For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

WORLD FRESH MARKETS, LLC d/b/a PUEBLO SUPERMARKET, Appellant/Defendant,	)	**S. Ct. Civ. No. 2018-0058** Re: Super. Ct. Civ. No. 557/2010 (STX)
v.	)	
JOSEPHAT HENRY, Appellee/Plaintiff.	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Harold W. L. Willocks

Considered: April 9, 2019
Filed: October 9, 2019

Cite as: 2019 VI 30

BEFORE: **RHYS S. HODGE**, Chief Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **MARIA M. CABERT**, Associate Justice.

APPEARANCES:

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OPINION OF THE COURT

SWAN, **Associate Justice**.

¶1 Appellant, World Fresh Markets, LLC d/b/a Pueblo Supermarket ("Pueblo"), seeks reversal of an order denying Pueblo's motion for judgment as a matter of law and a "Final Judgment" memorializing the September 2, 2015 jury award—plus statutory interest—both entered on the docket of the Superior Court of the Virgin Islands ("Superior Court") on August 20, 2018. Pueblo argues for the first time on appeal that the August 20, 2018 Final Judgment erroneously awarded Henry prejudgment interest and compounded interest. Henry ardently argues that, by two courses of action (or inaction), Pueblo has waived these arguments for consideration on appeal, and we should, therefore, affirm the Superior Court's Final Judgment. For the reasons elucidated below, we affirm but address the Superior Court's failure to timely enter a judgment on the docket in accordance with the requirements of Virgin Islands Rule of Civil Procedure 58(b) mandating that a judgment be "promptly signed" and "entered by the clerk of the court" on the Superior Court's docket.

I. FACTS AND PROCEDURAL HISTORY

¶2 On December 9, 2010, Appellee Josephat Henry filed a verified complaint in the Superior Court suing Pueblo for negligence and asserting other causes of action sounding in tort, claiming both economic and non-economic compensatory damages as well as punitive damages. In that complaint, Henry alleged he had slipped and fallen in a puddle of dirty water at Pueblo's La Reine location on St. Croix. On October 28, 2013, Pueblo filed a motion for summary judgment. From the trial record, as replicated in both the "Appendix" and "Supplemental Appendix," there is no indication this motion was ever decided.

¶3 Jury selection was conducted, and the trial commenced on August 25, 2015. On September 2, 2015, the jury returned its verdict awarding Henry $113,096 in damages. On September 16,

2015, Henry filed a proposed judgment with the court. The copy of the proposed judgment provided in the trial record is consistent with the jury verdict.

¶4 Then, on September 30, 2015, Pueblo filed a renewed motion for judgment as a matter of law and alternatively sought a new trial. However, in the trial record provided, there is no docket entry for a first motion for judgment as a matter of law. Ultimately, on August 20, 2018, the Superior Court issued its memorandum opinion and order deciding Pueblo's September 30, 2015 renewed motion, which was denied.

¶5 Previously, on May 26, 2017, Henry had submitted a motion for entry of judgment and an award of interest, which Pueblo opposed on June 15, 2017. Henry filed a reply on June 22, 2017. Relying on *Companion Assurance Co. v. Smith*, 66 V.I. 562 (V.I. 2017), and Virgin Islands Rule of Appellate Procedure 5(a)(4), Henry argued that Pueblo's motion for a new trial was automatically denied for purposes of appeal—by operation of the rules of appellate procedure—120 days after it was filed in the Superior Court. Therefore, in Henry's view, upon the expiration of this 120-day period, which was January 28, 2016, the countdown to the expiration of the 30-day deadline for filing a notice of appeal, as provided for in Rule 5(a)(4), began.[1] Henry further argued that, because no judgment had been entered in the 30 days following the expiration of the Superior Court's deadline to decide the renewed motion for a new trial, the deadline for filing an appeal had likewise expired.

¶6 Henry then asserted that he was entitled to nine percent interest annually "because no judgment was entered, [and] the sums awarded have been accruing interest at nine percent," relying on V.I. CODE ANN. tit. 11, § 951(a)(1) ("The rate of interest shall be nine (9%) per centum per

[1] The full text of subsection (a)(4) of Rule 5—"Appeal as of Right—When Taken"—of the Virgin Islands Rules of Appellate Procedure is provided in footnote 12 of this opinion.

annum on . . . all monies which have become due."). Specifically, Henry argued that, from September 3, 2015, to September 3, 2016, the interest that had accrued and was due was $10,178.65. Henry also argued that he was entitled to additional interest accruing at a rate of $30.40 per day commencing September 4, 2016.

¶7 Pueblo's opposition asserted that the 120-day period for the trial court to decide a post-trial motion had never begun to run because no judgment had been entered. Henry, in his reply, simply argued that, based on *Companion*, "the jury verdict becomes final with the passing of 120 days." In response, the Superior Court entered judgment in favor of Henry on August 20, 2018. The judgment provided that Henry was entitled to the following: (1) the $113,096 in damages that the jury had awarded in its September 2, 2015 verdict; (2) accrued pre-judgment interest from September 3, 2015, through September 3, 2016, in the amount of $10,178.64; (3) additional pre-judgment interest from September 4, 2016, "until judgment is entered" accruing at $30.40 per day; and (4) "the legal rate of interest thereafter until the judgment has been satisfied."

¶8 The Superior Court entered two orders on August 20, 2018. The first was the Final Judgment memorializing the jury award and applying the interest to be charged pursuant to 11 V.I.C. § 951(a)(1). The other, which was accompanied by a memorandum opinion, denied Pueblo's renewed motion for judgment as a matter of law.

¶9 Following entry of the Final Judgment, Pueblo filed its initiating notice of appeal on September 3, 2018. In this notice, Pueblo stated that it "files this Notice of Appeal from the orders of Judge Willocks on or about August 20, 2018 . . . ." Pueblo posited the following issues for this Court to decide: (1) the denial of the renewed motion for a judgment as a matter of law, (2) the Superior Court's failure to timely address the "motions creating pre and post judgment interest,"

(3) the Superior Court's "failure to timely enter a judgment," and (4) "any other issues that may become apparent during the review of the trial record and briefing . . . ."

