

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

NOTC

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person by
and through his Conservator CINDY REIF,

Plaintiff,

vs.

ARIES CONSULTANTS INC., a Nevada
Corporation, DOES 1 through 5, and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

CASE NO.: A-18-770951-C
DEPT NO.: XXII

**PLAINTIFF'S NOTICE OF
APPEAL**

Hearing Date:
Hearing Time:

NOTICE IS HEREBY GIVEN that Plaintiff MARCUS A. REIF, an incompetent person by
and through his Conservator CINDY REIF, hereby appeal to the Supreme Court of Nevada from the
following District Court Orders:

1. Order Granting Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's
Complaint, entered May 11, 2018.

GLEN LERNER INJURY ATTORNEYS

By: /s/ Glen J. Lerner

Glen J. Lerner (NV SBN 4314)
4795 S. Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a) and N.E.F.C.R. 9, I hereby certify that I am an employee of GLEN LERNER INJURY ATTORNEYS, and on the 8th day of June, 2018 the foregoing **PLAINTIFF’S NOTICE OF APPEAL** was served by electronic copy via the Eighth Judicial Court’s Odyssey E-File and Serve system, to the following counsel of record:

Craig J. Mariam, Esq.
Robert S. Larsen, Esq.
Wing Yan Wong, Esq.
GORDON & REES, LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101
Attorney for Defendant Aries Consultants, Inc.

/s/ Miriam Alvarez
An Employee of GLEN LERNER INJURY
ATTORNEYS

DEPARTMENT 22
CASE SUMMARY
CASE NO. A-18-770951-C

Marcus Reif, Plaintiff(s)
vs.
Aries Consultants, Inc., Defendant(s)

§
§
§
§
§

Location: **Department 22**
Judicial Officer: **Johnson, Susan**
Filed on: **03/12/2018**
Cross-Reference Case Number: **A770951**

CASE INFORMATION

Statistical Closures

05/11/2018 Motion to Dismiss by the Defendant(s)

Case Type: **Negligence - Premises Liability**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-18-770951-C
Court Department 22
Date Assigned 03/12/2018
Judicial Officer Johnson, Susan

PARTY INFORMATION

Plaintiff **Reif, Marcus**

Lead Attorneys

Lerner, Glen J
Retained
7028771500(W)







Defendant **Aries Consultants, Inc.**

Mariam, Craig J.
Retained
7025779300(W)











DATE

EVENTS & ORDERS OF THE COURT

INDEX

03/12/2018	 Complaint With Jury Demand Filed By: Plaintiff Reif, Marcus <i>Complaint and Demand for Jury Trial</i>	
03/12/2018	 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>	
03/12/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Reif, Marcus <i>Summons</i>	
03/13/2018	 Amended Complaint Filed By: Plaintiff Reif, Marcus <i>Amended Complaint and Demand for Jury Trial</i>	
03/16/2018	 Proof of Service Filed by: Plaintiff Reif, Marcus <i>Proof of Service</i>	
04/03/2018	 Motion to Dismiss Filed By: Defendant Aries Consultants, Inc. <i>Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's Complaint</i>	

DEPARTMENT 22
CASE SUMMARY
CASE NO. A-18-770951-C

04/04/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Aries Consultants, Inc. <i>Aries Consultants, Inc.'s Initial Appearance Fee Disclosure</i>
04/19/2018	 Motion to Consolidate Filed By: Plaintiff Reif, Marcus <i>Notice of Motion and Motion to Consolidate Related Cases</i>
04/20/2018	 Opposition to Motion to Dismiss Filed By: Plaintiff Reif, Marcus <i>Plaintiff's Opposition to Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's Complaint</i>
05/04/2018	 Motion to Associate Counsel Filed By: Plaintiff Reif, Marcus <i>Motion to Associate Counsel</i>
05/10/2018	 Motion to Dismiss (10:30 AM) (Judicial Officer: Johnson, Susan) <i>Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's Complaint</i>
05/11/2018	Order of Dismissal (Judicial Officer: Johnson, Susan) Debtors: Marcus Reif (Plaintiff) Creditors: Aries Consultants, Inc. (Defendant) Judgment: 05/11/2018, Docketed: 05/11/2018
05/11/2018	 Order Granting Motion <i>Order Granting Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's Complaint</i>
05/11/2018	 Notice of Entry of Order Filed By: Defendant Aries Consultants, Inc. <i>Notice of Entry of Order Granting Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's Complaint</i>
05/22/2018	 Motion to Reconsider Filed By: Plaintiff Reif, Marcus <i>Plaintiff's Motion for Reconsideration</i>
05/24/2018	CANCELED Motion to Consolidate (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Case Closed</i> <i>Notice of Motion and Motion to Consolidate Related Cases</i>
06/07/2018	CANCELED Motion to Associate Counsel (10:30 AM) (Judicial Officer: Johnson, Susan) <i>Vacated - Case Closed</i>
06/08/2018	 Notice of Appeal Filed By: Plaintiff Reif, Marcus <i>Notice of Appeal</i>
06/11/2018	 Opposition and Countermotion Filed By: Defendant Aries Consultants, Inc. <i>Defendant Aries Consultants, Inc.'s Opposition to Plaintiff's Motion for Reconsideration and Countermotion to Vacate June 26, 2018 Hearing</i>
06/26/2018	Motion For Reconsideration (10:30 AM) (Judicial Officer: Johnson, Susan) <i>Plaintiff's Motion for Reconsideration</i>

