qualifications or not accepted at all,
 3 there is no agreement.).

4 Here, because Avila’s response to Plaintiff’s offer, in the form of AAA’s Release, included
 5 material terms far different than those contained in Plaintiff’s offer, Avila’s response operated as
 6 a counteroffer. *See Ex. 2*, at p. 4/011. One of those material terms is a hold harmless provision,
 7 which states that:

8 ***The Releasor agrees to reimburse, indemnify and hold harmless each of the***
 9 ***Releasee, persons, firms, corporations released herein and their insurer(s),***
 10 ***including their agents and assigns, with respect to all known and unknown***
 11 ***Medicare rights to recovery related to the accident or event*** referred to above for
 12 which the Federal government may seek repayment, as well as, any fine or penalty
 13 the Federal government may seek resulting from the sufficiency and/or accuracy of
 14 the information the Releasor provided to the parties released and their insurer(s)
 15 regarding Medicare rights to recovery known as of this date.

16 *Id.* (emphasis added).

17 Plaintiff’s offer did not include an offer to reimburse, indemnify, or hold AAA, or its
 18 insured, harmless. *See Ex. 1*. Plaintiff also did not agree to “give up all rights and claims for
 19 damages resulting from the accident or incident referred to in the Release, which you may not even
 20 know or suspect to exist and which if known by you would have materially affected your
 21 settlement.” *See Ex. 2*, at p. 4/011. Because the Release, providing for resolution of Plaintiff’s
 22 claim in exchange for consideration (\$25,000 for Plaintiff, release of all claims for Avila), featured
 23 material terms far different from those contained in Plaintiff’s offer, AAA’s letter constituted a
 24 counteroffer. *See Ex. 1*. It is hornbook contract law that an offer of a counteroffer with different
 25 material terms constitutes a rejection of the original offer, which then loses all force unless it is
 26 renewed by the offeror. Thus, by sending its Release with a hold harmless agreement and
 27 additional material terms, Avila rejected Plaintiff’s initial offer, and that offer “los[t] its effect”
 28 and was no longer “open to acceptance” unless Plaintiff subsequently renewed it.

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 27 ////
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III.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant Amanda Marie Avila’s Motion To Enforce Settlement Agreement.

Dated this 23rd day of August, 2021.

EGLET ADAMS

/s/ Danielle C. Miller, Esq.
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE C. MILLER, ESQ.
Nevada Bar No. 14127
400 South 7th Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NEFC Rule 9(b), I hereby certify that on the 23rd day of August, 2021, I caused the foregoing **PLAINTIFF’S OPPOSITION TO DEENDANT AMANDA MARIE AVILA’S MOTION TO ENFORCE SETTLEMENT AGREEMENT** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and entered on the Court’s docket in the above-referenced matter.

/s/ Kiera Buckley
An Employee of **EGLET ADAMS**

EXHIBIT 1

EXHIBIT 1

February 28, 2020

AAA
Nicole Phillips
PO Box 24523
Oakland, CA 94623

TIME LIMIT, POLICY LIMIT DEMAND
VIA CERTIFIED MAIL
70181830000024088624

Re: Your Insured: Avila, Amanda Marie
Claim No.: 1003-65-8003
Our Client: Anna Grey
Our Case No.: 20-000031
Date of Loss: January 21, 2020

Dear Ms. Phillips:

As we discussed, our client was seriously injured by the extremely negligent behavior of your insured Amanda Avila. You have informed us that due to the nature of our client's injuries there are potential limits issue. Therefore, we are submitting our clients claim and request for policy limits prior to obtaining all the medical records. Please accept this correspondence as a demand for your insured's policy limits which includes any and all applicable policies.

LIABILITY

Our client was a passenger in an Uber vehicle when it was struck by your insured who ran a stop sign. Your insured was subsequently arrested and charged with Felony DUI resulting in substantial bodily harm.

INJURIES

Multiple fractures of the cervical spine

Fracture of the thoracic vertebral body

Subarachnoid hemorrhage

Fracture of the right rib

Lacerations to the scalp requiring stitches

Various contusions

MEDICAL SPECIALS

Enclosed please find the partial records documenting our client's injuries and 5 day stay at UMC.

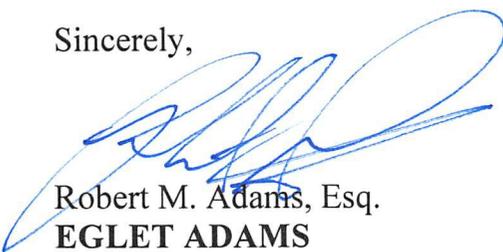
DEMAND

Our client is now willing to accept Ms. Avila's policy limits which includes any and all policies. We are also requesting that your insured complete and sign the enclosed confidential affidavit regarding insurance and assets. This includes AAA providing documentation on the limits of all policies related to this loss.

You now have the opportunity to settle in the amount of your insured's policy limits. If settlement is not achieved within thirty days from the date of this letter, my client will seek full compensation from your client regardless of the limits of liability coverage. This demand must be accepted in writing by 5:00 p.m., March 30, 2020 or this offer is withdrawn.

Please contact me or my assistant Thomas Rossnagel to resolve this matter.

Sincerely,



Robert M. Adams, Esq.
EGLET ADAMS

RMA:tr

Enclosure: Affidavit

EXHIBIT 2

EXHIBIT 2

This message may contain information, including personally identifiable information that is confidential, privileged, or otherwise legally protected. If you are not the intended recipient, please immediately notify the sender and delete this message without copying, disclosing, or distributing it.



P.O. Box 24523
Oakland, CA 94623-1523
Phone 888.335.2722
Fax 877.548.1610

March 31, 2020

EGLET LAW GROUP
400 S 7TH ST
STE 400
LAS VEGAS, NV 89101-6941

Re: Insured: BLANCA AVILA
Claim No.: 1003-65-8003
Date of Loss: January 21, 2020
Your Client: Anna Grey

Dear Eglet Law Group:

Enclosed is our Release for your bodily injury claim prepared in the amount of our insureds limits of \$25,000.00 which is the agreed settlement for the above referenced matter.

Please have your client sign the release in the presence of a notary and have the signature notarized. Once we receive the properly executed release and well as the final hospital lien, we will promptly forward payment, made payable to you and your client, directly to you.

Thank you for your cooperation. Should you have any questions about your client's claim, or if we can assist you in completing the enclosed forms, please let me know.

Sincerely,

Nicole Phillips

Nicole Phillips
Claims Representative
Phone: 702-790-5344

Enclosures

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Witness Address

Witness Signature

Witness Print Name

Witness Address

Releasor/Claimant Print Name

Releasor/Claimant Signature

Releasor/Claimant Print Name

Releasor/Claimant Signature

Releasor/Claimant Print Name

This page is intentionally left blank

STATE OF NEVADA)
)
COUNTY OF _____)

The instrument was acknowledged before me on _____, by _____.
(Date) (Name(s) of Person(s))

(Seal, if any)

Notary Public in and for the State of Nevada:

Signature

Name - printed

Title (and Rank)

My commission expires:

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How to fill out a RELEASE

1. Read before signing

2. Sign and Date Here

3. Read Content

4. Read Content

5. Have someone else sign here as a witness to your signature and provide their address

6. Print name here

7. Sign here in the presence of a witness or notary (if required)

8. Notary signs here

5. Enter the city and state in which you are signing; enter the date as well (i.e. Modesto, California, the 24th day of June, 2014)

1. Read before signing

2. Sign and Date Here

3. Read Content

4. Read Content

5. Have someone else sign here as a witness to your signature and provide their address

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8. Notary signs here

5. Enter the city and state in which you are signing; enter the date as well (i.e. Modesto, California, the 24th day of June, 2014)

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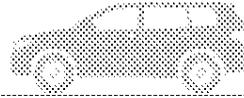
EXHIBIT 3

EXHIBIT 3

This message may contain information, including personally identifiable information that is confidential, privileged, or otherwise legally protected. If you are not the intended recipient, please immediately notify the sender and delete this message without copying, disclosing, or distributing it.



CSAA General Insurance Company
P.O. Box 24523
Oakland, CA 94623-1523



EGLET LAW GROUP
400 S 7TH ST
STE 400
LAS VEGAS, NV 89101-6941

OUR CLAIM INFORMATION

Our claim number 1003-65-8003
Our policyholder BLANCA AVILA
Date of incident January 21, 2020
Your client Anna Grey



Nicole Phillips
702-790-5344
Or 888-335-2722, Ext. 7905344
Regular Claims Center hours are
Monday - Friday 8:00 AM - 7:00 PM,
Pacific Time

April 21, 2020

Dear Eglet Law Group:

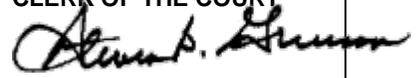
As requested, attached is a copy of our insureds declaration page. Also, I have forwarded the updated declaration you sent to us to our insured for review. If signed by the insured, we will forward the document to your office immediately.

Sincerely,

Nicole Phillips

Nicole Phillips
Claims Representative

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1 JARED G. CHRISTENSEN, ESQ.
Nevada State Bar No. 11538
2 KRISTINA MILETOVIC, ESQ.
Nevada State Bar No. 14089
3 BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
4 SUITE 250
LAS VEGAS, NV 89144
5 TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
6 jchristensen@bremerwhyte.com
kmiletovic@bremerwhyte.com

7 Attorneys for Defendant,
8 CHRISTOPHER VIGIL

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

12 ANNA MARYKE GREY, an Individual,) Case No. A-21-837504-C
13 Plaintiff,)
14 vs.) **DEFENDANT CHRISTOPHER VIGIL'S**
15 AMANDA MARIE AVILA, an Individual;) **JOINDER TO PLAINTIFF'S**
16 CHRISTOPHER VIGIL, an Individual; RAISER) **OPPOSITION TO DEFENDANT**
17 LLC dba UBER, a Foreign Limited-Liability) **AMANDA MARIE AVILA'S MOTION**
Company; DOES 1 through 20; and ROE) **TO ENFORCE SETTLEMENT**
18 COMPANIES 1 THROUGH 40, inclusive,) **AGREEMENT**
19 Defendants.)
Hearing Date: **October 19, 2021**
Hearing Time: **10:00 a.m.**

20 Defendant, CHRISTOPHER VIGIL ("Defendant"), by and through his attorneys of record,
21 Jared G. Christensen, Esq. and Kristina Miletovic, Esq., of BREMER WHYTE BROWN &
22 O'MEARA, LLP, hereby files this Joinder to Plaintiff's Opposition to Defendant Amanda Marie
23 Avila's Motion to Enforce Settlement Agreement (Plaintiff's Opposition, the "Opposition"; this
24 Joinder, the "Joinder").

25 ///
26 ///
27 ///
28 ///

1 This Joinder is made and based on the memorandum of points and authorities submitted
2 herewith, the exhibits attached hereto, and any oral arguments which may be made at the time of the
3 hearing of the Motion.

4 Dated: August 24, 2021

BREMER WHYTE BROWN & O'MEARA LLP

5
6 By: Kristina Miletovic
7 Jared G. Christensen, Esq., Bar No. 11538
8 Kristina Miletovic, Esq., Bar No. 14089
9 Attorneys for Defendant
10 CHRISTOPHER VIGIL

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 Defendant Christopher Vigil hereby joins the arguments in their entirety that Plaintiff Grey
13 makes in the Opposition and adopts same with respect to Defendant Vigil. Critically, no meeting of
14 the minds as to material settlement terms existed at any point between Plaintiff and Defendant Avila
15 pursuant to principles of contract law and *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257
16 (2005), requiring denial of Defendant Avila's Motion to Enforce Settlement Agreement. Defendant
17 Vigil therefore requests such denial and that this matter proceed in the regular course.

18 Dated: August 24, 2021

BREMER WHYTE BROWN & O'MEARA LLP

19
20 By: Kristina Miletovic
21 Jared G. Christensen, Esq., Bar No. 11538
22 Kristina Miletovic, Esq. Bar No. 14089
23 Attorneys for Defendant
24 CHRISTOPHER VIGIL
25
26
27
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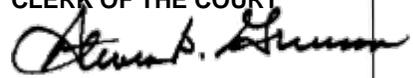
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August 2021, a true and correct copy of the foregoing document was electronically delivered to Odyssey for filing and service upon all electronic service list recipients.



Stephanie Hutchinson, an employee of
BREMER, WHYTE, BROWN & O'MEARA
LLP



1 **RPLY**
McCormick, Barstow, Sheppard,
2 Wayte & Carruth LLP
Renee M. Maxfield
3 Nevada Bar No. 12814
renee.maxfield@mccormickbarstow.com
4 8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
5 Telephone: (702) 949-1100
Facsimile: (702) 949-1101

6 *Attorneys for Defendant Amanda Marie Avila*

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA
10

11 ANNA MARYKE GREY, an Individual,
12
13 Plaintiff,

14 v.

15 AMANDA MARIE AVILA, an Individual;
CHRISTOPHER VIGIL, an Individual;
16 RAISER LLC dba UBER, a Foreign Limited-
Liability Company; DOES 1 through 20; and
17 ROE COMPANIES 1 THROUGH 40,
inclusive,

18 Defendants.

Case No.: A-21-837504-C
Dept. No.: XIV

**DEFENDANT AMANDA MARIE
AVILA'S REPLY IN SUPPORT OF
MOTION TO ENFORCE SETTLEMENT
AGREEMENT**

Hearing Date: October 19, 2021
Hearing Time: 10:00 a.m.

19
20 COMES NOW, Defendant AMANDA MARIE AVILA ("Defendant" or "Ms. Avila"), by
21 and through her counsel of record of the Law Firm of McCORMICK, BARSTOW, SHEPPARD,
22 WAYTE & CARRUTH, LLP, and hereby submits her Reply in Support of her Motion to Enforce
23 Settlement Agreement.

24 This Reply is based on the papers and pleadings on file herein, the following Memorandum
25 of Points and Authorities, and any such other argument this Court may entertain at the time set for
26 hearing on this matter.

27 ///

28 ///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.
3 INTRODUCTION

4 The instant litigation stems from an automobile accident which is alleged to occurred on
5 January 21, 2020. *See generally Exh. A.* Plaintiff alleges she was a passenger in Defendant Vigil’s
6 vehicle while Defendant Vigil was acting within the course and scope of his employment as an Uber
7 driver when Defendant Vigil and Ms. Avila’s vehicles collided. *Id.*

8 On February 28, 2020, Plaintiff’s counsel sent a written policy limits demand to Ms. Avila’s
9 insurer (“the Demand”). *See Exh. B, and C.* The Demand was titled “TIME LIMIT, POLICY
10 DEMAND VIA CERTIFIED MAIL.” *Exh. B*, at p. 1. It opened with the following language:

11 As we discussed, our client was seriously injured by the extremely
12 negligent behavior of your insured Amanda Avila. You have
13 informed us that due to the nature of our client’s injuries there are
14 potential limits issue [sic]. Therefore, we are submitting our clients
claim and request for policy limits prior to obtaining all the medical
records. ***Please accept this correspondence as a demand for your
insured’s policy limits*** which includes any and all applicable policies.

15 *Exh. B*, at p. 1 (emphasis added).

16 The Demand went on to state:

17 DEMAND

18 ***Our Client is now willing to accept Ms. Avila’s policy limits*** which
19 includes any and all policies. We are also requesting that your
20 insured complete and sign the enclosed confidential affidavit
regarding insurance and assets. This includes AAA providing
documentation on the limits of all policies related to this loss.

21 ***You now have the opportunity to settle in the amount of your***
22 ***insured’s policy limits.*** If settlement is not achieved within thirty
23 days from the date of this letter, my client will seek full compensation
24 from your client regardless of the limits of liability coverage. This
demand must be accepted in writing by 5:00 p.m., March 30, 2020 or
this offer is withdrawn.

25 *Id.* at p. 2 (emphasis added).

26 By the plain language of the Demand, it is patently clear that the Demand was for Ms. Avila’s
27 policy limits in exchange for a settlement. The policy limits are the only material term. As Ms.
28 Avila outlined in detail in her Motion, and Plaintiff’s Opposition ignored, Ms. Avila’s insurer timely

1 accepted Plaintiff's policy limits demand. Nicole Phillips, a claims representative for CSAA, faxed
2 a response on March 30, 2020, which was inadvertently dated as March 31, 2020. *See Exh. C*, and
3 *D*. The response from Ms. Phillips stated "[e]nclosed is our Release for your bodily injury claim
4 prepared in the amount of our insureds limits of \$25,000.00 which is the agreed settlement for the
5 above referenced matter." *Exh. C*, at p. 1. Ms. Phillips' response also included a standard release
6 form.

7 In sum, Plaintiff made a policy limits demand, which Ms. Avila's insurer timely accepted.
8 Ms. Avila's Motion established the existence of a valid settlement agreement. Plaintiff is now
9 attempting to renege on the settlement agreement with meritless arguments pertaining to an untimely
10 acceptance and material terms. As such, Plaintiff's Opposition fails to meaningfully refute Ms.
11 Avila's Motion.

12 **II.**
13 **LAW AND ARGUMENT**

14 **A. Defendant Avila Timely Accepted Plaintiff's Offer**

15 Plaintiff placed an arbitrary expiration date of March 30, 2020 at 5:00 p.m. on her Demand.
16 *See Exh. B*, at p. 2. Defendant's Motion established that Defendant's insurer timely responded to
17 the Demand on March 20, 2020 at 2:29 p.m. *See Motion*, at 4:17-19, *Exhs. C, D*, and *E*.

18 As Ms. Avila outlined in her Motion (*see Exhs. C, D*, and *E*), Nicole Phillips, a CSAA
19 claims representative, sent a timely response to Plaintiff's counsel's demand at 2:29 p.m. on March
20 30, 2020, which stated:

21 Enclosed is our Release for your bodily injury claim prepared in the
22 amount of our insureds limits of \$25,000.00 which is the agreed
settlement for the above referenced matter.

23 Please have your client sign the release in the presence of a notary and
24 have the signature notarized. Once we receive the properly executed
release and well as the final hospital lien, we will properly forward
25 payment, made payable to you and your client, directly to you.

26 Thank you for your cooperation, Should you have any questions
27 about your client's claim, or if we can assist you in completing the
enclosed forms, please let me know.

28 ///

1 **Exh. D**, at p. 1. Although this correspondence was dated March 31, 2020, Defendant's Motion
2 explained that this was an inadvertent error and established that this correspondence was sent to
3 Plaintiff's counsel via facsimile at 2:29 p.m. on March 30, 2020, well within Plaintiff's arbitrary
4 deadline.

5 Ms. Avila's Motion included a Declaration from Danielle McGough, a manager for Ms.
6 Avila's insurer CSAA, which explained why CSAA's acceptance letter was dated March 31, 2020.
7 *See generally Exh. C*. Ms. McGough explained:

8 3. On March 4, 2020, CSAA received a policy limits demand
9 from Plaintiff's counsel, Eplet Adams, which was dated February 28,
10 2020. Plaintiff's demand requested acceptance in writing by 5:00
11 p.m. on March 30, 2020.

12 4. ***On March 30, 2020 at 2:28 p.m., claims adjuster, Nicole
Phillips, drafted a letter to Eplet Adams accepting Anna Grey's
policy limits demand. The acceptance letter was sent via facsimile
to counsel at (702) 450-5451 on March 30, 2020 at 2:29 p.m.***

13 5. CSAA's system defaults to dating mailed correspondence to
14 the next day to be mailed by the mailing center. If correspondence is
15 to be emailed or faxed, the adjuster has to manually change the date
to reflect the date of service; otherwise, per CSAA's computer
system, the letter will default to the next day.

16 6. Due to an inadvertent error, the claim adjuster mistakenly
17 forgot to manually change the date of the acceptance letter to the date
of actual service, March 30, 2020, although ***the letter was sent to
counsel via facsimile the same day, March 30, 2020.***

18 7. That, to my knowledge, there was no equipment malfunction
19 or error in CSAA's facsimile machine that delayed sending the March
20 30, 2020 correspondence, which was sent via fax on March 30, 2020
at 2:29 p.m. based on the system-generated date and time stamped
21 facsimile confirmation.

22 **Exh. C**, at ¶¶ 3-7. Ms. Avila's Motion also included a fax confirmation from CSAA demonstrating
23 that the facsimile was indeed sent on March 30, 2020 at 2:29 p.m. *See Exh. E*.

24 Plaintiff's Opposition summarily dismissed these facts out of hand. *See Opposition*, at 7:27-
25 8:2 (Avila's argument fails in its entirety as the acceptance letter is clearly dated March 31, 2020, a
26 day **after** Plaintiff's offer expired, and was not faxed until 7:09 p.m. **on** March 31, 2020.") (emphasis
27 in original). Nevertheless, Ms Avila established that CSAA's response to Plaintiff's policy limits
28 demand on her behalf was timely as it was sent in writing at 2:29 p.m. on March 30, 2020.

1 Therefore, Plaintiff's arguments that no settlement agreement was reached because no timely
2 acceptance was delivered are without merit.

3 **B. An Agreement was Reached Between the Parties to Settle for Policy Limits; The**
4 **Affidavit and Declarations Page were not Material Terms**

5 Settlement agreements are contracts and their "construction and enforcement are governed
6 by principles of contract law." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005)
7 (citing *Reichelt v. Urban Inv. & Dev. Co.*, 611 F.Supp. 952, 954 (N.D.Ill.1985)). While contract
8 interpretation is subject to a de novo standard of review, "the question of whether a contract exists
9 is one of fact," and a district court's decision will be upheld on review unless "they are clearly
10 erroneous or not based on substantial evidence." *Id.* (citing *James Hardie Gypsum, Inc. v. Inquipco*,
11 112 Nev. 1397, 1401, 929 P.2d 903, 906 (1996), overruled on other grounds by *Sandy Valley Assocs.*
12 *v. Sky Ranch Estates*, 117 Nev. 948, 955 n. 6, 35 P.3d 964, 968-69 n. 6 (2001)).

13 In *May*, the Nevada Supreme Court provided a review of applicable contract law principles:

14 Basic contract principles require, for an enforceable contract, an offer
15 and acceptance, meeting of the minds, and consideration. With
16 respect to contract formation, preliminary negotiations do not
17 constitute a binding contract unless the parties have agreed to all
18 material terms. A valid contract cannot exist when material terms are
19 lacking or are insufficiently certain and definite. *A contract can be*
20 *formed, however, when the parties have agreed to the material*
terms, even though the contract's exact language is not finalized
until later. In the case of a settlement agreement, a court cannot
compel compliance when material terms remain uncertain. The
court must be able to ascertain what is required of the respective
parties.

21 *May*, 121 Nev. at 672, 119 P.3d at 1257 (emphasis added). The Court went on to note that "what is
22 an essential release term necessarily varies with the nature and complexity of the case." *Id.* at 670,
23 119 P.3d at 1256.

24 Here, the legal and factual issues in this case are relatively straightforward. Plaintiff alleges
25 she sustained injuries due to Ms. Avila's alleged negligence. Per the clear terms of the Demand,
26 Plaintiff offered to release Ms. Avila from liability in exchange for Ms. Avila's policy limits. By
27 way of review, the Demand, which was titled "POLICY LIMITS DEMAND," states:

28

1 As we discussed, our client was seriously injured by the extremely
2 negligent behavior of your insured Amanda Avila. You have
3 informed us that due to the nature of our client's injuries there are
4 potential limits issue [sic]. Therefore, we are submitting our clients
5 claim and request for policy limits prior to obtaining all the medical
6 records. ***Please accept this correspondence as a demand for your
7 insured's policy limits*** which includes any and all applicable policies.

8 ...

9 DEMAND

10 ***Our Client is now willing to accept Ms. Avila's policy limits*** which
11 includes any and all policies. We are also requesting that your
12 insured complete and sign the enclosed confidential affidavit
13 regarding insurance and assets. This includes AAA providing
14 documentation on the limits of all policies related to this loss.

15 ***You now have the opportunity to settle in the amount of your
16 insured's policy limits.*** If settlement is not achieved within thirty
17 days from the date of this letter, my client will seek full compensation
18 from your client regardless of the limits of liability coverage. This
19 demand must be accepted in writing by 5:00 p.m., March 30, 2020 or
20 this offer is withdrawn.

21 *See Exh. B.*

22 By the plain language of the Demand, Plaintiff sought Ms. Avila's policy limits in exchange
23 for a release from liability; these are the material terms. The only condition of the demand was
24 Plaintiff's arbitrary time limit, which as explained in the previous section, Defendant's insurer
25 satisfied. Plaintiff's Opposition argues that Plaintiff's request for an affidavit of no assets and an
26 updated declarations page are material terms. This argument fails because material terms are
27 generally terms which are sufficient to determine a course of performance and identify a breach.
28 *See e.g. Turping v. United States*, 134 Fed.Cl. 293, 303 (2017), *aff'd*, 913 F.3d 1060 (Fed. Cir. 2019)
(noting that material terms required to form a binding contract in the context of government
procurement contracts include those sufficient to provide a basis for determining the existence of a
breach and for giving an appropriate remedy); *Trustees of Teamsters Union Local No. 142 Pension
Trust Fund v. McAllister, Inc.*, 602 F.Supp.2d 948, 955.(N.D. Ind. 2009) (noting that plaintiffs'
settlement proposal provided the material terms of the settlement, namely, the settlement amount,
defendant's obligation to send the check, and that dismissal would occur after the check cleared
plaintiffs' bank). Here, once again, Plaintiff requested Ms. Avila's policy limits in exchange for a

1 release of liability. The declarations page and affidavit of no assets were non-material as they
2 merely confirmed the existence and amount of policy limits. Their addition does not change the
3 core substance of the agreement. Moreover, the plain language of the Demand demonstrates that
4 these were secondary requests – the Demand was titled “POLICY LIMITS DEMAND.”
5 Defendant’s insurer timely accepted the Policy Limits Demand; the affidavit and declarations page
6 are not material terms. Defendant accepted Plaintiff’s Offer; there was no counteroffer. Therefore,
7 an enforceable settlement agreement exists between the parties.

8 Finally, Plaintiff’s Opposition argues that the release sent by CSAA to Plaintiff materially
9 alters the agreement because the release sent by CSAA included a provision stating:

The Releasor [Plaintiff] agrees to reimburse, indemnify and hold harmless each of the Releasee, persons, firms, corporations released herein and their insurer(s), including their agents and assigns, with respect to all known and unknown Medicare rights to recovery related to the accident or event referred to above for which the Federal government may seek resulting from the sufficiency and/or accuracy of the information the Releasor provided to the parties released and their insurers(s) regarding Medicare rights to recovery known as of this date.

15 See Opposition, at *Exh. 2*. Contrary to Plaintiff’s assertions in her Opposition, this release is clearly
16 intended to indemnify and hold harmless CSAA and Ms. Avila from any claims Medicaid or
17 Medicare may make on the settlement proceeds with respect to Plaintiff’s treatment bills. Such
18 provisions are standard, boilerplate language included in every settlement release for bodily injury
19 claims due to federal laws requiring that Medicaid and Medicare liens be satisfied. Such a term in
20 no way constitutes a counteroffer. Plainly, Plaintiff made a Policy Limits Demand, which CSAA
21 timely accepted on behalf of Ms. Avila. CSAA’s timely response was not a counteroffer as the only
22 material term in the Demand was the policy limits in exchange for a liability release. The only
23 condition placed on the Demand was the time limit, which Defendant complied with. Therefore, a
24 valid and enforceable settlement agreement exists between the parties.

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III.
CONCLUSION

Based on the foregoing, Defendant, AMANDA MARIE AVILA, respectfully requests that this Honorable Court grant her Motion to Enforce Settlement in its entirety.

DATED this 12th day of October, 2021

MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By *Renee M. Maxfield*
Renee M. Maxfield
Nevada Bar No. 12814
8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
Tel. (702) 949-1100

Attorneys for Defendant Amanda Marie Avila

7956340.1

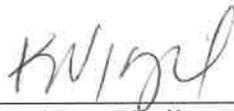
1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 12th day of October, 2021, a true and correct copy
3 of **DEFENDANT AMANDA MARIE AVILA'S REPLY IN SUPPORT OF MOTION TO**
4 **ENFORCE SETTLEMENT AGREEMENT** was served by electronically filing with the Clerk of
5 the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on
6 record, who have agreed to receive electronic service in this action.

7 Tracy A. Eglet, Esq.
8 Robert M. Adams, Esq.
9 Jordan Eglet, Esq.
10 EGLET ADAMS
11 400 South 7th Street, Suite 400
12 Las Vegas, Nevada 89101
13 *Attorneys for Plaintiff*

Jared G. Christensen, Esq.
Kristina Miletovic, Esq.
BREMER WHYTE BROWN & O'MEARA
LLP
1160 N. Town Center Drive, Suite 250
Las Vegas, Nevada 89144
Attorneys for Defendant Christopher Vigil

11 Analise N. M. Tilton, Esq.
12 Xheni Ristani, Esq.
13 WOOD, SMITH, HENNING & BERMAN, LLP
14 2881 Business Park Court, Suite 200
15 Las Vegas, Nevada 89128
16 *Attorneys for Defendant Rasier, LLC*

17
18 By 
19 Kathy L. Vigil, an Employee of
20 McCORMICK, BARSTOW, SHEPPARD,
21 WAYTE & CARRUTH LLP
22
23
24
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28

EGLET ADAMS

1 **ORDR**
2 ROBERT T. EGLET, ESQ.
3 Nevada Bar No. 3402
4 TRACY A. EGLET, ESQ.
5 Nevada Bar No. 6419
6 DANIELLE C. MILLER, ESQ.
7 Nevada Bar No. 9127
8 **EGLET ADAMS**
9 400 South Seventh Street, Suite 400
10 Las Vegas, Nevada 89101
11 Telephone: (702) 450-5400
12 Facsimile: (702) 450-5451
13 Email: eservice@egletlaw.com
14 *Attorneys for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

11 ANNA MARYKE GREY, an individual,

Case No.: A-21-837504-C

12
13 Plaintiff,

Dept. No.: XIV

14 vs.

**ORDER DENYING DEFENDANT
AMANDA MARIE AVILA'S MOTION
TO ENFORCE SETTLEMENT
AGREEMENT**

15 AMANDA MARIE AVILA, an Individual;
16 CHRISTOPHER VIGIL, an Individual;
17 RAISER LLC dba UBER, a Foreign Limited-
18 Liability Company; DOES 1 through 20; and
19 ROE COMPANIES 1 THROUGH 40,
20 inclusive,

**Date of Hearing: October 19, 2021
Time of Hearing: 10:00 a.m.**

Defendants.

21 Defendant Amanda Marie Avila's Motion to Enforce Settlement Agreement came before
22 the Honorable Adriana Escobar, Department 14, Eighth Judicial District Court, for oral
23 argument via BlueJeans remote teleconference on October 19, 2021 at 10:00 a.m. Appearances
24 were made by Robert T. Eglet, Esq. and Danielle C. Miller, Esq. of EGLET ADAMS on behalf
25 of Plaintiff Anna Maryke Grey; Allison L. Rothgeb, Esq. of McCORMICK, BARSTOW,
26 SHEPPARD, WAYTE & CARRUTH, LLP on behalf of Defendant Amanda Marie Avila;
27 Kristina Miletovic, Esq. of BREMER WHYTE BROWN & O'MEARA LLP on behalf of
28 Defendant Christopher Vigil; and Xheni Ristani, Esq. of WOOD, SMITH, HENNING &
BERMAN LLP on behalf of Defendant Rasier, LLC.

EGLET ADAMS

1 The Court, having reviewed the moving papers and pleadings on file herein, hearing oral
2 argument, being fully advised in the premises, and for good cause appearing, hereby finds as
3 follows:

- 4 1) Plaintiff made an offer that was very specific in stating that it would remain open until
5 March 30, 2020, at 5:00 pm.
- 6 2) Defendant Amanda Marie Avila's insurer, AAA, failed to timely accept the offer, which
7 constitutes a rejection of the original offer.
- 8 3) Defendant Amanda Marie Avila's insurer, AAA, also failed to comply with the conditions
9 precedent included in Plaintiff's offer by failing to provide (1) an affidavit of no other
10 insurance or assets; and (2) the declarations pages with the limits of all policies related to
11 this loss, which were material terms that Defendant Amanda Marie Avila's insurer, AAA
12 failed to satisfy.
- 13 4) Therefore, because there was no meeting of the minds, no settlement agreement (i.e., no
14 contract), was formed.

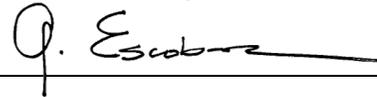
15 Accordingly, the court finds that Defendant Amanda Marie Avila's Motion to Enforce
16 Settlement Agreement is **DENIED**.

17 **ORDER**

18 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Amanda
19 Marie Avila's Motion to Enforce Settlement Agreement is **DENIED**.

20 **IT IS SO ORDERED.**

Dated this 2nd day of November, 2021

21 

22
23 **7F9 B7F AC16 1C46**
Adriana Escobar
District Court Judge



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Respectfully Submitted By:
DATED this 27th day of October, 2021.
EGLET ADAMS

/s/ Danielle C. Miller, Esq.
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE C. MILLER, ESQ.
Nevada Bar No. 9127
400 South 7th Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Approved as to Form and Content:
DATED this 27th day of October, 2021.
WOOD, SMITH, HENNING & BERMAN LLP

/s/ Xheni Ristani, Esq.
ANALISE N. M. TILTON, ESQ.
Nevada Bar No. 13185
XHENI RISTANI, ESQ.
Nevada Bar No. 15313
2881 Business Park Court, Suite 200
Las Vegas, Nevada 89128-9020
Attorneys for Defendant Rasier, LLC

Approved as to Form and Content:
DATED this 27th day of October, 2021.
McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH, LLP

/s/ Allison L. Rothgeb, Esq.
RENEE M. MAXFIELD, ESQ.
Nevada Bar No. 12814
ALLISON L. ROTHGEB, ESQ.
Nevada Bar No. 14262
8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
Attorneys for Defendant Amanda Marie Avila

Approved as to Form and Content:
DATED this 27th day of October, 2021.
BREMER WHYTE BROWN & O'MEARA LLP

/s/ Kristina Miletovic, Esq.
JARED G. CHRISTIANSEN, ESQ.
Nevada Bar No. 11538
KRISTINA MILETOVIC, ESQ.
Nevada Bar No. 14089
1160 N. Town Center Drive, Suite 250
Las Vegas, Nevada 89144
Attorneys for Defendant Christopher Vigil

From: [Xheni Ristani](#)
To: [Danielle Miller](#); [allison.rothgeb@mccormickbarstow.com](#); [renee.maxfield@mccormickbarstow.com](#); [Jared G. Christensen](#); [Kristina Miletovic](#); [Analise N. M. Tilton](#)
Cc: [Stephanie Hutchinson](#); [Kiera Buckley](#)
Subject: RE: Anna Grey v. Amanda Avila, et al.
Date: Wednesday, October 27, 2021 1:08:30 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Good afternoon,

You may add my signature. Thank you!

Xheni Ristani

Associate | Wood, Smith, Henning & Berman LLP
2881 Business Park Court, Suite 200 | Las Vegas, NV 89128-9020
xristani@wshblaw.com | **T** (725) 220-6542 | **M** (702) 353-4641

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From: Danielle Miller <dmiller@egletlaw.com>
Sent: Friday, October 22, 2021 3:44 PM
To: allison.rothgeb@mccormickbarstow.com; renee.maxfield@mccormickbarstow.com; [Jared G. Christensen <jchristensen@bremerwhyte.com>](mailto:Jared.G.Christensen@bremerwhyte.com); [Kristina Miletovic <kmiletovic@bremerwhyte.com>](mailto:Kristina.Miletovic@bremerwhyte.com); [Xheni Ristani <XRistani@wshblaw.com>](mailto:Xheni.Ristani@wshblaw.com); [Analise N. M. Tilton <atilton@wshblaw.com>](mailto:Analise.N.M.Tilton@wshblaw.com)
Cc: [Stephanie Hutchinson <shutchinson@bremerwhyte.com>](mailto:Stephanie.Hutchinson@bremerwhyte.com); [Kiera Buckley <kbuckley@egletlaw.com>](mailto:Kiera.Buckley@egletlaw.com)
Subject: [EXTERNAL] Anna Grey v. Amanda Avila, et al.
Importance: High

Counsel,

Please find attached hereto a draft of the proposed Order Denying Raiser, LLC's Partial Motion to Dismiss and a draft of the proposed Order Denying Avila's Motion to Enforcement Settlement.

At your earliest convenience, please provide me with any and all revisions and/or additions you would like me to make. In the event you do not have any changes, please confirm that I have your permission to affix your e-signature and submit. Thank you.



Danielle C. Miller, Esq
p: (702) 450-5400
w: www.egletlaw.com
a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101



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PA-00078

From: [Allison Rothgeb](#)
To: [Danielle Miller](#)
Cc: [Renee Maxfield](#); [Kathy Vigil](#)
Subject: RE: Anna Grey v. Amanda Avila, et al.
Date: Monday, October 25, 2021 9:55:59 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Hi Danielle,

Both of these orders are fine with me. You have my permission to include my electronic signature.

Thank you,
Allison

Allison Rothgeb
Associate
McCormick Barstow LLP
8337 West Sunset Road, Suite 350
Las Vegas, NV 89113
Main (702) 949-1100 | Fax (702) 949-1101
www.mccormickbarstow.com

From: Danielle Miller <dmiller@egletlaw.com>
Sent: Friday, October 22, 2021 3:44 PM
To: Allison Rothgeb <Allison.Rothgeb@mccormickbarstow.com>; Renee Maxfield <Renee.Maxfield@mccormickbarstow.com>; Jared G. Christensen <jchristensen@bremerwhyte.com>; Kristina Miletovic <kmiletovic@bremerwhyte.com>; Xheni Ristani <XRistani@wshblaw.com>; Analise N. M. Tilton <atilton@wshblaw.com>
Cc: Stephanie Hutchinson <shutchinson@bremerwhyte.com>; Kiera Buckley <kbuckley@egletlaw.com>
Subject: Anna Grey v. Amanda Avila, et al.
Importance: High

Counsel,

Please find attached hereto a draft of the proposed Order Denying Raiser, LLC's Partial Motion to Dismiss and a draft of the proposed Order Denying Avila's Motion to Enforcement Settlement.

At your earliest convenience, please provide me with any and all revisions and/or additions you would like me to make. In the event you do not have any changes, please confirm that I have your permission to affix your e-signature and submit. Thank you.



Danielle C. Miller, Esq
p: (702) 450-5400
w: www.egletlaw.com
a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101
□ □ □ □ □

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To: [Xheni Ristani](#); [Danielle Miller](#); [allison.rothgeb@mccormickbarstow.com](#); [renee.maxfield@mccormickbarstow.com](#); [Jared G. Christensen](#); [Analise N. M. Tilton](#)
Cc: [Stephanie Hutchinson](#); [Kiera Buckley](#)
Subject: Re: Anna Grey v. Amanda Avila, et al.
Date: Wednesday, October 27, 2021 1:48:29 PM
Attachments: [image002.png](#)
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[image006.png](#)
[BWBO_Logo2_320_33911903-db74-49b1-8618-5f4e19893d01.png](#)

You may submit with my electronic signature.

Kristina Miletovic

Bremer Whyte Brown & O'Meara, LLP
1160 N Town Center Drive Suite 250
Las Vegas, NV 89144
e: kmiletovic@bremerwhyte.com
d: 725 210 8823
t: 702 258 6665
f: 702 258 6662
www.bremerwhyte.com



From: Xheni Ristani <XRistani@wshblaw.com>
Sent: Wednesday, October 27, 2021 1:08 PM
To: Danielle Miller <dmiller@egletlaw.com>; allison.rothgeb@mccormickbarstow.com <allison.rothgeb@mccormickbarstow.com>; renee.maxfield@mccormickbarstow.com <renee.maxfield@mccormickbarstow.com>; [Jared G. Christensen <jchristensen@bremerwhyte.com>](mailto:Jared G. Christensen@bremerwhyte.com); [Kristina Miletovic <kmiletovic@bremerwhyte.com>](mailto:Kristina Miletovic@bremerwhyte.com); [Analise N. M. Tilton <atilton@wshblaw.com>](mailto:Analise N. M. Tilton@atilton@wshblaw.com)
Cc: [Stephanie Hutchinson <shutchinson@bremerwhyte.com>](mailto:Stephanie Hutchinson@bremerwhyte.com); [Kiera Buckley <kbuckley@egletlaw.com>](mailto:Kiera Buckley@egletlaw.com)
Subject: RE: Anna Grey v. Amanda Avila, et al.

*** This is an external email ***

Good afternoon,

You may add my signature. Thank you!

Xheni Ristani

Associate | Wood, Smith, Henning & Berman LLP
2881 Business Park Court, Suite 200 | Las Vegas, NV 89128-9020
xristani@wshblaw.com | T (725) 220-6542 | M (702) 353-4641

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Cc: [Stephanie Hutchinson <shutchinson@bremerwhyte.com>](mailto:Stephanie Hutchinson@bremerwhyte.com); [Kiera Buckley <kbuckley@egletlaw.com>](mailto:Kiera Buckley@egletlaw.com)
Subject: [EXTERNAL] Anna Grey v. Amanda Avila, et al.
Importance: High

Counsel,

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At your earliest convenience, please provide me with any and all revisions and/or additions you would like me to make. In the event you do not have any changes, please confirm that I have your permission to affix your e-signature and submit. Thank you.



Danielle C. Miller, Esq
p: (702) 450-5400
w: www.egletlaw.com
a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Anna Grey, Plaintiff(s)

CASE NO: A-21-837504-C

7 vs.

DEPT. NO. Department 14

8 Amanda Avila, 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:

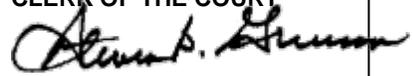
14 Service Date: 11/2/2021

15 Renee Maxfield	renee.maxfield@mccormickbarstow.com
16 Cheryl Schneider	cheryl.schneider@mccormickbarstow.com
17 Jenny Goodrich	jenny.goodrich@mccormickbarstow.com
18 Jared Christensen	jchristensen@bremerwhyte.com
19 E Service	eservice@egletlaw.com
20 Analise Tilton	atilton@wshblaw.com
21 Alexis Robinson	arobinson@bremerwhyte.com
22 Kathy Vigil	kathy.vigil@mccormickbarstow.com
23 Kristina Miletovic	kmiletovic@bremerwhyte.com
24 Emilio Aguilar	eaguilar@wshblaw.com
25 Stephanie Hutchinson	shutchinson@bremerwhyte.com

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PA-00082

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Xheni Ristani	XRistani@wshblaw.com
WSHB-LV Efilings Inbox	lvfilings@wshblaw.com
Michelle Jensen	mjensen@bremerwhyte.com
Jeanne Calix	jcalix@wshblaw.com
Teresa Arias	tarias@wshblaw.com



1 **FAC**
2 ROBERT T. EGLET, ESQ.
3 Nevada Bar No. 3402
4 TRACY A. EGLET, ESQ.
5 Nevada Bar No. 6419
6 DANIELLE C. MILLER, ESQ.
7 Nevada Bar No. 9127
8 **EGLET ADAMS**
9 400 South Seventh Street, Suite 400
10 Las Vegas, Nevada 89101
11 Telephone: (702) 450-5400
12 Facsimile: (702) 450-5451
13 Email: eservice@egletwall.com
14 *Attorneys for Plaintiff*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 ANNA MARYKE GREY, an Individual,

18 Plaintiff,

19 vs.

20 AMANDA MARIE AVILA, an Individual;
21 CHRISTOPHER VIGIL, an Individual;
22 RASIER LLC dba UBER, a Foreign Limited-
23 Liability Company; DOES 1 through 40; and
24 ROE COMPANIES 1 through 40, inclusive,

25 Defendants.

Case No.: A-21-837504-C
Dept. No.: XIV

FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

26 Plaintiff, ANNA MARYKE GREY, and by and through her attorneys, ROBERT T.
27 EGLET, ESQ., TRACY A. EGLET, ESQ., and DANIELLE C. MILLER, ESQ. of EGLET
28 ADAMS, hereby demands a trial by jury and complains and alleges against Defendants as follows:

I.

PARTIES AND JURISDICTION

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

2. That upon information and belief, Defendant AMANDA MARIE AVILA is, and
at all times pertinent hereto was, a resident of the State of Nevada.

PA-00084

1 3. That upon information and belief, Defendant CHRISTOPHER VIGIL is, and at all
2 times pertinent hereto was, a resident of the State of Nevada.

3 4. That Plaintiff ANNA MARYKE GREY, is and at all times pertinent hereto was,
4 domiciled in the State of Nevada.

5 5. That upon information and belief, Defendant RASIER LLC dba UBER, is, and at
6 all times pertinent hereto was, a foreign limited liability company authorized to do, and doing
7 business in the County of Clark, State of Nevada.

8 6. That at all pertinent times hereto, Defendant CHRISTOPHER VIGIL, was an
9 employee and/or representative and/or agent of Defendant RASIER LLC dba UBER, and ROE
10 COMPANIES 1 through 40.

11 7. That at all pertinent times hereto, Defendant CHRISTOPHER VIGIL, was acting
12 within the course and scope of his employment with Defendant RASIER LLC dba UBER, and
13 ROE COMPANIES 1 through 40.

14 8. That pursuant to NRS 41.130, Defendants, including but not limited to RASIER
15 LLC dba UBER, are vicariously liable for the damages caused by their employee's actions and
16 negligence.

17 9. That Defendants named as ROE COMPANIES 1 through 40 are business entities,
18 corporations and/or limited liability companies affiliated with RASIER LLC dba UBER, who is
19 the employer(s) of CHRISTOPHER VIGIL. That the true names and capacities, of ROE
20 COMPANIES 1 through 40 are unknown to Plaintiff at this time who therefore sue said
21 Defendants by fictitious names.

22 10. That Plaintiff is informed and believes and thereon alleges that at all times
23 mentioned herein, Defendant RASIER LLC dba UBER, and ROE COMPANIES 1 through 40,
24 was acting as principal and was negligent in the selection, hiring and/or training of Defendant
25 CHRISTOPHER VIGIL, or ratifies the conduct of Defendant CHRISTOPHER VIGIL, as an
26 agent, servant, employee, employer or joint venturer.

27 11. Plaintiff alleges that each named Defendant herein designated as DOES 1 through
28 40 and ROE COMPANIES 1 through 40, are legally responsible for the events and happenings

1 herein referred to and proximately caused damages to Plaintiff as alleged herein. Plaintiff will seek
2 leave of the Court to amend this Complaint to insert the true names and capacities of such
3 Defendants when same have been ascertained and will further seek to leave to join said Defendants
4 in these proceedings.

5 12. That the true names and capacities, whether individual, corporate, associate,
6 partnership or otherwise, of the Defendants herein designated as DOES 1 through 40 and ROE
7 COMPANIES 1 through 40, are unknown to Plaintiff, who therefore sues said Defendants by such
8 fictitious names. Plaintiff will seek leave of the Court to insert the true names and capacities of
9 such Defendants when the same have been ascertained and will further seek leave to join said
10 Defendants in these proceedings.

11 **II.**
12 **GENERAL ALLEGATIONS**

13 13. That all incidents described herein occurred on Centennial Parkway at or near its
14 three-way stop intersection with John Hawthorne Avenue, in the County of Clark, State of Nevada.

15 14. That Defendant AMANDA MARIE AVILA was at all times mentioned herein, the
16 owner and operator of a Honda Civic vehicle.

17 15. That Defendant CHRISTOPHER VIGIL was at all times mentioned herein, the
18 owner and operator of a Ford Focus vehicle.

19 16. That at all times Plaintiff ANNA MARYKE GREY was a passenger in the Ford
20 Focus vehicle driven by Defendant CHRISTOPHER VIGIL.

21 17. That on or about January 21, 2020, Defendant CHRISTOPHER VIGIL was driving
22 his Ford Focus vehicle southbound on John Herbert Boulevard approaching a stop sign at the
23 intersection of Centennial Parkway.

24 18. That Defendant CHRISTOPHER VIGIL proceeded to make a left hand turn at the
25 the three-way stop intersection of John Herbert Boulevard and Centennial Parkway to go
26 eastbound on Centennial Parkway without proper caution when Defendant AMANDA MARIE
27 AVILA failed to lower her speed at the intersection.

28 19. That Defendant AMANDA MARIE AVILA failed to stop at the stop sign at the

1 intersection of John Herbert Boulevard and Centennial Parkway and collided with Defendant
2 CHRISTOPHER VIGIL’s Ford Focus vehicle.

3 20. That Defendant AMANDA MARIE AVILA was charged with a felony driving
4 under the influence at the scene of the collision.

5 21. That Plaintiff ANNA MARYKE GREY was a fault-free passenger.

6 22. That as a direct and proximate result of the negligence of Defendants, and each of
7 them, Plaintiff ANNA MARYKE GREY sustained personal injuries, some of which conditions
8 may be permanent and disabling, and all to Plaintiff’s damage in a sum of Fifteen Thousand
9 Dollars (\$15,000.00).

10 23. That as a direct and proximate result of the negligence of Defendants, and each of
11 them, Plaintiff ANNA MARYKE GREY, received medical and other treatment for the
12 aforementioned injuries, and that said services, care, and treatment is continuing and shall continue
13 in the future, all to Plaintiff’s damage.

14 24. That as a direct and proximate result of the negligence of Defendants, each of them,
15 Plaintiff ANNA MARYKE GREY, is entitled to recover damages for pain, suffering, anxiety,
16 disability, emotional distress, physical injuries and medical treatment, both past and future, all of
17 which are damages recoverable by her, in an amount in excess of Fifteen Thousand Dollars
18 (\$15,000.00).

19 25. That as a direct and proximate result of the negligence of Defendants, and each of
20 them Plaintiff ANNA MARYKE GREY, suffered a loss of enjoyment of life, all of which are
21 damages recoverable by Plaintiff, in an amount in excess of Fifteen Thousand Dollars
22 (\$15,000.00).

23 26. That as a direct and proximate result of the negligence of Defendants, and each of
24 them, Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused
25 and shall continue to cause her physical impairment, mental anguish, and loss of enjoyment of life,
26 in a presently unascertainable amount.

27 27. That as a direct and proximate result of the aforementioned negligence of
28 Defendants, and each of them, Plaintiff ANNA MARYKE GREY, has suffered a loss of past and

1 future household services in an amount to be proven at trial.

2 28. That as a direct and proximate result of the aforementioned negligence of
3 Defendants, and each of them, Plaintiff has been required to engage the services of an attorney,
4 incurring attorney's fees and costs to bring this action.

5 **III.**

6 **FIRST CLAIM FOR RELIEF**

7 **(Negligence Against All Defendants)**

8 29. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of the
9 Complaint as though fully set forth herein and incorporates the same herein by reference.

10 30. That Defendants, and each of them, owed a duty of care to Plaintiff ANNA
11 MARYKE GREY, to operate their vehicles in a reasonable and safe manner.

12 31. That Defendants, and each of them, breached that duty of care by causing the
13 Honda Civic vehicle and Ford Focus vehicle to collide.

14 32. That Defendants, and each of them, are joint and severally liable to Plaintiff ANNA
15 MARYKE GREY, for causing the vehicle collision.

16 33. That as a direct and proximate result of the negligence of Defendants, and each of
17 them, a traffic collision occurred and Plaintiff ANNA MARYKE GREY, sustained personal
18 injuries, all or some of which conditions may be permanent and disabling, and all to Plaintiff's
19 damage in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

20 34. That as a direct and proximate result of the negligence of Defendants, and each of
21 them, Plaintiff ANNA MARYKE GREY, received medical and other treatment for the
22 aforementioned injuries, and that said services, care, and treatment is continuing and shall continue
23 in the future, all to Plaintiff's damage.

24 35. That as a direct and proximate result of the negligence of Defendants, and each of
25 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
26 anxiety, disability, emotional distress, physical injuries, and medical treatment, both past and
27 future, all of which are damages recoverable by her, in an amount in excess of Fifteen Thousand
28 Dollars (\$15,000.00).

1 36. That as a direct and proximate result of the negligence of Defendants, and each of
2 them, Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused
3 and shall continue to cause her physical impairment, mental anguish, and loss of enjoyment of life,
4 in a presently unascertainable amount.

5 37. That as a further direct and proximate result, Plaintiff ANNA MARYKE GREY,
6 has suffered a loss of past and future household services in an amount to be proven at trial.

7 38. That as a direct and proximate result of the aforementioned negligence of
8 Defendants, and each of them, Plaintiff ANNA MARYKE GREY has been required to engage the
9 services of an attorney, incurring attorney's fees and costs to bring this action.

10 **IV.**

11 **SECOND CLAIM FOR RELIEF**

12 **(Negligence *Per Se* Against Defendant CHRISTOPHER VIGIL for Violation of**
13 **NRS 484B.253)**

14 39. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of the
15 Complaint as though fully set forth herein and incorporates the same herein by reference.

16 40. That at all times mentioned herein, there were in force statutes, ordinances, and
17 regulations prohibiting the conduct exhibited by Defendant CHRISTOPHER VIGIL.

18 41. That the acts of Defendant CHRISTOPHER VIGIL, as described herein, violated
19 Nevada statutes, ordinances and regulations, specifically, NRS 484B.253, et. seq., which
20 constitutes negligence *per se*.

21 42. That Defendant CHRISTOPHER VIGIL is liable for the damages sustained by
22 Plaintiff ANNA MARYKE GREY.

23 43. That Plaintiff ANNA MARYKE GREY, sustained injuries that were the type that
24 said statutes, ordinances, and regulations were intended to prevent.

25 44. That as a direct and proximate result of the acts of Defendant CHRISTOPHER
26 VIGIL, Plaintiff ANNA MARYKE GREY, sustained personal injuries, all or some of which
27 conditions may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of
28 Fifteen Thousand Dollars (\$15,000.00).

1 45. That as a direct and proximate result of the acts of Defendant CHRISTOPHER
2 VIGIL, Plaintiff ANNA MARYKE GREY, received medical and other treatment for the
3 aforementioned injuries, and that said services, care, and treatment is continuing and shall continue
4 in the future, all to Plaintiff's damage.

5 46. That as a direct and proximate result of the negligence of Defendant
6 CHRISTOPHER VIGIL, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for
7 the pain, suffering, anxiety, disability, emotional distress, physical injuries, and medical treatment,
8 both past and future, all of which are damages recoverable by her, in an amount in excess of Fifteen
9 Thousand Dollars (\$15,000.00).

10 47. That as a direct and proximate result of the acts of Defendant CHRISTOPHER
11 VIGIL, Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused
12 and shall continue to cause her physical impairment, mental anguish, and loss of enjoyment of life,
13 in a presently unascertainable amount.

14 48. That as a further direct and proximate result of the aforementioned acts of
15 Defendant CHRISTOPHER VIGIL, Plaintiff ANNA MARYKE GREY, has suffered a loss of
16 past and future household services in an amount to be proven at trial.

17 49. That as a direct and proximate result of the aforementioned acts of Defendant
18 CHRISTOPHER VIGIL, Plaintiff has been required to engage the services of an attorney,
19 incurring attorney's fees and costs to bring this action.

20 **V.**

21 **THIRD CLAIM FOR RELIEF**

22 **(Negligence *Per Se* Against Defendant AMANDA MARIE AVILA for Violation of**
23 **NRS 484B.257 and NRS 484C.110)**

24 50. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of the
25 Complaint as though fully set forth herein and incorporates the same herein by reference.

26 51. That at all times mentioned herein, there were in force statutes, ordinances, and
27 regulations prohibiting the conduct exhibited by Defendant AMANDA MARIE AVILA.

28 52. That Plaintiff ANNA MARYKE GREY, was a member of the class of persons for

1 whose protection said statutes, ordinances, and regulations were enacted or promulgated.

2 53. That the acts of Defendant AMANDA MARIE AVILA, as described herein,
3 violated Nevada statutes, ordinances and regulations, specifically, NRS 484B.257, et. seq., and
4 NRS 484C.110, et. seq., which constitutes negligence *per se*.

5 54. That Defendant is liable for the damages sustained by Plaintiff ANNA MARYKE
6 GREY.

7 55. That Plaintiff ANNA MARYKE GREY, sustained injuries that were the type that
8 said statutes, ordinances, and regulations were intended to prevent.

9 56. That as a direct and proximate result of the acts of Defendant AMANDA MARIE
10 AVILA, Plaintiff ANNA MARYKE GREY, sustained personal injuries, all or some of which
11 conditions may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of
12 Fifteen Thousand Dollars (\$15,000.00).

13 57. That as a direct and proximate result of the acts of Defendant AMANDA MARIE
14 AVILA, Plaintiff ANNA MARYKE GREY, received medical and other treatment for the
15 aforementioned injuries, and that said services, care, and treatment is continuing and shall continue
16 in the future, all to Plaintiff's damage.

17 58. That as a direct and proximate result of the negligence of Defendant AMANDA
18 MARIE AVILA, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain,
19 suffering, anxiety, disability, emotional distress, physical injuries, and medical treatment, both
20 past and future, all of which are damages recoverable by her, in an amount in excess of Fifteen
21 Thousand Dollars (\$15,000.00).

22 59. That as a direct and proximate result of the acts of Defendant AMANDA MARIE
23 AVILA, Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused
24 and shall continue to cause her physical impairment, mental anguish, and loss of enjoyment of life,
25 in a presently unascertainable amount.

26 60. That as a further direct and proximate result of the aforementioned acts of
27 Defendant AMANDA MARIE AVILA, Plaintiff ANNA MARYKE GREY, has suffered a loss of
28 past and future household services in an amount to be proven at trial.

1 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
2 anxiety, disability, emotional distress, physical injuries and medical treatment, both past and
3 future, all of which are damages recoverable by Plaintiff ANNA MARYKE GREY, in an amount
4 in excess of Fifteen Thousand Dollars (\$15,000.00).

5 70. That as a direct and proximate result of the acts of Defendants, and each of them,
6 Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused and shall
7 continue to cause her physical impairment, mental anguish, and loss of enjoyment of life, in a
8 presently unascertainable amount.

9 71. That as a further direct and proximate result of the aforementioned acts of
10 Defendants, and each of them, Plaintiff ANNA MARYKE GREY, has suffered a loss of past and
11 future household services in an amount to be proven at trial.

12 72. That as a direct and proximate result of the aforementioned acts of Defendants, and
13 each of them, Plaintiff ANNA MARYKE GREY has been required to engage the services of an
14 attorney, incurring attorney's fees and costs to bring this action.

15 **VII.**

16 **FIFTH CLAIM FOR RELIEF**

17 **(Negligent Hiring, Training, Retention, and Supervision Against Defendant RASIER LLC**
18 **dba UBER)**

19 73. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of the
20 Complaint as though fully set forth herein and incorporates the same herein by reference.

21 74. That Defendant RASIER LLC dba UBER had a duty to properly and adequately
22 hire, train, retain, and supervise personnel under its control so as to avoid unreasonable risk of
23 harm to the general public.

24 75. That Defendant RASIER LLC dba UBER was responsible for the hiring, training,
25 retaining, supervision, and control of its employees and/or agents, including Defendant
26 CHRISTOPHER VIGIL, and as a direct and proximate result of Defendant RASIER LLC dba
27 UBER negligence in hiring, training, supervising, and controlling its employees and/or agents,
28 including Defendant CHRISTOPHER VIGIL, Plaintiff ANNA MARYKE GREY suffered injuries

1 and damages as herein alleged.

2 76. That as a direct and proximate result of the acts of Defendants, and each of them, a
3 traffic collision occurred and Plaintiff ANNA MARYKE GREY, sustained personal injuries, all
4 or some of which conditions may be permanent and disabling, and all to Plaintiff ANNA
5 MARYKE GREY damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

6 77. That as a direct and proximate result of the acts of Defendants, and each of them,
7 Plaintiff ANNA MARYKE GREY, received medical and other treatment for the aforementioned
8 injuries, and that said services, care, and treatment is continuing and shall continue in the future,
9 all to Plaintiff ANNA MARYKE GREY damage.

10 78. That as a direct and proximate result of the negligence of Defendants, and each of
11 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
12 anxiety, disability, emotional distress, physical injuries and medical treatment, both past and
13 future, all of which are damages recoverable by Plaintiff ANNA MARYKE GREY, in an amount
14 in excess of Fifteen Thousand Dollars (\$15,000.00).

15 79. That as a direct and proximate result of the acts of Defendants, and each of them,
16 Plaintiff ANNA MARYKE GREY, has limited recreational activities, which have caused and shall
17 continue to cause her physical impairment, mental anguish, and loss of enjoyment of life, in a
18 presently unascertainable amount.

19 80. That as a further direct and proximate result of the aforementioned acts of
20 Defendants, and each of them, Plaintiff ANNA MARYKE GREY, has suffered a loss of past and
21 future household services in an amount to be proven at trial.

22 81. That as a direct and proximate result of the aforementioned acts of Defendants, and
23 each of them, Plaintiff ANNA MARYKE GREY has been required to engage the services of an
24 attorney, incurring attorney's fees and costs to bring this action.

25 **VIII.**

26 **SIXTH CAUSE OF ACTION**

27 **(Vicarious Liability/Respondeat Superior Against Defendant RASIER LLC dba UBER)**

28 82. Plaintiff repeats and re-allege the allegations of the preceding paragraphs of the

1 Complaint as though fully set forth herein and incorporates the same herein by reference.

2 83. That at all times mentioned herein, Defendant CHRISTOPHER VIGIL was an
3 employee and/or agent and/or contractor of Defendant RASIER LLC dba UBER.

4 84. That upon information and belief, at the time of the Collision, Defendant
5 CHRISTOPHER VIGIL was acting within the course and scope of his employment with
6 Defendant RASIER LLC dba UBER while driving.

7 85. That upon information and belief, at the time of the Collision, Defendant
8 CHRISTOPHER VIGIL was on a business errand on behalf of Defendant RASIER LLC dba
9 UBER or furthering a business purpose of Defendant RASIER LLC dba UBER.

10 86. That upon information and belief, Defendant CHRISTOPHER VIGIL was under
11 Defendant RASIER LLC dba UBER's control at the time of the collision.

12 87. That upon information and belief, the relationship between Defendant RASIER
13 LLC dba UBER and Defendant CHRISTOPHER VIGIL is that of superior and subordinate.

14 88. That as Defendant CHRISTOPHER VIGIL's employer, Defendant RASIER LLC
15 dba UBER is vicariously liable for all of Defendant CHRISTOPHER VIGIL's actions, omissions
16 and inactions performed within the course and scope of his agency, ostensible agency, joint
17 venture, contractual or employment relationship with Defendant RASIER LLC dba UBER.

18 89. That as a direct and proximate result of the acts of Defendants, and each of them,
19 Plaintiff ANNA MARYKE GREY, is entitled to a judgment against Defendant RASIER LLC dba
20 UBER stating that it is vicariously liable for all of Defendant CHRISTOPHER VIGIL's actions
21 herein.

22 90. That as a direct and proximate result of the acts of Defendants, and each of them, a
23 collision occurred and Plaintiff ANNA MARYKE GREY, sustained personal injuries, all or some
24 of which conditions may be permanent and disabling, and all to Plaintiff ANNA MARYKE GREY
25 damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

26 91. That as a direct and proximate result of the acts of Defendants, and each of them,
27 Plaintiff ANNA MARYKE GREY received medical and other treatment for the aforementioned
28 injuries, and that said services, care, and treatment is continuing and shall continue in the future,

1 all to Plaintiff ANNA MARYKE GREY damage.

2 92. That as a direct and proximate result of the negligence of Defendants, and each of
3 them, Plaintiff ANNA MARYKE GREY, is entitled to recover damages for the pain, suffering,
4 anxiety, disability, emotional distress, physical injuries, and medical treatment, both past and
5 future, all of which are damages recoverable by Plaintiff ANNA MARYKE GREY, in an amount
6 in excess of Fifteen Thousand Dollars (\$15,000.00).

7 93. That as a direct and proximate result of the negligence of Defendants, and each of
8 them, Plaintiff ANNA MARYKE GREY suffered a loss of enjoyment of life, all of which are
9 damages recoverable by Plaintiff ANNA MARYKE GREY, an amount in excess of Fifteen
10 Thousand Dollars (\$15,000.00).

11 94. That as a direct and proximate result of the acts of Defendants, and each of them,
12 Plaintiff ANNA MARYKE GREY has limited recreational activities, which have caused and shall
13 continue to cause them physical impairment, mental anguish, and loss of enjoyment of life, in a
14 presently unascertainable amount.

15 95. That as a further direct and proximate result of the aforementioned acts of
16 Defendants, and each of them, Plaintiff ANNA MARYKE GREY has suffered a loss of past and
17 future household services in an amount to be proven at trial.

18 96. That as a direct and proximate result of the aforementioned acts of Defendants, and
19 each of them, Plaintiff ANNA MARYKE GREY has been required to engage the services of an
20 attorney, incurring attorney's fees and costs to bring this action.

21 **IX.**

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
24 follows:

- 25 1. General damages in an amount in excess of \$15,000.00;
26 2. Compensatory damages in an amount in excess of \$15,000.00;
27 3. Special damages in an amount in excess of \$15,000.00;
28 4. Medical and incidental expenses incurred and to be incurred;

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- 5. Damages for past and future pain, suffering, mental anguish, and loss of enjoyment of life;
- 6. Damages for a loss of past and future household services;
- 7. Costs of suit, reasonable attorney fees, interest incurred herein; and
- 8. For such other and further relief as is just and proper.

DATED this 4th day of November, 2021.

EGLET ADAMS

/s/ Robert T. Eglet, Esq.
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE C. MILLER, ESQ.
Nevada Bar No. 9127
400 South Seventh Street, Suite 400
Las Vegas, NV 89101
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff, by and through her attorney of record, EGLET ADAMS, hereby demands a jury trial of all of the issues in the above matter.

DATED this 4th day of November, 2021.

EGLET ADAMS

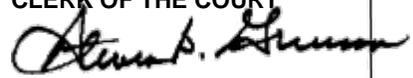
/s/ Robert T. Eglet, Esq. _____
ROBERT T. EGLET, ESQ.
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400 South Seventh Street, Suite 400
Las Vegas, NV 89101
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NEFC Rule 9(b), I hereby certify that on the 4th day of November, 2021, I caused the foregoing **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and entered on the Court’s docket in the above-referenced matter.

/s/ Jennifer Buckley
An Employee of **EGLET ADAMS**



1 McCormick, Barstow, Sheppard,
Wayte & Carruth LLP
2 Renee M. Maxfield
Nevada Bar No. 12814
3 *renee.maxfield@mccormickbarstow.com*
8337 West Sunset Road, Suite 350
4 Las Vegas, Nevada 89113
Telephone: (702) 949-1100
5 Facsimile: (702) 949-1101

6 *Attorneys for Defendant/Cross-Claimant Amanda*
Marie Avila

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA
10

11 ANNA MARYKE GREY, an Individual,
12 Plaintiff,

13 v.

14 AMANDA MARIE AVILA, an Individual;
CHRISTOPHER VIGIL, an Individual;
15 RASIER LLC dba UBER, a Foreign Limited-
Liability Company; DOES 1 through 20; and
16 ROE COMPANIES 1 THROUGH 40,
inclusive,

17 Defendants.
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19 AMANDA MARIE AVILA,

20 Cross-Claimant,

21 v.

22 CHRISTOPHER VIGIL; RASIER, LLC d/b/a
UBER,

23 Cross-Defendants.
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Case No.: A-21-837504-C
Dept. No.: XIV

**DEFENDANT AMANDA MARIE
AVILA'S ANSWER TO FIRST
AMENDED COMPLAINT AND CROSS-
CLAIM**

25
26 Defendant AMANDA MARIE AVILA, by and through her counsel of record of the law firm
27 of McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH, LLP, and in Answer to the
28 Complaint filed herein admits, denies, and alleges as follows:

I.
PARTIES AND JURISDICTION

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3 1. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 1,
4 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
5 to the truth or falsity of said allegations and on that basis therefore denies same.

6 2. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 2,
7 Defendant admits the allegations contained therein.

8 3. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 3,
9 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
10 to the truth or falsity of said allegations and on that basis therefore denies same.

11 4. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 4,
12 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
13 to the truth or falsity of said allegations and on that basis therefore denies same.

14 5. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 5,
15 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
16 to the truth or falsity of said allegations and on that basis therefore denies same.

17 6. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 6,
18 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
19 to the truth or falsity of said allegations and on that basis therefore denies same.

20 7. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 7,
21 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
22 to the truth or falsity of said allegations and on that basis therefore denies same.

23 8. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 8,
24 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
25 to the truth or falsity of said allegations and on that basis therefore denies same.

26 9. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 9,
27 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
28 to the truth or falsity of said allegations and on that basis therefore denies same.

1 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
2 said allegations and on that basis, therefore, denies the same.

3 19. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 19,
4 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
5 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
6 said allegations and on that basis, therefore, denies the same.

7 20. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 20,
8 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
9 to the truth or falsity of said allegations and on that basis therefore denies same.

10 21. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 21,
11 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
12 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
13 said allegations and on that basis, therefore, denies the same.

14 22. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 22,
15 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
16 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
17 said allegations and on that basis, therefore, denies the same.

18 23. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 23,
19 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
20 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
21 said allegations and on that basis, therefore, denies the same.

22 24. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 24,
23 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
24 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
25 said allegations and on that basis, therefore, denies the same.

26 25. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 25,
27 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is

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1 32. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 32,
2 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
3 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
4 said allegations and on that basis, therefore, denies the same.

5 33. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 33
6 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
7 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
8 said allegations and on that basis, therefore, denies the same.

9 34. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 34,
10 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
11 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
12 said allegations and on that basis, therefore, denies the same.

13 35. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 35,
14 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
15 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
16 said allegations and on that basis, therefore, denies the same.

17 36. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 36,
18 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
19 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
20 said allegations and on that basis, therefore, denies the same.

21 37. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 37,
22 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
23 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
24 said allegations and on that basis, therefore, denies the same.

25 38. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 38,
26 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
27 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
28 said allegations and on that basis, therefore, denies the same.

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IV.
SECOND CLAIM FOR RELIEF

**(Negligence *Per Se* Against Defendant CHRISTOPHER VIGIL for Violation of NRS
484B.253)**

39. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 39, Defendant restates and re-alleges her responses to Paragraphs 1 through 38, inclusive, and incorporates the same as though fully set forth herein.

40. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 40, Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis, therefore, denies the same.

41. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 41, Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis, therefore, denies the same.

42. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 42, Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis, therefore, denies the same.

43. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 43, Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis, therefore, denies the same.

44. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 44, Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis, therefore, denies the same.

45. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 45, Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is

1 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
2 said allegations and on that basis, therefore, denies the same.

3 46. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 46,
4 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
5 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
6 said allegations and on that basis, therefore, denies the same.

7 47. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 47,
8 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
9 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
10 said allegations and on that basis, therefore, denies the same.

11 48. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 48,
12 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
13 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
14 said allegations and on that basis, therefore, denies the same.

15 49. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 49,
16 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
17 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
18 said allegations and on that basis, therefore, denies the same.

19 **V.**
20 **THIRD CLAIM FOR RELIEF**

21 **(Negligence *Per Se* Against AMANDA MARIE AVILA for Violation of NRS 484B.257 and
22 NRS 484C.110)**

23 50. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 50,
24 Defendant restates and re-alleges her responses to Paragraphs 1 through 49, inclusive, and
25 incorporates the same as though fully set forth herein.

26 51. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 51,
27 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
28 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
said allegations and on that basis, therefore, denies the same.

1 52. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 52,
2 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
3 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
4 said allegations and on that basis, therefore, denies the same.

5 53. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 53,
6 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
7 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
8 said allegations and on that basis, therefore, denies the same.

9 54. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 54,
10 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
11 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
12 said allegations and on that basis, therefore, denies the same.

13 55. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 55,
14 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
15 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
16 said allegations and on that basis, therefore, denies the same.

17 56. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 56,
18 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
19 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
20 said allegations and on that basis, therefore, denies the same.

21 57. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 57,
22 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
23 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
24 said allegations and on that basis, therefore, denies the same.

25 58. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 58,
26 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
27 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
28 said allegations and on that basis, therefore, denies the same.

1 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
2 said allegations and on that basis, therefore, denies the same.

3 66. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 66,
4 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
5 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
6 said allegations and on that basis, therefore, denies the same.

7 67. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 67,
8 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
9 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
10 said allegations and on that basis, therefore, denies the same.

11 68. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 68,
12 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
13 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
14 said allegations and on that basis, therefore, denies the same.

15 69. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 69,
16 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
17 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
18 said allegations and on that basis, therefore, denies the same.

19 70. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 70,
20 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
21 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
22 said allegations and on that basis, therefore, denies the same.

23 71. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 71,
24 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
25 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
26 said allegations and on that basis, therefore, denies the same.

27 72. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 72,
28 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is

1 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
2 said allegations and on that basis, therefore, denies the same.

3
4 **VII.**
FIFTH CLAIM FOR RELIEF

5 **(Negligent Hiring, Training, Retention, and Supervision Against Defendant RASIER LLC**
6 **dba UBER)**

7 73. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 73,
8 Defendant restates and re-alleges her responses to Paragraphs 1 through 72, inclusive, and
9 incorporates the same as though fully set forth herein.

10 74. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 74,
11 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
12 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
13 said allegations and on that basis, therefore, denies the same.

14 75. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 75,
15 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
16 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
17 said allegations and on that basis, therefore, denies the same.

18 76. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 76,
19 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
20 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
21 said allegations and on that basis, therefore, denies the same.

22 77. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 77,
23 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
24 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
25 said allegations and on that basis, therefore, denies the same.

26 78. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 78,
27 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
28 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
said allegations and on that basis, therefore, denies the same.

1 86. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 86,
2 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
3 to the truth or falsity of said allegations and on that basis therefore denies same.

4 87. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 87,
5 Defendant alleges she is without sufficient knowledge or information necessary to form a belief as
6 to the truth or falsity of said allegations and on that basis therefore denies same.

7 88. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 88,
8 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
9 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
10 said allegations and on that basis, therefore, denies the same.

11 89. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 89,
12 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
13 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
14 said allegations and on that basis, therefore, denies the same.

15 90. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 90,
16 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
17 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
18 said allegations and on that basis, therefore, denies the same.

19 91. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 91,
20 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
21 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
22 said allegations and on that basis, therefore, denies the same.

23 92. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 92,
24 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
25 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
26 said allegations and on that basis, therefore, denies the same.

27 93. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 93,
28 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is

1 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
2 said allegations and on that basis, therefore, denies the same.

3 94. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 94,
4 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
5 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
6 said allegations and on that basis, therefore, denies the same.

7 95. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 95,
8 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
9 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
10 said allegations and on that basis, therefore, denies the same.

11 96. In answering the allegations of Plaintiff's First Amended Complaint, Paragraph 96,
12 Defendant objects as the allegations are legal conclusion. Defendant further alleges that she is
13 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
14 said allegations and on that basis, therefore, denies the same.

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

17 (Failure to State a Cause of Action)

18 1. That the Complaint and each and every cause of action purported to be set forth
19 therein, fails to allege facts sufficient to state a claim against Defendant upon which relief can be
20 granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 (Failure to Mitigate Damages)

23 2. The answering Defendant alleges that Plaintiff has failed and refused to take
24 reasonable steps to remedy, cure or mitigate her damages as alleged in the Complaint, and is
25 therefore now barred from any recovery in the present action as a result of and to the extent of such
26 failure and refusal.

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THIRD AFFIRMATIVE DEFENSE

(Contributory Negligence)

3. Plaintiff did not exercise ordinary care, caution or prudence in this incident and the resulting accident and damages, if any, were proximately caused and contributed to by Plaintiff's own negligence and such negligence was greater than the negligence, if any, of the Defendant.

FOURTH AFFIRMATIVE DEFENSE

(Negligence of Third Parties)

4. The incident involved herein and any resulting injuries or damages, if any, were caused or contributed by acts and/or omissions of third parties over whom Defendant has no control.

FIFTH AFFIRMATIVE DEFENSE

(Not a Substantial Factor)

5. The Complaint, and each cause of action thereof, is barred on the grounds that Defendant's materials and/or conduct referred to in the Complaint were not a substantial factor in bringing about the injuries and damages complained of by Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

6. Defendant hereby requests a credit in the amount of any advanced sums of money, if any, either to or on behalf of Plaintiff prior to trial in this action.

SEVENTH AFFIRMATIVE DEFENSE

7. In the event these answering Defendant is found to be liable in any way for the injuries claimed by Plaintiff, the answering Defendant is only severally liable as Plaintiff was in whole or in part responsible for her own injuries and Plaintiff's alleged injuries were caused in whole or part by the actions of third parties outside of these answering Defendant's control.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff is precluded from bringing this action pursuant to Nevada Revised Statute Section 17.225(3).

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff is barred from recovering any special damages herein for failure to specifically allege the types of special damages claims, pursuant to NRCPC 9(g).

1 **THIRD CLAIM FOR RELIEF**

2 **(Apportionment against Cross-Defendants Christopher Vigil and Rasier, LLC d/b/a Uber)**

3 15. Cross-Claimant refers to and incorporates by reference Paragraphs 1 through 14 as
4 though fully set forth herein.

5 16. Should Cross-Claimant be found legally liable as a result of this incident, for injuries
6 alleged by the Plaintiff, if at all, Cross-Claimant is entitled to contribution and apportionment from
7 the Cross-Defendants in an amount proportionate to the amount of negligence and/or fault to the
8 Cross-Defendants.

9 17. It has been necessary for Cross-Claimant to retain the services of counsel to represent
10 her in this action. Accordingly, Cross-Claimant is entitled to the recovery of her reasonable
11 attorneys' fees and costs incurred herein.

12 WHEREFORE Cross-Claimant prays for judgment against Cross-Defendants, as follows:

- 13 1. For general and special damages in excess of \$10,000;
- 14 2. For indemnity for all damages and/or economic losses that Plaintiff recovers against
15 Cross-Claimant by way of judgment, order, settlement, compromise or trial;
- 16 3. For reasonable attorneys' fees, costs, expert costs and expenses pursuant to statutory
17 law, common law and contractual law;
- 18 4. For pre-judgment interest;
- 19 5. For contribution pursuant to NRS 17.225; and
- 20 6. For such further relief as this Court may deem just, equitable and proper.

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DATED this 18th day of November, 2021

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By Renee M. Maxfield

Renee M. Maxfield
Nevada Bar No. 12814
8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
Tel. (702) 949-1100

*Attorneys for Defendant/Cross-Claimant Amanda
Marie Avila*

CERTIFICATE OF SERVICE

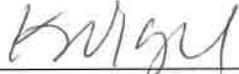
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I hereby certify that on this 18th day of November, 2021, a true and correct copy of **DEFENDANT AMANDA MARIE AVILA'S ANSWER TO FIRST AMENDED COMPLAINT AND CROSS-CLAIM** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

Robert T. Eglet, Esq.
Tracey A. Eglet, Esq.
Danielle C. Miller, Esq.
EGLET ADAMS
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Jared G. Christensen, Esq.
Kristina Miletovic, Esq.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 N. Town Center Drive, Suite 250
Las Vegas, Nevada 89144
Attorneys for Defendant Christopher Vigil

Analise N. M. Tilton, Esq.
Xheni Ristani, Esq.
WOOD, SMITH, HENNING & BERMAN, LLP
2881 Business Park Court, Suite 200
Las Vegas, Nevada 89128
Attorneys for Defendant Rasier, LLC d/b/a Uber

By 
Kathy L. Vigil, an Employee of
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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