¶10 Pueblo filed an amended notice of appeal on November 27, 2018.[2] Similar to the first notice of appeal, Pueblo identifies "the orders of Judge Willocks on or about August 20, 2018." However, the issues identified by Pueblo are as follows: (1) the Superior Court's failure to timely address the "post trial motions creating pre and post judgment interest," (2) the Superior Court's failure to enter a judgment in a timely manner, and (3) "any other issues that may become apparent during the review of the trial record and briefing of this appeal."

¶11 Henry, on December 10, 2018, notified the Superior Court that Pueblo had "paid to Plaintiff all sums due under the judgment, and all pre and post judgment interest." There is no opposition from Pueblo in the record, indicating that this statement is inaccurate.

¶12 In its brief, Pueblo identified the Superior Court's August 20, 2018 Final Judgment as the order for which review has been sought, specifically assigning error to the following language, "plus pre-judgment interest totaling $10,178.64 from September 3, 2015 through September 3, 2016, and accruing at $30.40 per day since September 4, 2016." On the merits, Pueblo argues that 11 V.I.C. § 951(a), first, does not apply to personal injury awards and, second, does not provide for the award of compounded interest. In support of these arguments, Pueblo cites *Skretvedt v. E.I. DuPont de Nemours*, 372 F.3d 193, 208 (3d Cir. 2004); *Bookworm, Inc. v. Tirado*, 44 V.I. 300, 307 n.5 (V.I. Super. Ct. 2002); and *Bank of Nova Scotia v. Four Winds Plaza Corp.*, 56 V.I.

[2] It is well established that, ordinarily, an amended filing supersedes any prior filing. *See Pacific Bell Tel. Co. v. Linkline Commc'n, Inc.*, 555 U.S. 438, 456 n.4 (2009). Therefore, the contents of Pueblo's amended notice of appeal—including the issues presented for appeal—superseded any previously filed notice of appeal and govern the determination of whether the issues presented therein were adequate to substantively give notice to this Court. *See, e.g.*, *Merz v. Civil Serv. Comm'n*, No. C-76677, 1977 WL 199794, at *2 (Ohio Ct. App. Sept. 7, 1977) (unpublished) (specifically noting that an amended notice of appeal supersedes a previously filed notice of appeal).

45, 57 (V.I. Super. Ct. 2012). Pueblo makes no arguments in its brief to this Court concerning the August 20, 2018 order denying its September 30, 2015 renewed motion for judgment as a matter of law, alternatively seeking a new trial.

¶13 Henry argues that Pueblo has waived all issues for consideration in this appeal. First, he argues that Pueblo "did not identify the briefed issues" in its notices of appeal. "Consequently, under this Court's rules both issues are waived on appeal; and this Court should summarily dismiss this appeal." Henry further argues that Pueblo failed to raise these issues before the Superior Court and has, thus, waived them. Henry provided his "Motion for Entry of Judgment and Interest" and the subsequent opposition and reply in the Supplemental Appendix. Nowhere does it appear that Pueblo argued the inapplicability of compounded interest or the inapplicability of 11 V.I.C. § 951(a)(1) to a personal injury tort action, and Pueblo has not provided further documentation or filed a reply brief addressing this absence of argument in the record.

II. JURISDICTION

¶14 This Court, being an appellate court, is a court of limited jurisdiction, and must be satisfied of its own appellate subject matter jurisdiction before it considers the merits of an appeal. *People v. Rios*, S. Ct. Crim. No. 2007-0112, 2008 WL 5605714, at *1 (V.I. Nov. 14, 2008) (unpublished) (citing *V.I. Gov't Hosp. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276 (V.I. 2008); *Gov't of the V.I. ex rel. Larsen v. Ruiz*, 145 F. Supp. 2d 681, 689 (D.V.I. App. Div. 2000)); *see V.I. Gov't Hosp. & Health Facilities Corp.*, 50 V.I. at 279. The Revised Organic Act of 1954, as amended ("ROA"), is the *de facto* constitution of the Territory, and the grant of jurisdiction to the courts of the Virgin Islands contained in the ROA controls over statutes enacted by the Virgin Islands Legislature. *Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 672, 682 (V.I. 2015); *Gov't of the V.I. v. Crook*e, 54 V.I. 237, 247 (V.I. 2010).

¶15 "Pursuant to the Revised Organic Act of 1954, [as amended,] this Court has appellate [subject matter] jurisdiction over 'all appeals from the decisions of the courts of the Virgin Islands established by local law.'" *In re Petition for Expungement*, 66 V.I. 299, 302 (V.I. 2017) (quoting 48 U.S.C. § 1613a(d)). Within the ROA framework, "[t]he Virgin Islands Legislature unquestionably possesses the authority to determine the jurisdiction of Virgin Islands courts. The Legislature has exercised that power by adopting the [Final Judgment Rule][3] and [establishing] a set of permissible interlocutory appeals as of right."[4] Therefore, this Court has jurisdiction over

[3] The jurisdiction of this Court, as set forth in subsections 32(a) and 33(a) of title 4 of the Virgin Islands Code, is a codification of the finality requirement that has been a part of U.S. common (and statutory) law since this country's founding and requires those wishing to challenge a ruling of a lower court to "'raise all claims of error in a single appeal following final judgment on the merits.'" *Enrietto v. Rogers Townsend & Thomas, PC*, 49 V.I. 311, 315 (V.I. 2007) (quoting *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 429-30 (1985)); *see also Joseph v. Daily News Pub. Co., Inc.*, 57 V.I. 566, 578 (V.I. 2012) ("'Section 32 embodies the final judgment rule, which generally requires a party 'to raise all claims of error in a single appeal following final judgment on the merits.'" (quoting *Bryant v. People*, 53 V.I. 395, 400 (V.I. 2010))); *see generally Bachowski v. Usery*, 545 F.2d 363, 368 n.20 (3d Cir. 1976) (citing *Metcalfe's Case*, 77 Eng. Rep. 1193 (K.B. 1615); 15 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 3906 (2d ed. 1976)).