CASE SUMMARY

CASE NO. A-18-770951-C

06/26/2018

Opposition and Countermotion (10:30 AM) (Judicial Officer: Johnson, Susan)

Defendant Aries Consultants, Inc.'s Opposition to Plaintiff's Motion for Reconsideration and Countermotion to Vacate June 26, 2018 Hearing

DATE

FINANCIAL INFORMATION

Defendant Aries Consultants, Inc.

Total Charges

237.00

Total Payments and Credits

237.00

Balance Due as of 6/12/2018**0.00****Plaintiff** Reif, Marcus

Total Charges

294.00

Total Payments and Credits

294.00

Balance Due as of 6/12/2018**0.00**

DISTRICT COURT CIVIL COVER SHEET

A-18-770951-C

County, Nevada

Department 22

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

MARCUS A. REIF, an incompetent person

by and through his Conservator CINDY REIF

Defendant(s) (name/address/phone):

ARIES CONSULTANTS, Inc.

Attorney (name/address/phone):

Glen J. Lerner, Esq.

Glen Lerner Injury Attorneys

4795 S. Durango Dr., Las Vegas, NV 89147

(702) 877-1500

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

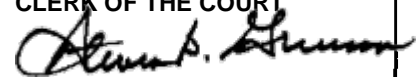
Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input checked="" type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

3/12/18
Date

Signature of initiating party or representative

See other side for family-related case filings.



OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person
by and through his Conservator CINDY
REIF,

Case No. A-18-770951-C
Dept. No. XXII

Plaintiff,

Vs.

ARIES CONSULTANTS, INC., a Nevada
Corporation; DOES 1 through 5; and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

**ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

This matter concerning Defendant ARIES CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 came on for hearing on the 10th day of May 2018 at the hour of 10:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiff MARCUS A. REIF appeared by and through his attorney, RANDOLPH WESTBROOK, ESQ. of the law firm, GLEN LERNER INJURY ATTORNEYS; and Defendant ARIES CONSULTANTS, INC. appeared by and through its attorney, BRIAN K. WALTERS, ESQ. of the law firm, GORDON REES SCULLY MANSUKHANI. Having reviewed the papers and pleadings on file herein, heard oral arguments of the attorneys and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

...

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

FINDINGS OF FACT AND PROCEDURAL HISTORY

1
2 1. On March 14, 2017, MARCUS A. REIF filed his Complaint against EDGEWATER
3 GAMING, LLC, EDGEWATER HOTEL AND CASINO, GILLETT CONSTRUCTION LLC and
4 ARIES CONSULTANTS INC.¹ as a result of personal injuries he sustained on March 16, 2016
5 when, while operating his 1998 Ford Expedition northbound in a hotel-casino's parking structure,
6 the vehicle exited or drove off the facility and fell several floors. *See Reif v. Edgewater Gaming,*
7 *LLC*, Case No. A-17-752432-C, assigned to Department XXX of the Eighth Judicial District Court.
8 "Upon information and belief," all defendants are alleged to be owners, managers, developers,
9 builders, maintainers, inspectors, supervisors and controllers of the premises and subject parking
10 structure. There are twelve claims for relief of which the Third (negligence), Sixth (negligence *per*
11 *se*), Ninth (premises liability) and Twelfth (punitive damages) are asserted against ARIES
12 CONSULTANTS INC.
13
14

