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BEFORE THE REAL ESTATE COMMISSION
STATE OF NEVADA

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS AND INDUSTRY, STATE
OF NEVADA,

Petitioner,

vs.

IVAN ALARCON,
(BS.0143962, Active),

Respondent.

CASE NO.: 2023-954

**IVAN ALARCON'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

FILED

MAY 01 2024

REAL ESTATE COMMISSION

BY *Kelley Valadez*

Respondent Ivan Alarcon, by and through his attorneys at LIPSON NEILSON P.C., hereby submits hereby moves for partial summary judgment pursuant to NRCP 56.

This motion is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file, and such argument as the Commission may entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Ivan Alarcon has been a licensed broker-salesperson in the State of Nevada for almost two decades. He has consistently performed his duties under that license with professionalism and integrity, and has no prior discipline on his record. Mr. Alarcon has also possessed a driver's license for many years. His prior record¹ demonstrates that he has exercised a consistent duty of care. Absent one ticket issued in a National Park and the accident at issue, Mr. Alarcon has no prior driving infractions of any kind over the last decade. The Real Estate Division of the Department of Business and Industry of the State of Nevada ("Division") is asking the Real Estate Commission ("Commission") to judge Mr. Alarcon for one moment in time on the worst day of his life. The Division is going to ask the Commission to deny Mr. Alarcon's application to renew his license and further deprive him of that license for many years

¹ See Exhibit 1, State of Nevada Department of Motor Vehicles Driver History Printout dated March 3, 2023.

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

1 to come. We believe that the Division is wrong. Mr. Alarcon's car accident and subsequent
2 criminal plea do not fall under the crimes set forth in NRS 645.330(2)(a). Mr. Alarcon's actions
3 did not result in a crime involving moral turpitude. Furthermore, while Mr. Alarcon's driver's
4 license was restricted for a period of time, his full driving privileges were restored with no
5 objection from the State prosecutor and by the approval of the Court.² While the Division
6 argues that driving "relates" to real estate and provides another means to deprive Mr. Alarcon of
7 his license, this argument is meritless. A driver's license is not a requirement to hold an active
8 broker-salesperson license. People with disabilities who cannot drive can still seek and obtain a
9 license, and often have other means of transportation. Older licensees who can longer drive due
10 to physical limitations can also still stay active using other means of transportation.

11 Mr. Alarcon has already paid dearly for the events of February 14, 2022. He should not
12 lose his license too.

13 **II. RELEVANT FACTS.**

14 On February 14, 2022, Mr. Alarcon planned a special Valentine's day evening for his
15 girlfriend, Marykarmen Guzman ("Ms. Guzman"). He borrowed his friend's 2018 Vanderhall,
16 an open-top, 3-wheeled, 2 seat vehicle so he could take her on a romantic evening adventure.
17 During their evening, Mr. Alarcon was attempting to exit the I15 to the I215 when tragedy
18 struck. Their vehicle was involved in a single vehicle roll-over accident. Ms. Guzman was
19 ejected when her seatbelt snapped. Ms. Guzman is currently engaged in a civil lawsuit with the
20 vehicle manufacturer claiming her injuries were the result of a product defect.³ While Mr.
21 Alarcon is also a named Defendant, Ms. Guzman's case is focused primarily on the
22 manufacturer.

23 Mr. Alarcon and Ms. Guzman were both seriously injured. Mr. Alarcon is still
24 recovering from his own physical injuries. After the accident, Mr. Alarcon was pursued
25 criminally by the State. While there was evidence that Respondent was traveling between 70-

26 _____
27 ² See **Exhibit 2**, *Minute Order and Order of Court Granting Motion to Remove Driving Restrictions*.

28 ³ See **Exhibit 3**, Complaint filed by Ms. Guzman.

1 80 miles an hour, which was less than the 20 mph over the 65 mph posted speed limit, and other
2 factors to support a defense against the charges as pled, Respondent chose to agree to a plea in
3 lieu of proceeding to trial. While Respondent signed the plea agreement on June 15, 2023, his
4 plea had to be approved by the Court. This is no different than any plea reached in a Real
5 Estate Commission matter. Mr. Alarcon did not appear before the Court to officially affirm his
6 plea and receive his sentence until October 12, 2023.

7 **III. APPLICABLE LEGAL STANDARDS.**

8 Summary judgment is appropriate when “after a review of the record viewed in a light
9 most favorable to the nonmoving party, there remains no issues of material fact.” *Barmettler v.*
10 *Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382, 1385 (1998), citing *Butler v. Bogdanovich*, 101
11 Nev. 449, 451, 705 P.2d 662, 663 (1985); NRCP 56. The non-moving party is not, however,
12 “entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.*,
13 quoting *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). In
14 evaluating a summary judgment motion, a court views all facts and draws all inferences in a light
15 most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793
16 F.2d 100, 1103 (9th Cir. 1986).

17 In opposing summary judgment under NRCP 56, “the non-moving party may not rest
18 upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific
19 facts demonstrating the existence of a genuine factual issue.” *Wood v. Safeway, Inc.*, 121 Nev.
20 724, 731, 121 P.3d 1026, 1030-31 (2005), quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.
21 706, 713, 57 P.3d 82, 87 (2002).