[4] *Stiles v. Yob*, S. Ct. Civ. No. 2016-0027, 2016 WL 3211244, at *3 (V.I. June 8, 2016) (per curiam) (unpublished) (citing 48 U.S.C. § 1611(b); 4 V.I.C. §§ 32(a), 33(b), (d)); *see also* 4 V.I.C. § 32(a) ("all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court"); 4 V.I.C. § 33(a) ("Appealable judgments and orders . . . shall be available only upon entry of final judgment in the Superior Court."); *Enrietto*, 49 V.I. at 315 (quoting 4 V.I.C. § 32(a)).

For the most obvious exceptions to the Final Judgment Rule, consider those that have been codified by the Legislature, *see generally, e.g.*, 4 V.I.C. § 33(b)(1) (orders granting, continuing, modifying, or dissolving an injunction as well as orders denying the dissolution or modification of an injunction); *Enrietto*, 49 V.I. at 316-17 (stating three-part test for determining whether the practical effect of an order was an injunction); 4 V.I.C. § 33(b)(2) (orders appointing receivers as well as orders denying a request to wind up a receivership or orders denying relief in furtherance of winding up a receivership); *Yusuf v. Hamed*, 62 V.I. 565, 568 (V.I. 2015) (finding that subsection 33(b)(2) only authorizes interlocutory appeals in three categories of cases, (1) the appointment of a receiver, (2) the refusal to wind up a receivership, and (3) the refusal to take steps to accomplished the purpose of the receivership; ultimately finding that the failure to challenge either the appointment of a receiver or the establishment of a wind up plan and instead challenging the various steps in the plan deprived this Court of jurisdiction); 4 V.I.C. § 33(d)(1), (5) (in a criminal prosecution, , within 30 days, an appeal by Government from an order "terminating a prosecution in favor of the defendant" when such appeal would not subject the defendant to double jeopardy); (d)(2), (5) (in a criminal prosecution, within 30 days, an appeal by the Government from an order suppressing or excluding evidence or requiring the return of seized property, only if the defendant has not been subjected to jeopardy and the appeal is prior to "the verdict or finding on indictment or information" when the evidence is substantial proof of material fact); *People v. Armstrong*, 64 V.I. 528, 533 (V.I. 2016); 4 V.I.C. § 33(d)(3), (5) (in a criminal prosecution, within 30 days, an appeal by the Government from an order granting the release of a person charged with or convicted of an offense or an order denying a motion to revoke or modify the conditions of a "decision or order of detention"); (d)(4), (5) (in a

all appeals arising from a Final Judgment of the Superior Court. 48 U.S.C. § 1613a(d); 4 V.I.C. § 32(a); *Toussaint v. Stewart*, 67 V.I. 931, 939 (V.I. 2017).

¶16 The Final Judgment Rule is embodied in title 4, subsections 32(a) and 33(a) of the Virgin Islands Code, which state that "[t]he Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law" and limits the availability of an appeal to "only upon entry of [F]inal [J]udgment in the Superior Court from which appeal or application for review is taken." 4 V.I.C. §§ 32(a), 33(a). "'A [Final Judgment] is a judgment from a court which ends the litigation on the merits, leaving nothing else for the court to do except execute the judgment.'" *Toussaint*, 67 V.I. at 939 (quoting *Ramirez v. People*, 56 V.I. 409, 416 (V.I. 2012) (citations omitted)). The entry of a Final Judgment implicitly denies all pending motions, and all prior interlocutory orders merge with the Final Judgment. *Toussaint*, 67 V.I. at 940 n.3 (citing *Simpson v. Board of Dirs. of Sapphire Bay Condos.*

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criminal prosecution, within 30 days, an appeal by a defendant from an order detaining the person or an order denying the revocation or modification of the conditions of the detention); *People v. Ward*, 55 V.I. 829, 837 (V.I. 2011) (citing subsection 33(d)(2) of title 4 for the legal authority authorizing the prosecution in a criminal action to bring an interlocutory appeal from an order suppressing or excluding evidence). In a criminal case, under subsection 33(d) of title 4, the V.I. Supreme Court generally has jurisdiction of appeals from a Final Judgment terminating a prosecution in favor of a criminal defendant, but such jurisdiction does not exist if jeopardy has attached to the defendant such that a retrial would violate the defendant's rights under the double jeopardy clause of the Constitution or section 3 of the Revised Organic Act, 48 U.S.C. § 1561. *People v. George*, 49 V.I. 504, 506-07 (V.I. 2008); *cf. Pickering v. People*, 64 V.I. 356, 363-64 (V.I. 2016) ("[A]n immediate appeal of an order denying a motion to dismiss on double jeopardy grounds is not authorized when, regardless of the outcome of the appeal, the defendant will need to face retrial for the underlying offense." (citations omitted)); *see generally Rios*, 2008 WL 5605714, at *1 ("It is well established that the People cannot appeal a criminal judgment 'unless statutory authority expressly and clearly permits such an appeal.'" (quoting *George*, 49 V.I. at 506-07)); *First Am. Dev. Group/Carib, LLC v. WestLB, AG*, 55 V.I. 594, 611-12 (V.I. 2011) (holding that appeals of interlocutory orders taken pursuant to subsections 33(b)(1-2) and 33(d)(1-4) must be taken within 30 days of entry of the order appealed pursuant to subsection 33(d)(5) of title 4, which is a jurisdictional time limit). Additionally, while this court's appellate subject matter jurisdiction—set forth in sections 32 and 33 of title 4 of the Virgin Islands Code—is a codification of the common law "Final Judgment" prerequisite to the exercise of jurisdiction by an appellate court, for interlocutory orders having certain characteristics, a party may request a discretionary grant of leave to appeal. 4 V.I.C. § 33(c) (interlocutory orders in civil cases meeting the requirements for certification that are actually certified by the Superior Court); *Enrietto*, 49 V.I. at 316; *e.g.*, *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 607 (V.I. 2012) (considering issues certified for appeal).