15 2. On July 11, 2017, ARIES CONSULTANTS, INC. filed a motion to dismiss and
16 alternatively to strike in that case upon the basis its only involvement in the construction of the
17 parking structure at issue was that as a quality assurance inspector or "design professional." ARIES
18 CONSULTANTS, INC. argued, as the action involved non-residential construction, and is
19 commenced against it as a design professional, Plaintiff's counsel was required to, but did not file an
20 affidavit concurrently with the service of the first pleading in the action stating (1) the lawyer had
21 reviewed the facts of the case, (2) consulted with an expert, (3) reasonably believes the expert is
22 knowledgeable in the relevant discipline and (4) has concluded on the basis of the review and
23 consultation the action has a reasonable basis in law and fact. *See* NRS 11.258. Given such failure,
24 the case lodged against ARIES CONSULTANTS, INC. should be dismissed. *See* NRS 11.259.
25
26

27 ¹Within the paperwork filed with the Eighth Judicial District Court, there are some references to ARIES
28 CONSULTANTS INC. and others to ARIES CONSULTANTS, INC. with the difference being the submission of a
comma in the name. This Court will treat them as one and the same.

1 JUDGE JERRY WIESE of Department XXX heard the matter on August 15, 2017, and found a
2 genuine issue of material fact remained regarding whether ARIES CONSULTANTS INC. was,
3 indeed, a “design professional” and thus, if the requirements of NRS 11.258 applied. He denied the
4 motion without prejudice and granted MR. REIF’S request for NRCP 56(f) relief to conduct
5 discovery regarding ARIES CONSULTANTS INC.’S status as a “design professional.”²

6
7 3. This Court understands the parties did conduct such discovery, and ultimately, both
8 parties now concede ARIES CONSULTANTS INC. is a “design professional,” whereby the
9 requirements of NRS 11.258 apply.

10 4. On March 12, 2018, just four days before the pertinent statute of limitations period
11 would have run,³ MR. REIF filed a separate action against ARIES CONSULTANTS INC. in Case
12 No. A-18-770951-C, which is assigned to this Court, i.e. Department XXII of the Eighth Judicial
13 District Court, in and for Clark County, Nevada. Plaintiff asserts claims for negligence, negligence
14 *per se*, and negligent performance of an undertaking. Although it is alleged ARIES
15 CONSULTANTS INC. is being sued given its performance as a quality assurance inspector in this
16 non-residential construction action, no affidavit was filed concurrently with the original complaint as
17 required by NRS 11.258. However, the next day, March 13, 2018, MR. REIF filed an amended
18 complaint which attached such an affidavit of his California lawyer, F. PHILLIP PECHE, ESQ.,
19 who has been admitted to practice *pro hac vice* in the case assigned to JUDGE WIESE.⁴ The
20 affidavit is dated September 28, 2017.

21
22 5. ARIES CONSULTANTS INC. now moves this Court to dismiss the complaint
23 pursuant to NRS 11.259 as the pleading here “violates the Single Cause of Action Rule.”⁵ Further,
24
25

26
27 ²See Order filed September 14, 2017 in Case No. A-17-752432-C.

28 ³See NRS 11.190(4)(e).

⁴MR. PECHE has not been admitted to practice *pro hac vice* in this case.

⁵See Defendant ARIES CONSULTANTS, INC.’S Motion to Dismiss Plaintiff’s Complaint filed April 3, 2018.

1 and notwithstanding the first point, the California lawyer, MR. PECHE, is not authorized or licensed
2 to represent MR. REIF in this case, whereby the affidavit, which must be submitted by "the attorney
3 for the complainant" is insufficient. See NRS 11.258(1). Plaintiff opposes, arguing the "single
4 action" rule does not apply as the litigation here is the matter is similar to that already being heard in
5 Department XXX, and no final judgment dismissing the action has been filed there. Further,
6 California counsel⁶ has been admitted *pro hac vice* in the case before Department XXX and is
7 working alongside local attorneys, GLEN LERNER INJURY ATTORNEYS, whereby the affidavit
8 is not insufficient.
9

10 CONCLUSIONS OF LAW

11 1. Rule 12(b) of the Nevada Rules of Civil Procedure (NRCP) provides every defense,
12 in law or fact, to a claim for relief shall be asserted in the responsive pleading thereto if one is
13 required, except that certain defenses, including plaintiff's failure to state a claim upon which relief
14 may be granted,⁷ may be made by motion.
15

16 2. As noted above, all parties now agree ARIES CONSULTANTS, INC. is being sued
17 as a quality assurance inspector or "design professional" in this non-residential construction action
18 whereby the requirements of NRS 11.258 apply. This statute provides in salient part:
19

20 1. Except as otherwise provided in subsection 2, in an action involving
21 nonresidential construction, the attorney for the complainant shall file an affidavit with the
22 court concurrently with the service of the first pleading in the action stating that the attorney:

- 23 (a) Has reviewed the facts of the case;
- 24 (b) Has consulted with an expert;
- 25 (c) Reasonably believes the expert who has consulted is knowledgeable in
26 the relevant discipline involved in the action; and
- 27 (d) Has concluded on the basis of the review and the consultation with the
28 expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to
subsection 1 at a later time if the attorney could not consult with an expert and prepare the

⁶This Court understands MR. PECHE employed by NAPOLI SHKOLNIK, PLLC, the California law firm that
still represents MR. REIF along with local counsel, GLEN LERNER INJURY ATTORNEYS.

⁷See NRCP 12(b)(5).

1 affidavit before filing the action without causing the action to be impaired or barred by the
2 statute of limitations or repose, or other limitations prescribed by law. If the attorney must
3 submit the affidavit late, the attorney shall file an affidavit concurrently with the service of
4 the first pleading in the action stating the reason for failing to comply with subsection 1 and
5 the attorney shall consult with an expert and file the affidavit required pursuant to subsection
6 1 not later than 45 days after filing the action.

3. In addition to the statement included in the affidavit pursuant to subsection 1,
a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the
report must be prepared by the expert consulted by the attorney and must include, without
limitation:

- (a) The resume of the expert;
- (b) A statement that the expert is experienced in each discipline which is
the subject of the report;
- (c) A copy of each nonprivileged document reviewed by the expert in
preparing the report, including, without limitation, each record, report and related
document that the expert has determined is relevant to the allegations of negligent
conduct that are the basis for the action;
- (d) The conclusions of the expert and the basis for the conclusions; and
- (e) A statement that the expert has concluded that there is a reasonable
basis for filing the action.

3. NRS 11.259 describes the effect of the complainant's failure to comply with NRS
11.258. It states in part:

1. The court shall dismiss an action involving nonresidential construction if the
attorney for the complainant fails to:

- (a) File an affidavit required pursuant to NRS 11.258;
- (b) File a report required pursuant to subsection 3 of NRS 11.258; or
- (c) Name the expert consulted in the affidavit required pursuant to
subsection 1 of NRS 11.258.

4. The Nevada Supreme Court has recently held, because the phrase in NRS 11.259
"shall dismiss" is clear and unambiguous, it must give "effect to that meaning and will not consider
outside sources beyond the statute." Otak Nevada, LLC v. District Court, 127 Nev. 593, 598, 260
P.3d 408, 411 (2011), *quoting* City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 272, 236
P.3d 10, 16 (2010), *in turn, quoting* NAIW v. Nevada Self-Insurers Association, 126 Nev. 74, 84,
225 P.3d 1265, 1271 (2010). The use of the word "[s]hall" imposes a duty to act." Otak Nevada,
LLC, 127 Nev. at 598, 260 P.3d at 411, *quoting* NRS 0.025(1)(d). Thus, the Nevada Legislature's
use of "shall" in NRS 11.259 demonstrates its intent to prohibit judicial discretion and,

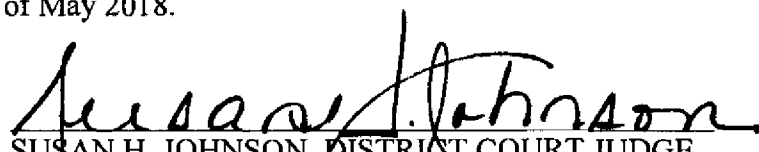
1 consequently, mandates automatic dismissal if the pleading is served without the complaining party
2 concurrently filing the required affidavit and report. Id.

3
4 5. In the case before this Court, the first pleading, or original complaint, was filed
5 March 12, 2018 and asserted a non-residential construction negligence claim against ARIES
6 CONSULTANTS, INC. without concurrently filing the required attorney affidavit and expert report
7 in direct violation of NRS 11.258. While there is an affidavit submitted with the amended
8 complaint filed the following day, the September 28, 2017 document does not set forth the reason
9 for California lawyer's failure to comply with NRS 11.258(1) when the original complaint was filed
10 in this case over five months later. As a consequence, the first pleading or original complaint filed
11 without the required affidavit and expert report is void *ab initio* and is of no legal effect. The
12 complainant's failure to comply with NRS 11.258 cannot be cured by amendment. Otak, 127 Nev.
13 at 599, 260 P.3d at 412. In other words, this Court has no discretionary authority to allow MR. REIF
14 to amend his pleading.
15

16
17 6. Given this its factual findings and conclusions above, this Court does not reach the
18 issues raised by the parties, and notably whether the "single action" rule applies. Accordingly, based
19 upon the foregoing Findings of Fact and Conclusions of Law,
20

21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant ARIES
22 CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 is granted,
23 and Case No. A-18-770951-C is dismissed.
24

25 DATED this 11th day of May 2018.

26 
27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
28

CERTIFICATE OF SERVICE

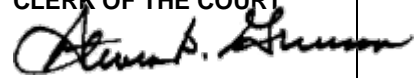
I hereby certify, on the 11th day of May 2018, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT to the following counsel of record with first-class postage fully prepaid thereon:

GLEN J. LERNER, ESQ.
GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
Las Vegas, Nevada 89147
glerner@glenlerner.com

ROBERT E. SCHUMACHER, ESQ.
BRIAN K. WALTERS, ESQ.
GORDON REESE SCULLY MANSUKHANI, LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
rschumacher@grsm.com
bwalters@grsm.com



Laura Banks, Judicial Executive Assistant



NEOJ
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ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
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GORDON REES SCULLY MANSUKHANI, LLP
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E-Mail: cmariam@grsm.com
rschumacher@grsm.com
bwalters@grsm.com

Attorneys for Defendant,
ARIES CONSULTANTS, INC.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person by and
through his Conservator CINDY REIF,

Plaintiff,

vs.

ARIES CONSULTANTS, INC., a Nevada
Corporation, DOES 1 through 5, and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

) Case No.: A-18-770951-C

) Dept. No.: XXII

) **NOTICE OF ENTRY OF ORDER**
) **GRANTING DEFENDANT ARIES**
) **CONSULTANTS, INC.'S MOTION**
) **TO DISMISS PLAINTIFF'S**
) **COMPLAINT**

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**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT ARIES CONSULTANTS,
INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

PLEASE TAKE NOTICE that, on May 11, 2018, the Court entered an Order Granting Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's Complaint in this matter. A copy of the Court's Order is attached hereto as **Exhibit "1."**

DATED this 11th day of May, 2018.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Brian K. Walters

CRAIG J. MARIAM, ESQ.
Nevada Bar No. 10926
ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
BRIAN K. WALTERS, ESQ.
Nevada Bar No. 9711
300 South 4th Street, Suite 1550
Las Vegas, Nevada 89101

***Attorneys for Defendant
ARIES CONSULTANTS, INC.***

CERTIFICATE OF SERVICE

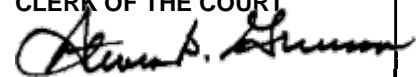
I HEREBY CERTIFY that on the 11TH day of May, 2018, I served a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT** via the Court's Electronic Filing/Service system upon all parties on the E-Service Master List:

Glen J. Lerner, Esq.
GLEN LERNER INJURY ATTORNEYS
4795 S. Durango Drive
Las Vegas, NV 89147
Attorneys for Plaintiff

/s/ Andrea Montero
An Employee of GORDON REES SCULLY
MANSUKHANI, LLP

EXHIBIT 1

EXHIBIT 1



OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person
by and through his Conservator CINDY
REIF,

Case No. A-18-770951-C
Dept. No. XXII

Plaintiff,

Vs.

ARIES CONSULTANTS, INC., a Nevada
Corporation; DOES 1 through 5; and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

**ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

This matter concerning Defendant ARIES CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 came on for hearing on the 10th day of May 2018 at the hour of 10:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiff MARCUS A. REIF appeared by and through his attorney, RANDOLPH WESTBROOK, ESQ. of the law firm, GLEN LERNER INJURY ATTORNEYS; and Defendant ARIES CONSULTANTS, INC. appeared by and through its attorney, BRIAN K. WALTERS, ESQ. of the law firm, GORDON REES SCULLY MANSUKHANI. Having reviewed the papers and pleadings on file herein, heard oral arguments of the attorneys and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

...

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

FINDINGS OF FACT AND PROCEDURAL HISTORY

1
2 1. On March 14, 2017, MARCUS A. REIF filed his Complaint against EDGEWATER
3 GAMING, LLC, EDGEWATER HOTEL AND CASINO, GILLETT CONSTRUCTION LLC and
4 ARIES CONSULTANTS INC.¹ as a result of personal injuries he sustained on March 16, 2016
5 when, while operating his 1998 Ford Expedition northbound in a hotel-casino's parking structure,
6 the vehicle exited or drove off the facility and fell several floors. *See Reif v. Edgewater Gaming,*
7 *LLC*, Case No. A-17-752432-C, assigned to Department XXX of the Eighth Judicial District Court.
8 "Upon information and belief," all defendants are alleged to be owners, managers, developers,
9 builders, maintainers, inspectors, supervisors and controllers of the premises and subject parking
10 structure. There are twelve claims for relief of which the Third (negligence), Sixth (negligence *per*
11 *se*), Ninth (premises liability) and Twelfth (punitive damages) are asserted against ARIES
12 CONSULTANTS INC.
13
14

15 2. On July 11, 2017, ARIES CONSULTANTS, INC. filed a motion to dismiss and
16 alternatively to strike in that case upon the basis its only involvement in the construction of the
17 parking structure at issue was that as a quality assurance inspector or "design professional." ARIES
18 CONSULTANTS, INC. argued, as the action involved non-residential construction, and is
19 commenced against it as a design professional, Plaintiff's counsel was required to, but did not file an
20 affidavit concurrently with the service of the first pleading in the action stating (1) the lawyer had
21 reviewed the facts of the case, (2) consulted with an expert, (3) reasonably believes the expert is
22 knowledgeable in the relevant discipline and (4) has concluded on the basis of the review and
23 consultation the action has a reasonable basis in law and fact. *See* NRS 11.258. Given such failure,
24 the case lodged against ARIES CONSULTANTS, INC. should be dismissed. *See* NRS 11.259.
25
26

27 ¹Within the paperwork filed with the Eighth Judicial District Court, there are some references to ARIES
28 CONSULTANTS INC. and others to ARIES CONSULTANTS, INC. with the difference being the submission of a
comma in the name. This Court will treat them as one and the same.

1 JUDGE JERRY WIESE of Department XXX heard the matter on August 15, 2017, and found a
2 genuine issue of material fact remained regarding whether ARIES CONSULTANTS INC. was,
3 indeed, a “design professional” and thus, if the requirements of NRS 11.258 applied. He denied the
4 motion without prejudice and granted MR. REIF’S request for NRCP 56(f) relief to conduct
5 discovery regarding ARIES CONSULTANTS INC.’S status as a “design professional.”²

6
7 3. This Court understands the parties did conduct such discovery, and ultimately, both
8 parties now concede ARIES CONSULTANTS INC. is a “design professional,” whereby the
9 requirements of NRS 11.258 apply.

10 4. On March 12, 2018, just four days before the pertinent statute of limitations period
11 would have run,³ MR. REIF filed a separate action against ARIES CONSULTANTS INC. in Case
12 No. A-18-770951-C, which is assigned to this Court, i.e. Department XXII of the Eighth Judicial
13 District Court, in and for Clark County, Nevada. Plaintiff asserts claims for negligence, negligence
14 *per se*, and negligent performance of an undertaking. Although it is alleged ARIES
15 CONSULTANTS INC. is being sued given its performance as a quality assurance inspector in this
16 non-residential construction action, no affidavit was filed concurrently with the original complaint as
17 required by NRS 11.258. However, the next day, March 13, 2018, MR. REIF filed an amended
18 complaint which attached such an affidavit of his California lawyer, F. PHILLIP PECHE, ESQ.,
19 who has been admitted to practice *pro hac vice* in the case assigned to JUDGE WIESE.⁴ The
20 affidavit is dated September 28, 2017.

21
22 5. ARIES CONSULTANTS INC. now moves this Court to dismiss the complaint
23 pursuant to NRS 11.259 as the pleading here “violates the Single Cause of Action Rule.”⁵ Further,
24
25

26
27 ²See Order filed September 14, 2017 in Case No. A-17-752432-C.