22 A factual dispute is only genuine if the evidence is such that a rational trier of fact could
23 return a verdict for the non-moving party. *Id.* The non-moving party bears the burden to show
24 more than some metaphysical doubt as to the operative facts in order to avoid summary
25 judgment. *Id.*, 121 Nev. at 732, 121 P.3d at 1031.

26 Further, “[w]here an essential element of a claim for relief is absent, the facts, disputed
27 or otherwise, as to other elements are rendered immaterial and summary judgment is proper.”
28

1 *Bulbman*, 108 Nev. at 111, 825 P.2d at 592. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447,
2 956 P.2d 1382, 1386 (1998).

3 **IV. ARGUMENT.**

4 **A. Mr. Alarcon's Conviction Is Not One of the Listed Crimes For Which a**
5 **Crime Can Be Denied Under NRS 645.330(2)(a).**

6 NRS 645.330 states as follows:

7 **NRS 645.330 General qualifications of applicant; grounds for denial of**
8 **application; eligibility for licensing as broker.**

9 1. Except as otherwise provided by a specific statute, the Division may
10 approve an application for a license for a person who meets all the following
11 requirements:

12 (a) Has a good reputation for honesty, trustworthiness and integrity and who
13 offers proof of those qualifications satisfactory to the Division.

14 (b) Has not made a false statement of material fact on his or her application.

15 (c) Is competent to transact the business of a real estate broker, broker-
16 salesperson or salesperson in a manner which will safeguard the interests of the
17 public.

18 (d) Has passed the examination.

19 (e) Has submitted all information required to complete the application.

20 2. The Division:

21 (a) May deny a license to any person who has been convicted of, or entered a
22 plea of guilty, guilty but mentally ill or nolo contendere to, **forgery,**
23 **embezzlement, obtaining money under false pretenses, larceny, extortion,**
24 **conspiracy to defraud, engaging in a real estate business without a license,**
25 **possessing for the purpose of sale any controlled substance** or any crime
26 involving moral turpitude, in any court of competent jurisdiction in the United
27 States or elsewhere; and

28 (b) Shall not issue a license to such a person until at least 3 years after:

(1) The person pays any fine or restitution ordered by the court; or

(2) The expiration of the period of the person's parole, probation or
sentence,
Ê whichever is later.

3. Suspension or revocation of a license pursuant to this chapter or any prior
revocation or current suspension in this or any other state, district or territory of
the United States or any foreign country before the date of the application is
grounds for refusal to grant a license.

4. Except as otherwise provided in NRS 645.332, a person may not be
licensed as a real estate broker unless the person has been actively engaged as a
full-time licensed real estate broker-salesperson or salesperson in this State, or
actively engaged as a full-time licensed real estate broker, broker-salesperson or
salesperson in another state or the District of Columbia, for at least 2 of the 4
years immediately preceding the issuance of a broker's license. [Emphasis added.]

1 NRS 645.330(2)(a) lists a specific series of crimes for which the Commission may deny
2 the application of a license. Each of the listed crimes are serious crimes involving dishonesty
3 or drug use. They also demonstrate the nature and scope of crimes contemplated for use under
4 this statute. Mr. Alarcon's conviction does not fall under any of the crimes specifically
5 referenced.

6 **B. Mr. Alarcon's Conviction Was Not a Crime Involving Moral Turpitude.**

7 The Division alleges that Mr. Alarcon's conviction for attempted reckless driving is a
8 crime involving moral turpitude. Moral turpitude is not defined anywhere within the NRS.
9 However, Courts in Nevada have adopted and recognized the term as defined by some secondary
10 sources. The Restatement (Second) of Torts, §571, at comment g, states "Moral turpitude has
11 been defined as inherent baseness or vileness of principle in the human heart. It means, in
12 general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good
13 morals, justice, or ethics as to be shocking to the moral senses of the community." *Andersen v.*
14 *Hazell*, 2016 Nev. Dist. LEXIS 2313, *78. Bouvier's Law Dictionary (Rawle's Third Revision)
15 "defines the term 'moral turpitude' as follows: 'an act of baseness, vileness or depravity in the
16 private and social duties which a man owes to his fellowmen or to society in general contrary to
17 the accepted rule of right and duty between man and man.'" *State ex rel. Conklin v. Buckingham*,
18 59 Nev. 36, 41, 84 P.2d 49, 50-51 (1938).

19 A number of courts have held that operation of a vehicle in a dangerous manner does not
20 rise to the level of a crime of moral turpitude, even when such operation results in death or
21 involves fleeing from the police. *In re Schiano Di Cola*, 7 F. Supp. 194, 194-95 (D. R.I. 1934)
22 (no finding of moral turpitude when an unintentional death resulting from negligent/reckless
23 operation of a vehicle resulted in death); *Ramirez-Contreras v. Sessions*, 858 F.3d 1298, 1603
24 (9th Cir. 2017) (holding that flight from police did not rise to the level of a crime of moral
25 turpitude as "[o]nly truly unconscionable conduct surpasses the threshold of moral turpitude"
26 *Robles-Urrera v. Holder*, 678 F.3d 702, 708, 710 (9th Cir. 2012) and that crimes of moral
27 turpitude "typically involve grave acts of baseness or depravity such as murder, rape, and
28 incest." *Id.* at 708).

1 Essentially, to be a crime of moral turpitude, a crime must be evil and depraved, rising to
2 the level of shocking the conscious. The Division’s Complaint alleges no facts to support such a
3 finding. The only fact the Complaint references is that Ms. Guzman was injured. This fact does
4 not speak to Mr. Alarcon’s intent, which is a necessary element of such a finding. Additionally,
5 Ms. Guzman is currently in litigation with the manufacturer of the vehicle claiming that there
6 was a product defect that primarily caused her injuries. There are no facts that would create this
7 intent on the part of Mr. Alarcon and this charge should be dismissed.

8 **C. A Licensee is Not Required to Hold a Driver’s License or Operate a Vehicle**
9 **in Order to Obtain or Maintain a License.**

10 The Division argues that the Commission can deprive Mr. Alarcon of his license because
11 the occupation of a real estate agent “may include driving a vehicle as a regular day-to-day
12 function.” This is a meritless argument. While many licensees drive vehicles, driving is not a
13 required function to obtain or maintain a license. People with disabilities or those of an
14 advanced age may have to find other means of transportation, but they can continue to engage in
15 the profession. Additionally, neither the State or the Court involved in Mr. Alarcon’s criminal
16 matter had an issue lifting all restrictions on his license. Other than this accident and one ticket ,
17 Mr. Alarcon has had an exemplary driving record. If this is an issue with the Commission, the
18 solution would be to place restrictions on his driving versus using the fact that some realtors
19 drive cars to deny him his license.

20 **V. CONCLUSION.**

21 The purpose of discipline is not punishment, but rather to protect the public and
22 confidence in the integrity of the profession. Here, there is no evidence of any crime related to
23 the profession and Mr. Alarcon has shown nothing but cooperation and contrition for his
24 mistake. He has also paid a heavy personal price. No sanction is required to protect the public
25 or educate him as to the profession. And, since punishment is not a goal of sanctions, any
26 additional penalty would be punitive under these facts. We request that the Commission dismiss
27 count 1 of the Complaint and simply hold a hearing on whether Mr. Alarcon acted in good faith
28

1 in connection with reporting his conviction less than 30 days after the Court approved his
2 proposed plea.

3 Dated this 1th day of May, 2024.

4 LIPSON NEILSON P.C.

5
6 By: /s/ Janeen V. Isaacson
7 JANEEN V. ISAACSON (NV Bar No. 6429)
8 9900 Covington Cross Drive, Suite 120
9 Las Vegas, Nevada 89144
10 (702) 382-1500 - Telephone
11 (702) 382-1512 – Facsimile
12 JIsaacson@lipsonneilson.com

13 *Attorneys for Respondent*

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2024, service of the foregoing IVAN ALARCON'S MOTION FOR PARTIAL SUMMARY JUDGMENT was made via electronic mail addressed to the following parties:

Kelley Valadez Commission Coordinator Shareece N. Bates Administration Section Manager Nevada Real Estate Division 3300 W. Sahara Avenue, Suite 350 Las Vegas, Nevada 89102 kvaladez@red.nv.gov sbates@red.nv.gov	Christal P. Keegan, Esq. Deputy Attorney General 5420 Kietzke Lane #202 Reno, Nevada 89511 ckeegan@ag.nv.gov <i>Attorneys for Real Estate Division</i>
---	--

/s/ Janeen V. Isaacson
An Employee of LIPSON NEILSON P.C.

LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

EXHIBIT 1



STATE OF NEVADA
 DEPARTMENT OF MOTOR VEHICLES
 MOTOR VEHICLES BRANCH
 555 WRIGHT WAY
 CARSON CITY, NEVADA 89711-0400
 (775) 684-4368

RECORD REQUEST

03-03-2023

Web Transaction Confirmation Number: 0165484993

DLN/ID: 0001375512

State of Record: NV

Name: ALARCON, IVAN

DOB: 02-02-1982

Sex: MALE

Height: 5 feet 11 inches

Weight: 190 lbs.

Hair: BROWN

Eyes: GREEN

Mailing Address: 4817 ANCHORAGE ST, LAS VEGAS, NV, 89147-5105

Physical Address: 4817 ANCHORAGE ST, LAS VEGAS, NV, 89147-5105

CDL Status: ELG

NCDL Status: LIC

License Listing:

Report Type: 10 Years

Licn Type	Class	Status	Permit	Issue Date	Exp Date	Endorsements
NCDL	C	VALID	NORMAL	08-14-2020	02-02-2025	
Restrictions: N/A						
NCDL	M	VALID	NORMAL	08-14-2020	02-02-2025	
Restrictions: N/A						

Withdrawal Listing:

Wdrl Type	Court Code	Case/Citation #	Begin Date	End Date	Status	RSN	St.	NCDL Reinst Dt	CDL Reinst Dt
NO WITHDRAWALS ON FILE									

Conviction Listing:

Demerit Points: 0

Cite Date	Conv date	State	Court	Viol Code	Off Ty	CMV Off	Haz Mat	Citation Number
08-22-2015	09-03-2015	UT	013		S92	NO	NO	U10361415

End of the Driver History Printout

EXHIBIT 2

C-23-371750-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 30, 2023

C-23-371750-1 State of Nevada
 vs
 Ivan Alarcon

March 30, 2023 09:00 AM Defendant's Notice of Motion and Motion to Remove Driving Restrictions

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Tucker, Michele

RECORDER: Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Danielle Marie Maatouk Attorney for Plaintiff

Jose Carlos Pallares Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Ms. Maatook stated the State has no opposition. **COURT ORDERED**, Defendant's Notice of Motion and Motion to Remove Driving Restrictions **GRANTED**.

OR

EXHIBIT 3



1 **COMJD**
2 DAVID J. CHURCHILL (SBN:7308)
3 JOLENE J. MANKE (SBN: 7436)
4 **INJURY LAWYERS OF NEVADA**
5 4001 Meadows Lane
6 Las Vegas, NV 89107
7 T: 702-868-8888
8 F: 702-868-8889
9 david@injurylawyersnv.com
10 jolene@injurylawyersnv.com
11 *Attorneys for Plaintiff*

CASE NO: A-22-861442-C
Department 16

7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 MARYCARMEN GUZMAN, an individual,
11
12 Plaintiff,

CASE NO.:
DEPT NO.:

13 vs.

14 IVAN ALARCON, an individual; LUIS FELIPE
15 MORALES-VILLA, an individual;
16 VANDERHALL MOTOR WORKS, INC., a
17 Foreign Profit Corporation; DOES 1-40, DOE
18 EMPLOYEES 1-40; DOE SEATBELT
19 DESIGNERS and/or MANUFACTURERS 1-
20 40; ROE ENTITIES 1-40, inclusive,

COMPLAINT AND DEMAND
FOR JURY TRIAL

Exemption Requested: Damages Exceed
\$50,000.00

21 Defendants.

22 COMES NOW, Plaintiff MARYCARMEN GUZMAN, by and through her attorneys, David J.
23 Churchill, Esq. and Jolene J. Manke, Esq. of INJURY LAWYERS OF NEVADA, and for her causes of
24 action against Defendants, and each of them, complains and alleges as follows:

25 **THE PARTIES**

26 1. Plaintiff MARYCARMEN GUZMAN (hereinafter referred to as "Plaintiff"), an
27 individual, was at all times relevant herein, a resident of Clark County, Nevada.

28 2. Defendant IVAN ALARCON ("Defendant IVAN"), an individual, was at all times
29 relevant herein, a resident of Clark County, Nevada.

30 ///

1 3. Defendant LUIS FELIPE MORALES-VILLA (“Defendant LUIS”), an individual, was at
2 all times relevant herein, a resident of Clark County, Nevada.

3 4. Defendant VANDERHALL MOTOR WORKS, INC. (“Defendant VANDERHALL”), a
4 Foreign Profit Corporation, was at all times relevant herein, engaged in the design, manufacture,
5 marketing, distribution and retail sale of autocycles and associated parts, and was doing business in Clark
6 County, Nevada.

7 5. All the facts and circumstances that give rise to the subject lawsuit occurred in Clark
8 County, Nevada.

9 6. Plaintiff is unaware of the true names and capacities whether individuals, corporations,
10 associations, or otherwise of Defendants DOES 1-40, DOE EMPLOYEES 1-40, DOE SEATBELT
11 DESIGNERS and/or MANUFACTURERS 1-40 and ROE ENTITIES 1-40, inclusive, and therefore sues
12 these Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that
13 these Defendants, and each of them, are in some other manner responsible and liable for the acts and
14 damages alleged in this Complaint as follows:
15

- 16
- 17 a. a party responsible in some manner for the events and happenings herein
18 referred to, and in some manner caused the injuries and damages
19 proximately thereby to Plaintiff as herein alleged;
 - 20 b. parties that were the agents, servants, employees and/or contractors of the
21 Defendants, and each of them, acting within the course and scope of their
22 agency, employment or contract;
 - 23 c. parties that owned, leased, managed, operated, secured, inspected, repaired,
24 maintained, entrusted and/or were responsible for the subject Vanderhall
25 Venice auticycle;
26

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1 d. parties that were responsible for the supervision of one or more of the
2 Defendants herein; and/or

3 e. parties that have assumed or retained the liabilities of any other person or
4 entity by virtue of an agreement, sale, transfer or otherwise.

5 7. Plaintiff will seek leave of this Court to amend this Complaint to insert the true names,
6 capacities and charging allegations relating to such Defendants when the same has been ascertained by
7 Plaintiff, and will further seek leave to join said Defendants in these proceedings.

8 8. Because Defendants, and each of them, including DOE EMPLOYEES, were acting within
9 the course and scope of their employment, service or agency, with the other Defendants, that Defendants,
10 and each of them, are vicariously responsible for the injuries and damages sustained by Plaintiff pursuant
11 to NRS 41.130, which states:
12

13 Except as otherwise provided in NRS 41.745, whenever any person shall suffer personal
14 injury by wrongful act, neglect or default of another, the person causing the injury is liable
15 to the person injured for damages; and where the person causing the injury is employed by
16 another person or corporation responsible for his conduct, that person or corporation so
17 responsible is liable to the person injured for damages.

18 9. Defendants DOES 1-40 may be immediate family members of Defendant IVAN who may
19 be liable for Defendant IVAN's negligence pursuant to NRS 41.440, which states:

20 Any liability imposed upon a wife, husband, son, daughter, father, mother, brother, sister
21 or other immediate member of a family arising out of his or her driving and operating
22 motor vehicle upon a highway with the permission, express or implied, of such owner is
23 hereby imposed upon the owner of the motor vehicle, and such owner shall be jointly and
24 severally liable with his or her wife, husband, son, daughter, father, mother, brother, sister
25 or other immediate member of the family for any damages proximately resulting from such
26 negligence or willful misconduct, and such negligent or willful misconduct shall be
27 imputed to the owner of the motor vehicle for all purposes of civil damages.

28 **JURISDICTION AND VENUE**

29 10. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.

30 11. The exercise of jurisdiction by the Court over the parties in this civil action is proper
31 pursuant to NRS 14.065.

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FACTS COMMON TO ALL CAUSES OF ACTION

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2 12. Plaintiff repeats and realleges each and every fact and allegation contained in this
3 Complaint and incorporates the same herein by reference as though fully set forth verbatim.

4 13. At approximately 3:00 p.m. on February 14, 2022, Defendant IVAN was driving a 2018
5 Vanderhall Venice owned by Defendant LUIS with Plaintiff as his restrained passenger utilizing the lap-
6 shoulder belt of the safety belt installed when the subject Vanderhall Venice was manufactured.

7 14. As Defendant IVAN was driving the subject Vanderhall Venice southbound on
8 IR15/IR215 eastbound ramp in the number three (3) travel lane South of SR 604, he caused the subject
9 Vanderhall Venice to cross the solid white line and enter the gore.
10

11 15. Defendant IVAN then made an unsafe lane change and for unknown reasons lost control
12 of the subject Vanderhall Venice while initiating a curve.

13 16. Defendant IVAN then caused the subject Vanderhall Venice to cross both the number two
14 (2) and number one (1) travel lanes and enter the left shoulder of the roadway.
15

16 17. Defendant IVAN then caused the front of the Vanderhall Venice to strike the curb and
17 enter the rock embankment where the subject Vanderhall Venice overturned multiple times and was
18 redirected southeast.

19 18. The subject Vanderhall Venice came to rest on its wheels in the rock embankment facing
20 northwest.

21 19. Plaintiff was fully ejected from the subject Vanderhall Venice and came to rest on her back
22 in the number one (1) travel lane facing southeast.

23 20. Defendant IVAN failed to comply with traffic laws requiring him to maintain control of
24 the subject Vanderhall Venice at all times.
25

26 21. The failure of Plaintiff's safety belt caused her to be fully ejected from the subject
27 Vanderhall Venice onto the roadway.
28

1 22. At all times relevant hereto, Defendants caused Plaintiff to sustain significant injury.

2 **FIRST CAUSE OF ACTION**

3 **(Negligence/Negligence Per Se – Defendant IVAN ALARCON)**

4 23. Plaintiff repeats and realleges each and every fact and allegation contained in this
5 Complaint and incorporates the same herein by reference as though fully set forth verbatim.

6 24. Defendant IVAN owed a duty of care to Plaintiff to operate the subject Vanderhall Venice
7 in a careful and prudent manner so as not to negligently, carelessly and/or recklessly cause injury and/or
8 damage to others, including Plaintiff herein.

9 25. Defendant IVAN breached his duty of care to Plaintiff by making an unsafe lane change,
10 failing to maintain his travel lane, failing to pay full attention while driving, failing to keep the subject
11 Vanderhall Venice under proper control and failing to comply with the rules of the road.

12 26. At all times relevant hereto, municipal, city and state rules, regulations, statutes and laws
13 were in place which prohibited the conduct exhibited by Defendant IVAN.

14 27. At all times relevant hereto, Defendant IVAN owed a duty to Plaintiff to comply with all
15 applicable municipal, city and state rules, regulations, statutes and laws, including, but not limited to
16 NRS 484B.223, requiring drivers to drive as nearly as practicable entirely within a single lane, and not
17 to move from that lane until the driver has given the appropriate turn signal and ascertained that such
18 movement can be made with safety.

19 28. Plaintiff was a member of the class of persons for whose protection said municipal, city
20 and state rules, regulations, laws, and statutes, including, but not limited to NRS 494B.223, were enacted
21 or promulgated.

22 29. At the time of the subject incident, Defendant IVAN acted in violation of applicable motor
23 vehicle laws in failing to maintain his travel lane, failing to pay full attention while driving and failing to
24 keep the subject Vanderhall Venice under proper control.
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1 30. As a direct and proximate result of Defendant IVAN's actions, Plaintiff sustained injuries
2 that were of the type such municipal, city and state rules, regulations, laws, and statutes, including, but
3 not limited to NRS 484B.223, were intended to prevent, constituting negligence per se.

4 31. As a direct and proximate cause of the negligence, carelessness and/or recklessness of
5 Defendants, Plaintiff sustained great emotional distress and bodily trauma, all or some of which may be
6 permanent and disabling in nature, all to her general and compensatory damage in an amount in excess
7 of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

8 32. In addition, Plaintiff has been required to incur expenses for medical care, treatment and
9 expenses incidental thereto, all to her damage in an amount presently unknown at this time, and may be
10 required in the future to incur expenses for medical care and treatment in an amount not yet ascertained,
11 and in this regard, Plaintiff prays for leave of the Court to insert all said damages herein when the same
12 have been fully ascertained or proven at the time of trial of this matter.

13 33. As a direct and proximate result of the negligence, carelessness and/or recklessness of
14 Defendants, Plaintiff has endured pain and suffering, worry, anxiety, emotional distress, loss of
15 enjoyment of life, loss of past and future income, and will continue to endure said losses for an indefinite
16 period of time in the future, in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00),
17 and, in this regard, Plaintiff prays for leave of the Court to insert all said damages herein when the same
18 have been fully ascertained or proven at the time of trial herein.

19 34. Plaintiff has been required to engage the services of an attorney to prosecute this action
20 and is entitled to attorney's fees and costs as provided by Nevada statute.

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SECOND CAUSE OF ACTION

(Negligent Entrustment – Defendant LUIS FELIPE MORALES-VILLA)

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3 35. Plaintiff repeats and realleges each and every fact and allegation contained in this
4 Complaint and incorporates the same herein by reference as though fully set forth verbatim.

5 36. Defendant LUIS was at all times referenced herein the registered owner of the subject
6 Vanderhall Venice that Defendant IVAN negligently operated.

7 37. Upon information and belief, Defendant IVAN was operating the subject vehicle with the
8 express or implied permission of Defendant LUIS.

9
10 38. Upon information and belief, Defendant LUIS negligently entrusted Defendant IVAN to
11 drive the subject Vanderhall Venice, which proximately caused the aforementioned injuries and damages
12 referenced by Plaintiff herein.

13 39. Defendant LUIS, knew or should have known, that Defendant IVAN would carelessly,
14 recklessly and negligently operate the subject Vanderhall Venice and/or otherwise knew or should have
15 known that said entrustment was negligent.

16
17 40. As a direct and proximate cause of the negligence, carelessness and/or recklessness of
18 Defendants, Plaintiff sustained great emotional distress and bodily trauma, all or some of which may be
19 permanent and disabling in nature, all to her general and compensatory damage in an amount in excess
20 of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

21 41. In addition, Plaintiff has been required to incur expenses for medical care, treatment and
22 expenses incidental thereto, all to her damage in an amount presently unknown at this time, and may be
23 required in the future to incur expenses for medical care and treatment in an amount not yet ascertained,
24 and in this regard, Plaintiff prays for leave of the Court to insert all said damages herein when the same
25 have been fully ascertained or proven at the time of trial of this matter.
26

1 42. As a direct and proximate result of the negligence, carelessness and/or recklessness of
2 Defendants, Plaintiff has endured pain and suffering, worry, anxiety, emotional distress, loss of
3 enjoyment of life, loss of past and future income, and will continue to endure said losses for an indefinite
4 period of time in the future, in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00),
5 and, in this regard, Plaintiff prays for leave of the Court to insert all said damages herein when the same
6 have been fully ascertained or proven at the time of trial herein.

7 43. Plaintiff has been required to engage the services of an attorney to prosecute this action
8 and is entitled to attorney’s fees and costs as provided by Nevada statute.
9

10 **THIRD CAUSE OF ACTION**

11 **(Negligence – Defendant VANDERHALL MOTOR WORKS, INC.)**

12 44. Plaintiff repeats and realleges each and every fact and allegation contained in this
13 Complaint and incorporates the same herein by reference as though fully set forth verbatim.

14 45. Defendant VANDERHALL MOTOR WORKS, INC. at all times relevant herein was the
15 designer, manufacturer, distributor and/or seller of the subject 2018 Vanderhall Venice.

16 46. Plaintiff at all times relevant hereto suffered severe personal injuries and substantial bodily
17 harm when the subject Vanderhall Venice overturned and she was completely ejected onto the roadway.
18

19 47. Defendants, and each of them, designed, tested, manufactured, developed warnings for
20 use, assembled, marketed and placed in the stream of commerce, the subject Vanderhall Venice.

21 48. Defendants, and each of them, owed a duty of care to Plaintiff, and others similarly
22 situated, in the design, testing, manufacture, assembly, marketing, warnings for use and sale of the
23 Vanderhall Venice line of autocycles.
24

25 49. Defendants, and each of them, breached their duty of care by their negligent, careless,
26 wanton, willful, and indifferent failure to act, including, but not limited to:

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1 a. The negligent and improper design, testing, manufacture, assembly, distribution
2 and inspection of the safety belt assembly located within the autocycle itself;

3 b. The negligent and improper design, testing, manufacture, assembly, distribution
4 and inspection of the safety belt assembly located within the autocycle itself in the event
5 of overturning;

6 c. The failure to provide adequate, accurate and effective warnings and instructions
7 to owners, operators and users of the Vanderhall Venice and other similar autocycles.

8 d. The negligent distribution of the subject safety belt when Defendants knew or
9 should have known that other safety belts were a safer and superior product that would
10 have prevented Plaintiff from suffering the injuries she sustained in this incident.

11
12 50. Upon information and belief, and at all times relevant relating to the subject incident, the
13 subject Vanderhall Venice, and including, but not limited to, the safety belt assembly located within the
14 autocycle itself, was in the same or similar condition as when it left the manufacturer.

15
16 51. As a direct and proximate result of the negligence and breach of due care by Defendants,
17 and each of them, including, but not limited to, the failure of the subject safety belt assembly located
18 within the subject Vanderhall Venice, Plaintiff was severely injured. As a result of the subject incident,
19 Plaintiff is entitled to recover for pain, suffering, anxiety, disability and medical treatment, both past and
20 future, all of which are damages recoverable by Plaintiff in an amount in excess of FIFTEEN
21 THOUSAND DOLLARS (\$15,000.00).

22
23 52. As a direct and proximate result of the defects in the subject Vanderhall Venice, Plaintiff
24 suffered severe personal injuries, including pain and suffering and emotional distress, all of which are
25 damages recoverable by Plaintiff, in an amount in excess of FIFTEEN THOUSAND DOLLARS
26 (\$15,000.00).

1 59. The safety belt assembly and/or Vanderhall Venice autocycle was defective in its design
2 and/or manufacture and/or distribution and/or lack of warnings and was unreasonably dangerous.

3 60. Because Defendants, and each of them, did not warn persons, including Plaintiff, of the
4 hazards associated with the use of the safety belt restraint assembly system and/or autocycle, it was
5 rendered an unreasonably dangerous and potentially deadly autocycle in its defective state.

6 61. The safety belt system contained in the Vanderhall Venice and/or autocycle itself was
7 improper and/or outdated, and a more superior design was known to product Defendants, and it was
8 unreasonably dangerous in that it was not accompanied with suitable and adequate warnings concerning
9 its safe handling, proper use and/or maintenance, and, therefore, is alleged to be defective.

10 62. The safety belt assembly system contained in the Vanderhall Venice and/or autocycle
11 itself was unreasonably dangerous in that it was defective in its design, and the product Defendants had
12 knowledge of a safer, more effective design.

13 63. The failure of the safety belt assembly system contained within the subject Vanderhall
14 Venice was a known risk to product Defendants, and itself caused Plaintiff, at the happening of the
15 aforementioned incident, to suffer severe personal injuries and substantial bodily harm, as Plaintiff was
16 at the mercy of, and under the control of, the equipment and component parts of the subject Vanderhall
17 Venice.

18 64. Such defect(s) existed when the subject Vanderhall Venice left the hands of the
19 manufacturer, designer, distributor, retailer, marketer, seller, repairer and/or maintainer.

20 65. Defendants, and each of them, knew or should have known of the subject Vanderhall
21 Venice's defect(s) which rendered it unreasonably dangerous at the time of placing the subject autocycle
22 into the stream of commerce and failed to undertake measures to prohibit it from entering into the stream
23 of commerce and into the hands of users in the State of Nevada, including warnings of the risks of the
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1 product failure, proper use and maintenance of the product and proper inspection of the product for
2 potential hazards and/or defects.

3 66. Defendants, and each of them, knew or should have known that the safety belt assembly
4 system contained in the subject Vanderhall Venice and/or autocycle itself would not prevent serious
5 damage/injury to its user, including Plaintiff, if the need arose.

6 67. Defendants, and each of them, knew or should have known that all operators of the safety
7 belt assembly system contained in the subject Vanderhall Venice and/or autocycle itself were at the
8 control and/or mercy of the product they were using and/or operating in the event of problems while
9 using said safety belt assembly and/or in the event of an accident.

10 68. Absolutely no instruction, training or warning was given to Plaintiff regarding how to
11 protect herself in the event of overturning while using and/or operating the safety belt assembly and the
12 resultant failure of said safety belt assembly system.

13 69. As a direct and proximate result of the aforesaid defect(s), Plaintiff suffered personal
14 injuries, which were, and are, serious in nature, and which also caused her to suffer great pain, suffering,
15 anxiety, disability and emotional distress, all of which are damages recoverable by Plaintiff in an amount
16 in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

17 70. As a further direct and proximate result of the defect(s), Plaintiff incurred expenses for
18 past medical care and treatment and will incur expenses for future medical care and treatment in an
19 amount to be proven at trial, all of which are damages recoverable by Plaintiff in an amount in excess of
20 FIFTEEN THOUSAND DOLLARS (\$15,000.00).

21 71. As a further direct and proximate result of the defect(s), Plaintiff sustained past and future
22 loss of earnings and earning capacity in an amount to be proven at trial, all of which are damages
23 recoverable by Plaintiff in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

1 72. As a further direct and proximate result of the defect(s), Plaintiff sustained a loss of past
2 and future household services, all of which are damages recoverable by Plaintiff in an amount in excess
3 of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

4 73. As a further direct and proximate result of the defect(s), Plaintiff has suffered a loss of
5 enjoyment of life in an amount to be proven at trial, all of which are damages recoverable by Plaintiff in
6 an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

7 74. Plaintiff has been required to engage the services of an attorney to prosecute this action
8 and is entitled to attorney's fees and costs as provided by Nevada statute.

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10 **FIFTH CAUSE OF ACTION**

11 **(Implied Warranty of Fitness for Particular Purpose of Merchantability**

12 **-Defendant VANDERHALL MOTOR WORKS, INC.)**

13 75. Plaintiff repeats and realleges each and every fact and allegation contained in this
14 Complaint and incorporates the same herein by reference as though fully set forth verbatim.

15 76. Through the design, testing, manufacturing, assembly, marketing and sale of the safety
16 belt restraint assembly system contained in the subject Vanderhall Venice, implied warranties of
17 merchantability and fitness for use arose by operation of Nevada common law.

18 77. The subject Vanderhall Venice and other similar autocyces and their components and
19 subassemblies, including the subject safety belt assembly system were unreasonably dangerous due to
20 the breach by Defendants, and each of them, of the implied warranties of merchantability and fitness for
21 use for the reasons described above.

22 78. As a direct and proximate result of the aforesaid breaches of implied warranty and breach
23 of due care by Defendants, and each of them, including, but not limited to, the failure of the subject safety
24 belt system and/or the Vanderhall Venice autocyce itself, Plaintiff was severely injured. As a result of
25 the subject incident, Plaintiff is entitled recover for pain, suffering, anxiety, disability and medical
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1 treatment, both past and future, all of which are damages recoverable by Plaintiff in an amount in excess
2 of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

3 79. The aforesaid breaches of implied warranty were both in-fact and proximate causes of
4 damages sustained by Plaintiff, thereby entitling Plaintiff to an award of general damages in an amount
5 in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

6 80. As a further direct and proximate result of the aforesaid breaches of implied warranty of
7 Defendants, and each of them, Plaintiff sustained current and future loss of earnings and earning capacity
8 in an amount to be proven at trial, all of which are damages recoverable by Plaintiff in an amount in
9 excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

10 81. As a further direct and proximate result of the aforesaid breaches of implied warranty of
11 Defendants, and each of them, Plaintiff sustained a loss of past and future household services, all of which
12 are damages recoverable by Plaintiff in an amount in excess of FIFTEEN THOUSAND DOLLARS
13 (\$15,000.00).

14 82. As a further direct and proximate result of the aforesaid breaches of implied warranty of
15 Defendants, and each of them, Plaintiff has suffered a loss of enjoyment of life in an amount to be proven
16 at trial, all of which are damages recoverable by Plaintiff in an amount in excess of FIFTEEN
17 THOUSAND DOLLARS (\$15,000.00).

18 83. Plaintiff has been required to engage the services of an attorney to prosecute this action
19 and is entitled to attorney's fees and costs as provided by Nevada statute.

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PRAYER FOR RELIEF

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

1. General damages in an amount in excess of \$15,000.00;
2. Compensatory damages in an amount in excess of \$15,000.00;
3. Medical and incidental expenses incurred and to be incurred;
4. Special damages in an amount in excess of \$15,000.00;
5. Damages for pain, suffering, disfigurement, mental anguish and loss of enjoyment of life;
6. Damages for lost earnings and earning capacity, and future earning capacity;
7. Damages for lost past and future household services;
8. Cost of suit, reasonable attorney fees, interest incurred; and
9. For such other and further relief as this Court may deem just and proper.

DATED this 17TH day of November, 2022.

INJURY LAWYERS OF NEVADA


By: 
DAVID J. CHURCHILL (SBN: 7308)
JOLENE L. MANKE (SBN: 7436)
4001 Meadows Lane
Las Vegas, NV 89107
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

1
2 Plaintiff MARYCARMEN GUZMAN, by and through her attorneys David J. Churchill, Esq. and
3 Jolene J. Manke, Esq. of INJURY LAWYERS OF NEVADA hereby demands a jury trial of all of the
4 issues in the above matter.

5 DATED this 17th day of November, 2022.

6
7 **INJURY LAWYERS OF NEVADA**

8
9 By: 
10 DAVID J. CHURCHILL (SBN: 7308)
11 JOLENE J. MANKE (SBN: 7436)
12 4001 Meadows Lane
13 Las Vegas, NV 89107
14 *Attorneys for Plaintiff*