W., 61 V.I. 728, 731 (V.I. 2015); *In re Estate of George*, 59 V.I. 913, 919 (V.I. 2013)). This Court obtained jurisdiction to hear this appeal based on the timely[5] notice of appeal that was filed on September 3, 2018, following the August 20, 2018 Final Judgment entered by the Superior Court. V.I. R. APP. P. 4(a), (5)(a)(1).[6]

III. STANDARD OF REVIEW

¶17 Pueblo posits two closely related legal issues for consideration on appeal. First, Pueblo challenges the applicability of 11 V.I.C. § 951(a) to personal injury jury awards. Second, Pueblo challenges the application of compounded interest pursuant to subsection 951(a), as opposed to the application of simple interest. Typically, such questions of law are subject to plenary, *de novo*, review. *See Bradford v. Cramer*, 54 V.I. 669, 672 (V.I. 2012).

¶18 However, Henry has challenged whether Pueblo (1) properly noticed these issues for appeal and (2) fairly presented either of these issues for consideration in the Superior Court; therefore, we

[5] Although Henry argued that Pueblo's notice of appeal was not timely because it was filed more than two years after expiration of the 120-day period prescribed in Rule 5(a)(1) of the Virgin Islands Rules of Appellate Procedure, we agree with Pueblo that the 120-day period did not begin to run because the time to file its post-trial motion did not commence until after entry of judgment on August 20, 2018. *Charles v. Payne*, 209 VI 20, ¶19.

[6] *See generally Penn v. Mosley*, 67 V.I. 879, 891 n.4 (V.I. 2017) (discussing the distinctions between a judgment, order, and decree); *Miller v. Sorenson*, 67 V.I. 861, 871 (V.I. 2017) (discussing the distinctions between a judgment and decree); *Prosser v. Prosser*, 33 V.I. 32, 40 (V.I. Super. Ct. 1995) (Noting that "with the procedural merger of law and equity in the federal and most state [and territorial] courts under the Rules of Civil Procedure, the term 'judgment' has generally replaced 'decree'." (quoting BLACK'S LAW DICTIONARY 410 (6th ed. 1990); and citing 16 V.I.C. §§ 108, 110, 111; 46 AM. JUR. 2D *Judgments* § 2 (1969)); *cf. Cianci v. Chaput*, 68 V.I. 682, 688 (V.I. 2016) (quoting *Estate of George*, 59 V.I. at 919); *Billu v. People*, 57 V.I. 455, 461 n.3 (V.I. 2012) (noting that, where an amended rule utilized the same language as the rule in effect at the time the notice of appeal was filed, the amended rule is applied); *Webster v. FirstBank Puerto Rico*, 66 V.I. 514, 519 n.3 (V.I. 2017) (applying former rules of the Superior Court in effect at the time the judgment was entered); *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 548 n.13 (V.I. 2015) (applying version of statute in effect at the time the action was commenced); *cf. Brown v. People*, 49 V.I. 378, 382-83 (V.I. 2008) (holding that a notice of appeal filed after the deadline set by court rule is subject to an excusable neglect analysis to extend the time for filing); *Williams v. People*, 58 V.I. 341, 347-48 (V.I. 2013) (holding that a stay of execution of judgment does not render a judgement non-final); *Gov't of the V.I. v. UIW-SIU*, 64 V.I. 312, 320-21 (V.I. 2016) (holding that statutes of limitations are claims-processing rules that do not affect a court's jurisdiction and are subject to wavier); *Prosser v. Public Serv. Comm'n*, 56 V.I. 391, 403 n.9 (V.I. 2012) (citing *Gov't of the V.I. v. Martinez*, 620 F.3d 321, 328-29 (3d Cir. 2010)).

must determine whether these issues were waived. V.I. R. APP. P. 4(h) ("Only issues and arguments fairly presented to the Superior Court may be presented for review on appeal . . . ."); V.I. R. APP. P. 22(m) ("Issues that were (1) not raised or objected to before the Superior Court . . . are deemed waived for purposes of appeal."); *see Ubiles v. People*, 66 V.I. 572, 582 (V.I. 2017) (citing *Percival v. People*, 62 V.I. 477, 486 (V.I. 2014); *Chinnery v. People*, 55 V.I. 508, 514 (V.I. 2011)).[7] As this is a civil case, "[a]bsent exceptional circumstances, we will not consider any argument that is raised for the first time on appeal or an argument that was raised in the trial court but not asserted on appeal." *Ubiles*, 66 V.I. at 582 (citing *Dupigny v. Tyson*, 66 V.I. 434, 439 (V.I. 2017)); *see also Etienne v. Etienne*, 56 V.I. 686, 691 (V.I. 2012); *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 335-36 (V.I. 2007) ("Appellate courts generally refuse to consider issues that are raised for the first time on appeal . . . ." (citations omitted)).

¶19 Additionally, Henry argues that Pueblo's payment of the judgment satisfied the Final Judgment making the current appeal moot. Therefore, Henry importunes us to dismiss this appeal. However, Henry has waived his right to argue mootness because he did not assert the claim until his appellate brief—filed on February 11, 2019—even though he was aware for more than four months that Pueblo had paid the judgment in full on October 1, 2018, and, in fact, made multiple substantive filings with this Court after October 1, 2018—before the filing of his appellate brief—that made no mention of his belief that this appeal had become moot. *See Hodge*, 62 V.I. at 687 n.8 (holding that

[7] Pueblo makes no argument in its appellant's brief addressing, either formalistically or in substance, the August 20, 2018 order of the Superior Court denying Pueblo's renewed motion for judgment as a matter of law, even though this order is listed in the notice of appeal. As matters presented in only a perfunctory manner or not briefed are deemed waived, any issues relating to this order have been waived by Pueblo. V.I. R. APP. P. 22(m). Additionally, Pueblo, in its amended notice of appeal, withdrew from consideration the issue of the Superior Court's denial of Pueblo's motion for judgment as a matter of law. This issue has been waived. V.I. R. APP. P. 4(c).

a party waives application of a claims-processing rule when it fails to raise the issue at the first opportunity prior to the case becoming fully briefed).

IV. DISCUSSION

¶20 Because the failure to present arguments in the Superior Court is the first factual incident of potential wavier by Pueblo, we first address the issue of waiver in the trial court. Therefore, as we conclude that Pueblo, at the trial level, waived the arguments it has briefed, we do not consider the adequacy of its notice of appeal despite Henry having presented that argument first.

A. Because, in the Superior Court, Pueblo Never Argued that "Interest," as Used in Subsection 951(a)(1) of Title 11 of the Virgin Islands Code, Does Not Include Within its Meaning "Compounded Interest" and, Likewise, Never Argued that Pre-Judgment Interest Does Not Apply to an Award of Damages for a Personal Injury Suit Sounding in Tort, These Arguments Were Not Fairly Presented and Have Been Waived.

¶21 In order for this Court to consider an issue on appeal, "'a party needs only to raise an issue [to allow] the Superior Court to address it and take whatever action is necessary in the first instance in order to fairly present the issue and preserve it for appeal.'" *Ubiles*, 66 V.I. at 583 (quoting *Percival*, 62 V.I. at 486; and citing *Douglas v. Alabama*, 380 U.S. 415, 422 (1965); *Gov't of the V.I. v. Joseph*, 964 F.2d 1380, 1384 (3d Cri. 1992)); V.I. R. APP. P. 4(h). Determining whether an issue was fairly presented requires this Court to disregard formalistic labels and, instead, rely upon the substance of what occurred and was argued in the trial court. *Ubiles*, 66 V.I. at 583 (quoting *State v. Balderama*, 88 P.3d 845, 850 (N.M. 2004)). However, "an issue must be presented in such a manner as to give the trial court the opportunity to consider, review, and address the argument in order to ensure that an adequate record of both law and fact is established so that an appellate court may make an informed decision." *Ubiles*, 66 V.I. at 584 (citing *Simpson v. Golden Resorts*,

LLP, 56 V.I. 272, 280-81 (V.I. 2012); *United States v. O'Neil*, 116 F.3d 245, 247 (7th Cir. 1997); *United States v. Jake*, 281 F.3d 123, 130 (3d Cir. 2002)).[8]

¶22 At the trial level, Pueblo opposed Henry's motion for entry of judgment arguing that the 120-day period for the trial court to decide a post-trial motion had not even begun to run because no judgment had been entered. In contrast, in this Court, Pueblo argues that "the language is plain that Section 951(a) applies only to money that has become 'due'" and, because the "jury award did not become legally 'due' (i.e., owing) until the Superior Court entered its judgment," subsection 951(a) was inapplicable. For its second argument, Pueblo asserts that, "'unless otherwise provided by statute, prejudgment interest is calculated as simple interest.'" (App'ee Br. at 1-3 (quoting *Bookworm*, 44 V.I. at 307 n.5; and citing *Bank of Nova Scotia*, 56 V.I. at 57)).

¶23 This Court has previously—in *Estate of Skepple v. Bank of Nova Scotia*, 69 V.I. 700, 722-24 (V.I. 2018), and *Dupigny*, 66 V.I. at 439—addressed circumstances of waiver remarkably similar to those presented in this appeal. In *Skepple*, 69 V.I. at 722-24, a defendant appealed an order denying a motion to vacate a default judgment. In support of vacating the default judgment, the defendant had argued in the Superior Court that she "lacked the knowledge and understanding to appreciate the significance" of service of process. On appeal, the defendant argued that her conduct had not been willful and that the failure to achieve personal service of process rendered the default judgment void. Similarly, in *Dupigny*,

[8] *See Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 821-22 (V.I. 2017) ("We have emphasized that such factual issues should be considered in the first instance in the trial court, as the trial courts have an essential role in developing the jurisprudence of this Territory, and thoroughly argued and researched decisions from the trial court enable this Court to give thorough consideration to any interpretation a statute may be given." (citing *Connor*, 60 V.I. at 604; *Dupigny*, 66 V.I. at 552)); *see also Cornelius*, 67 V.I. at 823 ("'The rules that require a litigant to brief and support his argument, both here and before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument before it is presented to this Court. That requirement permits the Superior Court to develop the record so that, in the event of an appeal, this Court can make informed rulings.'" (quoting *Simpson*, 56 V.I. at 280-81)).

> the appellant argued at the trial level that settlement proceeds from his personal injury case that had been subjected to a child support obligation were not "income" within the meaning of the applicable provisions of the Virgin Islands Code. However, on appeal, the appellant argued that the income was exempt from a child support obligation, as provided in a different section of the Virgin Islands Code. Both of Dupigny's arguments were at their core an argument that the money that had been subjected to the child support obligation was somehow legally not subject to such an obligation. But the legal theories presented were dramatically different, and we held that both arguments had been waived.

Skepple, 69 V.I. at 722 (citing 66 V.I. at 439-40).

¶24 Comparing the arguments, it is clear that, as in both *Dupigny* and *Skepple*, Pueblo has presented legally distinct theories as to the applicability of subsection 951(a)(1) of title 11, arguing in the trial court that, "What is clear . . . is that the 'clock' only starts to run upon the entry of judgment by the Court." Pueblo expanded upon this assertion stating that, "[t]he argument by Plaintiff that Defendant's post trial motion has been denied by operation of law after the passing of 120 days is factually and legally incorrect as no Final Judgment has ever been entered by this Court. Likewise, Plaintiff's argument that the time for an appeal to the Virgin Islands Supreme Court has expired is also false." This is in stark contrast to the substance of Pueblo's appellate arguments relating to whether pre-judgment interest under subsection 951(a) of title 11 is applicable to a claim sounding in tort for personal injuries, and whether the plain language of the statute supports the availability of compounded interest.

¶25 The crux of the analysis can be summarized as follows: Pueblo's conduct in response to the motion for entry of judgment did absolutely nothing to provide an opportunity for the Superior Court to consider the statutory interpretation arguments Pueblo now advances. *See Ubiles*, 66 V.I. at 584. As we have said, the primary underlying purpose of the requirement that an issue be fairly presented is to give the trial court, in the first instance, the opportunity to develop an adequate

record of fact and law in order to enable expeditious appellate review. *Id.* Because an adequate record was not developed due to Pueblo's failure to fairly present these issues at the trial level, as in *Skepple* and *Dupigny*, the arguments have been waived. 69 V.I. at 722; 66 V.I. at 439-40. Furthermore, "[w]here a party timely raises a claims processing rule that was violated by its opponent, we have no choice but to dismiss based on it." *Prosser v. Public Serv. Comm'n*, 56 V.I. 391, 403 n.9 (V.I. 2012) (citing *Gov't of the V.I. v. Martinez*, 620 F.3d 321, 328-29 (3d Cir. 2010)).

¶26 Henry has thoroughly canvassed the varying modes by which Pueblo waived its arguments, underscoring that the statutory interpretation arguments were never presented in the trial court (having failed to present them in both its motion for judgment as a matter of law and its opposition to Henry's motion for entry of judgment) and do not fall within the terms of the operative notice of appeal. Additionally, Pueblo failed to file a reply brief, thus waiving the opportunity to respond to Henry's waiver arguments. These failings by Pueblo contrast with plaintiff's diligence on these matters; Henry has invoked this Court's claims-processing rules "at the first opportunity prior to the case becoming fully briefed." *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 436 (V.I. 2013) (quoting *In re Smith*, 54 V.I. 517, 524 n.5 (V.I. 2010); and citing *Martinez*, 620 F.3d at 327-28). Therefore, Henry having vigorously pressed for application of this claims-processing rule, we affirm the August 20, 2018 Final Judgment of the Superior Court.

¶27 However, as we find the Superior Court's failure to timely, much less "promptly," "sign" and "enter" the Final Judgment—waiting from the return of jury's verdict on September 2, 2015, until August 20, 2018—is an error likely to be repeated in future cases, we exercise our supervisory powers, 4 V.I.C. § 32(b) ("The Supreme Court has supervisory jurisdiction over the Superior Court of the Virgin Islands and all other courts of the judicial branch of the Virgin Islands."), to address

the Clerk of the Superior Court's failure to comply with the mandatory prescriptions of Rule 58(b) of the Virgin Islands Rules of Civil Procedure.

B. Waiting Until 1,083 Days After the Jury's Return of its Verdict Before Entering the Judgment on the Docket of the Superior Court is not Promptly Signing and Entering the Judgment in Compliance with the Mandatory, Non-Discretionary Requirements of Rule 58(b) of the Virgin Islands Rules of Civil Procedure Placed Upon (1) Each Superior Court Judge to "Promptly Sign" a Written Judgment Following a Jury's Verdict and (2) the Clerk of the Superior Court to "Promptly Enter the Judgment."

¶28 It is undeniable that Pueblo argued to the Superior Court that "[w]hat is clear . . . is that the 'clock' only starts to run upon the **entry of judgment** by the Court." (emphasis added) However, Pueblo failed to cite Rule 5(a)(9) in its opposition in the Superior Court and completely abandons this argument on appeal. *See* V.I. R. APP. P. 22(m) ("Issues that were . . . only adverted to in a perfunctory manner or unsupported by argument and citation to legal authority are deemed waived for purposes of appeal . . . ."). While Pueblo has waived this argument, as discussed above, and thus waived its entitlement to relief on appeal, *see, e.g.*, *Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 821 (V.I. 2017), this Court has repeatedly refused to allow the actions of the judges and staff of the Superior Court to prejudice litigants. *E.g.*, *Toussaint*, 67 V.I. at n.16 ("To the extent the trial court's own failure to address the motion in a timely fashion created any problems, those concerns were not a justification for denying the motion to amend, as they were a result of the trial court's own inaction, which should not result in penalizing a party.").[9] Further, this Court has not hesitated to hold the Superior Court to a legally correct standard.[10] Considering the record before

[9] *See also Toussaint*, 67 V.I. at 942 ("We have established that a trial court need not exercise its discretion where a party fails to meet the test necessary to invoke such discretion. In contrast, we have also held that errors induced by the trial court's actions, even if unintentional, should not be borne by litigants." (citing 5 V.I.C. § 740(5); *Beachside Assocs., LLC v. Fishman*, 53 V.I. 700, 711-12 (V.I. 2010); *Miller*, 67 V.I. at 875)).

[10] *E.g.*, *Penn*, 67 V.I. at n.6 ("Again, the Appellate Division found this argument to not have been fairly presented in the Magistrate Division. As discussed in the prior footnote, in Small Claims matters, such a reflexive and mechanistic

us, we take this opportunity to, first, remind the Judges and Clerk of the Superior Court that they have an obligation to adhere to the rules applicable in the courts of the Virgin Islands, especially those placing affirmative, non-discretionary duties upon judicial officers, and to unfailingly perform those duties and, second, provide guidance as to the meaning and application of those rules.

¶29 Virgin Islands Rule of Civil Procedure 58(b) specifies that

> Upon determination of an action by a judge or jury, the judge shall promptly **sign the judgment**, which **shall take effect**, **for purposes of appeal, upon entry** by the clerk of the court, unless otherwise ordered by the court. Unless the court orders otherwise, the clerk of the court **must promptly enter the judgment**.

V.I. R. CIV. P. 58(b) (emphasis added). "Entry" is "the placement of something . . . on the record." BLACK'S LAW DICTIONARY 574 (8th ed. 2004); *id.* at 572 (defining "enter" as "to put formally

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determination of this issue is inappropriate. The Appellate Division should consider the legal import of the facts presented in the Magistrate Division in light of the legal arguments presented, to see if the facts as presented could reasonably be understood to [have raised] the issue presented on review. Failing this, resort to a hearing pursuant to Rule 322.3(c) of the Superior Court should be had." (citing *Bryan v. Fawkes*, 61 V.I. 416, 467 n.3 (V.I. 2014); *Jarbough v. United States*, 483 F.3d 188, 189 (3d Cir. 2007))); *Rodriguez v. Bureau of Corrections*, 2019 VI 10, ¶5 n.3 ("'The Government's failure to plead was likely directly attributable to the Superior Court *sua sponte* denying Petitioner's petition before the time for the Government to file an answer expired,' the defense was not forfeited." (quoting *Hughley v. Gov't of the V.I.*, 61 V.I. 323, 337 (V.I. 2014); *George v. Wilson*, 59 V.I. 984, 990 (V.I. 2013))); *see Toussaint*, 67 V.I. at 942 ("Considering, in light of the language in Rule 8 authorizing 'the court' to amend a pleading, that the FED hearing was specifically dismissed to allow Toussaint to present his claim of interest in the real property because the FED court lacked subject matter jurisdiction, and the trial court's admonition to Toussaint that 'the answers are going to have to be amended," a party could readily have concluded that no motion was required in order to file an amended answer and counterclaim. Even though these facts present a close decision, we hold that the trial court abused its discretion when it struck Toussaint's amended pleading."); *see also Miller*, 67 V.I. at 876; *Dupigny*, 66 V.I. at 452 (remanding child support award for consideration of the purposes of the income to the non-custodial parent even though such argument was never fairly presented); *cf. Penn*, 67 V.I. at 895 ("The lack of explanation by the Appellate Division as to why Penn's evidence was 'not credible or carried little weight' was not an error because it was not the obligation of the Appellate Division to do so. The Appellate Division's obligation was to consider the evidence and affirm the Magistrate Division unless that ruling was 'devoid of minimum evidentiary support displaying some hue of credibility' or had 'no rational relationship to the supportive evidence.'" (quoting *Moore v. Walters*, 61 V.I. 502, 506 (V.I. 2014))).

before the court or on the record <the defendant entered a plea of no contest>.").[11] To "sign" means "to affix one's signature." COMPACT AMERICAN DICTIONARY: A CONCISE DICTIONARY OF AMERICAN ENGLISH, 760 (1998); *see also* BLACK'S L. DICT., at 1415 ("To identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it."). To act "promptly" or to be "prompt" is to be "on time; punctual" or to be "done without delay." COMPACT AM. DICT., at 662. Essentially, Rule 58(b) dictates that the trial judge will sign a written judgment memorializing the jury's verdict without delay after it is returned and further dictates that the Clerk of the Superior Court must enter such a judgment on the court's docket without delay.

¶30 Importantly, Rule 5(a)(9) specifically provides that a judgment "is **entered** within the meaning of this Rule when it is **entered in the docket**" and further provides that "[t]he time for appeal begins upon the **entry** of the **final order** into the **docket.**" V.I. R. APP. P. 5(a)(9) (emphasis added).[12] This rule, Rule 5(a)(9), specifically defines the entry of a Final Judgment to be entered

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[11] *See, e.g.*, *Kansas Packing Co. v. Lavilla*, 39 V.I. 71, 74 (V.I. Super. Ct. 1998) ("In the matter *sub judice*, the Court Order, while signed on Monday, December 8, 1997, was not entered by the Clerk of the Court until Tuesday, December 9, 1997. Therefore, the 14 day time period prescribed by Fed. R. Civ. P. 54(d)(2)(B) began to run the following day, Wednesday, December 10, 1997.").

[12] Virgin Islands Rule of Appellate Procedure 5(a) provides, in relevant part, as follows:

> (1) In a civil case in which an appeal is permitted by law as of right from the Superior Court to the Supreme Court, the notice of appeal required by Rule 4 shall be filed with the Clerk of the Supreme Court **within 30 days after the date of entry of the judgment or order appealed from**; but if the Government of the Virgin Islands or the United States of America or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. A notice of appeal filed after the announcement of a judgment or order – but before entry of the judgment or order – is treated as filed on the date of and after the entry of judgment.
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> . . .
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> (4) If any party **timely files in the Superior Court a motion for judgment as a matter of law**; to amend findings or make additional findings; for a new trial; to

on the court's docket "in compliance with Superior Court Rule 49." *Id.*; *see also* BLACK'S L. DICT., at 572, 574. Moreover, this rule further provides that the 30-day deadline for filing a notice of appeal begins to run "upon the entry of the final order into the docket." V.I. R. APP. P. 5(a)(9).

¶31 In contrast, Virgin Islands Rule of Civil Procedure 49(d) further provides as follows:

> (d) Filing and Form of Verdict; Discharge of Jury. As provided in 5 V.I.C. § 361, when the verdict is given, and is such as the court may receive, and the jury is not again sent out, **the clerk shall file the verdict**. The verdict **is then complete**, and the jury shall be discharged from the case. The **verdict shall be in writing**, and under the direction of the court shall be substantially entered in the minutes as of the day's proceedings on which it was given.

> alter or amend the judgment or order; or (if filed within 28 days) for relief from the judgment or order, **the time for filing the notice of appeal for all parties is extended until 30 days after entry of an order disposing of the last such motion;** provided, however, that the failure to dispose of any motion by order entered upon the record within 120 days after the date the motion was filed shall constitute a denial of the motion for purposes of appeal.
>
> A notice of appeal filed **after announcement or entry of the judgment** but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding or 120 days after the date the last such motion was filed. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 4(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file with the Clerk of the Supreme Court a notice or an amended notice of appeal within the time prescribed by this Rule 5, measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice. A motion for attorney's fees shall not affect the running of the time for appeal.
>
> . . . .
>
> (9) A judgment or order is **entered within the meaning of this Rule when it is entered in the docket** in compliance with Superior Court Rule 49. Failure of the Superior Court to enter a separate document representing the judgment and/or order shall not toll the time for appeal. **The time for appeal begins upon the entry of the final order into the docket.**

V.I. R. APP. P. 5(a) (emphasis added).

V.I. R. CIV. P. 49(d) (emphasis added). A comparison of the foregoing rules makes clear that the Clerk's minute entry[13] of the jury's verdict on the Superior Court's docket, though complying with Rule 49(d), was not the equivalent of a signed judgment entered on the docket, which would have started the running of the "clock" on the deadline for seeking appeal.

¶32 Pueblo, in its opposition to Henry's motion, while not directly addressing the application of interest to the amount awarded by the jury, unequivocally stated that no judgment had been entered and requested that the Superior Court address its pending motion for judgment as a matter of law. No Final Judgment—in this case, a judgment memorializing the jury award—was entered on the docket of the Superior Court prior to August 20, 2018. Therefore, Rule 5(a)(4) was not operative until that date, and the 120-day deadline, the deadline by which Pueblo's motion for judgment as a matter of law would have been denied for purposes of appeal by operation of court rules, never began to run until the date of entry of the judgment. *Charles v. Payne*, 2019 VI 20, ¶19.

¶33 Rule 58(b) obligates the Clerk to not just enter the judgment after return of the jury's verdict, but to do so **promptly**. The Judges and Clerk of the Superior Court are without discretion in this matter, and their failure to promptly enter a written judgment should not prejudice a litigant, especially when the argument was based upon a court rule and actually made to the trial court, albeit without citation to the rule, and was legally correct. Indeed, the mandates of Rules 49(d)

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[13] Rule 49(d) has altered the practice of the Superior Court from traditional practice.

> Although practice[s] varie[d], traditionally when a trial judge is sitting officially, with or without a court reporter, a clerk or deputy clerk keeps minutes. When the judge makes an oral order, the only record of that order may be in the minutes. It is therefore referred to as a minute order.—Also termed minute entry.

BLACK'S L. DICT., at 1130. Indeed, a minute order is defined as "[a]n order recorded in the minutes of the court rather than directly on a case docket." *Id.* However, the practice in the Superior Court is to record the verdict of the jury in a minute entry on the docket, which was done in this case.

and 58(b) of the Virgin Islands Rules of Civil Procedure, in conjunction with Rule 5(a)(9) of the Virgin Islands Rules of Appellate Procedure, cannot lead to any conclusion other than that the automatic denial embodied in Rule 5(a)(4) was not triggered prior to August 20, 2018. The delay of 1,083 days from the jury's return of its verdict to the entry of the written, signed Final Judgment on the Superior Court's docket was not prompt action in compliance with Rule 58(b) of the Virgin Islands Rules of Civil Procedure.

¶34 Having promptly filed its opposition to the application of interest to the judgment against it prior to entry of that judgment, Pueblo had an unquestionably reasonable expectation to have its pending motion for judgment as a matter of law decided before the trial court entered judgment in favor of Henry. Moreover, placing any burden upon Pueblo, or any other party, to respond to a motion for entry of judgment when the Virgin Islands Rules of Civil Procedure mandate its prompt entry by the Clerk of the Court generally prejudices litigants[14] and undermines the effectiveness

[14] This case presents another occasion for us to address a situation involving delay between the announcement of a jury verdict and the entry of a judgment embodying that verdict, as well as the respective roles of the judge and the clerk as contemplated by Rule 58(b) of the Virgin Islands Rules of Civil Procedure with respect to jury verdicts in civil cases. As we have noted, this rule mandates that the Superior Court judge "shall promptly sign the judgment" embodying the jury's verdict and that the clerk "must promptly enter th[at] judgment." This obligation, like the other provisions stated in the Virgin Islands Rules of Civil Procedure, must be "construed, administered, and employed by the court . . . to secure the just, speedy, and inexpensive determination of every action and proceeding." V.I. R. Civ. P. 1. While we have recognized that a judge properly exercises judicial discretion to delay the signing and entry of a judgment embodying a jury verdict so as to further judicial economy and prevent piecemeal appeals, such as when motions from the parties concerning the trial remain pending after the jury has announced its verdict, *see In re Royer*, S. Ct. Civ. No. 2014-0023, 2014 WL 2938456, at *2 (V.I. June 30, 2014) (unpublished), and we have also recognized that "entry of judgment is not a ministerial act that can be done by the clerk acting alone without any judicial involvement," *Charles*, 2019 VI 20, ¶14 n.4, this is not a case involving circumstances that warranted delaying the signing and entry of judgment for 1,083 days after the jury announced its verdict. Thus, we do not hesitate to conclude that the Superior Court failed to satisfy its duty to "construe[ ], administer[ ], and employ[ ]" Rule 58(b) in a manner that "secure[d] the just, speedy, and inexpensive determination of . . . [this] action." Unfortunately, that failure carries real consequences, not just for the litigants in this case, but also for cases in general. At a minimum, this failure to adhere to the mandate of V.I. R. Civ. P. 1 delays resolution of cases and drives up the costs of litigation, diminishing the recovery for any prevailing injured party while also delaying any relief from suffering and needlessly and unjustifiably driving up these same costs for the opposing party. This is to say nothing of the financial impact such actions of judges have on the ability of law firms and lawyers to operate and provide quality representation. A blatant failure by the Superior Court to perform a mandatory duty should not be allowed to unnecessarily add to any of the costs of litigation; allowing such is not justice in any sense of the word. Furthermore, such egregious judicial apathy, and downright judicial ineptitude, undermines the public's confidence in the judiciary of this Territory.

of the court's functioning and specifically undermines the effectiveness of its rules. The Superior Court's failure to recognize that no deadline had been set due to its failure to promptly enter a Final Judgment memorializing the jury's verdict was legal error; nonetheless, this Court must deny relief to Pueblo because Henry has properly and timely pressed for application of its claim of Pueblo's waiver. *Prosser*, 56 V.I. at 403 n.9.

V. CONCLUSION

¶35 Pueblo failed to argue before the Superior Court the proper construction of "interest" as used in subsection 951(b) of title 11 of the Virgin Islands Code and the proper application of that same subsection to personal injury awards sounding in tort. Thus, both arguments are subject to waiver under Rule 22(m) of the Virgin Islands Rules of Appellate Procedure. As Henry has timely and promptly pursued these violations of the applicable rules of appellate procedure, we find that all of Pueblo's arguments have been waived. We therefore affirm the judgment of the Superior Court.

¶36 However, we find that the Superior Court utterly failed to comply with the mandatory obligations of Virgin Islands Rule of Civil Procedure 58(b) with respect to the signing and entry of a final judgment memorializing the September 2, 2015 jury verdict awarding Henry damages. A signed judgment, entered 1,083 days after the jury's return of its verdict, is in no sense prompt. We therefore take this opportunity to strenuously admonish the Superior Court Judges and Clerk of the Superior Court to actually "**promptly**" sign and enter judgments confirming jury awards.

Dated this 9th day of October, 2019.

BY THE COURT:

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice