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**APPENDIX A — ORDER OF THE
SUPREME COURT OF THE STATE OF
DELAWARE, FILED JUNE 21, 2024**

**IN THE SUPREME COURT
OF THE STATE OF DELAWARE**

No. 440, 2023

Court Below—Superior Court of the State of Delaware
C.A. No. N17C-08-152

JAMES L. MARTIN,

*Plaintiff Below,
Appellant,*

v.

DAVID H. NIXON,

*Defendant Below,
Appellee.*

Submitted: April 19, 2024

Decided: June 21, 2024

Before VALIHURA, TRAYNOR, and LEGROW, Justices.

ORDER

After consideration of the parties' briefs and the record on appeal, we find it evident that the judgment below should be affirmed on the basis of and for the reasons cited by the Superior Court in its October 31, 2023 order

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Appendix A

denying the appellant's supplemental amended renewed motion for judgment as a matter of law, the appellant's amended motion to alter or amend the judgment, and the appellant's motion to reopen the judgment.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be AFFIRMED.

BY THE COURT:

/s/
Gary F. Traynor
Justice

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**APPENDIX B — ORDER OF THE
SUPERIOR COURT OF THE STATE OF
DELAWARE, FILED OCTOBER 31, 2023**

**IN THE SUPERIOR COURT
OF THE STATE OF DELAWARE**

C.A. No. N17C-08-152 CEB

JAMES L. MARTIN

Plaintiff,

v.

DAVID H. NIXON

Defendant.

Submitted: October 19, 2023

Decided: October 31, 2023

*Upon Plaintiff's Supplemental Amended Rule 50(b)
Renewal of Motion for Judgment as a Matter of Law
after Verdict **DENIED***

*Upon Plaintiff's Amended Rule 59(d) Motion to Alter
or Amend a Judgment, or alternatively, Amended
Motion for a New Trial **DENIED***

*Upon Plaintiff's Rule 60 Motion to Reopen **DENIED***

Butler, RJ

*Appendix B***ORDER**

1. The Court has before it a “Motion to Reopen” pursuant to Rule 60 and, characteristic of so many motions filed by Mr. Martin, pro se, paper clipped within the sundry exhibits, there is a “Supplemental Amended R 50(b) Renewal of Motion for Judgment as a Matter of Law After Verdict, with Amended R. 59(d) Motion to Alter or Amend A Judgment, or alternately Amended Motion for a New Trial.”

2. Because the Court is well familiar with this case, with the saga of Mr. Martin’s travails with retained counsel and subsequent self-representation, with the bifurcated trial that was necessitated by Mr. Martin’s failure to secure expert testimony on damages in accordance with the pretrial scheduling order, and with the many accommodations made for Mr. Martin in light of his self-representation status, despite his being an attorney at law, a detailed recitation of all of the facts would needlessly delay the needed rulings and the business of the Court.¹

3. After the trial(s) were over, Mr. Martin moved for a new trial, along with some original new motions. He filed a motion for a mle to show cause against the vice president of the videography company in Portland, Oregon that took his medical expert’s deposition. He also filed a motion for a rule to show cause against the Court’s Chief Security Officer, complaining about a connection for his laptop to access the Court’s video capabilities. All of these motions

1. See *Martin v. Nixon*, 2023 WL 2671811 (Del. Mar. 28, 2023).

Appendix B

were denied.² Mr. Martin next took his complaints to the Delaware Supreme Court, which affirmed the judgment by Order dated March 28, 2023.³

4. Martin then filed a civil suit against the lawyer that represented him early in the case, before counsel's untimely death, as well as that lawyer's partner, who withdrew representation not long after his former partner's demise.⁴ That case has generated discovery that, Plaintiff claims, mandate a new trial. The Court disagrees.

A. The Rule 50 and 59 motion.

5. The accident giving rise to this lawsuit involved the Plaintiff riding his bicycle on Pennsylvania Avenue, heading into the City of Wilmington. To get around stopped traffic in front of him, he went to their left and continued past the stopped traffic. One such stopped motorist ahead of Martin elected to make a U-turn at a most unfortunate moment, just as Plaintiff was about to pass him on his left. Plaintiff collided with the U-turning motorist, causing injuries. The jury found the Plaintiff 43% responsible and the U-turning motorist 57% responsible.

6. Apparently as a result of discovery in his legal malpractice litigation, Plaintiff has the auto repair bill from the U-turning motorist that, he says, shows damage

2. *Martin v. Nixon*, 2022 WL 1123389, at *4 (Del. Super. Apr. 13, 2022).

3. *Martin*, 2023 WL2671811, at *3.

4. *Martin v. Hudson, et al.*, No. N21C-12-195 VLM.

Appendix B

to the rear, driver's side door of the U-turning car, right about where no party disputes Plaintiff hit the turning car. It is irrelevant. Plaintiff has also seen a statement in an insurance file from an eyewitness who was not called to the stand at trial. Plaintiff disputes the accuracy of that statement. Again, irrelevant. The witness did not testify at trial.

7. We could spend good time and ink explaining how utterly devoid of merit these claims are, but the simpler route is that motions under Rule 50 are to be filed within 10 days of the verdict, motions under Rule 59 must be filed within 10 days of the judgment and nothing in Plaintiff's pleadings suggest the jury's verdict on liability should or would be altered or amended in any way. Plaintiff is woefully out of time and is procedurally defaulted from raising these claims now and, even if he was not, they are utterly without merit.

B. The Rule 60 motion

8. Plaintiff has also moved for relief under Rule 60(b). While federal rule 60(b) requires that such motions be filed within one year,⁵ the Delaware rule has been held to merely require that such motions be filed without unreasonable delay.⁶ Even then, Plaintiff must allege "extraordinary circumstances."⁷

5. Fed. R. Civ. P. 60.

6. *See Schremp v. Marvel*, 405 A.2d 119, 120 (Del. 1979).

7. *Jewell v. Division of Social Services*, 401 A.2d 88, 90 (Del. 1979).

Appendix B

9. Martin says that some of his pleadings were not properly docketed on the civil docket in his case. If true, it would not be a shock. As here, many of Martin's pleadings were disjointed, meandering and repetitive. In all of this, however, Mr. Martin does not lay out exactly what "mistake, inadvertence, surprise or excusable neglect" or other error so prejudiced Plaintiff that the Court should reverse or revise the decision of the jury. If some papers were mis-filed, it is regrettable, but it is not a cause for a new trial.

Plaintiff's motions for relief under Rules 50, 59 and 60 are **DENIED**.

IT IS SO ORDERED.

/s/

Resident Judge Charles E. Butler

cc: Prothonotary
James L. Martin
Edward F. Kafader, Esquire

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**APPENDIX C — ORDER IN THE SUPERIOR
COURT OF THE STATE OF DELAWARE,
FILED NOVEMBER 1, 2023**

IN THE SUPERIOR COURT OF THE
STATE OF DELAWARE

C.A. No. N17C-08-152 CEB

TRIAL BY JURY OF 12 DEMANDED

JAMES L. MARTIN,

Plaintiff,

v.

DAVID H. NIXON,

Defendant.

Filed: November 1, 2023

ORDER

Upon the David H. Nixon's Motion to Satisfy, said Motion having been duly considered,

IT IS ORDERED on this ____ day of _____ 2023 that the Prothonotary shall satisfy the judgment against the Defendant, David H. Nixon in the above-captioned matter.

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Appendix C

IT IS FURTHER ORDERED that the Defendant shall pay to the Plaintiff the amount of \$66,408.11 less \$_____ which is awarded to the Defendant as representing the fees and costs incurred by the Defendant in presenting this Motion. Said check will be delivered to the Plaintiff by appropriate means within three (3) weeks of this Order.

Judge

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Appendix C

EFiled: Nov 01 2023 11:20AM:EDT

Transaction ID 71279295

Case No. N17C-08-152 CEB

This document constitutes a ruling of the court and should be treated as such.

Court Authorizer

Comments:

If Plaintiff does not accept receipt of the payment within 3 weeks, Defendant may withhold \$783 representing Defendant's costs in securing this resolution. At that time, Defendant may pay the residuum in to the Prothonotary's office after which time Defendant will not be responsible for further post judgment interest. The amount held by the Prothonotary will be held without interest until such time as it may escheat to the State.

SO ORDERED

11a

**APPENDIX D — ORDER OF THE SUPERIOR
COURT OF THE STATE OF DELAWARE,
DATED DECEMBER 6, 2023**

**IN THE SUPERIOR COURT
OF THE STATE OF DELAWARE**

JAMES L. MARTIN,

Plaintiff,

v.

DAVID H. NIXON,

Defendant.

C.A. No. N17C-08-152 CEB

ORDER

This 6th day of December, 2023, the Court finds that Plaintiffs Supplementary Answer to Defendant's Motion to Satisfy Judgment is improper.

The judgment has been paid; it is fully satisfied. The case is therefore closed. No further pleadings in this matter should be accepted for filing.

IT IS SO ORDERED.

/s/ Charles E. Butler
Charles E. Butler, Resident
Judge

AFFIDAVIT OF SERVICE

SUPREME COURT OF THE UNITED STATES

No. ____

-----X

JAMES L. MARTIN,

Petitioner,

v.

DAVID H. NIXON,

Respondent,

-----X

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Ann Tosel, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for *Petitioner*.

That on the 2nd day of December, 2024, I served the within *Petition for a Writ of Certiorari* in the above-captioned matter upon:

Edward F. Kafader, Esq.
Ferry Joseph, PA
1521 Concord Pike, Ste 202
Wilmington, DE 19803
(302) 575-1555
ekafader@ferryjoseph.com

by sending three copies of same, addressed to each individual respectively, through Priority Mail.

That on the same date as above, I sent to this Court forty copies of the within *Petition for a Writ of Certiorari* and three hundred dollar filing fee check through the Overnight Next Day Federal Express, postage prepaid.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of December, 2024.

Ann Tosel

Ann Tosel

Sworn to and subscribed before me
this 2nd day of December, 2024.

Mariana Braylovsky

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026



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SUPREME COURT OF THE UNITED STATES

No. ____

-----X

JAMES L. MARTIN,

Petitioner,

v.

DAVID H. NIXON,

Respondent,

-----X

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 1,922 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of December, 2024.

Ann Tosel

Ann Tosel

Sworn to and subscribed before me
on this 2nd day of December, 2024.

Mariana Braylovsky

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026