28 ³See NRS 11.190(4)(e).

⁴MR. PECHE has not been admitted to practice *pro hac vice* in this case.

⁵See Defendant ARIES CONSULTANTS, INC.’S Motion to Dismiss Plaintiff’s Complaint filed April 3, 2018.

1 and notwithstanding the first point, the California lawyer, MR. PECHE, is not authorized or licensed
2 to represent MR. REIF in this case, whereby the affidavit, which must be submitted by "the attorney
3 for the complainant" is insufficient. See NRS 11.258(1). Plaintiff opposes, arguing the "single
4 action" rule does not apply as the litigation here is the matter is similar to that already being heard in
5 Department XXX, and no final judgment dismissing the action has been filed there. Further,
6 California counsel⁶ has been admitted *pro hac vice* in the case before Department XXX and is
7 working alongside local attorneys, GLEN LERNER INJURY ATTORNEYS, whereby the affidavit
8 is not insufficient.
9

10 CONCLUSIONS OF LAW

11 1. Rule 12(b) of the Nevada Rules of Civil Procedure (NRCP) provides every defense,
12 in law or fact, to a claim for relief shall be asserted in the responsive pleading thereto if one is
13 required, except that certain defenses, including plaintiff's failure to state a claim upon which relief
14 may be granted,⁷ may be made by motion.
15

16 2. As noted above, all parties now agree ARIES CONSULTANTS, INC. is being sued
17 as a quality assurance inspector or "design professional" in this non-residential construction action
18 whereby the requirements of NRS 11.258 apply. This statute provides in salient part:
19

20 1. Except as otherwise provided in subsection 2, in an action involving
21 nonresidential construction, the attorney for the complainant shall file an affidavit with the
22 court concurrently with the service of the first pleading in the action stating that the attorney:

- 23 (a) Has reviewed the facts of the case;
- 24 (b) Has consulted with an expert;
- 25 (c) Reasonably believes the expert who has consulted is knowledgeable in
26 the relevant discipline involved in the action; and
- 27 (d) Has concluded on the basis of the review and the consultation with the
28 expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to
subsection 1 at a later time if the attorney could not consult with an expert and prepare the

⁶This Court understands MR. PECHE employed by NAPOLI SHKOLNIK, PLLC, the California law firm that
still represents MR. REIF along with local counsel, GLEN LERNER INJURY ATTORNEYS.

⁷See NRCP 12(b)(5).

1 affidavit before filing the action without causing the action to be impaired or barred by the
2 statute of limitations or repose, or other limitations prescribed by law. If the attorney must
3 submit the affidavit late, the attorney shall file an affidavit concurrently with the service of
4 the first pleading in the action stating the reason for failing to comply with subsection 1 and
5 the attorney shall consult with an expert and file the affidavit required pursuant to subsection
6 1 not later than 45 days after filing the action.

3. In addition to the statement included in the affidavit pursuant to subsection 1,
a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the
report must be prepared by the expert consulted by the attorney and must include, without
limitation:

- (a) The resume of the expert;
- (b) A statement that the expert is experienced in each discipline which is
the subject of the report;
- (c) A copy of each nonprivileged document reviewed by the expert in
preparing the report, including, without limitation, each record, report and related
document that the expert has determined is relevant to the allegations of negligent
conduct that are the basis for the action;
- (d) The conclusions of the expert and the basis for the conclusions; and
- (e) A statement that the expert has concluded that there is a reasonable
basis for filing the action.

3. NRS 11.259 describes the effect of the complainant's failure to comply with NRS
11.258. It states in part:

1. The court shall dismiss an action involving nonresidential construction if the
attorney for the complainant fails to:

- (a) File an affidavit required pursuant to NRS 11.258;
- (b) File a report required pursuant to subsection 3 of NRS 11.258; or
- (c) Name the expert consulted in the affidavit required pursuant to
subsection 1 of NRS 11.258.

4. The Nevada Supreme Court has recently held, because the phrase in NRS 11.259
"shall dismiss" is clear and unambiguous, it must give "effect to that meaning and will not consider
outside sources beyond the statute." Otak Nevada, LLC v. District Court, 127 Nev. 593, 598, 260
P.3d 408, 411 (2011), *quoting* City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 272, 236
P.3d 10, 16 (2010), *in turn, quoting* NAIW v. Nevada Self-Insurers Association, 126 Nev. 74, 84,
225 P.3d 1265, 1271 (2010). The use of the word "[s]hall" imposes a duty to act." Otak Nevada,
LLC, 127 Nev. at 598, 260 P.3d at 411, *quoting* NRS 0.025(1)(d). Thus, the Nevada Legislature's
use of "shall" in NRS 11.259 demonstrates its intent to prohibit judicial discretion and,

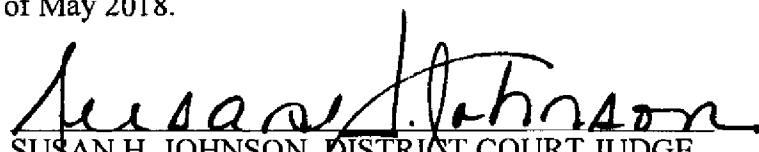
1 consequently, mandates automatic dismissal if the pleading is served without the complaining party
2 concurrently filing the required affidavit and report. Id.

3
4 5. In the case before this Court, the first pleading, or original complaint, was filed
5 March 12, 2018 and asserted a non-residential construction negligence claim against ARIES
6 CONSULTANTS, INC. without concurrently filing the required attorney affidavit and expert report
7 in direct violation of NRS 11.258. While there is an affidavit submitted with the amended
8 complaint filed the following day, the September 28, 2017 document does not set forth the reason
9 for California lawyer's failure to comply with NRS 11.258(1) when the original complaint was filed
10 in this case over five months later. As a consequence, the first pleading or original complaint filed
11 without the required affidavit and expert report is void *ab initio* and is of no legal effect. The
12 complainant's failure to comply with NRS 11.258 cannot be cured by amendment. Otak, 127 Nev.
13 at 599, 260 P.3d at 412. In other words, this Court has no discretionary authority to allow MR. REIF
14 to amend his pleading.
15

16
17 6. Given this its factual findings and conclusions above, this Court does not reach the
18 issues raised by the parties, and notably whether the "single action" rule applies. Accordingly, based
19 upon the foregoing Findings of Fact and Conclusions of Law,
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21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant ARIES
22 CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 is granted,
23 and Case No. A-18-770951-C is dismissed.
24

25 DATED this 11th day of May 2018.

26 
27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
28

CERTIFICATE OF SERVICE

I hereby certify, on the 11th day of May 2018, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT to the following counsel of record with first-class postage fully prepaid thereon:

GLEN J. LERNER, ESQ.
GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
Las Vegas, Nevada 89147
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ROBERT E. SCHUMACHER, ESQ.
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Laura Banks, Judicial Executive Assistant

A-18-770951-C Marcus Reif, Plaintiff(s)
vs.
Aries Consultants, Inc., Defendant(s)

May 10, 2018 10:30 AM Defendant Aries Consultants, Inc's Motion to Dismiss Plaintiff's Complaint

HEARD BY: Johnson, Susan COURTROOM: RJC Courtroom 15D

COURT CLERK: Maldonado, Nancy

RECORDER: Ramirez, Norma

REPORTER:

PARTIES PRESENT:

Brian K. Walters Attorney for Defendant

JOURNAL ENTRIES

Randy Westbrook, Esq., also present.

Argument by Mr. Walters stating the Plaintiff's failed to comply with 258, and the matter should be dismissed because there is an action pending in Dept. 30. Court noted that if the matter were to be dismissed it would be dismissed without prejudice so it does not effect the other case. Argument by Mr. Westbrook stating an amended complaint was filed and further stating they were not splitting the claims, they were splitting the cause of action. COURT stated its findings and ORDERED, matter taken UNDER ADVISEMENT.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

GLEN J. LERNER, ESQ.
4795 S. DURANGO DR.
LAS VEGAS, NV 89147

DATE: June 12, 2018
CASE: A-18-770951-C

RE CASE: MARCUS A. REIF, an incompetent person by and through his Conservator, CINDY REIF vs. ARIES CONSULTANTS, INC.

NOTICE OF APPEAL FILED: June 8, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

PLAINTIFF'S NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

MARCUS A. REIF, an incompetent person by
and through his Conservator, CINDY REIF,

Plaintiff(s),

vs.

ARIES CONSULTANTS, INC.,

Defendant(s),

Case No: A-18-770951-C

Dept No: XXII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 12 day of June 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk