

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

ARIES CONSULTANTS, INC.

Respondent.

Case No.: 76121 Electronically Filed
Nov 06 2018 10:16 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO APPELLANT'S OPENING BRIEF ON APPEAL

Glen J. Lerner
Nevada Bar No. 4314
Randolph L. Westbrook, III
Nevada Bar No. 12893

**GLEN LERNER INJURY
ATTORNEYS**

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Brian K. Walters, Esq.

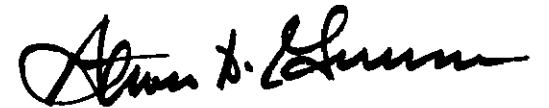
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Consultants, Inc.*

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CLERK OF THE COURT

COMP
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCUS A. REIF, an individual;

Plaintiff,

vs.

EDGEWATER GAMING, LLC, a Nevada
Limited Liability Company, doing business as
EDGEWATER HOTEL AND CASINO,
GILLETT CONSTRUCTION LLC, a Nevada
Limited Liability Company, ARIES
CONSULTANTS INC., a Nevada
Corporation, DOES 1 through 40, and ROE
CORPORATIONS 1 through 40, inclusive;

Defendants.

Case No. A- 17 - 752432 - C

Dept. No. XXX

COMPLAINT AND
DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff MARCUS A. REIF, an individual, (hereinafter "Plaintiff"), by and through their attorneys of record, GLEN LERNER INJURY ATTORNEYS, for his Complaint against Defendants EDGEWATER GAMING LLC, a Nevada Limited Liability Company, doing business as EDGEWATER HOTEL AND CASINO, (hereinafter "EDGEWATER"), GILLETT CONSTRUCTION LLC, a Nevada Limited Liability Company, (hereinafter "GILLETT"), ARIES CONSULTANTS INC., a Nevada Corporation, (hereinafter "ARIES"), DOES 1 through 40, and ROE CORPORATIONS 1 through 40, inclusive, (hereinafter referred to collectively as "Defendants") allege and aver as follows:

JURISDICTION

1. The incident complained of herein occurred in Clark County, Nevada, on March 16, 2016, granting jurisdiction upon this Honorable Court.

2. At all times mentioned herein, MARCUS A. REIF was over eighteen years old and resided in San Bernardino County, California.

3. At all times mentioned herein, Defendant EDGEWATER GAMING, LLC was a Nevada Limited Liability Company duly organized under the laws of the State of Nevada and authorized to conduct business in the State of Nevada.

4. At all times mentioned herein, Defendant GILLETT CONSTRUCTION, LLC was a Nevada Limited Liability Company duly organized under the laws of the State of Nevada and authorized to conduct business in the State of Nevada.

5. At all times mentioned herein, Defendant ARIES CONSULTANTS, INC. was a Nevada Corporation duly organized under the laws of the State of Nevada and authorized to conduct business in the State of Nevada.

6. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants DOES 1 through 40 and/or ROE CORPORATIONS 1 through 40, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed, believes and thereupon alleges that the Defendants designated herein as DOES 1 through 40 and/or ROE CORPORATIONS 1 through 40, inclusive, are any one of the following:

- (a) Parties responsible in some manner for the events and happenings herein referred to that caused injuries and damages proximately thereby to MARCUS A. REIF as herein alleged;
- (b) Parties that are the agents, servants, employees, and/or contractors of the Defendants, each of them acting within the course and scope of their agency, employment or contract;
- (c) Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are responsible for the premises referred to hereinafter;
- (d) Parties that have assumed or retained the liabilities of any of the Defendants by virtue of an agreement, sale, transfer or otherwise; and/or

1 (e) Parties responsible for the design, manufacture, and/or installation of the vehicle barrier
2 wall on the north side of the fifth floor parking garage at issue herein.

3 Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and
4 capacities of said Defendants, DOES 1 through 40 and ROE CORPORATIONS 1 through 40,
5 inclusive, when the same has been ascertained by the Plaintiff, together with appropriate charging
6 allegations, and to join said Defendants in the action.

7 **GENERAL ALLEGATIONS**

8 7. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
9 incorporates the same by reference as though fully set forth at length herein.

10 8. That on or about March 16, 2016, MARCUS A. REIF was the operator of a 1998 Ford
11 Expedition, bearing California license plate number 5PKT385.

12 9. Upon knowledge and belief, Defendants were the owners of the premises and subject
13 parking structure, located at 2020 South Casino Drive, Laughlin, NV 89029 (hereinafter “parking
14 structure”).

15 10. Upon knowledge and belief, Defendants were the managers of the premises and the
16 parking structure.

17 11. Upon knowledge and belief, Defendants were the developers of the premises and the
18 parking structure.

19 12. Upon knowledge and belief, Defendants were the builders of the premises and the
20 parking structure.

21 13. Upon knowledge and belief, Defendants were the maintainers of the premises and the
22 parking structure.

23 14. Upon knowledge and belief, Defendants were the inspectors of the premises and the
24 parking structure.

25 15. Upon knowledge and belief, Defendants were the supervisors of the premises and the
26 parking structure.

27 16. Upon knowledge and belief, Defendants were the controllers of the premises and the
28 parking structure.

17. That on or about March 16, 2016, MARCUS A. REIF traveled northbound through the

1 parking structure. As a result of the Defendants' conduct, MARCUS A. REIF's vehicle exited the side
2 of the parking structure and fell several floors causing him to sustain severe injuries.

3
4 **FIRST CLAIM FOR RELIEF**
5 **(Negligence against Defendant Edgewater Gaming, LLC)**

6 18. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
7 incorporates the same by reference as though fully set forth at length herein.

8 19. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
9 dangerous condition.

10 20. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-
11 obvious condition.

12 21. Defendant's negligence directly and proximately caused Plaintiff serious injury.

13 22. As a direct and proximate result of the negligence, Plaintiff has incurred damages in
14 excess of ten thousand dollars (\$10,000.00).

15 **SECOND CLAIM FOR RELIEF**
16 **(Negligence against Defendants Gillet Construction, LLC)**

17 23. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
18 incorporates the same by reference as though fully set forth at length herein.

19 24. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
20 dangerous condition.

21 25. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-
22 obvious condition.

23 26. Defendant's negligence directly and proximately caused Plaintiff serious injury.

24 27. As a direct and proximate result of the negligence, Plaintiff has incurred damages in
25 excess of ten thousand dollars (\$10,000.00).

26 **THIRD CLAIM FOR RELIEF**
27 **(Negligence against Defendant Aries Consultants, Inc.)**

28 28. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
incorporates the same by reference as though fully set forth at length herein.

29. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

30. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

31. Defendant's negligence directly and proximately caused Plaintiff serious injury.

32. As a direct and proximate result of the negligence, Plaintiff incurred damages in excess of ten thousand dollars (\$10,000.00).

FOURTH CLAIM FOR RELIEF
(Negligence Per Se Against Defendants Edgewater Gaming, LLC)

33. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

34. Defendant violated Nevada Revised Statutes, and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

35. As a result of Defendant's violations, Plaintiff sustained injuries.

36. Plaintiff was and is a member of the class persons that the statutes and/or county building codes were intended to protect.

37. Plaintiff sustained the type of injuries that the statutes and/or county building codes were intended to prevent.

38. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages in excess of ten thousand dollars (\$10,000.00).

FIFTH CLAIM FOR RELIEF
(Negligence Per Se Against Defendants Gillet Construction, LLC)

39. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

40. Defendant violated Nevada Revised Statutes and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

41. As a result of Defendant's violations, Plaintiff sustained injuries.

42. Plaintiff was and is a member of the class persons that the statutes and/or county

1 building codes were intended to protect.

2 43. Plaintiff sustained the type of injuries that the statutes and/or county building codes
3 were intended to prevent.

4 44. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
5 in excess of ten thousand dollars (\$10,000.00.)
6

7 **SIXTH CLAIM FOR RELIEF**
8 **(Negligence Per Se against Defendant Aries Consultants, Inc.)**

9 45. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
10 incorporates the same by reference as though fully set forth at length herein.

11 46. Defendant violated Nevada Revised Statutes and/or county building codes governing
12 the building, maintenance, and/or repair of the parking structure.

13 47. As a result of Defendant's violations, Plaintiff sustained injuries.

14 48. Plaintiff was and is a member of the class persons that the statutes, and/or county
15 building codes were intended to protect.

16 49. Plaintiff sustained the type of injuries that the statutes and/or county building codes
17 were intended to prevent.

18 50. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
19 in excess of ten thousand dollars (\$10,000.00.)

20 **SEVENTH CLAIM FOR RELIEF**
21 **(Premises Liability against Defendant Edgewater Gaming, LLC)**

22 51. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
23 incorporates the same by reference as though fully set forth at length herein.

24 52. Defendant owed Plaintiff a duty to maintain the parking structure in a reasonably safe
25 condition for use.

26 53. Defendant breached this duty by not ensuring that the parking structure was in a
27 reasonably safe condition for use.

28 54. Defendant's breach directly and proximately caused Plaintiff to sustain serious injury.

55. As a direct and proximate result of Defendant's breach, Plaintiff to incurred damages in

1 excess of ten thousand dollars (\$10,000.00).

2
3 **Eighth Claim for Relief**
4 **(Negligent Performance of an Undertaking against Defendant Gillett Construction, LLC)**

5 56. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
6 incorporates the same by reference as though fully set forth at length herein.

7 57. Defendant undertook, gratuitously or for consideration, to render services to Edgewater
8 Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's protection.

9 58. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
10 Plaintiff.

11 59. Defendant failed to exercise reasonable care in its undertaking.

12 60. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

13 61. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
14 Defendant's undertaking.

15 62. As a direct and proximate result of Defendant's failure to exercise reasonable care,
16 Plaintiff incurred damages in excess of ten thousand dollars (\$10,000.00).

17 **Ninth Claim for Relief**
18 **(Negligent Performance of an Undertaking against Defendant Aries Consultants, Inc.)**

19 63. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
20 incorporates the same by reference as though fully set forth at length herein.

21 64. Defendant undertook, gratuitously or for consideration, to render services to Edgewater
22 Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's protection.

23 65. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
24 Plaintiff.

25 66. Defendant failed to exercise reasonable care in its undertaking.

26 67. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

27 68. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
28 Defendant's undertaking.

69. As a direct and proximate result of Defendant's failure to exercise reasonable care,

1 Plaintiff to incurred damages in excess of ten thousand dollars (\$10,000.00).

2
3 **Tenth Claim for Relief**
4 **(Punitive Damages against Defendant Edgewater Gaming, LLC)**

5 70. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
6 incorporates the same by reference as though fully set forth at length herein.

7 71. Defendant knew or should have known that the parking structure was not in a
8 reasonably safe condition for use.

9 72. Plaintiff seeks an award of exemplary and punitive damages pursuant to NRS 42.001 et
10 seq. in an amount excess of \$10,000.00 for Defendant's despicable conduct with a conscious disregard
11 for the rights and safety of others by failing to repair the parking structure and/or warning Plaintiff of
12 the parking structure's dangerous condition.

13 **Eleventh Claim for Relief**
14 **(Punitive Damages against Defendant Gillett Construction, LLC)**

15 73. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
16 incorporates the same by reference as though fully set forth at length herein.

17 74. Defendant knew or should have known that the parking structure was not in a
18 reasonably safe condition for use.

19 75. Plaintiff seeks an award of exemplary and punitive damages pursuant to NRS 42.001 et
20 seq. in an amount excess of \$10,000.00 for Defendant's despicable conduct with a conscious disregard
21 for the rights and safety of others by failing to repair the parking structure and/or warning Plaintiff of
22 the parking structure's dangerous condition.

23 **Twelfth Claim for Relief**
24 **(Punitive Damages against Defendant Aries Consultants, Inc.)**

25 76. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
26 incorporates the same by reference as though fully set forth at length herein.

27 77. Defendant knew or should have known that the parking structure was not in a
28 reasonably safe condition for use.

78. Plaintiff seeks an award of exemplary and punitive damages pursuant to NRS 42.001 et

1 seq. in an amount excess of \$10,000.00 for Defendant’s despicable conduct with a conscious disregard
2 for the rights and safety of others by failing to repair the parking structure and/or warning Plaintiff of
3 the parking structure’s dangerous condition.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 7 (a) For general damages in an amount in excess of ten thousand dollars (\$10,000.00)
8 for each claim for relief;
- 9 (b) For special damages in an amount in excess of ten thousand dollars (\$10,000.00)
10 for each claim for relief;
- 11 (c) For exemplary/punitive damages in a constitutional amount according to proof;
- 12 (d) For pecuniary and economic losses according to proof;
- 13 (e) For past and future medical and related expenses according to proof;
- 14 (f) For damage to personal property according to proof;
- 15 (g) For Plaintiff’s cost of suit herein, including attorneys’ fees; and
- 16 (h) For such other and further relief as the Court may deem just and proper.

17 DATED: 3/14/2017

18 By: /s/ Glen J. Lerner
19 Glen J. Lerner (NV SBN 4314)
20 GLEN LERNER INJURY ATTORNEYS
21 4795 S. Durango Drive
22 Las Vegas, NV 89147
23 Telephone: (702) 877-1500
24 glerner@glenlerner.com
25 Attorney for Plaintiff
26
27
28

1 **IAFD**
2 Glen J. Lerner
3 Nevada Bar No. 4314
4 **GLEN LERNER INJURY ATTORNEYS**
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7 Telephone: (702) 877-1500
8 glerner@glenlerner.com
9 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

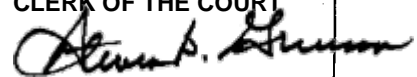
9 MARCUS A. REIF, an individual;)
10)
11 Plaintiff,) Case No.
12 vs.) Dept. No.
13)
14 EDGEWATER GAMING, LLC, a Nevada)
15 Limited Liability Company, doing business as)
16 EDGEWATER HOTEL AND CASINO,)
17 GILLETT CONSTRUCTION LLC, a Nevada)
18 Limited Liability Company, ARIES)
19 CONSULTANTS INC., a Nevada)
20 Corporation, DOES 1 through 40, and ROE)
21 CORPORATIONS 1 through 40, inclusive;)
22 Defendants.)

20 **INITIAL APPEARANCE FEE DISCLOSURE**
21 **(NRS CHAPTER 19)**

22 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
23 parties appearing in the above entitled action as indicated below:

24 Mark Miles Farris \$270.00
25 TOTAL REMITTED: \$270.00

26 By: /s/ Glen J. Lerner
27 Glen J. Lerner (NV SBN 4314)
28 GLEN LERNER INJURY ATTORNEYS
4795 S. Durango Drive
Las Vegas, NV 89147
Telephone: (702) 877-1500
Attorney for Plaintiff



1 **ORD**
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3 Nevada Bar No. 4314
4 GLEN LERNER INJURY ATTORNEYS
5 4795 S. Durango Drive
6 Las Vegas, NV 89147
7 Telephone: (702) 877-1500
8 glerner@glenlerner.com
9 *Attorney for Plaintiff*

DISTRICT COURT
CLARK COUNTY, NEVADA

9 MARCUS A. REIF, an individual;)

10)
11 Plaintiff,)

Case No. A-17-752432-C
Dept. No. XXX

12 vs.)

13 EDGEWATER GAMING, LLC, a Nevada)
14 Limited Liability Company, doing business as)
15 EDGEWATER HOTEL AND CASINO,)
16 GILLETT CONSTRUCTION LLC, a Nevada)
17 Limited Liability Company, ARIES)
18 CONSULTANTS INC., a Nevada)
19 Corporation, DOES 1 through 40, and ROE)
20 CORPORATIONS 1 through 40, inclusive;)

21 Defendants.)

ORDER TO ASSOCIATE COUNSEL

22 Ferdinand Phillip Peche, Esq., having filed his Motion to Associate Counsel under Nevada
23 Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a
24 Certificate of Good Standing for the State of California, and the State Bar of Nevada Statement;
25 said application having been noticed, no objections having been made, and the Court being fully
26 apprised in the premises, and good cause appearing, it is hereby

27 ///

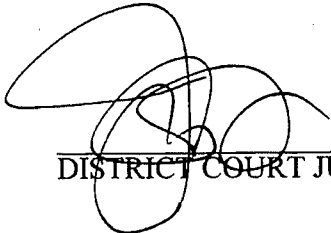
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///

1 ORDERED that said application is granted and Ferdinand Phillip Peche, Esq., is hereby
2 admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

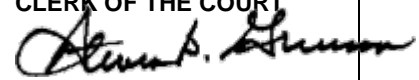
3 Dated this 25 day of April, 2017.

4
5
6 
7 DISTRICT COURT JUDGE

8 Respectfully submitted:

9 GLEN LERNER INJURY ATTORNEYS

10
11 By: /s/ Glen J. Lerner
12 Glen J. Lerner, Esq.
13 Nevada Bar No. 4314
14 4795 South Durango Drive
15 Las Vegas, Nevada 89147
16 Attorneys for Plaintiff
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28



MDSM
CRAIG J. MARIAM, ESQ.
Nevada Bar No. 10926
ROBERT S. LARSEN, ESQ.
Nevada Bar No. 7785
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Attorneys for Aries Consultants, Inc.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MARCUS A. REIF, an individual,
Plaintiff,

vs.

EDGEWATER GAMING, LLC, a Nevada Limited
Liability Company, doing business as
EDGEWATER HOTEL AND CASINO; GILLETT
CONSTRUCTION LLC, a Nevada Limited Liability
Company; ARIES CONSULTANTS, INC., a Nevada
corporation; DOES 1 through 40; and ROE
CORPORATIONS, 1 through 40, inclusive,
Defendants.

AND ALL RELATED CLAIMS.

) Case No.: A-17-752432-C
) Dept. No.: XXX

) *The Honorable Jerry A. Wiese*

) **ARIES CONSULTANTS, INC.'S**
) **MOTION TO DISMISS OR IN**
) **THE ALTERNATIVE TO STRIKE**
) **COMPLAINT AND CROSSCLAIM**
) **PURSUANT TO NRS 11.259**

Defendant Aries Consultants, Inc. ("Aries"), by and through its attorneys, Craig J. Mariam, Esq., Robert S. Larsen, Esq. and Wing Yan Wong, Esq., of the law firm of Gordon & Rees LLP, hereby submits its Motion to Dismiss or in the Alternative to Strike Complaint and Crossclaim Pursuant to NRS 11.259.

1 This Motion is based on the pleadings and papers filed in this action, the attached
2 Memorandum of Points and Authorities, and any oral argument and evidence the Court may
3 allow at the hearing on the Motion.

4 DATED this 11th day of July, 2017.

5 Respectfully Submitted,

6 GORDON REES SCULLY
7 MANSUKHANI, LLP

8
9 /s/ Craig J. Mariam

10 Craig J. Mariam, Esq.
11 Nevada Bar No. 10926
12 Robert S. Larsen, Esq.
13 Nevada Bar No. 7785
14 Wing Yan Wong, Esq.
15 Nevada Bar No. 13622
16 300 South Fourth Street, Suite 1550
17 Las Vegas, Nevada 89101

18 *Attorneys for Aries Consultants, Inc.*

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD.

PLEASE TAKE NOTICE that Defendant Aries Consultants, Inc. will bring the foregoing **ARIES CONSULTANTS, INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STRIKE COMPLAINT AND CROSSCLAIM PURSUANT TO NRS 11.259** on for hearing before the Honorable Judge Jerry A. Wiese in Department XXX of the above-entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the **15** day of **AUGUST**, 2017, at the hour of **9:00 a**.m., or as soon thereafter as counsel can be heard.

Dated this 11th day of July, 2017.

Respectfully Submitted,

GORDON REES SCULLY
MANSUKHANI, LLP

/s/ Craig J. Mariam
Craig J. Mariam, Esq.
Nevada Bar No. 10926
Robert S. Larsen, Esq.
Nevada Bar No. 7785
Wing Yan Wong, Esq.
Nevada Bar No. 13622
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101

Attorneys for Aries Consultants, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND

Plaintiff's Complaint and Edgewater Gaming, LLC's ("Edgewater") Crossclaim against Aries Consultants, Inc. ("Aries") must be dismissed or in the alternative stricken because both were void *ab initio* under NRS 11.258 and NRS 11.259, which required Plaintiff and Edgewater to have filed an affidavit and expert report at the time the Complaint and Crossclaim were filed.

Aries is a Clark County-approved quality assurance agency. *See* Ex. A, Declaration of Jerry B. Reynolds in Support of Motion. In February 2015, Edgewater retained Aries to perform the testing and inspections services in accordance with Clark County Building Department Requirements related to the parking garage on Edgewater's premises. *See Id.* On or about March 23, 2015, Aries issued a Final Quality Assurance Report ("Report"). *See* Ex. A and Ex. C, Final Quality Assurance Report. The Report identifies the scope of Aries' work, which included inspection of the concrete placement, concrete reinforcing steel, structural welding, and structural steel in select areas of the parking garage. *See id.*

This action arose out of a vehicular incident involving Plaintiff in allegedly the same parking garage. In the Complaint, Plaintiff asserted various theories of negligence against Aries, Edgewater, and Gillett Construction. Defendant Edgewater filed a Crossclaim against Aries, seeking indemnity, contribution, and declaratory relief against Aries purportedly related to the work Aries performed. The Complaint's allegations as to Aries are vague, overbroad, and also inaccurate (for example, Aries was never the "owner," "manager," or "developer" of the premises as alleged in ¶¶ 9-11). *See* Ex. A. Nonetheless, there is no dispute that Aries' only involvement was the inspection Aries performed as a quality assurance inspector.

Neither Plaintiff nor Edgewater filed the requisite attorney's affidavit and expert report as required by NRS 11.258. NRS 11.259 mandates that this Court "shall" dismiss any pleadings filed in violation of NRS 11.258. Therefore, the Complaint and Crossclaim against Aries must be dismissed or in the alternative stricken.

II. RELEVANT PROCEDURAL HISTORY

Plaintiff filed its Complaint on March 14, 2017. At the time, Plaintiff did not any affidavit or expert report required by NRS 11.258. The Complaint asserted four causes of action against Aries, including 1) negligence, 2) negligence per se, 3) negligence performance of an undertaking, and 4) punitive damages. The Complaint generally alleged:

¶ 14. Upon knowledge and belief, Defendants were inspectors of the premises and the parking structure.

¶ 29. Defendant owed Plaintiff a duty to warn Plaintiff of the non-obvious and dangerous condition.

¶ 30. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

¶ 46. Defendant violated Nevada Revised Statutes and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

¶ 64. Defendant undertook, gratuitously or for consideration, to render services to Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's protection.

On April 26, 2017, Edgewater filed its Answer and Crossclaim against Aries. The Crossclaim asserted three causes of action against Aries: 1) contractual indemnity, 2) declaratory judgment, and 3) contribution. Similar to Plaintiff, Edgewater also failed to file an affidavit or expert report required by NRS 11.258.

III. LEGAL STANDARD

A. Dismissal Based on Lack of Subject Matter Jurisdiction

NRCP 12(b)(1) allows this Court to dismiss an action for lack of jurisdiction. Subject matter jurisdiction is the power of the court to hear and determine a particular type of controversy. See *Azabrea v. City of N. Las Vegas*, 95 Nev. 109, 111, 506 P.2d 161 (1979); *Galloway v. Truesdell*, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). The lack of subject matter jurisdiction is never waived and may be brought to the Court's attention at any time and in almost any manner. *Meinhold v. Clark County Sch. Dist.*, 89 Nev. 56, 59, 506 P.2d 420, 422 (1973); *Stock Growers and Ranchers Bank v. Milisich*, 48 Nev. 373, 390, 233 P.41, 46 (1925). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of

the subject matter, the court shall dismiss the action.” NRCp 12(h); *Washoe County v. Otto*, 282 P.3d 719, 725 (2012) (petitioner’s failure to comply with NRS 233B.130(2)’s requirements for filing a petition was a jurisdictional defect”).

B. Motion to Strike

Under NRCp 12(f), this court “may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” When a complaint or other pleading is filed without any of the statutorily required documents, the pleading should be stricken. *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 148 P.3d 790, 795 (2006) (directing district court to grant motion to strike complaint due to plaintiff’s failure to file an expert affidavit in legal malpractice action).¹

IV. LEGAL ARGUMENTS

When filing an action or a claim against a design professional in an action involving nonresidential construction, NRS 11.258 imposes extensive requirements on the filing party:

[I]n an action involving nonresidential construction, the attorney for the complainant *shall* file an affidavit with the court concurrently with the service of the first pleading in the action stating that the attorney:

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

NRS 11.258(1) (emphasis added). Further,

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

¹ Dismissal under NRCp 12(b)(5) is proper “where the allegations in the [Complaint], taken at face value, and construed favorably in the [Plaintiff’s] behalf, fail to state a cognizable claim for relief.” *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 886 P.2d 454 (1994) (citations omitted). Pleading of conclusions must be “sufficiently definite to give fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved.” *Taylor v. State of Nevada*, 73 Nev. 151, 152, 311 P.2d 733, 734 (1957).

Aries submits that NRCp 12(b)(5) is not the proper standard for dismissal under NRS 11.259, which is a jurisdictional requirement. Nonetheless, if the Court is inclined to consider this motion under NRCp 12(b)(5), Aries maintains that notwithstanding all favorable inferences, Plaintiff and Edgewater cannot establish any set of facts that would entitle it to relief against Aries based on the Complaint and Crossclaim because they did not satisfy NRS 11.258. *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (affirming dismissal).

1 in subsection 4, the report must be prepared by the expert consulted by the
2 attorney and must include, without limitation:

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

13 NRS 11.258(3).

14 This Court “**shall**” dismiss an action for failure to comply with NRS 11.258. NRS
15 11.259(1); *Otak Nevada, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. ___, 260 P.3d 408, 409 (2011)
16 (pleadings filed in violation of NRS 11.258; *In re City Center Construction and Lien Master*
17 *Litig.*, 129 Nev. ___, 310 P.3d 574, 576 (2013) (reversing lower court’s denial of motion to
18 dismiss for failure to comply with NRS 11.259). “The use of the word ‘shall’ imposes a duty to
19 act.” *Otak Nevada, LLC*, 260 P.3d at 411 (quotations omitted). “Thus, the Legislature’s use of
20 ‘shall’ in NRS 11.259 demonstrates its intent to prohibit judicial discretion and, consequently,
21 mandates automatic dismissal if the pleading is served without the complaining party
22 concurrently filing the required affidavit and report.” *Id.* A pleading is “void ab-initio—of no
23 legal effect—because it was filed without the affidavit and expert report required by NRS
24 11.258.” *In re City Center Construction and Lien Master Litig.*, 310 P.3d at 576 (citing *Otak*
25 *Nevada, LLC*, 260 P.3d at 409, 411-12).

26 The duty to comply with NRS 11.258 extends to not only the plaintiff but each party who
27 files a claim against the design professional, including crossclaims. *Id.* at 412 (“Each Party that
28 files a separate complaint for nonresidential construction malpractice must file its own expert
report and attorney affidavit”). “Requiring each party to file a separate expert report and attorney
affidavit that are particularized to that party’s claims is not an unreasonable requirement, as each
party must justify its claims of nonresidential construction malpractice based on that party's
relationship with the defendant” *Id.* The purpose of NRS 11.258 is “to advance judicial economy
and prevent frivolous suits against the design professional by requiring a complaint to include an

expert report and attorney affidavit regarding the suit’s reasonable basis.” *In re City Center Construction & Lien Master Litig.*, 310 P.3d at 581.

For purposes of NRS 11.258,

1. “Action involving nonresidential construction” means an action that:

(a) Is commenced against a design professional; and

(b) Involves the design, construction, manufacture, repair or landscaping of a nonresidential building or structure, of an alteration of or addition to an existing nonresidential building or structure, or of an appurtenance, including, without limitation, the design, construction, manufacture, repair or landscaping of a new nonresidential building or structure, of an alteration of or addition to an existing nonresidential building or structure, or of an appurtenance.

The term includes, without limitation, an action for professional negligence.

2. As used in this section:

(a) “Appurtenance” means a structure, installation, facility, amenity or other improvement that is appurtenant to or benefits one or more nonresidential buildings or structures, but is not a part of the nonresidential building or structure. The term includes, without limitation, the parcel of real property, recreational facilities, walls, sidewalks, driveways, landscaping and other structures, installations, facilities and amenities associated with or benefiting one or more nonresidential buildings or structures.

(b) “Design professional” means a person who holds a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture.

NRS 11.2565.

“NRS 11.2565’s definition of an action involving nonresidential construction is expansive; the claims do not have to be directly based on the design, construction, or manufacture of a nonresidential building, but merely “involve[]” those activities.” *In re CityCenter Construction and Lien Master Litig.*, 310 P.3d at 578. In fact, the Nevada Supreme Court has clarified that “an action involving nonresidential construction includes *any* cause of action against a design professional that concerns the construction of a nonresidential building.” *Id.* (emphasis in original). Quality inspection falls within the definition of “construction” for purposes of NRS 11.258. *Id.* at 579. That is because “[c]onstruction of a building involves

1 inspection of the ongoing construction activity, and claims that a quality control and assurance
2 inspector made misrepresentations about the quality or was at fault for defective conditions
3 concern the construction of the buildings.” *Id.*

4 Further, a quality control and assurance inspector is a design professional for purposes of
5 NRS 11.258. *Id.* Quality assurances services “implicate the practice of professional engineering
6 as they involve the observation and supervision of a portion of the [] construction.” *Id.* (pleading
7 against an inspector must be dismissed under NRS 11.258).

8 In this action, there can be no dispute that NRS 11.258 applied to the claims in both the
9 Complaint and Crossclaim against Aries. The parking garage on the premises of Edgewater is a
10 non-residential structure. The inspection Aries performed falls squarely within the definition of
11 “construction,” as clarified by the Nevada Supreme Court in the *In re CityCenter Construction*
12 *and Lien Master Litigation*. Aries was a design professional just as the quality assurance
13 inspector in the *CityCenter* litigation was a design professional. Aries performed inspection with
14 respect to areas including, but not limited to, the structural engineering of the repair of the
15 parking garage. Accordingly, NRS 11.258’s requirements apply to both Plaintiff’s Complaint as
16 well as Edgewater’s Crossclaim against Aries.

17 The records are clear: Plaintiff and Edgewater did not file the requisite affidavit or expert
18 reports pursuant to NRS 11.258 concurrently with the filing of the Complaint and the
19 Crossclaim. As noted above, the purpose of the statute is to prevent frivolous claims against
20 design professionals and to provide a reasonable basis for the claims against Aries. Neither the
21 affidavit nor the expert report was filed; Plaintiff and Edgewater failed to meet their obligation to
22 demonstrate that there are reasonable basis to bring Aries into this action.

23 The Complaint and the Crossclaim against Aries are void *ab initio*. They should be
24 dismissed pursuant to NRS 11.259 or in the alternative stricken as to Aries.

25 ///

26 ///

27 ///

28 ///

1 **V. CONCLUSION**

2 Plaintiff and Edgewater failed to comply with NRS 11.258 and file the affidavit and
3 expert report. The Complaint and the Crossclaim against Aries must be dismissed or stricken in
4 their entirety.

5 DATED this 11th day of July, 2017.

6 Respectfully Submitted,

7 GORDON REES SCULLY
8 MANSUKHANI, LLP

9
10 /s/ Craig J. Mariam

11 Craig J. Mariam, Esq.
12 Nevada Bar No. 10926
13 Robert S. Larsen, Esq.
14 Nevada Bar No. 7785
15 Wing Yan Wong, Esq.
16 Nevada Bar No. 13622
17 300 South Fourth Street, Suite 1550
18 Las Vegas, Nevada 89101

19 *Attorneys for Aries Consultants, Inc.*

CERTIFICATE OF MAILING

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of GORDON & REES LLP, and that on the 11th day of July, 2017, the foregoing **ARIES CONSULTANTS, INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STRIKE COMPLAINT AND CROSSCLAIM PURSUANT TO NRS 11.259** was served upon those persons designated by the parties in the E-Service Master List in the Eighth Judicial District court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules, upon the following:

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

M. Craig Murdy, Esq.
LEWIS BRISBOIS BISGAARD & SMITH, LLP
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118

Ferdinand Phillip Peche, Esq.
NAPOLI SHKOLNIK PLLC
525 S. Douglas Street, Suite 260
El Segundo, CA 90245

Attorney for Edgewater Gaming, LLC

Hunter Jay Shkolnik, Esq.
NAPOLI SHKOLNIK PLLC
360 Lexington Ave., 11th Floor
New York, New York 10017

Theodore Parker, III, Esq.
PARKER NELSON & ASSOCIATION, CHTD.
2460 Professional Court, Suite 200
Las Vegas, NV 89128

Attorneys for Plaintiff

Attorneys for Gillett Construction, LLC

/s/ Gayle Angulo
An Employee of GORDON REES SCULLY
MANSUKHANI, LLP

EXHIBIT “A”

CRAIG J. MARIAM, ESQ.
Nevada Bar No. 10926
ROBERT S. LARSEN, ESQ.
Nevada Bar No. 7785
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rlarsen@gordonrees.com
wwong@gordonrees.com

Attorneys for Aries Consultants, Inc.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an individual,
Plaintiff,

vs.

EDGEWATER GAMING, LLC, a Nevada Limited
Liability Company, doing business as
EDGEWATER HOTEL AND CASINO; GILLETT
CONSTRUCTION LLC, a Nevada Limited Liability
Company; ARIES CONSULTANTS, INC., a Nevada
corporation; DOES 1 through 40; and ROE
CORPORATIONS, 1 through 40, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-17-752432-C
Dept. No.: XXX

The Honorable Jerry A. Wiese

**DECLARATION OF JERRY B.
REYNOLDS IN SUPPORT OF
ARIES CONSULTANTS, INC.'S
MOTION TO DISMISS OR IN
THE ALTERNATIVE TO STRIKE
COMPLAINT AND CROSSCLAIM
PURSUANT TO NRS 11.259**

*Submitted concurrently with Motion to
Dismiss or in the Alternative to Strike
Complaint and Crossclaim Pursuant to
NRS 11.259*

STATE OF NEVADA)
COUNTY OF CLARK) ss:

JERRY B. REYNOLDS declares and states under penalty of perjury that:

1. I am over the age of 18 years, and I have personal knowledge of the facts set forth herein except where stated on information and belief and, as to those matters, I believe

1 them to be true. If called as a witness, I would competently testify thereto.

2 2. I am and have been the president and a Principal of Aries Consultants, Inc.
3 (“Aries”) during the relevant times alleged in the Complaint on file in this matter. As such, I am
4 familiar with Aries’ maintenance of its business records and have access to the records related to
5 the parking structure on the premises of Edgewater Gaming, LLC (“Edgewater”), the subject
6 premises of this matter.

7 3. Any report, compilation, or document relied upon by me in this declaration was
8 created, made, and maintained in the regular course of Aries’ business, at or near the time of the
9 act, condition, or event so referenced.

10 3. Aries is a quality assurance inspection agency approved by Clark County,
11 Nevada.

12 4. In February 2015, Edgewater retained Aries to perform the testing and inspections
13 services in accordance with Clark County Building Department Requirements related to the
14 repairs Edgewater was undertaking on the parking structure.

15 6. The inspectors from Aries who performed work on the project included Neil L.
16 Haynes and James M. Martinez.

17 7. Aries provided a “Final Quality Assurance Report” (“Report”) as the conclusion
18 of its inspection.

19 8. A true and correct copy of the Report, dated March 23, 2015 is attached as
20 Exhibit B to Aries’ Motion.

21 9. Aries’ services included inspection of the concrete placement, reinforcing steel, as
22 well as the structural welding and steel in select parts of the parking structure.

23 10. Aries was not a manager, developer, builder, supervisor, or controller of the
24 parking garage in Edgewater. Aries also did not “maintain” Edgewater’s premises.

11. All work Aries performed on this project consisted of inspection services related
the structural engineering of the parking structure.

FURTHER DECLARANT SAYETH NAUGHT.

DATED this 11th day of July, 2017.


JERRY B. REYNOLDS

EXHIBIT “B”

FINAL QUALITY ASSURANCE REPORT

Edgewater Hotel Casino - Garage

**2020 South Casino Drive
CCDB Permit # 15-6880 BU1
AC-2379**

**Prepared For:
Marnell Companies
222 Via Marnell Way
Las Vegas, Nevada 89119**

Prepared By:

**Aries Consultants
6635 West Badura Street, Suite A-140
Las Vegas, Nevada 89118
Office (702) 202-2199
Facsimile (702) 202-3384**

March 23, 2015



Aries Consultants Inc.
Material Testing & Inspection Services
ICC-CWI-ACI-NDE Consultants

Certificate of Compliance

Client: **Marnell Companies**
222 Via Marnell Way
Las Vegas, Nevada 89119

March 23, 2015

Final Report

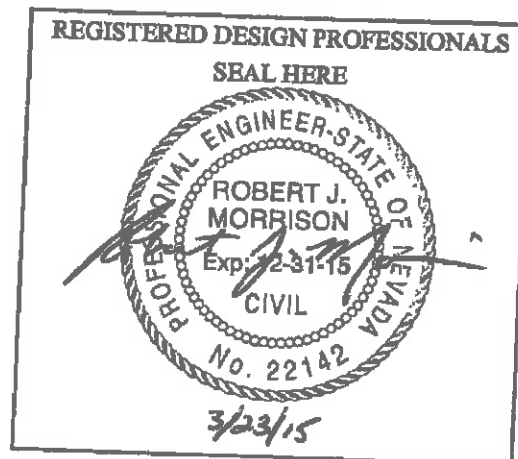
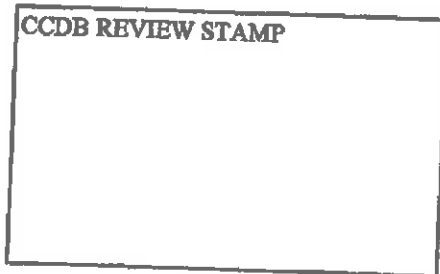
Project Name: **Edgewater Hotel Casino - Garage**
Project Address: **2020 South Casino Drive**
Permit No. : **CCDB Permit # 15-6880 BU1**
Project No. : **AC-2379**

Aries Consultants performed and completed the special inspection services for the Edgewater Hotel Casino - Garage project and is in compliance with the Clark County Department of Building approved construction documents, and the quality assurance agency special inspection agreement. Aries Consultants performed the following Special Inspection Item(s): **"S & X"**

Only CCDB approved special inspectors were utilized to perform those specific inspections as required by the Quality Assurance Agency Special Inspection Agreement. Any items that were found to be in noncompliance with the approved construction documents were repaired or replaced, and re-inspected for acceptance

Attached for your review are the daily inspection reports, testing results, and other applicable reports.

CCDB REVIEW STAMP



6635 West Badura Street, Suite A-140 | Las Vegas Nevada 89118
Office (702) 202-2199 | Facsimile (702) 202-3384

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Concrete Placement.....	Section C-C
Concrete Reinforcing Steel.....	Section C-R
Structural Welding.....	Section S-W
Structural Steel.....	Section S-S
Special Cases Construction.....	Section X

SECTION A

**Permit
QAA Agreement
Clark County Approved Inspector List
CCDDS Project Start Up Letter**



BUILDING DEPARTMENT

4701 West Russell Road • Las Vegas, NV 89118 • (702) 455-3000

PERMIT

PERMIT NUMBER 15-6880 BUI
PHONE SYSTEM NUMBER 16339764

ISSUE DATE
2/26/15

PROJECT NAME EDgewater HOTEL CASINO
SUBDIVISION

PARCEL NO: 264-13-601-007 RANGE-TOWNSHIP-SECTION 66-32-13

SITE ADDRESS: 2020 S CASINO DR
TENANT NAME: EDgewater GAMING

TENANT NO:

PROPERTY OWNER: EDgewater GAMING L.P.
CONTRACTOR: GILLIS CONSTRUCTION LLC

PERMIT: BUILDING CONSTRUCTION
PARKING GARAGE, 1000/1000
COMMERCIAL BUILDING
STRUCTURAL REINFORCEMENT TO EXISTING
PARKING GARAGE PER

VEHICLE: 66112

UNITS/RMS: 0 SO FLOOR: 0
OCCUPANCY: 0

DOB: 2012
PRIN: Yes

FEE SUMMARY
PERMIT-FEE
ZONING PC FEE

PAYEE: 426.73
42.47

467.20
CHECK
10950

CONDITIONS OF PERMIT

This permit is issued to the Permittee subject to the following conditions:

1. By accepting this Permit, I, the Permittee, agree to build the project in accordance with the approved construction documents and the Clark County Code; and
2. I agree to call 455-3000 for required inspections at each construction phase is completed.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed pursuant to the provisions of NRS 624.283.

OWNER-BUILDER DECLARATION

I am the owner of the real property upon which I will build the project described above. The project will be a residential structure which I will occupy, and it is not intended for sale or lease, or the offering for sale or lease, for at least 1 year after its completion. I intend to act as my own contractor and I have obtained an exemption pursuant to NRS 624.031(4). I understand that I may be liable to civil and criminal penalties under NRS 624.212 and NRS 624.700 if I act as a contractor in violation of NRS Chapter 624. (Note: this is in addition to the statement of restrictions that must be delivered to the owner pursuant to NRS 278.571.)

2/26/15

150

AP-1311



CLARK COUNTY DEPARTMENT OF BUILDING
4701 West Russell Road, Las Vegas, NV 89118 - (702) 455-3000
Commercial Building
Permit Application



ACCREDITED

ASSESSOR PARCELS: 264-13-001-007 ✓

JOB SITE ADDRESS: 2020 S Casino Drive, Laughlin NV 89029

TENANT NAME: Edgewater Gaming

APPLICATION NO:

15-6880

PROJECT NAME: Facility Inspection Program Edgewater Hotel Casino - Parking Garage

SET UP BY: mem

BUILDINGS:

UNITS/SUITS:

PROPERTY OWNER NAME: Edgewater Gaming

FAIR:

CONTACT NAME: Brian Cahapey

EMAIL ADDRESS: bcahapey@mermaidcorporate.com

CONTACT ADDRESS: 222 VIA MARNELL WAY

ZIP: 89118

CONTACT PHONE: 702-730-2000

FAX: 702-730-2005

Parking Garage structural enhancements. Install new pre-cast spandrel and weld into place. Drill & Epoxy braces to anchor existing spandrels to columns. Provide and install new bollards.

THIS PROPERTY IS BEING SERVICED BY: ☐ SEPTIC OR ☐ SEWER

RAIN:

NOV:

TYPE OF CONSTRUCTION

OCCUPANCY:

SPRINKLER SYSTEM:

SQ. FT.:

NO. UNITS:

NO. STORIES:

GAA REQ'D:

CONTRACTOR NAME: GILBERT CONSTRUCTION

ST. LIC. NO.: 55582

CLASS: B

BUSINESS LIC. #: 2000572434 PHONES: 702 795-3398

MAILING ADDRESS: 980 AMERICAN PACIFIC DR #100

CITY: Henderson

STATE: NV

ZIP: 89014

CONTRACTOR SIGNATURE

DATE: 2-26-15

I certify that I have read this application and state that the above information is correct. I agree to comply with all county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above described property for inspection purposes.

APPLICANT SIGNATURE

DATE

COMMENTS: H-1

STANDARD PLANS:

☐ Plans Attached ☐ Plans on file ☐ No Plans

Zoning Review By:

Date: 2/13/15

Ordg Plan Review By:

Date: 2/24/15

Valuation:

\$ 88,112.30

Permit Fee:

\$ 424.73

Plan Review Fee Paid:

\$ 276.07

Ordg Plan Review Fee:

\$ 47.97

Major Project Fee:

\$ 0

Park Fee:

\$ 0

Transportation Fee:

\$ 0

Water Fee:

\$ 0

PPWA Fee:

\$ 0

MSWCP Fee:

\$ 0

Mitigation Report Fee:

\$ 0

Traffic Mitigation Fee:

\$ 0

NOV Fee:

\$ 0

TOTAL:

\$ 467.20

Check ☒ Cash ☐ Check Mail

\$ 467.20

Issued By:

10050



Development Services Department
County of Clark, State of Nevada

QUALITY ASSURANCE AGENCY SPECIAL INSPECTION AGREEMENT
PAC # 15-6880

On this date 2/26/2015, the Clark County Development Services Department, acting through the BUILDING OFFICIAL and EDGEWATER GAMING LLC as the OWNER or OWNER'S AGENT for the construction and/or alteration of a structure/building known as EDGEWATER GARAGE at 2020 S CASINO DR for work described as PARKING GARAGE/COMM/REMODEL with inspection or testing services being performed by Arles Consultants Inc. an approved quality assurance/testing agency in the County of Clark, State of Nevada, agree to the following:

1. That the BUILDING OFFICIAL, in accordance with Chapter 17 of the 2012 International Building Code has identified a requirement for on-site special inspection and/or testing services for that work which falls within the categories specifically identified on the attached addendum.
(Item # S,X) Arles Consultants Inc.
2. That the OWNER or OWNER'S AGENT is responsible for obtaining all testing and/or special inspection services from a quality assurance or testing agency approved by the BUILDING OFFICIAL.
3. That all work falling within the categories identified on the attached addendum shall be inspected or tested in accordance with the provisions of Chapter 17 of the 2012 International Building Code, and that written results of those inspections or tests shall be provided to the BUILDING OFFICIAL with copies available to the permit holder upon permittee's request.
4. That the BUILDING OFFICIAL shall determine when special inspections or testing services are to commence and terminate based on the scope and progress of work.
5. That no testing services will be performed by Clark County.

THIS AGREEMENT IS ACKNOWLEDGED BY THE SIGNATURES SHOWN BELOW
CLARK COUNTY DEVELOPMENT SERVICES DEPARTMENT

By: 
(Print Name) Christopher Casey
(Print Company Name) Markel Companies

DEVELOPMENT SERVICES DEPARTMENT

County of Clark, State of Nevada. PAC# 15-6888

ADDENDUM TO SPECIAL INSPECTION AGREEMENT

In addition to the inspections required by Chapter 17 of the 2012 International Building Code, a special inspector must be present during construction and the following types of work, and must verify approved size, location and connections of all structural members fabricated on or off site included in this work. These inspections may be made on a periodic basis to satisfy the requirements of the continuous inspection at Clark County's discretion. Agency inspections or testing may only be conducted by a firm approved by Clark County.

THE FINAL QAA REPORT SHALL BE SUBMITTED TO THE CLARK COUNTY DEVELOPMENT SERVICES DEPARTMENT FOR ITS ACCEPTANCE A MINIMUM OF SEVEN DAYS PRIOR TO REQUESTING A FINAL INSPECTION.

A FINAL INSPECTION REQUEST WILL NOT BE GRANTED UNTIL THE FINAL QAA REPORT HAS BEEN ACCEPTED BY THE CLARK COUNTY DEVELOPMENT SERVICES DEPARTMENT.

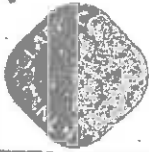
It is the Owners and/or Contractors responsibility to provide a copy of the CCDD-SD approved revisions to the approved construction documents, including any sketch, detail, engineering analysis, designs, and calculations to the special inspector for the inspection services listed above.

Artes Consultants Inc. : S, X

S Steel construction: The special inspection for steel elements of buildings and structures shall be as required by Section 1705.2, Section 1705.10.2, Section 1706.1, and Table 1705.6.

X Special cases: Special inspections shall be required for proposed work that is, in the opinion of the building official, unusual in its nature per Section 1705.1.1. The Owner and/or Contractor is responsible to provide the special inspector with the current ICC-ES report for the products used/installed at the time of inspection, when applicable.
QAA X = Epoxy // DCT

APPLT. APP. 36



CLARK COUNTY DEPARTMENT OF BUILDING
4701 West Russell Road, Las Vegas, NV 89118 ~ (702) 455-3000
Project Start-Up Notification of Special Inspections



Pursuant to the Building Administrative Code Section 22.02.525, the approved QAAs shall notify the Building Official within 24 hours of commencement of special inspection activities on a project. Depending on the scope of the project, multiple notifications may be required, such as first notification prior to earthwork activities and second notification prior to superstructure construction.

QAA: Aries Consultants Notification Date: 2/24/15 Commenced On: 2/25/15

Project Name/Phase: Edgewater Parking Garage Permit No.: 15-6880

Project Address (cross streets): 2020 S. Casino Dr.

REQUIRED SPECIAL INSPECTION ACTIVITIES: (Mark all that apply)

- ☐ Grading (G) ☐ Drilled Piles/Caissons (R) ☐ Driven Piles (X) ☐ Concrete (C)
☐ Masonry (M) ☒ Steel (S) ☐ Smoke Control/Air Balance (K or K-TAB)
☐ Amusement/Transportation Systems (A) ☐ Wood (W) ☐ Fireproofing (F)
☐ Exterior Wall Systems (E) ☒ Special Cases (X) ☐ or Other: _____

Check all applicable boxes.

- ☐ There is no permit on site.
☐ There are no approved plans on site.
☐ NCR's are attached for your review.
☐ Unapproved fabricator.

*** Fax to Clark County Building Department at: 702-221-0630 ***

Clark County Department of Development Services-Building Division
Approved Listing of Quality Assurance Agencies, Special Inspection Personnel, and Other Organizations

Aries Consultants Inc.

Organization Aries Consultants Inc.	
Category Prime Agency	Type Special Inspection
Approved to Perform N C M S R G F X N FAB-S-A FAB-S-I W E Y FAB-S- [REDACTED] C-L M-L, F-L, G-L	Annual Renewal Group A
Engineering Manager Robert Morrison, P.E.	Quality Manager/Contact Person James Lopez
Phone 702-202-2199	Designated NDT Level III Bill Glass
Fax 702-331-7159	E-MAIL address rmorrison@ariesclv.com
Mailing Address 6635 West Badura, Suite A-140 Las Vegas	NV 89118

Inspector/Technician Name

Inspector/Technician Approvals

Blacholder, Steve

; C-SOG; F

☒ TG-100 Affidavit ☒ TG Form

Carr, Micheal

☒ TG-100 Affidavit ☒ TG Form

Cass, Jason

; C-SOG; G-F

☒ TG-100 Affidavit ☒ TG Form

Glass, David L.

; CC; S; M; F; UT; FAB-S-I; FAB-S-A; FAB-S-UT

☒ TG-100 Affidavit ☒ TG Form

Gorski, Daniel

; CC; F

☒ TG-100 Affidavit ☒ TG Form

Haynes, Neil L.

; CC; M; F

Field audit first few concrete tilt-up panel inspections. QM to notify Clark County when scheduled.

☒ TG-100 Affidavit ☒ TG Form

Judd, Joe

; C-SOG; G-B

☒ TG-100 Affidavit ☒ TG Form

Levasseur, Lindsay

; CC; S; M; F; FAB-S-I; FAB-S-A; W; E; Y

☒ TG-100 Affidavit ☒ TG Form

Revised: Thursday, November 06, 2014

Page 17 of 99

Clark County Department of Development Services-Building Division
Approved Listing of Quality Assurance Agencies, Special Inspection Personnel, and Other Organizations

Aries Consultants Inc.

Lopez, James	; CC; S; M; F; FAB-S-I; FAB-S-A; FAB-S-(MT+UT); QM	<input checked="" type="checkbox"/> TG-100 Affidavit	<input checked="" type="checkbox"/> TG Form
Morrison, Robert J.	; C; R; G-B; EM	<input checked="" type="checkbox"/> TG-100 Affidavit	<input checked="" type="checkbox"/> TG Form
Reynolds, Jerry	; C; M	<input checked="" type="checkbox"/> TG-100 Affidavit	<input checked="" type="checkbox"/> TG Form
Scott, Gene	; C-SOG; MT; W; E	<input checked="" type="checkbox"/> TG-100 Affidavit	<input checked="" type="checkbox"/> TG Form
Stark, C. John	; CC; S; M; UT	<input checked="" type="checkbox"/> TG-100 Affidavit	<input checked="" type="checkbox"/> TG Form
Torres, Harris	; CC; M; G-T	<input type="checkbox"/> TG-100 Affidavit	<input checked="" type="checkbox"/> TG Form

Organization Associated Inspection & Testing, Inc.

Category Non-QAA Firm	Type Fabricator Shop Inspection/Audit/NDT	Annual Renewal Group FAB
Approved to Perform FAB-S-A FAB-S-I	Must Subcontract	
Engineering Manager	Quality Manager/Contact Person John S. Rice	Designated NDT Level III
Phone (951) 681-1007	Mailing 6109 Ridgeview Ave.	E-MAIL address cwi871@yahoo.com
Fax (951) 681-9305	Address Mira Loma	CA 91752
Inspector/Technician Name Rice, John S.	Inspector/Technician Approvals ; FAB-S-I; FAB-S-A	
	<input checked="" type="checkbox"/> TG-100 Affidavit	<input checked="" type="checkbox"/> TG Form

Revised: Thursday, November 06, 2014

SECTION NCR & ROCs
Non Compliance
And
Record of Correction Reports

Non-Compliance Report / Record of Correction Reports

(NCR/ROC x - 1)

REPORT OF
CORRECTIONS

ARIES CONSULTANTS INC.

6635 Badura Street, Suite A-140
Las Vegas, Nevada 89118
Ph. (702) 202-2199 • Fax (702) 202-3384

INSPECTION DATE: 3/20/15

REPORT #: ROC- X-1

PERMIT#: 15-6880

PROJECT NAME: Edgewater Garage

PROJECT LOCATION: 2000 S. Casino Dr.

PROJECT NUMBER: _____

CLIENT/OWNER: _____

CONTRACTOR: Gillett

SUPERINTENDENT: Brad

PLAN DATE: _____

BD APPROVAL DATE: _____

REVISED: _____

PLANS PREPARED BY: Barker Drottar

TYPE OF INSPECTION: Epoxy

AREA INSPECTED: Parking Garage Spandrel Wall Connections

SEPARATE ROC SHALL BE WRITTEN FOR EACH NCR THAT IS BEING CLEARED

THE FOLLOWING ITEMS HAVE BEEN RE-INSPECTED AND WERE FOUND TO BE IN COMPLIANCE WITH THE APPROVED [] CCDD
[] CLVBD [] COHBD [] CNLVBD [] CCSD PROJECT PLANS, SPECIFICATIONS AND/OR SHOP DRAWINGS.

THIS REPORT CLEARS NCR# X-1 DATED: 2/27/15

CURRENT CONDITION: Epoxy embed was changed from 6" to 4" AS PER CCDB approved plan revision dated March 09 2015

APPROVED CORRECTIVE DATA ATTACHED:

SEE ATTACHED

TIME IN: _____ AM / PM

TIME OUT: _____ AM / PM

PAGE 1 OF 1

WEATHER CONDITIONS

TEMP: _____

CLOUD COND: _____

WIND COND: _____

INSPECTOR'S NAME: Neil Haynes

INSPECTOR'S SIGNATURE: Neil Haynes

INSPECTOR'S CERTIFICATION #: _____

NOTIFICATION OF REPORT: _____

CLARK COUNTY DEPARTMENT OF BUILDING
Hourly Plan Review

APPROVALS

☒ PLAN REVIEWED
☐ REVIEWED
☐ STANDARD PLAN
☐ CHANGES
☐ SAFETY
☐ SAFETY SYSTEM TESTING

THIS PROJECT INFORMATION MUST BE COMPLETED BY THE CONTRACTOR, DEVELOPER, ARCHITECT, ENGINEER OR OTHERS. THE COMPLETION OF THIS COMPLETED FORM AND PLANS ARE REQUIRED FOR BUILDING PERMITS. THE COMPLETION OF THIS FORM IS REQUIRED BY ZONING APPROVAL IS REQUIRED (SEE ATTACHED CHECKLIST).

PROJECT # 15-6350 REVISION # 01

PROJECT INFORMATION

Project Name: FORNEMER... SPANISH LARVA

Project Address: 1020 S. CASANO PA

(Project Sub/Space No. or Letter Designation if Applicable)

CONTACT INFORMATION

Company Name: GLUECK CONSTRUCTION

Address: 1920 ANDERSON AVENUE DE

City: MIAMI FL State: FL Zip: 33149

Phone: (305) 785-3298 Fax: (305) 612-3393

Email: glueckconstruction@gmail.com

DESCRIPTION

Project Description: SPANISH LARVA AT JUNCTIONS FROM 6" TO 4" TO ACCOMMODATE 6" PAPER SPANNS

ITEM TYPE

☐ New
☐ Existing
☐ Other
☐ Other

☐ 1/4" PTH WITH
☐ 1/2" PTH WITH
☐ 3/4" PTH WITH
☐ 1" PTH WITH
☐ 1 1/2" PTH WITH
☐ 2" PTH WITH
☐ 3" PTH WITH
☐ 4" PTH WITH
☐ 6" PTH WITH
☐ 8" PTH WITH
☐ 10" PTH WITH
☐ 12" PTH WITH
☐ 14" PTH WITH
☐ 16" PTH WITH
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☐ 92" PTH WITH
☐ 94" PTH WITH
☐ 96" PTH WITH
☐ 98" PTH WITH
☐ 100" PTH WITH

ADMINISTRATIVE CODE

☐ 1/4" PTH WITH
☐ 1/2" PTH WITH
☐ 3/4" PTH WITH
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☐ 92" PTH WITH
☐ 94" PTH WITH
☐ 96" PTH WITH
☐ 98" PTH WITH
☐ 100" PTH WITH

RECORDS SET

Interviewed and Answered:
Pick Mielowski
City Building Official

THE JOURNAL

1. EXISTING CONCRETE WALL IN
INTERNAL COLUMN.

2. EXISTING PRECAST CONCRETE
SPANDREL.

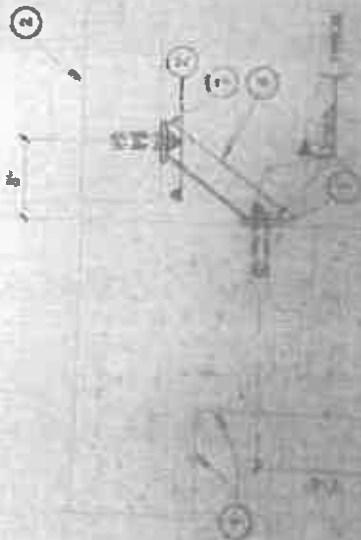
3. NEW STEEL PLATE 1/4" x 4" x 4" WITH
3/4" x 3" SAMPSON SET-UP EPOXY
ANCHOR EMBEDDED 4" PER
SPECS. SPECIAL INSPECTION IS
REQUIRED DURING INSTALLATION.
LOCATE ANCHORS 1/4" ABOVE
PARALLEL SLAB AS SHOWN BELOW.

4. ANGLE 3x3x1/4."

5. IF BEAR IS ENCOUNTERED PROVIDE
TWO 3/4" x 3" PLATES AT ONE OR
BOTH ANCHOR PLATES.



CONDITIONS AT SHIM PLATE



TOP OF
CONC. SLAB

ELEVATION OF ANCHOR PLATES

SPANDREL CONN. TO RECTANGULAR COL.

1

1. EXISTING CONCRETE COLUMN

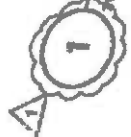
2. EXISTING PRECAST CONCRETE

③ TYPICAL

TOP OF
CONC. SLAB

ELEVATION AT ANCHOR PLATE

PLAN VIEW AT END OF SPANDREL



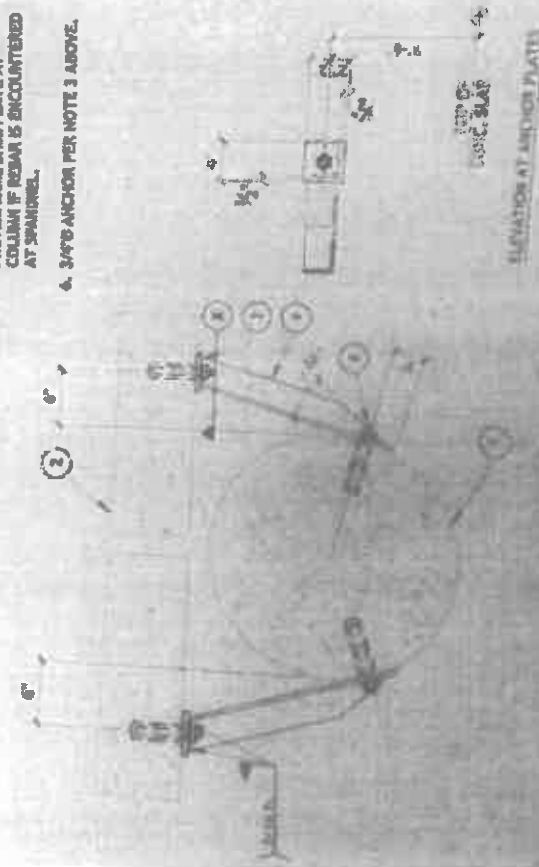
SPANDREL CONN TO RECTANGULAR COL

100222001

1. EXISTING CONCRETE COLUMN.
2. EXISTING PRECAST CONCRETE SPANDREL.
3. NEW STEEL PLATE 1/4" THICK WITH 3/4" SIMPSON SET-UP BRICKY ANCHOR EMBEDDED 4" PER ESR-2004. SPECIAL INSPECTION IS REQUIRED DURING INSTALLATION. LOCATE ANCHORS 18" ABOVE PARKING SLAB AS SHOWN BELOW.
4. ANGLE 2x2x1/4
5. IF REBAR IS ENCOUNTERED AT COLUMN PROVIDE 1x6x3 SHIM PLATES AT SPANDREL ANCHOR. PROVIDE SAME SHIM PLATE AT COLUMN IF REBAR IS ENCOUNTERED AT SPANDREL.
6. 3/4" ANCHOR PER NOTE 3 ABOVE.



CONDITIONS AT SHIM PLATE



ELEVATION AT ANCHOR PLATE

SPANDREL CONNECTION AT ROUND COLUMN



NEW PRECAST (NOTE C007)
CONCRETE

**NON-COMPLIANCE
REPORT**

ARIES CONSULTANTS INC.
6635 Badura Street, Suite A-140
Las Vegas, Nevada 89118
(702) 202-2199 • Fax (702) 202-3384

INSPECTION DATE: 3/27/15
REPORT #: NCR- X-1
PERMIT#: 15-6880

PROJECT NAME: Edgewater Parking Garage CLIENT/OWNER: _____
PROJECT LOCATION: 0000 Casino Dr CONTRACTOR: Gillett
PROJECT NUMBER: _____ SUPERINTENDENT: Brad / Ernie
PLAN DATE: 2/23/14 BD APPROVAL DATE: _____ REVISED: _____ PLANS PREPARED BY: Barker Drottar
TYPE OF INSPECTION: Epoxy
AREA INSPECTED: Spandrel Connection to Columns

SEPARATE NCR SHALL BE WRITTEN FOR EACH TYPE OF NON-COMPLYING ITEM OR CONDITION

THE FOLLOWING ITEMS HAVE BEEN INSPECTED AND WERE FOUND NOT TO BE IN COMPLIANCE WITH THE APPROVED PROJECT PLANS, SPECIFICATIONS AND/OR SHOP DRAWINGS. THESE ITEMS SHOULD BE CORRECTED, THEN RE-INSPECTED AND APPROVED PRIOR TO PROCEEDING WITH THIS PHASE OF THE PROJECT.

CURRENT CONDITION: Embed depth of 6" min. was changed to 4" min because spandrels are only 6" thick. An engineered fix is required showing this change. is OK.

REASON FOR NON-COMPLIANCE: Change needs to be approved by the engineer.

ITEMS NEEDED FOR COMPLIANCE: Need engineered fix

TIME IN: _____ AM / PM
TIME OUT: _____ AM / PM

PAGE 1 OF 1

WEATHER CONDITIONS

TEMP: _____
CLOUD COND: _____
WIND COND: _____

INSPECTOR'S NAME: Neil Haynes
INSPECTOR'S SIGNATURE: Neil Haynes
INSPECTOR'S CERTIFICATION #: _____
NOTIFICATION OF REPORT: _____

SECTION S-W

Structural Welding

Steel (S)

DAILY REPORT OF
SPECIAL INSPECTIONS

ARIES CONSULTANTS INC.
6635 West Badura Street, Suite A-140
Las Vegas, Nevada 89118
ph. (702) 202-2199 • Fax (702) 202-9304

Inspection Date: 3/20/11
Report # SLW-2
Permit # 15-6880

PROJECT NAME: Edgewater Garage
PROJECT LOCATION: 2020 Casino Dr
PROJECT NUMBER: _____

CLIENT/OWNER: _____
CONTRACTOR: Gillett
SUPERINTENDANT: Brad
PLANS PREPARED BY: Barker Drc

PLAN DATE: 2.5.15 B/D APPROVAL DATE: 2.24.15 REVISED: _____

TYPE OF INSPECTION: _____

AREA INSPECTED: _____

INSPECTION STATUS: _____

☐ PROGRESS

☐ COMPLETE

☒ AREA SIGN OFF

OBSERVATIONS: _____

COMPLETION LETTER

Based on site walk through, review of CCDB approved plans, and review of QAA special inspection reports, the work and third party special inspections within the boundaries of the above referenced are complete.

To the best of my knowledge, the requirements of the QAA Special Inspection Agreement have been fulfilled for item: "S" Steel welding

Referenced reports: S-1

Reference NCR/ROC reports: N/A

To the best of my knowledge, the inspection above ☒ COMPLIES ☐ DOES NOT COMPLY with the approved plans. Not in compliance, ref NCR _____

☒ CCDB ☐ CLVBD ☐ COMBD ☐ CHVBD ☐ CCSO

WEATHER CONDITIONS

QUALIFIED PERSONNEL

INSPECTOR'S NAME: James Lopez

INSPECTOR'S SIGNATURE: _____

INSPECTOR'S CERTIFICATION #: _____

NOTIFICATION OF REPORT: _____

DAILY REPORT OF
SPECIAL INSPECTIONS

ARIES CONSULTANTS INC.
6635 West Badura Street, Suite A-140
Las Vegas, Nevada 89118
Ph. (702) 202-2199 • Fax (702) 202-3384

INSPECTION DATE: 03/19/2015
REPORT #: SW-1
PERMIT#: 15-6880

PROJECT NAME: EDGEWATER PARKING GARAGE
PROJECT LOCATION: 2020 CASINO DRIVE, CL NV
PROJECT NUMBER: _____

CLIENT/OWNER: _____
CONTRACTOR: Gillette Construction
SUPERINTENDENT: ERNE

PLAN DATE: 2-5-15 BD APPROVAL DATE: 2-24-15 REVISED: _____ PLANS PREPARED BY: BALLER DROTTER

TYPE OF INSPECTION: Field Welding

AREA INSPECTED: REPLACEMENT SPANDREL WALL SECTION FOR STAIR (EASTSIDE)

SUMMARY OF INSPECTION:

☐ PROGRESS ☐ COMPLETE ☐ AREA SIGN OFF

Performed visual inspection of field welding at above noted single replacement spandrel wall section. L wall embedded L 4x4 x 3/8 as per detail (2) ON S.I.D. TO EXISTING STEEL EMBED PLATE USING 1/4" filler weld 4" horizontal with 1" ripples for a total of 6" total length + 1" R.C.A.

Small no less using 47018 electrodes performed by All same steel certified welder.

above work is complete and found visually acceptable per AWS standards. Inspection included verification of proper weld size, length & spacing.

REF DRAWINGS: S.I.D.

TIME IN: _____ AM / PM
TIME OUT: _____ AM / PM

PAGE _____ OF _____

To the best of my knowledge, the inspection above ☒ COMPLIES ☐ DOES NOT COMPLY with the ☒ CCDD ☐ CLVBD ☐ COHBD ☐ CNLVBD ☐ CCSD approved plans. Not in compliance, ref NCR

WEATHER CONDITIONS

TEMP: _____
CLOUD COND: _____
WIND COND: _____

INSPECTOR'S NAME: JAMES LOPEZ
INSPECTOR'S SIGNATURE: _____
INSPECTOR'S CERTIFICATION #: ICC 110416985
NOTIFICATION OF REPORT: AWS CWS 0705051

Department of Development Services Building Division

4701 W Russell Rd. • Las Vegas NV 89118
(702) 455-3000 • Fax (702) 221-0630

Ronald L. Lynn, Director/Building Official • Gregory J. Franklin, Assistant Director

WELDER QUALIFICATION RECORD (WQR) VERIFICATION

QAA Company APRIS CONSULTANTS INC Project Name Edgewood
Project Address 2026 Casino Dr Permit Number 15-16890-BV
Company performing the welding LAUGHLIN NV ALL STEEL

Welder Name	Qualified Welding Process	Qualified Thickness & Position	Original Qualification Date	Update Letter Rec'd Date
<u>STANZ SILDON</u>	<u>SMW D1.1</u>	<u>1/2" - L</u> <u>3G-4G</u>	<u>10/3/11</u>	<u>1-2-1</u>
<u>Manco MARTINEZ</u>	<u>SMW D1.1</u>	<u>1/2" - U</u> <u>3G-4G</u>	<u>1/16/13</u>	<u>1-2-15</u>

The inspector shall review all Welder Qualification Records (WQR) to verify that the welder is qualified to weld using the welding process qualified, the joint types, materials and material thicknesses specified in the approved project plans. The inspector shall also review welder documentation to verify that the welder's qualification is current and is in accordance with the applicable AWS welding code. The inspector certifies, by signing and dating this form, that he or she has reviewed and verified the WQR information is complete and in compliance with Clark County codes and the applicable AWS welding code.

Inspector Name Thomas Lopez Signature [Signature] Date 3-1-15

Note: This form shall be included in the QAA's final report. WQR documents are not required to be included in the QAA's final report, but are required to be maintained in the QAA's project files for future reference.

ALL STAR STEEL LLC.

Welder Qualification Update Letter

The Welder noted below has not had a lapse greater than six (6) months for welding in the noted process from the original certification date. (Original certifications attached)

UPDATE: 1-2-15

PROJECT: ALL ALL STAR STEEL PROJECTS

A / NAME	#	PROCESS, PROCEDURE, THICKNESS, ORIGINAL DATE		
MARCO MARTINEZ	3	SAW 3G 4G UNLTD 1/16/13	NA	NA
CHAZ PILLEY	11	SAW 3G 4G UNLTD 4-29/11	SAW F4 UNLTD 4-19-11	SAW FLAT 16, 18, 20ga. 03/01/11
CHAZ PILLEY	11	SAW 6G 3-19-14		
SHANE SAILOR	9	SAW 3G 4G UNLTD 10/02/11	NA	NA

Print: Michael E. Greener Safety Welding Q.C. CWI # 070401131

Supervisor's Name: CRAIG PILLEY

Signature: 

Employer Representative Name and Title "Print"

Welder qualified per AWS D1.1, D1.3, D1.4 Structural Steel Welding Code-Steel

Period of Effectiveness"

States that qualification shall be considered as remaining in effect indefinitely unless,

1. The welder has not engaged in a given process, that the welder is qualified in, for a period exceeding six months.
2. There is reason to question the welder's ability.

Received By: _____

Contractor: _____

Date: _____



**IRONWORKER/AWS WELDER
CERTIFICATION PROGRAM OF
NORTH AMERICA**

CERTIFIED WELDER

Marco Martinez

Membership #: 1425471

EFFECTIVE DATE EXPIRATION DATE
01-16-2013 01-16-2014

Process: SMAW - A1



Process: SMAW
Joint: AWS D1.1, D1.5
Spec. R: AWS A5.1, A5.5
Class R: AWS E7018
Type: ASTM A-36
Thickness: 1"
Thick Qual: 1/8" to 1/2"
Backing: ASTM A-36
Dist: DC
Pos: 3G Up, 4G
Membership #: 1425471
PR 4 Date: AWS D1.1, D1.5
Material: ASTM A-36 meets A270M700 Gr 36
Vert. Pos.: Vertical Up Gen:
Pol: REV.
TEST PERFORMED AT AN APPROVED AWS SITE. TEST RECORDS FOR THE
BEARER OF THIS CARD MAY BE VERIFIED BY CALLING OR WRITING THE
IRONWORKER NATIONAL WELDING COMMITTEE
1700 NEW YORK AVENUE, N.W., SUITE 400
WASHINGTON, D.C. 20005
PHONE: (202) 393-4914 FAX: (202) 397-4286

OKLAHOMA
DEPARTMENT OF LABOR
Welder Certification Card
NOT VALID FOR HIGH PRESSURE VESSELS
Chaz Pitt



was successfully tested
 test facility under TIG
 Statutes in the following
 Cert No: 31764
 Position: OG
 Processes: SMAW
 Issued: 03/11/2014 Expires: 08/31/2015
 Not intended for identification purposes.

Mark Corbett
 Mark Corbett
 Commissioner of Labor

Name: Chris Piley ID No.: 1340 Stamp: "CP"
Tested For: Lane Community College
Code: BWS.D2.1 (Shielded Metal Arc Weld)
Process: SMAW Material: A-36
Electrodes: E6010 (F-4) Coupon Thickness: .312"
Qualified for: 1/8" to Unlimited Thickness Groove & Flare Joints
Type weld: AL Pipe



This card is verification that the welder acceptably
passed a similar qualification test in accordance with
the noted code or specification, and is qualified to
weld within the limits of scope of initial-qualification.

By: [Signature] Date Tested: 04/10/2011
Atlantic Precision Labs Inc. ATL-WQ # 6448

ALL STAR STEEL

P.O. BOX 90729
HENDERSON, NV 89009-0729

Name: Chaz Pitley
Street Address: 1002 Wreath Court
City: Henderson State: NV Zip: 89074

WELDING PERFORMANCE QUALIFICATION TEST RECORD

Spec. Code:	<u>AWS D1.1</u>	Process:	<u>SMAW</u>	Test # <u>ASS012</u>
Base Metal:	<u>A36 Plate Steel</u>	Manual / Machine:	<u>Manual</u>	Position:
Material:	<u>ASTMA36</u>	Filler Metal Spec:	<u>AWS A5.1.5.5</u>	1G:
Size:	<u>6</u>	Filler Metal Class:	<u>AWS E7018</u>	2G:
Thickness:	<u>1"</u>	F #:	<u>4</u>	3G: <u>XX UP</u>
Plate:	<u>XX</u>	Current:	<u>DC+</u>	4G: <u>XX</u>
Tube:		Polarity:	<u>Reverse</u>	5G:
Pipe:		Amperage:	<u>90-140</u>	6G:
Backing:	<u>ASTMA36 1/4 x 1"</u>	Voltage:	<u>19-24</u>	1F:
Preheat:	<u>Steel</u>	Gas:	<u>None</u>	2F:
Post Heat:	<u>50 °F min.</u>	Flow Rate:	<u>None</u>	3G:
Type of Joint:	<u>None</u>	Quality Thickness Range	<u>1/8 to Unlimited</u>	4G:
	<u>AWS B-U2a</u>			

VISUAL TEST

Witnessed:

Pass: Pass
Jim Satcher
SIGNATURE OF EXAMINER

Fail: _____

Date: 04/29/2011

Remarks: Meets AWS D1.1, Table 6.1 &

AWS D1.5 SEC 9.2.1.1

BEND OR DESTRUCTIVE TEST

Position	Specimen #	Direction of Bend	Pass	Fail	Date	Remarks
3G	CP1	SIDE	XX		<u>04/29/11</u>	
3G	CP2	SIDE	XX		<u>04/29/11</u>	
4G	CP3	SIDE	XX		<u>04/29/11</u>	
4G	CP4	SIDE	XX		<u>04/29/11</u>	

We certify the statements in this record are correct and the test welds were prepared, welded and tested in accordance with the requirements AWS D1.1, D1.5

Jim Satcher

Signature of examiner





P.O. BOX 90729
HENDERSON, NV 89009-0729

Name: Chaz Pilley
Street Address: 1002 Wreath Court
City: Henderson State: NV Zip: 89074

WELDING PERFORMANCE QUALIFICATION TEST RECORD

Spec. Code:	<u>AWS D1.3</u>	Process:	<u>SMAW</u>	Test #	<u>ASS012</u>
Base Metal:	<u>Sheet Steel</u>	Manual / Machine:	<u>Manual</u>	Position:	
Material:	<u>ASTM A653</u>	Filler Metal Spec:	<u>AWS A5.1.5.5</u>	1G:	<u>XX</u>
Size:	<u>3" x 5"</u>	Filler Metal Class:	<u>E7018</u>	2G:	
Thickness:	<u>16,18,20ga</u>	F #:	<u>4</u>	3G:	
Plate:	<u>XX</u>	Current:	<u>DCEN</u>	4G:	
Tube:		Polarity:	<u>STRAIGHT</u>	5G:	
Pipe:		Amperage:	<u>120-140</u>	6G:	
Backing:	<u>1/2" x 3" x 5" A36 Plate</u>	Voltage:	<u>19-24</u>	1F:	
Preheat:	<u>None</u>	Gas:	<u>None</u>	2F:	
Post Heat:	<u>None</u>	Flow Rate:	<u>None</u>	3G:	
Type of Joint:	<u>Arc Spot</u>	Qualify Thickness Range	<u>16ga GALV</u>	4G:	

VISUAL TEST

Witnessed:

Jim Lulebur Pass XX

SIGNATURE OF EXAMINER

Fail: _____

Date: 04/29/2011

Diameter Arc Spot 5/8"

Date 3-1-11

BEND OR DESTRUCTIVE TEST

Position	Specimen #	Direction of Bend	Pass	Fail	Date	Remarks
Flat	CP1	Tear	XX		03/1/11	
Flat	CP2	Tear	XX		03/1/11	

We certify the statements in this record are correct and the test welds were prepared, welded and tested in accordance with the requirements AWS D1.1, D1.5

Jim Lulebur
Signature of examiner

APPROVED
04/29/2011
CWL

ALL STAR STEEL

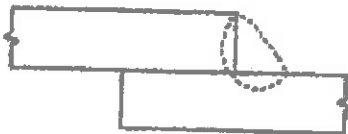
FW 1

SMAW

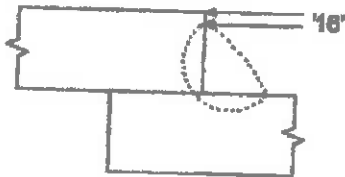
STANDARD WELDING PROCEDURE SPECIFICATION (WPS)

Spec. Code:	AWS D1.1	Process:	SMAW	Position:	
Base Metal:	Carbon Steel, Group I & II	Manual / Machine:	MANUAL	1G	
Filler Metal Class	AWS E7018	Single Arc:	XX	2G	
Filler Metal Spec.	AWS A5.1	Multiple Pass:	XX	3G	
Plate:	XX	F #:	4	4G	
Tube:	XX	Current:	DCEP	5G	
Pipe:	XX	Polarity:	REVERSE	6G	
Root Treatment:	N/A	Amperage:	**	1F	X
Material:	Carbon Steel, Group I & II	Voltage:	**	2F	X
Preheat:	Section 3.5 Table 3.2	Travel speed:	**	3F	X
Post Heat:	Section 5.9	Gas:	N/A	4F	X
Type of Joint:	FILLET WELD LAP / T-JOINT	Thickness Range:	1/8" - UNLTD		

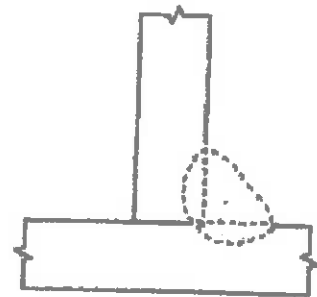
** Within the range of recommended operation by the filler metal manufacturer. See Typical Operating Procedures Chart **



BASE METAL THICKNESS LESS THAN 1/4" THICK



BASE METAL THICKNESS 1/4" OR MORE IN THICKNESS



T-JOINT

Notes	Welding Pos. Allowed	MINIMUM FILLET WELD SIZES				Notes
	All	BASE METAL THICKNESS (T)		MINIMUM SIZE OF FILLET WELD		3
		$T \leq 1/4"$		1/8"		
		$1/4" < T \leq 1/2"$		3/16"		
		$1/2" < T \leq 3/4"$		1/4"		
		$3/4" < T$		5/16"		
MINIMUM FILLET WELD SIZES ARE IN ACCORDANCE WITH D1.1 TABLE 5.8						
TECHNIQUE						
Weave or Stringer Bead:		Either				
Peening:		Not required				
Initial Cleaning:		Mechanical or Chemical Joint shall be dry prior to welding.				
Interpass Cleaning:		Mechanical only.				
Backgouging:		Mechanical or Thermal as Required				
Gouging:		Mechanical or Thermal				
Single / Multiple Pass:		Either				
** TYPICAL OPERATING PROCEDURES CHART**						
		Classification	Diameter	Amps	Polarity	
		E 7018	3/32"	70 - 110	DCEP	
		E 7018	1/8"	90 - 150	DCEP	
		E 7018	5/32"	120 - 180	DCEP	
		E 7018	3/16"	170 - 280	DCEP	
The care and storage of electrodes shall be as recommended by the electrode manufacturer.						
IN ACCORDANCE WITH THE REQUIREMENTS OF AWS D1.1 / D1.1M:2004						
Prepared by: Michael E. Greener, Welding O.C.						

Prepared by: Michael E. Greener, Welding Q.C.
Signature:

Date:

SECTION S-S

Structural Steel

Steel (S)

**DAILY REPORT OF
SPECIAL INSPECTIONS**

ARIES CONSULTANTS INC.
6635 West Badura Street, Suite A-140
Las Vegas, Nevada 89118
Ph. (702) 202-2199 • Fax (702) 202-3384

INSPECTION DATE: 03/02/2015
REPORT #: SS-1
PERMIT#: 15-6880

PROJECT NAME: EDGEWATER PARKING GARAGE
PROJECT LOCATION: 8080 CASINO DRIVE, CC NV
PROJECT NUMBER: _____

CLIENT/OWNER: _____
CONTRACTOR: Collette Construction
SUPERINTENDENT: CRNIE

PLAN DATE: 2-5-15 BD APPROVAL DATE: 2-24-15 REVISED: _____ PLANS PREPARED BY: BAILER DROTTER
TYPE OF INSPECTION: STEEL & SHOP WELDING
AREA INSPECTED: REPLACEMENT SPANDREL UNIT SECTION FOR STEEL (EASTSIDE)

SUMMARY OF INSPECTION:

☐ PROGRESS ☒ COMPLETE ☐ AREA SIGN OFF

Performed special inspection of Shop welding / fabrication
at K11 Steel Fabrication Henderson NV
Identified three total L4x4x3/8x10" long
with 3/4" Nelson Headed studs @ 3" o.c. (3 total)
5/16" filler weld all around typical
Shop process using E7018 electrodes by
all steel shop

Above work is complete and per AWS standards

REF DRAWINGS: _____

TIME IN: _____ AM / PM
TIME OUT: _____ AM / PM

PAGE _____ OF _____

To the best of my knowledge, the inspection above ☒ COMPLIES ☐ DOES NOT COMPLY with the
ACCDSS ☐ CLVBD ☐ COHBD ☐ CNLVD ☐ CCSD approved plans. Not in compliance, ref NCR

WEATHER CONDITIONS

TEMP: _____
CLOUD COND: _____
WIND COND: _____

INSPECTOR'S NAME: JAMES LOPEZ
INSPECTOR'S SIGNATURE: _____
INSPECTOR'S CERTIFICATION #: ICC 110416985
NOTIFICATION OF REPORT: AWS CWC00050851

AC Document No. 001

Approval Date: Sept. 18, 2009

Revision Date: Sept 18, 2009

8:15 FAX

0003/003



California Steel Industries
14000 San Bernardino Ave.
Fontana, California 92335

CERTIFIED TEST REPORT

ORDER 787	NO ORDER 01-2998-08	CERTIFICATION DATE 01/28/15	SHIP NAME HS 281214140 1/
CURTIS STEEL CO., INC./CRS 4555 WYNN RD. LAS VEGAS NV 89103		CURTIS STEEL CO., INC. C/O HANSEN STEEL SERVICE CENTE 9703 S. NORWALK BLVD SANTE FE SPRINGS CA 90870	

3/4 TL
604120

USE WAREHOUSE STOCK
WRO H.R. BAND - DIRECT SHIP (NON SKIN PASS) - PRIME
WTC PO-IN CONFORMANCE WITH ASTM-A38-08 CHEMICAL AND TENSILE REQUIREMENTS

ITEM	DESCRIPTION	COIL FEEDS OR REELS	NO. ROLLS			
	3/00 x 60.0000 x COIL NON ME	1	CA4757			
				<p>I certify that the material described herein has been manufactured and tested in accordance with the requirements of the referenced specification, and the test results conform to the specification requirements.</p> <p><i>[Signature]</i> Chief - Laboratory Services</p>		

MECHANICAL PROPERTIES										CHEMICAL ANALYSIS															08:12:49 01/28/15 MM				
TEST OR LOT NUMBER	SLAB MARKS	LOD	YIELD STRENGTH	TENSILE STRENGTH	ELONGATION	REDUCED SECTION	C	Mn	P	S	Si	Cu	Ni	Cr	Mo	Al	V	Co	Ti	B	N								
CA4757 K11126	06-1	B	44.7	66.6	24		1/	.01	.016	.004	.196	.00	.01	.01	.00	.028	.001	.000	.000	.0030	.004								
Material is 100% compliant																													
Steel products manufactured in the U.S. from CS, coil quality as "domestic end products" and "U.S. made end products" under the Buy American and Trade Agreement Acts																													
TEST REPORT APPROVED																													

NV072

4/07/74

Certificate of Compliance

NELSON

PAGE INDUSTRIAL SUPPLY COMPANY
2425 SOUTH 2700 WEST
NORTH VALLEY CITY

7000 N. 10th St. N.W.
Albuquerque, N.M. 87110
Tel. (505) 261-1111
Telex 150000 NELSON

Material Description	Quantity	Spec. Number	Lab. Number
	84116		
304 1/4 x 3 3/16 MS	5500	5173024	21247
304 1/4 x 3 3/16 MS	1500	10325970	200255
304 1/4 x 3 3/16 MS	1500	10325970	709162

Nelson Order Number: 56227

Customer P.O. # 23560

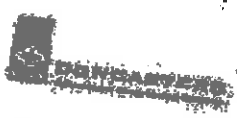
The product supplied under the contract or purchase order number shown is certified to comply with the latest revision of one or more of the applicable product specifications therein: AMS DL-1, AMS DL-2, AMS DL-3, AMS DL-4, AMS DL-5, AMS DL-6, AMS DL-7, AMS DL-8, AMS DL-9, AMS DL-10, AMS DL-11, AMS DL-12, AMS DL-13, AMS DL-14, AMS DL-15, AMS DL-16, AMS DL-17, AMS DL-18, AMS DL-19, AMS DL-20, AMS DL-21, AMS DL-22, AMS DL-23, AMS DL-24, AMS DL-25, AMS DL-26, AMS DL-27, AMS DL-28, AMS DL-29, AMS DL-30, AMS DL-31, AMS DL-32, AMS DL-33, AMS DL-34, AMS DL-35, AMS DL-36, AMS DL-37, AMS DL-38, AMS DL-39, AMS DL-40, AMS DL-41, AMS DL-42, AMS DL-43, AMS DL-44, AMS DL-45, AMS DL-46, AMS DL-47, AMS DL-48, AMS DL-49, AMS DL-50, AMS DL-51, AMS DL-52, AMS DL-53, AMS DL-54, AMS DL-55, AMS DL-56, AMS DL-57, AMS DL-58, AMS DL-59, AMS DL-60, AMS DL-61, AMS DL-62, AMS DL-63, AMS DL-64, AMS DL-65, AMS DL-66, AMS DL-67, AMS DL-68, AMS DL-69, AMS DL-70, AMS DL-71, AMS DL-72, AMS DL-73, AMS DL-74, AMS DL-75, AMS DL-76, AMS DL-77, AMS DL-78, AMS DL-79, AMS DL-80, AMS DL-81, AMS DL-82, AMS DL-83, AMS DL-84, AMS DL-85, AMS DL-86, AMS DL-87, AMS DL-88, AMS DL-89, AMS DL-90, AMS DL-91, AMS DL-92, AMS DL-93, AMS DL-94, AMS DL-95, AMS DL-96, AMS DL-97, AMS DL-98, AMS DL-99, AMS DL-100.

Grade
Spec. Number
Orientation
Finish
Tensile
Yield
Elongation
Reduction of Area
Impact
Hardness
Chemical
Analysis
Microstructure
Surface

C-1013	C-1014	C-1015
5173024	10325970	10325970
75,000	75,000	75,000
52,000	50,000	50,000
64.0	62.0	62.0
30.0	25.0	25.0
30.000	25.000	25.000
.150	.150	.150
.050	.050	.050
.010	.010	.010
.005	.005	.005

I hereby certify that the data listed in this Certificate of Compliance is true and correct as contained in the company test records and that it complies with the specifications shown.

Authorized by: *Conrad...*



SECTION X

Special Cases

Special Cases (X)

DAILY REPORT OF SPECIAL INSPECTIONS		ARIES CONSULTANTS INC. 6635 West Badura Street, Suite A-140 Las Vegas, Nevada 89118 ph. (702) 282-2199 • Fax (702) 282-9384		Inspection Date: <u>3/20/15</u>	
				Report # <u>X-6</u>	
				Permit # <u>15-6880</u>	
PROJECT NAME: <u>Edgewater Garage</u>			CLIENT/OWNER:		
PROJECT LOCATION: <u>2020 Casino Dr</u>			CONTRACTOR: <u>Gillett</u>		
PROJECT NUMBER:			SUPERINTENDANT: <u>Brad</u>		
PLAN DATE: <u>2-23-15</u>		B/D APPROVAL DATE: <u>2-24-15</u>		REVISED:	
TYPE OF INSPECTION: <u>Epoxy</u>		PLANS PREPARED BY: <u>Barker Drot</u>			
AREA INSPECTED: <u>Parking Garage Spandrel Walls</u>					
INSPECTION STATUS: <input type="checkbox"/> PROGRESS <input type="checkbox"/> COMPLETE <input checked="" type="checkbox"/> AREA SIGN OFF					
OBSERVATIONS:					
COMPLETION LETTER					
Based on site walk through, review of CCDB approved plans, and review of QAA special inspection reports, the work and third party special inspections within the boundaries of the above referenced are complete.					
To the best of my knowledge, the requirements of the QAA Special Inspection Agreement have been fulfilled for item: <u>"X" Special Cases</u>					
Referenced reports: <u>X-1 to X-5</u>					
Reference NCR/ROC reports: <u>NCR-X-1</u>					
To the best of my knowledge, the inspection above <input checked="" type="checkbox"/> COMPLIES <input type="checkbox"/> DOES NOT COMPLY with the approved plans. Not in compliance, ref NCR _____					
<input checked="" type="checkbox"/> CCDB <input type="checkbox"/> CLVD <input type="checkbox"/> COHBD <input type="checkbox"/> CNLVD <input type="checkbox"/> CCSO					
WEATHER CONDITIONS			QUALIFIED PERSONNEL		
			INSPECTOR'S NAME: <u>Neil Haynes</u>		
			INSPECTOR'S SIGNATURE: <u>Neil Haynes</u>		
			INSPECTOR'S CERTIFICATION #:		
			NOTIFICATION OF REPORT:		

Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 455-3000 • Fax (702) 221-0630

Ronald L. Lynn, Director/Building Official

Report No.	X-5
Page	1 of 1
Inspection Date	3/19/15
Permit No.	15-6880

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

Project Address:	2020 S. Casino Dr.			Lot:		Block:	
Development Name:	Edgewater Parking Garage						
Quality Assurance Agency:	Aries			Owner/Agent:			
Owner/Agent Signature:							
CCBD Inspector Initials							Date:
							Date:

1ST INSTALLATION INSPECTION SUMMARY

RESULTS		INSPECTION DATA		RESULTS	
CCDDS-BD Plan Approval Date:	2/24/15	Quantity of Rods/Bolts Installed:	4		
CCDDS-BD Plan Sheet & Detail	SI-0/1	Hole Depth & Diameter:	4" x 1"		
Adhesive Product Name:	Simpson Set XP	Anchor Diameter, Type & Length:	3/4" All Thread, 10"		
Adhesive Expiration Date:	07/2016	Anchor Embedment Depth:	4" min.		
Evaluation Report No. & Date:	ESR-2508	Anchor Spacing	N/A		
Concrete Type and Strength:	Spandrel & Walls	Anchor Edge Distance	N/A		
Concrete Thickness & Temp (°F)	6" thk.	Time of Installation & Cure, full (time till full cure)	6am		
Hole Cleaning Procedure	Brushed & Blown				

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

Spandrel Connection to Columns Level 5 replacement
Spandrel
Plans by Barker Drottar dated 2/23/15

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturers' installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

Neil Haynes	
	3/19/15

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EN. 03/29/10

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Ronald L. Lynn, Director/Building Official

Report No.	X-4
Page	1 of 1
Inspection Date	3/4/15
Permit No.	15-6880

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

Project Address:	2020 S. Casino Dr.	Lot:		Block:	
Development Name:	Edgewater Parking Garage				
Quality Assurance Agency:	Aries	Owner/Agent:			
Owner/Agent Signature:					
CCBD Inspector Initials					Date:
					Date:

1ST INSTALLATION INSPECTION SUMMARY

CCDD-SD Plan Approval Date:	2/24/15	Quantity of Rods/Bolts Installed:	290
CCDD-SD Plan Sheet & Detail	SI.0/1	Hole Depth & Diameter:	4" x 1"
Adhesive Product Name:	Simpson Set XP	Anchor Diameter, Type & Length:	3/4" All Thread, 10"
Adhesive Expiration Date:	07/2016	Anchor Embedment Depth:	4" min.
Evaluation Report No. & Date:	ESR-2508	Anchor Spacing	N/A
Concrete Type and Strength	Spandrel & Walls	Anchor Edge Distance	N/A
Concrete Thickness & Temp (°F)	6" thk.	Time of Installation & Cure (full time till full cure)	Cam
Hole Cleaning Procedure	Brushed & Blown		

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

Spandrel Connection to Columns Levels 2 & 3 & 1A
Plans by Barker Drottar dated 2/23/15

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturers' installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

Neil Haynes	
	3/4/15

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Ronald L. Lynn, Director/Building Official

Report No.	X-3
Page	1 of 1
Inspection Date	3/3/15
Permit No.	15-6880

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

Project Address:	2020 S. Casino Dr.	Lot:		Block:	
Development Name:	Edgewater Parking Garage				
Quality Assurance Agency:	Aries				
Owner/Agent Signature:		Owner/Agent:			
CCBD Inspector Initials				Date:	
				Date:	

1ST INSTALLATION INSPECTION SUMMARY

ITEM	ISSUE	REMARKS
CCDDS-BD Plan Approval Date:	2/24/15	Quantity of Rods/Bolts Installed: 280
CCDDS-BD Plan Sheet & Detail	51.0/1	Hole Depth & Diameter: 4" x 1"
Adhesive Product Name:	Simpson Set XP	Anchor Diameter, Type & Length: 3/4" All Thread, 10"
Adhesive Expiration Date:	07/2016	Anchor Embedment Depth: 4" min.
Evaluation Report No. & Date:	ESR-2508	Anchor Spacing: N/A
Concrete Type and Strength	Spandrel Walls	Anchor Edge Distance: N/A
Concrete Thickness & Temp (°F)	6" thk.	Time of Installation & Cure, full (time till full cure): 6am
Hole Cleaning Procedure	Brushed & Blown	

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

Spandrel Connection to Columns Levels 3 & 4
Plans by Barker Drottar dated 2/23/15

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturers' installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

Neil Haynes	
<i>[Signature]</i>	3/3/15

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EN. 02/29/10

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Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 455-3000 • Fax (702) 221-0530

Ronald L. Lynn, Director/Building Official

Report No.	X-2
Page	1 of 1
Inspection Date	2/27/15
Permit No.	15-6880

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

Project Address:	2020 S. Casino Dr.			Lot:		Block:	
Development Name:	Edgewater Parking Garage						
Quality Assurance Agency:	Aries			Owner/Agent:			
Owner/Agent Signature:							
CCBD Inspector Initials							
							Date:
							Date:

1ST INSTALLATION INSPECTION SUMMARY

CCDDS-BD Plan Approval Date:	2/24/15	Quantity of Rods/Bolts Installed:	224
CCDDS-BD Plan Sheet & Detail	SI-0/1	Hole Depth & Diameter:	4" x 1"
Adhesive Product Name:	Simpson Set XP	Anchor Diameter, Type & Length:	3/4" All Thread, 10"
Adhesive Expiration Date:	07/2016	Anchor Embedment Depth:	4" min.
Evaluation Report No. & Date:	ESR-2508	Anchor Spacing	N/A
Concrete Type and Strength	Spandrel Walls & Columns	Anchor Edge Distance	N/A
Concrete Thickness & Temp (°F)	6" thk.	Time of Installation & cure, full (time till full cure)	Cam
Hole Cleaning Procedure	Brushed & Blown		

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

Spandrel Connection to Columns Levels 4 & 5
Plans by Barker Drottar dated 2/23/15

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturers' installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

Neil Haynes	
	2/27/15

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Development Services Building Division

4701 W. Russell Rd • Las Vegas NV 89118
(702) 455-3000 • Fax (702) 221-0830

Ronald L. Lynn, Director/Building Official

Report No.	X-1
Page	1 of 1
Inspection Date	2/26/15
Permit No.	15-6880

POST-INSTALLED ADHESIVE ANCHORAGE CLEARANCE REPORT

Project Address:	2020 S. Casino Dr.	Lot:	Block:	
Development Name:	Edgewater Parking Garage			
Quality Assurance Agency:	Aries	Owner/Agent:		
Owner/Agent Signature:				Date:
CCBD Inspector Initials				Date:

1ST INSTALLATION INSPECTION SUMMARY

INSPECTION ITEM	RESULTS	INSPECTION ITEM	RESULTS
CCDDS-BD Plan Approval Date:	2/24/15	Quantity of Rods/Bolts Installed:	210
CCDDS-BD Plan Sheet & Detail	S1.0 / 1	Hole Depth & Diameter:	4" x 1"
Adhesive Product Name:	Simpson Set XP	Anchor Diameter, Type & Length:	3/4", All thread, 10"
Adhesive Expiration Date:	07/2016	Anchor Embedment Depth:	4 1/2" min
Evaluation Report No. & Date:	ESR-2508	Anchor Spacing	N/A
Concrete Type and Strength	Spandrel & Columns	Anchor Edge Distance	N/A
Concrete Thickness & Temp (°F)	6" thk.	Time of Installation & cure, full (time till full cure)	6am
Hole Cleaning Procedure	Brushed & Blown		

The special inspector must be present at the time the bolt is torqued.

LOCATIONS OF ROD/BOLT & ADDITIONAL INSPECTION INFORMATION

Spandrel Connection to Columns Levels 6 & 5
Plans by Barker Drotter dated 2/23/15

I hereby acknowledge that I have reviewed the approved plans, applicable evaluation report, and manufacturers' installation instructions. I inspected the products and observed the product installation. The anchor installation has been verified to be in accordance with the manufacturer's published instructions, the above referenced evaluation report and the Clark County approved plans.

Neil Haunes SPECIAL INSPECTOR (PRINTED) SPECIAL INSPECTOR (SIGNATURE)	2/26/15 DATE
---	-----------------

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Form 811a
Eff. 03/29/10

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SECTION C-C

**Reinforced Concrete
Cylinders and Placement**

Concrete (C)

**DAILY REPORT OF
SPECIAL INSPECTIONS**

ARIES CONSULTANTS INC.

6635 West Badura Street, Suite A-140
Las Vegas, Nevada 89118
Ph. (702) 202-2199 • Fax (702) 202-3384

INSPECTION DATE: 9/3/15
REPORT #: CC-1
PERMIT#: 15-6880

PROJECT NAME: Edgewater Parking Garage CLIENT/OWNER: _____
PROJECT LOCATION: 8020 Casino Dr CONTRACTOR: Gillett
PROJECT NUMBER: _____ SUPERINTENDENT: Brad

PLAN DATE: 9/23/15 BD APPROVAL DATE: 9/24/15 REVISED: _____ PLANS PREPARED BY: Barker Drottar
TYPE OF INSPECTION: Concrete Placement
AREA INSPECTED: Replacement Spandrel Wall for 5th Level East Side

SUMMARY OF INSPECTION:

☐ PROGRESS ☐ COMPLETE ☐ AREA SIGN OFF

Observed placement of approx. 3 yds of S⁵S Concrete
Materials LLC mix # 4502CL (4500psi, 3/4" agg.) concrete
placed by direct discharge and mechanically consolidated
by vibration @ location noted above.

All areas were free of debris prior to concrete
placement and all reinf. steel maintained proper
spacing and clearances throughout pour.

1 set of (5) 4x8 cylinders was cast for testing

REF DRAWINGS: CR-1

TIME IN: _____ AM / PM

PAGE 1 OF 1

TIME OUT: _____ AM / PM

To the best of my knowledge, the inspection above ☒ COMPLIES ☐ DOES NOT COMPLY with the
☒ CCDDS ☐ CLVBD ☐ COHBD ☐ CNLVB ☐ CCSD approved plans. Not in compliance, ref NCR _____

WEATHER CONDITIONS

TEMP: 55°

CLOUD COND: Cloudy

WIND COND: Calm

INSPECTOR'S NAME: Neil Haynes

INSPECTOR'S SIGNATURE: Neil Haynes

INSPECTOR'S CERTIFICATION #: _____

NOTIFICATION OF REPORT: _____

Centurion Consultants, Inc.

6635 BADURA ST. SUITE A140
LAS VEGAS, NV 89118

PHONE: 702 260-1391
FAX: 702 260-3921

REPORT OF CONCRETE CYLINDER TEST

Project Number: 15069-13

Report Date: 3/20/15

Lab Number: 15985

Project: EDGEWATER PARKING GARAGE

Client: ARIES CONSULTANTS, INC.

Address: 6635 WEST BADURA STREET, SUITE A-140
LAS VEGAS, NEVADA 89118

Attn: JERRY REYNOLDS

FIELD TEST CONDITIONS AND RESULTS (ASTM C 31)

Sample Date: 3/3/2015

Time: 10:30 AM

Sampled By: N. HAYNES

Design Strength Age: 28 Days

Design Strength: 4500 PSI

Material Supplier: S & S

Delivery Ticket No: 84334

Mix I.D. No: 4502CL

Water Added On Site, Gal: NA

Slump, in.: 5.0 (ASTM C 143)

Air Content, %: NA (ASTM C 231)

Concrete Temp, °F: 71

Ambient Temp, °F: 55

Plastic Unit Weight, PCF: NA

Placement Description: REPLACEMENT SPANDREL

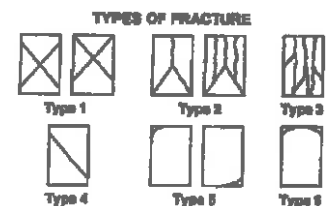
Sample Location: 5TH LEVEL WALL EAST SIDE

LABORATORY TEST RESULTS (ASTM C 39)

Specimen	Test Date	Age	Load	Diameter	Area	Strength	Percent of Design	Type of Fracture
15985	3/10/2015	7	29300	4.00	12.57	2330	52%	5
15985	3/17/2015	14	45700	4.00	12.57	3640	81%	2
15985	3/24/2015	21	56850	4.00	12.57	4520	100%	1
15985	3/31/2015	28						
15985	3/31/2015	28						

Remarks: PERMIT #: 15-6880

Copies to:



Reported by:

SMB
Steven M. Blaeholder
Laboratory Manager

SECTION C-R

Reinforced Steel in Concrete

Concrete (C)

**DAILY REPORT OF
SPECIAL INSPECTIONS**

ARIES CONSULTANTS INC.
6635 West Badura Street, Suite A-140
Las Vegas, Nevada 89118
Ph. (702) 202-2199 • Fax (702) 202-3384

INSPECTION DATE: 2 / 27 / 15
REPORT #: CR-1
PERMIT#: 15-6880

PROJECT NAME: Edgewater Parking Garage CLIENT/OWNER: _____
PROJECT LOCATION: 2000 S. Casino Dr. CONTRACTOR: Gillett
PROJECT NUMBER: _____ SUPERINTENDENT: Brad

PLAN DATE: 2/6/15 BD APPROVAL DATE: 2/24/15 REVISED: _____ PLANS PREPARED BY: Barker Drottar
TYPE OF INSPECTION: Reinforcing Steel
AREA INSPECTED: Replacement Spandrel Wall for 5th Level East side

SUMMARY OF INSPECTION:

☐ PROGRESS ☐ COMPLETE ☐ AREA SIGN OFF

Observed placement of Grade 60 ASTM A615
reinf. steel @ area noted above as;

Pre-Cast concrete spandrel with #5 horiz. @ 6" O.C. outermost
face and #4 verts @ 12" O.C. Each face and (3)
4 x 4 x 3/8 x 10" long w/ (2) 5/8" ϕ x 6" embed angles located at
centerline of exist. floor slab embed plates.

All reinf. steel was verified for proper grade, size, spacing
and clearances and was securely tied in place.

REF DRAWINGS: SI.O / (3)

TIME IN: _____ AM / PM
TIME OUT: _____ AM / PM

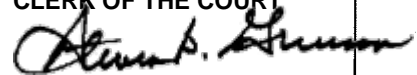
PAGE 1 OF 1

To the best of my knowledge, the inspection above ☒ COMPLIES ☐ DOES NOT COMPLY with the
☒ CCDDS ☐ CLVBD ☐ COHBD ☐ CNLVD ☐ CCSD approved plans. Not in compliance, ref NCR _____

WEATHER CONDITIONS

TEMP: 72°
CLOUD COND: Clear
WIND COND: Calm

INSPECTOR'S NAME: Neil Haynes
INSPECTOR'S SIGNATURE: Neil Haynes
INSPECTOR'S CERTIFICATION #: _____
NOTIFICATION OF REPORT: _____



ORD

Glen J. Lerner, Esq.
Nevada Bar No. 4314
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Las Vegas, Nevada 89147
Telephone: (702) 877-1500
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New York, NY 10017
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hunter@NapoliLaw.com
Attorneys for Plaintiff

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El Segundo, CA 90245
Telephone: (310) 331-8224
PPeche@NapoliLaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an individual;
Plaintiff,
vs.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

EDGEWATER GAMING, LLC, a Nevada
Limited Liability Company, doing business as
EDGEWATER HOTEL AND CASINO,
GILLETT CONSTRUCTION LLC, a Nevada
Limited Liability Company, ARIES
CONSULTANTS INC., a Nevada Corporation,
DOES 1 through 40, and ROE CORPORATIONS
1 through 40, inclusive,

**ORDER DENYING DEFENDANT
ARIES CONSULTANTS, INC.'S
MOTION TO DISMISS OR IN
THE ALTERNATIVE TO STRIKE
COMPLAINT AND
CROSSCLAIM PURSUANT TO
NRS 11.259**

Defendants.

AND ALL RELATED CLAIMS.

**Date of hearing: August 15, 2017
Time of hearing: 9:00am**

Defendant Aries Consultants, Inc.'s Motion to Dismiss or in the Alternative to Strike Complaint
and Crossclaim Pursuant to NRS 11.259 came on for hearing before this Court on August 15, 2017.

1 Plaintiff Marcus Reif was represented by his counsel, Randolph L. Westbrook III, Esq., of Glen Lerner
2 & Associates, and Hunter Jay Shkolnik, Esq. of Napoli Shkolnik, PLLC. Defendant Aries Consultants,
3 Inc. was represented by its counsel Wing Yan Wong, Esq. of Gordon & Rees, LLC. Defendant
4 Edgewater Gaming, LLC was represented by its counsel, Craig Murdy, Esq. of Lewis Brisbois
5 Bisgarrrd & Smith.

6 The Court, having considered Aries Consultants Inc.'s motion, Plaintiff's and Edgewater
7 Gaming, LLC's respective oppositions, the parties' oral argument, and good cause appearing,

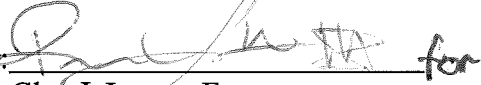
8 IT IS HEREBY ORDERED Aries Consultants Inc.'s Motion to Dismiss or in the Alternative to
9 Strike Complaint and Crossclaim Pursuant to NRS 11.259 is DENIED without prejudice to allow the
10 parties time to conduct discovery, pursuant to NRCP 56(f).

11 Dated this 31 day of August, 2017

12
13 
DISTRICT COURT JUDGE

14 Respectfully Submitted by:

15 GLEN LERNER INJURY ATTORNEYS

16 By:  for
17 Glen J. Lerner, Esq.
18 4795 S. Durango Dr.
19 Las Vegas, Nevada 89147
(702) 877-1500
Attorneys for Plaintiff

20 Approved as to form and content:

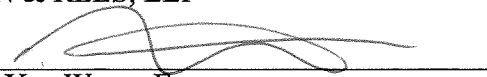
21 LEWIS BRISBOIS BISGAARD & SMITH

22 By: see attached
23 M. Craig Murdy, Esq.
24 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorney for Edgewater Gaming, LLC

PARKER, NELSON, & ASSOCIATES, CHTD.

By: see attached
Theodore Parker III, Esq.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128
Attorney for Defendant Gillett Construction

25 GORDON & REES, LLP

26 By: 
27 Wing Yan Wong, Esq.
28 300 S. Fourth St., Suite 1550
Las Vegas, Nevada 89101
Attorney for Defendant Aries Consultants

1 Plaintiff Marcus Reif was represented by his counsel, Randolph L. Westbrook III, Esq., of Glen Lerner
2 & Associates, and Hunter Jay Shkolnik, Esq. of Napoli Shkolnik, PLLC. Defendant Aries Consultants,
3 Inc. was represented by its counsel Wing Yan Wong, Esq. of Gordon & Rees, LLC. Defendant
4 Edgewater Gaming, LLC was represented by its counsel, Craig Murdy, Esq. of Lewis Brisbois
5 Bisgarrrd & Smith.

6 The Court, having considered Aries Consultants Inc.'s motion, Plaintiff's and Edgewater
7 Gaming, LLC's respective oppositions, the parties' oral argument, and good cause appearing,

8 IT IS HEREBY ORDERED Aries Consultants Inc.'s Motion to Dismiss or in the Alternative to
9 Strike Complaint and Crossclaim Pursuant to NRS 11.259 is DENIED without prejudice to allow the
10 parties time to conduct discovery, pursuant to NRCP 56(f).

11 Dated this ____ day of August, 2017

12
13 _____
DISTRICT COURT JUDGE

14 Respectfully Submitted by:

15 GLEN LERNER INJURY ATTORNEYS

16 By: /s/
17 Glen J. Lerner, Esq.
18 4795 S. Durango Dr.
19 Las Vegas, Nevada 89147
(702) 877-1500
Attorneys for Plaintiff

20 Approved as to form and content:

21 LEWIS BRISBOIS BISGAARD & SMITH

22 By: /s/
23 M. Craig Murdy, Esq.
24 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorney for Edgewater Gaming, LLC

25 GORDON & REES, LLP

26 By: /s/
27 Wing Yan Wong, Esq.
28 300 S. Fourth St., Suite 1550
Las Vegas, Nevada 89101
Attorney for Defendant Aries Consultants

PARKER, NELSON, & ASSOCIATES, CHTD.

By: /s/
Theodore Parker III, Esq.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128
Attorney for Defendant Gillett Construction

1 Plaintiff Marcus Reif was represented by his counsel, Randolph L. Westbrook III, Esq., of Glen Lerner
2 & Associates, and Hunter Jay Shkolnik, Esq. of Napoli Shkolnik, PLLC. Defendant Aries Consultants,
3 Inc. was represented by its counsel Wing Yan Wong, Esq. of Gordon & Rees, LLC. Defendant
4 Edgewater Gaming, LLC was represented by its counsel, Craig Murdy, Esq. of Lewis Brisbois
5 Bisgard & Smith.

6 The Court, having considered Aries Consultants Inc.'s motion, Plaintiff's and Edgewater
7 Gaming, LLC's respective oppositions, the parties' oral argument, and good cause appearing,

8 IT IS HEREBY ORDERED Aries Consultants Inc.'s Motion to Dismiss or in the Alternative to
9 Strike Complaint and Crossclaim Pursuant to NRS 11.259 is DENIED without prejudice to allow the
10 parties time to conduct discovery, pursuant to NRCP 56(f).

11 Dated this ____ day of August, 2017

12
13 _____
DISTRICT COURT JUDGE

14 Respectfully Submitted by:

15 GLEN LERNER INJURY ATTORNEYS

16 By: /s/
17 Glen J. Lerner, Esq.
18 4795 S. Durango Dr.
19 Las Vegas, Nevada 89147
(702) 877-1500
Attorneys for Plaintiff

20 Approved as to form and content:

21 LEWIS BRISBOIS BISGAARD & SMITH

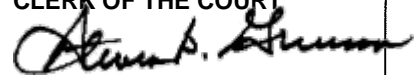
22 By: *M. Craig Murdy*
23 M. Craig Murdy, Esq.
24 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorney for Edgewater Gaming, LLC

PARKER, NELSON, & ASSOCIATES, CHTD.

By: /s/
Theodore Parker III, Esq.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128
Attorney for Defendant Gillett Construction

25 GORDON & REES, LLP

26 By: /s/
27 Wing Yan Wong, Esq.
300 S. Fourth St., Suite 1550
28 Las Vegas, Nevada 89101
Attorney for Defendant Aries Consultants



ORDR

Glen J. Lerner
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Hunter J. Shkolnik (Admitted Pro Hac Vice)
Joseph P. Napoli (Admitted Pro Hac Vice)
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Hunter@napolilaw.com
JNapoli@napolilaw.com
PPeche@napolilaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an individual;
Plaintiff,
vs.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

EDGEWATER GAMING, LLC, a Nevada
Limited Liability Company, doing business as
EDGEWATER HOTEL AND CASINO,
GILLETT CONSTRUCTION LLC, a Nevada
Limited Liability Company, ARIES
CONSULTANTS INC., a Nevada Corporation,
DOES 1 through 40, and ROE CORPORATIONS
1 through 40, inclusive,

**ORDER GRANTING
PLAINTIFF'S MOTION TO
AMEND COMPLAINT**

Date of hearing: November 28, 2017
Time of hearing: 9:00 a.m.

Defendants.

AND ALL RELATED CLAIMS.

Plaintiff's Motion to Amend Complaint came before this court on November 28, 2017; Plaintiff was represented by Ferdinand Phillip Peche, Esq., of NAPOLI SHKOLNIK, PLLC and Randolph L. Westbrook III, Esq., of GLEN LERNER INJURY ATTORNEYS; Defendant Edgewater Gaming, LLC was represented by M. Craig Murdy, Esq., of LEWIS, BRISBOIS, BISGAARD & SMITH, LLP; Defendant Aries Consultants, Inc., were represented by Brian K. Walters, Esq., of GORDON & REES, LLP; and Defendant Gillett Construction, LLC was

1 represented by Theodore Parker, Esq., of PARKER, NELSON & ASSOCIATES, CHTD.

2 The Court, having considered the Motion, Opposition, and oral argument of the parties, and
3 good cause appearing,

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Amend Complaint is granted, and
5 Plaintiff is granted leave to file his First Amended Complaint, a copy of which is attached to this
6 order as Exhibit 1.

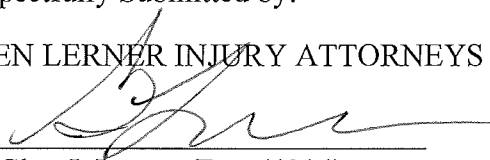
7 **IT IS FURTHER ORDERED** that this order shall have no impact on Aries Consultants'
8 objections to Plaintiff's initial complaint under NRS 11.258.

9 Dated this 20 day of December, 2017

10 
11 DISTRICT COURT JUDGE

12 Respectfully Submitted by:

13 GLEN LERNER INJURY ATTORNEYS

14 By: 
15 Glen J. Lerner, Esq. (4314)
16 Attorneys for Plaintiff

17 Approved as to form and content:

18 GORDON & REES, LLP

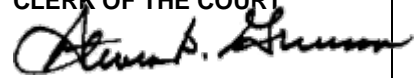
19 refused
20 Craig J. Mariam, Esq. (4716)
21 Brian K. Walters, Esq. (9711)
22 Wing Yan Wong, Esq. (13622)
23 Attorney for Defendant
24 Aries Consultants, Inc.

25 PARKER, NELSON, & ASSOCIATES, CHTD.

26 refused
27 Theodore Parker III, Esq. (4716)
28 Attorney for Defendant
Gillett Construction, LLC

29 LEWIS, BRISBOIS BISGAARD & SMITH, LLP

30 refused
31 M. Craig Murdy, Esq. (7108)
32 Attorney for Defendant Edgewater



ACOM

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Nevada Bar No. 4314
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4795 S. Durango Drive
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F. Phillip Peche (Admitted Pro Hac Vice)
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Hunter@napolilaw.com
JNapoli@napolilaw.com
PPeche@napolilaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

EDGEWATER GAMING, LLC, a Nevada Limited
Liability Company, doing business as
EDGEWATER HOTEL AND CASINO, GILLET
CONSTRUCTION, LLC, a Nevada Limited
Liability Company, ARIES CONSULTANTS. INC.,
a Nevada Corporation, BARKER DROTTAR
ASSOCIATES, LLC, a Nevada Limited Liability
Company, doing business as BARKER
STRUCTURAL, DOES 1 through 40, and ROE
CORPORATIONS 1 through 40, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-17-752432-C
Dept. No.: XXX

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff MARCUS A. REIF, an incompetent person by and through his
Conservator CINDY REIF, (hereinafter "Plaintiff"), and by and through his attorneys of record,
GLEN LERNER INJURY ATTORNEYS and NAPOLI SHKOLNIK PLLC, for his Complaint

1 against Defendants EDGEWATER GAMING LLC, a Nevada Limited Liability Company, doing
2 business as EDGEWATER HOTEL AND CASINO, (hereinafter “EDGEWATER”), GILLETT
3 CONSTRUCTION LLC, a Nevada Limited Liability Company, (hereinafter “GILLETT”), ARIES
4 CONSULTANTS INC., a Nevada Corporation, (hereinafter “ARIES”), BARKER DROTTAR
5 ASSOCIATES, LLC, a Nevada Limited Liability Company, doing business as BARKER
6 STRUCTURAL, (hereinafter “BARKER DROTTAR”) DOES 1 through 20, and ROE
7 CORPORATIONS 1 through 20, inclusive, (hereinafter referred to collectively as “Defendants”)
8 allege and aver as follows:

9 **JURISDICTION AND VENUE**

10 1. The incident complained of herein occurred in Clark County, Nevada, on March 16,
11 2016, granting jurisdiction and venue upon this Honorable Court (hereinafter the “subject incident”).

12 2. That all requirements set forth pursuant to applicable Nevada law have been adhered
13 to and are further substantiated by the affidavit of attorney with exhibits attached hereto.

14 3. At all times mentioned herein, MARCUS A. REIF was over eighteen years old and
15 resided in San Bernardino County, California.

16 4. At all times relevant, CINDY REIF is over eighteen years old, resided in San
17 Bernardino County, California, is the mother and CONSERVATOR of the PERSON and ESTATE of
18 MARCUS REIF, an incompetent person [Ex. 1], with foreign guardianship for MARCUS REIF
19 registered in Nevada [Ex. 2].

20 5. At all times mentioned herein, Defendant EDGEWATER was a Nevada Limited
21 Liability Company duly organized under the laws of the State of Nevada and authorized to conduct
22 business in the State of Nevada.

23 6. At all times mentioned herein, Defendant GILLETT was a Nevada Limited Liability
24 Company duly organized under the laws of the State of Nevada and authorized to conduct business in
25 the State of Nevada.

26 7. At all times mentioned herein, Defendant ARIES was a Nevada Corporation duly
27 organized under the laws of the State of Nevada and authorized to conduct business in the State of
28 Nevada.

1 8. At all times mentioned herein, Defendant BARKER DROTTAR was a Nevada
2 Limited Liability Company duly organized under the laws of the State of Nevada and authorized to
3 conduct business in the State of Nevada.

4 9. The true names and capacities, whether individual, corporate, associate or otherwise,
5 of Defendants DOES 1 through 20 and/or ROE CORPORATIONS 1 through 40, inclusive, are
6 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is
7 informed, believes and thereupon alleges that the Defendants designated herein as DOES 1 through
8 40 and/or ROE CORPORATIONS 1 through 20, inclusive, are any one of the following:

- 9 (a) Parties responsible in some manner for the events and happenings herein referred to
10 that caused injuries and damages proximately thereby to MARCUS A. REIF as herein
11 alleged;
- 12 (b) Parties that are the agents, servants, employees, and/or contractors of the Defendants,
13 each of them acting within the course and scope of their agency, employment or
14 contract;
- 15 (c) Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are
16 responsible for the premises referred to hereinafter;
- 17 (d) Parties that have assumed or retained the liabilities of any of the Defendants by virtue
18 of an agreement, sale, transfer or otherwise; and/or
- 19 (e) Parties responsible for the design, manufacture, and/or installation of the vehicle
20 barrier wall on the north side of the fifth floor of the parking garage at issue herein.

21 Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and
22 capacities of said Defendants, DOES 1 through 20 and ROE CORPORATIONS 1 through 20,
23 inclusive, when the same has been ascertained by the Plaintiff, together with appropriate charging
24 allegations, and to join said Defendants in the action.

25 **GENERAL ALLEGATIONS**

26 10. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
27 incorporates the same by reference as though fully set forth at length herein.

28 ...

1 11. On or about March 16, 2016, MARCUS A. REIF was the operator of a 1998 Ford
2 Expedition, bearing California license plate number 5PKT385 (hereinafter the “subject vehicle”).

3 12. At all times relevant, Defendants EDGEWATER, DOES 1-5, and ROE
4 CORPORATIONS 1-5 were the owners, controllers, managers, and maintainers of the premises and
5 subject parking structure, located at 2020 South Casino Drive, Laughlin, NV 89029 (hereinafter
6 “parking structure”), that is classified as nonresidential construction.

7 13. On or about 2002, a vehicle exited the side of the parking structure and fell several
8 floors (hereinafter the “first prior incident”).

9 14. On or about December 8, 2014, a vehicle owned and operated by Defendants
10 EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 impacted and dislodged a barrier wall
11 segment on the fifth level of the parking structure (hereinafter the “second prior incident”).

12 15. Shortly after the second prior incident, Defendants EDGEWATER, DOES 1-5, and
13 ROE CORPORATIONS 1-5 had installed a steel vehicle barrier approximately three feet in front of
14 the barrier wall segment that was dislodged as a result of the second prior incident (hereinafter the
15 “steel vehicle barrier”).

16 16. Subsequent to the second prior incident and before the subject incident, Defendants
17 EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 chose not to have installed any
18 additional steel vehicle barriers in front of any other barrier wall segments in the parking structure.

19 17. Subsequent to the second prior incident and before the subject incident, Defendants,
20 and each of them—in whole or in part—designed, engineered, repaired, inspected, and rebuilt each
21 individual barrier wall segment in the parking structure, including the specific barrier wall segment
22 that gave way and resulted in subject incident, in accordance with the applicable building codes of
23 Clark County, Nevada in place in 2015 (hereinafter the “parking structure remodel”).

24 18. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted
25 with Defendants BARKAR DROTTAR, DOES 6-10, AND ROE CORPORATIONS 6-10 to provide
26 structural engineering services in conjunction with the parking structural remodel.

27 19. Defendants BARKAR DROTTAR, DOES 6-10, AND ROE CORPORATIONS 6-10
28 provided structural engineering services in conjunction with the parking structural remodel.

20. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted with Defendants GILLETT, DOES 11-15 and ROE CORPORATIONS 11-15 to provide building and repair services in conjunction with the parking structure remodel.

21. Defendants GILLETT, DOES 11-15 and ROE CORPORATIONS 11-15 provided building and repair services in conjunction with the parking structure remodel.

22. Defendants EDGEWATER, DOES 1-5, and ROE CORPORATIONS 1-5 contracted with Defendants ARIES, DOES 16-20, and ROE CORPORATIONS 16-20 to provide special inspection and quality assurance services in conjunction with the parking structure remodel.

23. Defendants ARIES, DOES 16-20, and ROE CORPORATIONS 16-20 provided special inspection and quality assurance services in conjunction with the parking structure remodel.

24. On or about March 16, 2016, MARCUS A. REIF traveled in the subject vehicle northbound through the parking structure, and as a result of the Defendants' conduct, the subject vehicle exited the side of the fifth level of parking structure and fell several floors causing severe injuries to MARCUS A. REIF (the subject incident).

FIRST CLAIM FOR RELIEF
(Negligence against Defendants EDGEWATER, DOES 1-5, and ROE Corporations 1-5)

25. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

26. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

27. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

28. Defendant's negligence directly and proximately caused Plaintiff serious injury.

29. As a direct and proximate result of the negligence, Plaintiff has incurred damages in excess of fifteen thousand dollars (\$15,000.00).

SECOND CLAIM FOR RELIEF
(Negligence Against Defendants GILLETT, DOES 11-15, and ROE Corporations 11-15)

30. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

31. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

32. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

33. Defendant's negligence directly and proximately caused Plaintiff serious injury.

34. As a direct and proximate result of the negligence, Plaintiff has incurred damages in excess of fifteen thousand dollars (\$15,000.00).

THIRD CLAIM FOR RELIEF
(Negligence Against Defendants ARIES, DOES 16-20, and ROE Corporations 16-20)

35. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

36. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

37. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

38. Defendant's negligence directly and proximately caused Plaintiff serious injury.

39. As a direct and proximate result of the negligence, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00).

FOURTH CLAIM FOR RELIEF
**(Negligence against Defendants BARKER DROTTAR, DOES 6-10, and
ROE Corporations 6-10)**

40. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

41. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous condition.

42. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-obvious condition.

43. Defendant's negligence directly and proximately caused Plaintiff serious injury.

44. As a direct and proximate result of the negligence, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00).

FIFTH CLAIM FOR RELIEF
**(Negligence Per Se Against Defendants EDGEWATER, DOES 1-5, and
ROE Corporations 1-5)**

45. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

46. Defendant violated Nevada Revised Statutes, and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

47. As a result of Defendant's violations, Plaintiff sustained injuries.

48. Plaintiff was and is a member of the class persons that the statutes and/or county building codes were intended to protect.

49. Plaintiff sustained the type of injuries that the statutes and/or county building codes were intended to prevent.

50. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00).

SIXTH CLAIM FOR RELIEF
**(Negligence Per Se Against Defendants GILLET, DOES 11-15, and
ROE Corporations 11-15)**

51. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

52. Defendant violated Nevada Revised Statutes and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

53. As a result of Defendant's violations, Plaintiff sustained injuries.

54. Plaintiff was and is a member of the class persons that the statutes and/or county building codes were intended to protect.

55. Plaintiff sustained the type of injuries that the statutes and/or county building codes were intended to prevent.

56. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00.)

...

...

SEVENTH CLAIM FOR RELIEF
(Negligence Per Se Against Defendants ARIES, DOES 16-20, and ROE Corporations 16-20)

57. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

58. Defendant violated Nevada Revised Statutes and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

59. As a result of Defendant's violations, Plaintiff sustained injuries.

60. Plaintiff was and is a member of the class persons that the statutes and/or county building codes were intended to protect.

61. Plaintiff sustained the type of injuries that the statutes and/or county building codes were intended to prevent.

62. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00.)

EIGHTH CLAIM FOR RELIEF
(Negligence Per Se Against Defendants BARKER DROTTAR, DOES 6-10, and ROE Corporations 6-10)

63. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

64. Defendant violated Nevada Revised Statutes and/or county building codes governing the building, maintenance, and/or repair of the parking structure.

65. As a result of Defendant's violations, Plaintiff sustained injuries.

66. Plaintiff was and is a member of the class persons that the statutes, and/or county building codes were intended to protect.

67. Plaintiff sustained the type of injuries that the statutes and/or county building codes were intended to prevent.

68. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages in excess of fifteen thousand dollars (\$15,000.00.)

...

...

NINTH CLAIM FOR RELIEF
**(Premises Liability Against Defendants EDGEWATER, DOES 1-5, and
ROE Corporations 1-5)**

69. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

70. Defendant owed Plaintiff a duty to maintain the parking structure in a reasonably safe condition for use.

71. Defendant breached this duty by not ensuring that the parking structure was in a reasonably safe condition for use.

72. Defendant's breach directly and proximately caused Plaintiff to sustain serious injury.

73. As a direct and proximate result of Defendant's breach, Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

TENTH CLAIM FOR RELIEF
**(Negligent Performance of an Undertaking Against Defendants GILLETT, DOES 11-15, and
ROE Corporations 11-15)**

74. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

75. Defendant undertook, gratuitously or for consideration, to render services to Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's protection.

76. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the Plaintiff.

77. Defendant failed to exercise reasonable care in its undertaking.

78. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

79. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on Defendant's undertaking.

80. As a direct and proximate result of Defendant's failure to exercise reasonable care, Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

...

...

1 **ELEVENTH CLAIM FOR RELIEF**
2 **(Negligent Performance of an Undertaking Against Defendants ARIES, DOES 16-20, and ROE**
3 **Corporations 16-20)**

4 81. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
5 incorporates the same by reference as though fully set forth at length herein.

6 82. Defendant undertook, gratuitously or for consideration, to render services to
7 Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's
8 protection.

9 83. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
10 Plaintiff.

11 84. Defendant failed to exercise reasonable care in its undertaking.

12 85. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

13 86. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
14 Defendant's undertaking.

15 87. As a direct and proximate result of Defendant's failure to exercise reasonable care,
16 Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

17 **TWELFTH CLAIM FOR RELIEF**
18 **(Negligent Performance of an Undertaking Against Defendants BARKER DROTTAR, DOES**
19 **6-10, and ROE Corporations 6-10)**

20 88. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
21 incorporates the same by reference as though fully set forth at length herein.

22 89. Defendant undertook, gratuitously or for consideration, to render services to
23 Edgewater Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's
24 protection.

25 90. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
26 Plaintiff.

27 91. Defendant failed to exercise reasonable care in its undertaking.

28 92. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

 93. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
 Defendant's undertaking.

1 94. As a direct and proximate result of Defendant's failure to exercise reasonable care,
2 Plaintiff to incurred damages in excess of fifteen thousand dollars (\$15,000.00).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 5 (a) For general damages in an amount in excess of fifteen thousand dollars
6 (\$15,000.00) for each claim for relief;
- 7 (b) For special damages in an amount in excess of fifteen thousand dollars
8 (\$15,000.00) for each claim for relief;
- 9 (c) For pecuniary and economic losses according to proof;
- 10 (d) For past and future medical and related expenses according to proof;
- 11 (e) For damage to personal property according to proof;
- 12 (f) For Plaintiff's cost of suit herein, including attorneys' fees; and
- 13 (d) For such other and further relief as the Court may deem just and proper.

14
15 GLEN LERNER INJURY ATTORNEYS

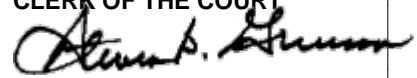
16
17 /s/ Glen J. Lerner
18 Glen J. Lerner, Esq.
19 Nevada Bar No. 4314
20 4795 South Durango Drive
21 Las Vegas, Nevada 89147
22 Attorneys for Plaintiff
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Attorneys for Plaintiff

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.: Department 22

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMES NOW, Plaintiff MARCUS A. REIF, an incompetent person by and through his
Conservator CINDY REIF, (hereinafter "Plaintiff"), and by and through his attorneys of record,
GLEN LERNER INJURY ATTORNEYS and NAPOLI SHKOLNIK PLLC, for his Complaint against

1 Defendants ARIES CONSULTANTS INC., a Nevada Corporation, (hereinafter “ARIES”), DOES 1
2 through 5, and ROE CORPORATIONS 1 through 5, inclusive, (hereinafter referred to collectively as
3 “Defendants”) allege and aver as follows:
4

5 **JURISDICTION AND VENUE**

6 1. The incident complained of herein occurred in Clark County, Nevada, on March 16,
7 2016, granting jurisdiction and venue upon this Honorable Court (hereinafter the “subject incident”).

8 2. That all requirements set forth pursuant to applicable Nevada law have been adhered to
9 and are further substantiated by the affidavit of attorney with exhibits attached hereto.

10 3. At all times mentioned herein, MARCUS A. REIF was over eighteen years old and
11 resided in San Bernardino County, California.

12 4. At all times relevant, CINDY REIF is over eighteen years old, resided in San
13 Bernardino County, California, is the mother and CONSERVATOR of the PERSON and ESTATE of
14 MARCUS REIF, an incompetent person, with foreign guardianship for MARCUS REIF registered in
15 Nevada.

16 5. At all times mentioned herein, Defendant ARIES was a Nevada Corporation duly
17 organized under the laws of the State of Nevada and authorized to conduct business in the State of
18 Nevada.

19 6. The true names and capacities, whether individual, corporate, associate or otherwise, of
20 Defendants DOES 1 through 5 and/or ROE CORPORATIONS 1 through 5, inclusive, are unknown to
21 Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed, believes
22 and thereupon alleges that the Defendants designated herein as DOES 1 through 5 and/or ROE
23 CORPORATIONS 1 through 5, inclusive, are any one of the following:

24 (a) Parties responsible in some manner for the events and happenings herein referred to
25 that caused injuries and damages proximately thereby to MARCUS A. REIF as herein
26 alleged;

27 (b) Parties that are the agents, servants, employees, and/or contractors of the Defendants,
28 each of them acting within the course and scope of their agency, employment or
contract;

- 1 (c) Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are
2 responsible for the premises referred to hereinafter;
3 (d) Parties that have assumed or retained the liabilities of any of the Defendants by virtue
4 of an agreement, sale, transfer or otherwise; and/or
5 (e) Parties responsible for the design, manufacture, and/or installation of the vehicle barrier
6 wall on the north side of the fifth floor of the parking garage at issue herein.
7

8 Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and
9 capacities of said Defendants, DOES 1 through 5 and ROE CORPORATIONS 1 through 5, inclusive,
10 when the same has been ascertained by the Plaintiff, together with appropriate charging allegations,
11 and to join said Defendants in the action.

12 **GENERAL ALLEGATIONS**

13 7. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
14 incorporates the same by reference as though fully set forth at length herein.

15 8. On or about March 16, 2016, MARCUS A. REIF was the operator of a 1998 Ford
16 Expedition, bearing California license plate number 5PKT385 (hereinafter the “subject vehicle”).

17 9. At all times relevant, Edgewater Gaming, LLC was the owner, controller, manager, and
18 maintainer of the premises and subject parking structure, located at 2020 South Casino Drive, Laughlin,
19 NV 89029 (hereinafter “parking structure”), that is classified as nonresidential construction.

20 10. On or about 2002, a vehicle exited the side of the parking structure and fell several floors
21 (hereinafter the “first prior incident”).

22 11. On or about December 8, 2014, a vehicle impacted and dislodged a barrier wall segment
23 on the fifth level of the parking structure (hereinafter the “second prior incident”).

24 12. Subsequent to the second prior incident and before the subject incident, Defendants
25 ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 inspected each individual barrier wall segment in
26 the parking structure, including the specific barrier wall segment that gave way and resulted in subject
27 incident, in accordance with the applicable building codes of Clark County, Nevada in place in 2015
28 (hereinafter the “parking structure remodel”).

1 13. Defendants ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 contracted with
2 Edgewater Gaming, LLC to provide special inspection and quality assurance services in conjunction
3 with the parking structure remodel.

4 14. Defendants ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 provided special
5 inspection and quality assurance services in conjunction with the parking structure remodel.

6 15. On or about March 23, 2015, ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 issued
7 a Final Quality Assurance Report certifying the inspection of the parking structure remodel.

8 16. On or about March 16, 2016, MARCUS A. REIF traveled in the subject vehicle
9 northbound through the parking structure, and as a result of the Defendants' conduct, the subject vehicle
10 exited the side of the fifth level of parking structure and fell several floors causing severe injuries to
11 MARCUS A. REIF (the subject incident).

12 17. On or about September 23, 2017, an independent inspection of the parking structure
13 revealed that installation of connection anchors to the barrier walls did not meet specified embedment
14 depth.

15
16 **FIRST CLAIM FOR RELIEF**
 (Negligence)

17 18. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
18 incorporates the same by reference as though fully set forth at length herein.

19 19. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
20 dangerous condition.

21 20. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-
22 obvious condition.

23 21. Defendant's negligence directly and proximately caused Plaintiff serious injury.

24 22. As a direct and proximate result of the negligence, Plaintiff incurred damages in excess
25 of ten thousand dollars (\$15,000.00).

26 **SECOND CLAIM FOR RELIEF**
27 **(Negligence Per Se)**

28 23. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
incorporates the same by reference as though fully set forth at length herein.

1 24. Defendant violated Nevada Revised Statutes and/or county building codes governing
2 the building, maintenance, and/or repair of the parking structure.

3 25. As a result of Defendant's violations, Plaintiff sustained injuries.

4 26. Plaintiff was and is a member of the class persons that the statutes and/or county
5 building codes were intended to protect.

6 27. Plaintiff sustained the type of injuries that the statutes and/or county building codes
7 were intended to prevent.

8 28. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
9 in excess of ten thousand dollars (\$15,000.00).
10

11 **THIRD CLAIM FOR RELIEF**
12 **(Negligent Performance of an Undertaking)**

13 29. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
14 incorporates the same by reference as though fully set forth at length herein.

15 30. Defendant undertook, gratuitously or for consideration, to render services to Edgewater
16 Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's protection.

17 31. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
18 Plaintiff.

19 32. Defendant failed to exercise reasonable care in its undertaking.

20 33. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

21 34. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
22 Defendant's undertaking.

23 35. As a direct and proximate result of Defendant's failure to exercise reasonable care,
24 Plaintiff incurred damages in excess of ten thousand dollars (\$15,000.00).

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

27 (a) For general damages in an amount in excess of ten thousand dollars (\$15,000.00) for
28 each claim for relief;

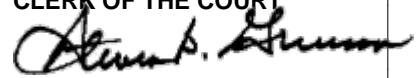
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- 3 (d) For past and future medical and related expenses according to proof;
- 4 (e) For damage to personal property according to proof;
- 5 (f) For Plaintiff's cost of suit herein, including attorneys' fees; and
- 6 (d) For such other and further relief as the Court may deem just and proper.
- 7

8 GLEN LERNER INJURY ATTORNEYS

9
10 /s/ Glen J. Lerner
11 Glen J. Lerner, Esq.
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13 4795 South Durango Drive
14 Las Vegas, Nevada 89147
15 Attorneys for Plaintiff
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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.: 22

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff MARCUS A. REIF, an incompetent person by and through his
Conservator CINDY REIF, (hereinafter "Plaintiff"), and by and through his attorneys of record,
GLEN LERNER INJURY ATTORNEYS and NAPOLI SHKOLNIK PLLC, for his Complaint against

1 Defendants ARIES CONSULTANTS INC., a Nevada Corporation, (hereinafter “ARIES”), DOES 1
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4 of an agreement, sale, transfer or otherwise; and/or
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8 Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and
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 (Negligence)

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4 26. Plaintiff was and is a member of the class persons that the statutes and/or county
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6 27. Plaintiff sustained the type of injuries that the statutes and/or county building codes
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11 **THIRD CLAIM FOR RELIEF**
12 **(Negligent Performance of an Undertaking)**

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21 34. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
22 Defendant's undertaking.

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25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

27 (a) For general damages in an amount in excess of ten thousand dollars (\$15,000.00) for
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(b) For special damages in an amount in excess of ten thousand dollars (\$15,000.00) for

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- 2 (c) For pecuniary and economic losses according to proof;
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- 4 (e) For damage to personal property according to proof;
- 5 (f) For Plaintiff's cost of suit herein, including attorneys' fees; and
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8 GLEN LERNER INJURY ATTORNEYS

9
10 /s/ Glen J. Lerner
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EXHIBIT 1

EXHIBIT 1



**NAPOLI
SHKOLNIK PLLC**
ATTORNEYS AT LAW

Mark Twain Plaza II
103 West Vandalia Street, Suite 125
(212) 397-1000
www.NapoliLaw.com

AFFIDAVIT OF F. PHILLIP PECHE, ESQUIRE

Before me, a notary, appear F. Phillip Peché, Esquire, being duly deposed and sworn does as follows:

1. I am an attorney in good standing and admitted to the courts in the State of California, State Bar Number 300198.
2. I am admitted Pro Hac Vice in the Eighth Judicial District Court, Clark County, Nevada for the action *REIF v. EDGEWATER GAMING, LCC et al.*, case number A-17-752432.
3. I, as a member of the law firm NAPOLI SHKOLNIK PLLC and along with Hunter J. Shkolnik and Joseph P. Napoli, personally represent Plaintiff MARCUS A. REIF as co-counsel with Glen Lerner (Nevada Bar Number 4314), GLEN LERNER INJURY ATTORNEYS, in the instant action.
4. I have reviewed the facts of this case, and pursuant to NRS 11.258 requirements for bringing an “Action involving nonresidential construction” against a “design professional,” shall file this affidavit concurrently with service of the First Amended Complaint, which names design professional BARKER DROTTAR ASSOCIATES, LLC (“Barker Drottai”) as a Defendant in this case. Defendant ARIES CONSULTANTS, INC. (“Aries”) has moved to dismiss the instant action against it on grounds that it is a design professional within the meaning of NRS 11.256 *et seq.* and that Plaintiff did not comply with the pre-filing requirements set forth in the same. Independent of the Court’s ruling on this pending legal issue, this Affidavit and attached expert report comport with the spirit and legislative intent of NRS 11.256 *et seq.* such that Aries pending motion to dismiss will become moot upon the filing and service of Plaintiff’s First Amended Complaint.
5. I have consulted with engineering expert, Jerry L. Miles, P.E., Bert L. Howe & Associates, Inc., regarding the facts of this case and the alleged tortious conduct arising therefrom.
6. I reasonably believe Jerry L. Miles, P.E. to be an expert knowledgeable in the relevant discipline—professional engineering—which is the subject of Mr. Miles’ report, and which is also readily apparent from the contents of his Curriculum Vitae attached hereto.
7. I have concluded on the basis of my review and my consultation with expert professional engineer Jerry L. Miles that the instant action has a reasonable basis in law and fact.


F. Phillip Peche, Esq.

Sworn to and subscribed this 28st day of September, 2017, in the City of Edwardsville and the State of Illinois.


Notary Public



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Jennifer Liakos (SBN 207487), F. Phillip Peche (SBN 300198) FIRM NAME: Napoli Shkolnik PLLC STREET ADDRESS: 525 South Douglas Street, Suite 260 CITY: El Segundo STATE: CA ZIP CODE: 90245 TELEPHONE NO.: (310) 331-8224 FAX NO.: (646) 843-7603 E-MAIL ADDRESS: jliakos@napolilaw.com; ppeche@napolilaw.com ATTORNEY FOR (name): Cindy G. Reif	FOR COURT USE ONLY FILED SUPERIOR COURT COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT MAY 15 2017 <i>Connie Cortes</i> DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415-0212 BRANCH NAME: Probate Division of the San Bernardino District	BY
CONSERVATORSHIP OF (name): MARCUS REIF	CONSERVATEE
ORDER APPOINTING <input type="checkbox"/> SUCCESSOR PROBATE CONSERVATOR OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE <input type="checkbox"/> Limited Conservatorship	CASE NUMBER: CONPS 170011
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.	

1. The petition for appointment of ☐ successor conservator came on for hearing as follows
 (check boxes c, d, e, and f or g to indicate personal presence):
- a. Judicial officer (name): *Cynthia Ludwigsen*
- b. Hearing date: *May 10, 2017* Time: *9:30am* ☒ Dept.: *S36* ☐ Room:
- c. ☒ Petitioner (name): *Cindy G. Reif*
- d. ☒ Attorney for petitioner (name): *F. Phillip Peche*
- e. ☒ Attorney for ☒ person cited ☐ the conservatee on petition to appoint successor conservator:
 (Name): *Sherril Kastilahn* (Telephone): *(760) 948-0927*
 (Address): *18956 Covina Street*
Hesperia, CA 92345
- f. ☒ Person cited was ☒ present. ☐ unable to attend. ☐ able but unwilling to attend. ☐ out of state.
- g. ☐ The conservatee on petition to appoint successor conservator was ☐ present. ☐ not present.

THE COURT FINDS

2. All notices required by law have been given.
3. Granting the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
4. (Name): *Marcus Reif*
- a. ☒ is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.
- b. ☒ is substantially unable to manage his or her financial resources or to resist fraud or undue influence.
- c. ☐ has voluntarily requested appointment of a conservator and good cause has been shown for the appointment.
5. The conservatee
- a. ☒ is an adult.
- b. ☐ will be an adult on the effective date of this order.
- c. ☐ is a married minor.
- d. ☐ is a minor whose marriage has been dissolved.
6. ☒ There is no form of medical treatment for which the conservatee has the capacity to give an informed consent.
☐ The conservatee is an adherent of a religion defined in Probate Code section 2355(b).
7. ☐ Granting the ☐ successor conservator powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and in the best interest of the conservatorship estate.
8. ☐ The conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

Do NOT use this form for a temporary conservatorship.

Page 1 of 3

CONSERVATORSHIP OF
(name):MARCUS REIF
CONSERVATEE

CASE NUMBER:

CONPS 1700114

9. ☐ The conservatee has dementia as defined in Probate Code section 2356.5, and the court finds all other facts required to make the orders specified in item 28.
10. ☒ Attorney (name): Sherri Kastilahn has been appointed by the court as legal counsel to represent the conservatee in these proceedings. The cost for representation is: \$
The conservatee has the ability to pay ☐ all ☐ none ☐ a portion of this sum (specify): \$
11. ☒ The conservatee need not attend the hearing.
12. ☒ The appointed court investigator is (name):
(Address and telephone):
13. ☐ (For limited conservatorship only) The limited conservatee is developmentally disabled as defined in Probate Code section 1420.
14. ☐ The ☐ successor conservator is a professional fiduciary as defined by Business and Professions Code section 6501(f).
15. ☐ The ☐ successor conservator holds a valid, unexpired, unsuspended license as a professional fiduciary issued by the Professional Fiduciaries Bureau of the California Department of Consumer Affairs under chapter 6 (commencing with section 6500) of division 3 of the Business and Professions Code.
License no.: Issuance or last renewal date: Expiration date:
16. (Either a, b, or c must be checked):
a. ☒ The ☐ successor conservator is not the spouse of the conservatee.
b. ☐ The ☐ successor conservator is the spouse of the conservatee and is not a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
c. ☐ The ☐ successor conservator is the spouse of the conservatee and is a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
It is in the best interest of the conservatee to appoint the spouse as ☐ successor conservator.
17. (Either a, b, or c must be checked):
a. ☒ The ☐ successor conservator is not the domestic partner or former domestic partner of the conservatee.
b. ☐ The ☐ successor conservator is the domestic partner of the conservatee and has neither terminated nor intends to terminate their domestic partnership.
c. ☐ The ☐ successor conservator is the domestic partner or former domestic partner of the conservatee and intends to terminate or has terminated their domestic partnership. It is in the best interest of the conservatee to appoint the domestic partner or former domestic partner as ☐ successor conservator.

THE COURT ORDERS

18. a. (Name): Cindy G. Reif (Telephone): (951) 999-7285
(Address): 31 S. Valley Mesa
Needles, CA 92363
is appointed ☐ successor ☒ conservator ☐ limited conservator of the PERSON of (name): Marcus Reif
and Letters of Conservatorship shall issue upon qualification. (Telephone): (951) 999-7285
- b. (Name): Cindy G. Reif
(Address): 31 S. Valley Mesa
Needles, CA 92363
is appointed ☐ successor ☒ conservator ☐ limited conservator of the ESTATE of (name): Marcus Reif
and Letters of Conservatorship shall issue upon qualification.
19. ☒ The conservatee need not attend the hearing.
20. a. ☒ Bond is not required.
b. ☐ Bond is fixed at: \$ to be furnished by an authorized surety company or as otherwise provided by law.
c. ☐ Deposits of: \$ are ordered to be placed in a blocked account at (specify institution and location):

and receipts shall be filed. No withdrawals shall be made without a court order.

☒ Additional orders in attachment 20c.

CONSERVATORSHIP OF
(name):

MARCUS REIF
CONSERVATEE

CASE NUMBER:

CONPS 1700114

20. (cont.)

d. ☒ The ☐ successor conservator is not authorized to take possession of money or any other property without a specific court order.

21. ☐ For legal services rendered, ☐ conservatee ☐ conservatee's estate shall pay the sum of: \$
to (name):

☐ forthwith ☐ as follows (specify terms, including any combination of payors):

☐ Continued in attachment 21.

22. ☐ The conservatee is disqualified from voting.

23. ☒ The conservatee lacks the capacity to give informed consent for medical treatment and the ☐ successor conservator of the person is granted the powers specified in Probate Code section 2355.

☐ The treatment shall be performed by an accredited practitioner of a religion as defined in Probate Code section 2355(b).

24. ☐ The ☐ successor conservator of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in attachment 24 ☐ subject to the conditions provided.

25. ☐ Orders relating to the capacity of the conservatee under Probate Code sections 1873 or 1901 as specified in attachment 25 are granted.

26. ☐ Orders relating to the powers and duties of the ☐ successor conservator of the person under Probate Code sections 2351–2358 as specified in attachment 26 are granted. (Do not include orders under Probate Code section 2356.5 relating to dementia.)

27. ☐ Orders relating to the conditions imposed under Probate Code section 2402 on the ☐ successor conservator of the estate as specified in attachment 27 are granted.

28. ☐ a. ☐ The ☐ successor conservator of the person is granted authority to place the conservatee in a care or nursing facility described in Probate Code section 2356.5(b).

b. ☐ The ☐ successor conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2356.5(c).

29. ☒ Other orders as specified in attachment 29 are granted.

30. ☐ The probate referee appointed is (name and address):

Patrick B. Wright-Probate Referee
306 W 2nd Street, Ste. 200
San Bernardino, CA 92401
(909) 885-5194

31. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the person under Probate Code section 2351.5 as specified in attachment 31 are granted.

32. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the estate under Probate Code section 1830(b) as specified in attachment 32 are granted.

33. ☐ (For limited conservatorship only) Orders limiting the civil and legal rights of the limited conservatee as specified in attachment 33 are granted.

34. ☒ This order is effective on the ☒ date signed ☐ date minor attains majority (specify):

35. Number of boxes checked in items 18–34: 9

36. Number of pages attached: 1

Date:

XXXXXX
JUDICIAL OFFICER

☒ SIGNATURE FOLLOWS LAST ATTACHMENT

Attachment 20 c and 29

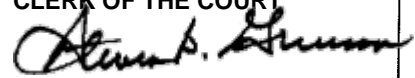
1. Petitioner is appointed as Conservator of the Estate for the purposes of representation of Marcus Reif in the personal injury litigation in Nevada.
2. Petitioner is appointed as the Guardian ad Litem for Marcus Reif, in the Estate of Dale Milton Reif.

May 15, 2017



IT IS SO ORDERED

Cynthia Ludvigsen
Judge Cynthia Ludvigsen



1 **NOE**
2 Glen J. Lerner, Esq.
3 Nevada Bar No. 4314
4 **GLEN LERNER INJURY ATTORNEYS**
5 4795 South Durango Drive
6 Las Vegas, Nevada 89147
7 Telephone: (702) 877-1500
8 Facsimile: (702) 877-0110
9 glerner@glenlerner.com
10 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 MARCUS A. REIF, an individual;
10 Plaintiff,
11 vs.

CASE NO.: A-17-752432-C
DEPT NO.: XXX

11 EDGEWATER GAMING, LLC, a Nevada
12 Limited Liability Company, doing business as
13 EDGEWATER HOTEL AND CASINO,
14 GILLETT CONSTRUCTION LLC, a Nevada
15 Limited Liability Company, ARIES
16 CONSULTANTS INC., a Nevada Corporation,
17 DOES 1 through 40, and ROE CORPORATIONS
18 1 through 40, inclusive,
19 Defendants.

NOTICE OF ENTRY OF ORDER
GRANTING APPLICATION TO
REGISTER FOREIGN
GUARDIANSHIP ORDER

16 AND ALL RELATED CLAIMS.

18 PLEASE TAKE NOTICE that an Order Granting Application to Register Foreign
19 Guardianship Order, was entered and filed on the 23rd day of October, a copy of the Order is
20 attached hereto.

21 GLEN LERNER INJURY ATTORNEYS

22 /s/ Glen J. Lerner
23 Glen J. Lerner, Esq.
24 Nevada Bar No. 4314
25 4795 South Durango Drive
26 Las Vegas, Nevada 89147
27 Attorneys for Plaintiff
28

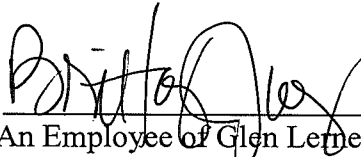
CERTIFICATE OF SERVICE BY MAIL

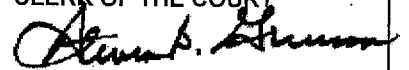
Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on 25 day of October, 2017, I served the foregoing **Notice of Entry of Order Granting Application to Register Foreign Guardianship Order** was served by electronic copy via the Court's electronic service system WIZNET, to the following counsel of record:

M. Craig Murdy, Esq.
Nausheen K. Peters, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorney for Defendant/Cross Claimant Edgewater Gaming, LLC

Theodore Parker III, Esq.
PARKER, NELSON, & ASSOCIATES, CHTD.
2460 Professional Court, Suite 200
Las Vegas, NV 89128
*Attorney for Defendant
Gillett Construction, LLC*

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.*


An Employee of Glen Lerner Injury Attorneys



ORDER

Glen J. Lerner, Esq.
Nevada Bar No. 4314
GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
Las Vegas, Nevada 89147
Telephone: (702) 877-1500
Facsimile: (702) 877-0110
glerner@glenlerner.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an individual;
Plaintiff,
vs.

CASE NO.: G-17-048624-A

CLARK DISTRICT FAMILY
DOMESTIC

EDGEWATER GAMING, LLC, a Nevada
Limited Liability Company, doing business as
EDGEWATER HOTEL AND CASINO,
GILLETT CONSTRUCTION LLC, a Nevada
Limited Liability Company, ARIES
CONSULTANTS INC., a Nevada Corporation,
DOES 1 through 40, and ROE CORPORATIONS
1 through 40, inclusive,
Defendants.

AND ALL RELATED CLAIMS.

ORDER GRANTING APPLICATION TO REGISTER FOREIGN GUARDIANSHIP ORDER

The Application to Register Foreign Guardianship Order filed by the law firm of GLEN LERNER INJURY ATTORNEYS, the Court, having reviewed the pleadings and papers on file herein and no Opposition or other pleading having been filed; and good cause appearing therefore,

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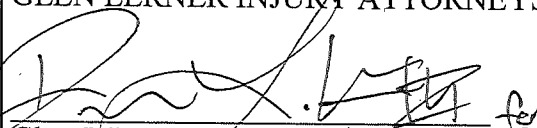
1 IT IS HEREBY ORDERED that the Application to Register Foreign Guardianship Order by the law
2 firm of Glen Lerner Injury Attorneys is hereby GRANTED.
3

4
5 DATED this 19th day of October 2017
6

7 
8 DISTRICT COURT JUDGE

9 Submitted by:

10 GLEN LERNER INJURY ATTORNEYS
11

12 
13 Glen J. Lerner, Esq. *ber #12893*
14 Nevada Bar No. 4314
15 4795 S. Durango Dr.
16 Las Vegas, Nevada 89147
17 Attorneys for Plaintiff
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Preliminary Report of Findings for Spandrel Vehicle Barrier Anchors on Parking Structure of the Edgewater Hotel Casino at 2020 Casino Drive in Laughlin, Nevada

Prepared by:

Jerry L. Miles, P.E.

Bert L. Howe & Associates, Inc.

5415 East La Palma Avenue

Anaheim Hills CA 92807

(714) 701-9180

Prepared for:

Napoli Shkolnik, PLLC

525 South Douglas Street, Suite 260

El Segundo, California 90245

(310) 331-8224

Scope of Evaluation

This evaluation report is being prepared for Napoli Shkolnik PLLC to evaluate the failure of anchors in a vehicle barrier spandrel on the fifth level of the parking structural at the Edgewater Hotel Casino in Laughlin. The installed anchors failed during a collision/crash with the spandrel when a vehicle driven by Marcus Reif struck the spandrel acting as a vehicle barrier at the end of a drive lane on the north side of the subject parking structure.

Documents Analyzed

As part of this evaluation, the following documents were reviewed and analyzed:

- *State of Nevada Traffic Crash Report (Crash Date: March 16, 2016)*, prepared by the Las Vegas Metro PD, Crash Number LVM160316001078; Investigator – Freeman (ID Number 4487), dated August 23, 2016, Reviewed by Robert Stauffer, dated September 1, 2016.
- *Collision Investigation Supplement*, prepared by the Las Vegas Metro PD, Event Number 160316-1078; Primary Investigator – Detective David Freeman.
- *Sections of the 2012 International Building Code (IBC)*, including Section 406.4.3 and Sections 1607.8.3 & 1607.9.
- *Section 4.5.3 of ASCE 7-10, Minimum Design Loads and Associated Criteria for Buildings and Other Structures*.
- *Parking Garage Repairs Edgewater Hotel Casino Plans*, prepared by Marnell Architecture and Barker Drott Associates, L.L.C., Dated February 5, 2015.
- *ICC-ES Evaluation Report ESR-2508*, Reissued 07/2017 – Evaluation Subject: Simpson Strong-Tie® SET-XP® Epoxy Adhesive Anchors for Cracked and Uncracked Concrete.
- *Letter from Barker Drott to Mr. David Howryla, AIA, Marnell Companies*, dated December 22, 2014, with Attached SK1 and SK2 (Spandrel Anchor Details), dated 12/18/2014.
- *Consulting Agreement between Aries Consultants and Edgewater Gaming, LLC*, dated February 6, 2015.
- *Final Quality Assurance Report, Edgewater Hotel Casino – Garage (CCDB Permit # 15-6880 BUI)*, prepared by Aries Consultants, dated March 23, 2015.
- *Ten (10) Scene Photos taken after Reif Crash Incident*, Unknown Origins.

Background Information

The Edgewater Hotel Casino in Laughlin, Nevada has a six (6) level parking structure/garage near the northwest corner of the site. The garage is a concrete reinforced structure with suspended concrete slabs at each level supported by rectangular and round concrete columns. The structure contains parking stalls, drive aisles, ramps, stairwells and an elevator.

Mr. Kris Barker in his above mention letter to Mr. Howryla with Marnell Companies discusses a prior incident where an unmanned pickup truck rolled from its parked position down a ramp, impacted a barrier spandrel on the east side of the 5th level of the Edgewater Hotel Casino's

parking garage. This impact broke the spandrel from its anchors and the spandrel fell to the ground below. Mr. Barker states that this incident led to concerns about the structural integrity of the spandrel connections to their supporting members. Mr. Barker concludes that the existing spandrel connections were inadequate and that the welded floor slab connection in his opinion had “practically no strength.” Attached to Mr. Barker’s letter, he provided SK1 and SK2 which are stamped and signed engineered, new proposed spandrel connection to adjacent support columns.

Repair plans were prepared by Marnell Architecture and Barker Drott Associates consisting of the repair of the missing (broken) spandrel on the 5th level of the garage, installation of a temporary barrier at the missing spandrel location on the 5th level, strengthening of the spandrel connections to the columns on level 2 through 6, installation of pipe bollard near the elevators on level 2 through 6 and cutting spandrel to spandrel connections on the east side of level 2. These plans were stamped by Kurt Guidice (State of Nevada PE No. 21312) and dated February 5, 2015.

These plans were submitted to Clark County and the county issued a building permit for the repairs. The county required special inspection for portions of the construction including the installation of the retrofit epoxy anchors at the spandrel to column connections. Edgewater Gaming contracted with Aries Consultants to provide special inspection services for the repairs to the parking garage, including the retrofit epoxy anchors at the new spandrel connection to the columns. Aries Consultants’ Final Quality Assurance Report indicates that the repairs to the Edgewater’s parking garage were performed in February and March of 2015.

Per the Las Vegas Metro PD’s Traffic Crash Report, Marcus Reif was driving a vehicle on the 5th level of the Edgewater parking garage on the morning of March 16, 2016. This report indicates that Mr. Reif’s vehicle impacted to low speed a spandrel/vehicle barrier at the end of a drive aisle on the north side of the garage. Mr. Reif then accidentally pushed on the gas pedal in lieu of the brake pedal. The barrier broke away from the installed retrofit epoxy anchors and fell to the ground in the alley adjacent to the north side of the garage. Mr. Reif’s vehicle was unable to stop and also fell to the alley below, landing on the roof of the vehicle.

Observations

The author of this report attended a site inspection at the Edgewater parking garage (including examination of the concrete spandrel that fell, the failed retrofit epoxy anchors still attached to the angle braces and various failed concrete pieces, the site of the failed spandrel connections at the repaired Reif crash site on the north side of the 5th level of the parking garage and the repaired spandrel section and connections at the prior failed spandrel barrier on the east side of the 5th level parking garage) on August 18, 2017. I photographed the inspected items and took pertinent measurements of those items and areas. Sample photographs presented in the Photo Index (pages 8 – 16) are representative examples of the photographs taken of pertinent information.

Spandrel Panel lying in Alley along North Side of Parking Garage: (see Photos 2 through 13 of the Photo Index) The fallen spandrel panel had been pushed from its original fallen position to

a position parallel to the north side of the parking garage along the chain link fence. The fallen spandrel was mostly intact but was cracked and broken in several areas. A cone shaped area of pulled out concrete was observed at the east end retrofitted epoxy anchor. Pieces of this cone shaped concrete were preserved and were provided for observation. Measurements showed the base of the cone (at the interior face of the panel) was estimated to be 12" by 10" and 4" by 3" at the bottom of the hole. Measurement of the depth of this hole varied from 3-1/2" to 3-5/8".

The upper east end of the panel was broken off. A triangular portion of the concrete at the upper portion of the spandrel was broken leaving the reinforcing bars exposed. The center of this triangular portion of missing concrete was located approximately seven (7) feet from the east end of the spandrel and was approximately four (4) wide at the top. The total length of the panel was measured to be approximately 29'-7" with a width of approximately 6" deep. The edges of the panel were beveled with a 3/4" chamfer. The interior spandrel panel face measured approximately 42" tall. The exterior face of the panel had a 3" thick slab cover leg that extends approximately 8" below the interior panel height. Much of the concrete slab cover leg was broken off, especially along the east end.

The concrete failed in an edge blowout type failure at west end retrofitted epoxy anchor. The location of the west end failed retrofit epoxy anchor had been despoiled when discarded concrete was placed near this location. It appears that some of this discarded concrete flowed over and covered the failed concrete at the failed west end anchor. This discarded concrete has hardened and no observations of the concrete immediately around the anchor location could be made. Five (5) embedded weld angles were observed along the bottom of the interior face of the panel. These weld angles were welded to weld angles installed in the 5th floor slab edge. Observed weld plate connections failures were weld failures or the floor slab weld angle pulled out of the slab.

The steel angle connections installed to connect the spandrel panel to the columns were also preserved and provided for observation. The retrofit anchors that broke away from the spandrel panel were still attached to the angles. Since the west end anchor location on the spandrel panel was despoiled, the anchor depth from the angle connection plate used on the west end of the spandrel was measured to be 4-3/4".

Repaired spandrel location at the Reif crash site on the 5th level of the garage: (see Photos 14 through 17 of the Photo Index) A replacement concrete spandrel panel had been installed at this location. A temporary barrier consisting of a HSS 12x6 was still in place and spanned between the east and west columns. The spandrel barrier had two steel angle connections with epoxy anchors to the columns at each end of the spandrel, one above and one below the originally installed angle connection. The original epoxy anchors installed in the columns had been cut off at the face of the columns. New slab weld angles had been installed using epoxy anchors into the slab at locations where the weld angles had broken free of the slab.

Evaluation

The repairs plans prepared by Marnell Architecture and Barker Drott Associates for the parking garage at the Edgewater Hotel Casino specified the use of retrofit epoxy anchors for connections of the concrete spandrel panels to the structural columns for all of the spandrel panel on levels 2 through 6 of the garage. In the General Structural Notes on Sheet S1.00, it states that the design and construction of the repairs were to comply with the 2012 International Building Code (IBC). The spandrel connection to column details on S1.00 specify that a 3/4" Simpson SET-XP epoxy anchor to be used at each spandrel-column connection and embedded 6" per ESR-2508. These details nor anywhere on these plans is the spandrel panel thickness called out. "Special Inspection" of the installation of the specified epoxy anchors was required per the plans. Edgewater contracted with Aries Consultants to provide the required special inspection of the installation of the anchors and other special inspection services.

In Section 406.4.3 of the 2012 IBC states that vehicle barriers shall be placed at the ends of drive lanes and at the end of parking spaces where the vertical distance to the ground or surface directly below is greater than 1 foot. It further states that vehicle barriers shall comply with the loading requirements of Section 1607.8.3 of the 2012 IBC. The spandrel panel barrier at the Reif crash site was on the fifth level of the garage and at the end of a drive lane. Therefore, the subject spandrel panels was required to be designed and constructed as a vehicle barrier and comply with the vehicle barrier loading requirements of IBC Section 1607.8.3. Section 1607.8.3 requires vehicle barrier to resist a concentrated load of 6,000 pounds in accordance with Section 4.5.3 of ASCE 7, which stated that the required 6,000 pound load is to be applied horizontally at a height of between 1 ft 6 in and 2 ft 3 in in height above the floor located to produce the maximum load effects.

The IBC requires building products and/or systems to be tested and evaluated to insure compliance with the code and to provide structural capacities through standard testing practices and scientific/engineering evaluation processes. An ESR (evaluation report) is then issued with the results and code compliant structural capacities of the products or systems. The ESR also contains installation guidelines and requirements in an effort to insure that the products/systems are installed in a manner that complies with the testing performed on the products.

Simpson Strong-Tie Company issued an approved ESR-2508 on their SET-XP Epoxy Adhesive Anchors for Cracked and Uncracked Concrete. Table 1 of ESR-2508 is titled "SET-XP Epoxy Adhesive Anchor Installation Information". Table 1 specifies that the permitted embedment depth range of a 3/4" diameter rod is a minimum of 3-1/2" and a maximum of 15". It also states that the minimum concrete thickness is required to be $h_{ef} + 5d_o$. Simpson defines h_{ef} as the embedment of the anchor and d_o indicates the nominal diameter of the specified anchor. This indicates that the repair plans specified 3/4" diameter spandrel to column connection anchors with a 6" embedment would have required a minimum concrete thickness of $[6" + (5 \times 0.75")]$ 9-3/4". The existing spandrel panels of the parking garage had an approximate thickness of 6". The specified 6" embedment depth would have required drilling through the entire panel thickness and won't have left any concrete below the anchors.

Aries Consulting's *Final Quality Assurance Report* contained a Non-Compliance Report, Report #: NCR-X-1, dated 2/27/15 that stated that the embedment depth of 6" minimum was changed to

4" minimum because the spandrels are only 6" thick. It further states that an engineering fix is required approving this change of anchor embedment depth. Aries's Report also contains a Report of Corrections, Report #: ROC-X-1, dated 3/20/15 and states this report clears NCR # X-1, dated 2/27/15. It further states the changed epoxy embedment depth (6" to 4") per Clark County Department of Building approved plan revision, dated March 9, 2015. Aries provided Post-Installed Adhesive Anchor Clearance Reports (dated 2/27/15, 3/3/15 & 3/4/15) with 4"x1" hole depth & diameter for the epoxy anchors. These reports state that the minimum anchor embedment depth was required to be 4" minimum. Examination of the failed spandrel panel and anchors from the Reif crash site indicated anchor embedment depths of less than the minimum 4" required. Aries was certifying the changed anchor depth prior to Clark County's approval of the revised embedment depth.

Clear copies of the above mentioned County approved, revised repair plans specifying the epoxy anchor depth as 4" was not available when this report was prepared. However, it appears that Marnell Architecture/Barker Drottars repair plans were modified and approved by the County for the change of anchor embedment. The specified change to 4" anchor embedment still violated Simpson's mandated minimum concrete thickness [$4" + (5 \times 0.75")$] of 7-3/4" with 6" minimum spandrel panels. Simpson provides free anchor design software to assist engineers and other anchor designers design appropriate and code compliant anchors. Simpson's software allows for a variety of anchor designs including their SET-XP epoxy anchors. Evaluation of the specified and installed anchors with Simpson's software indicates that the software will not calculate SET-XP anchor capacity without the mandated minimum concrete thickness, which neither the originally specified 6" anchor embedment nor the revised 4" anchor embedment provided with the 6" thick spandrel panels. The failure of Simpson's software to calculate the anchor capacity without the mandated concrete thickness is an indication of the importance of the minimum concrete thickness in the SET-XP epoxy manufacturer's installation requirements.

It would appear the Mr. Barker in his letter to Mr. Howryla with Marnell Companies was correct in his assertion that the slab to panel weld plate connections had little to no strength. Examination of the subject spandrel and anchors from the Reif crash site indicate that the anchors most likely failed as a result of a combination of inadequate concrete thickness and inadequate anchor capacity.

Conclusions

1. Marnell Architecture/Barker Drott and Kurt Guidice, P.E. negligently designed and specified inappropriate spandrel to column connection SET-XP epoxy anchor depth on their original Parking Garage Repair plans. They further failed in their duties as design professionals when their modified design of 4” SET-XP epoxy anchor embedment depth still violated the manufacturer’s required minimum concrete thickness when installed on a 6” thick spandrel panel.
2. Observed and measured embedment depths on the connection anchors installed on the spandrel panel involved in the Reif crash incident did not meet the modified repair plans specified 4” embedment depth. Since Aries Consulting provided code mandated special inspection of these anchors and certified the installation of these anchors, they failed in their duty to ensure that these anchors were installed with the minimum specified embedment depth.

The opinions and conclusions expressed in this preliminary report are based upon our visual inspection of the incident site and failed spandrel panel and connection anchors, evaluation of the documentation that we have received and our understanding of applicable engineering practices that are standard in the industry. We reserve the right to re-evaluate our opinions and conclusions if we are presented with further documentation or evidence that would be of such a nature that would warrant revising our opinions and conclusion.

Photo Index

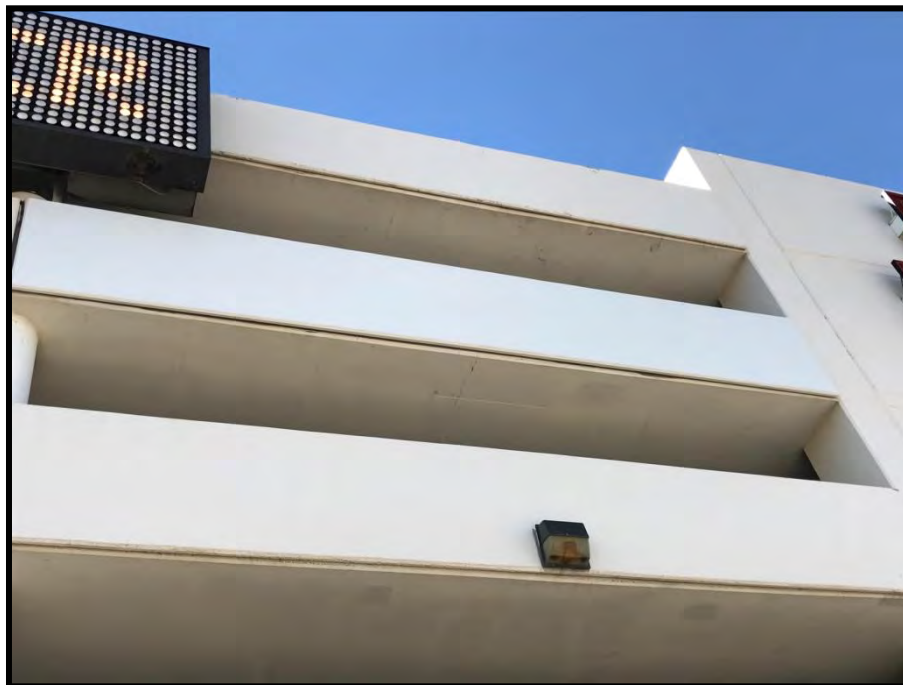


Photo 1: Replacement Spandrel Barrier on North Side of Garage



Photo 2: Eastern End of Spandrel Barrier in Alley on North side of Garage

Photo Index



Photo 3: View of Spandrel Barrier in Alley Looking West



Photo 4: West End of Spandrel Barrier – Despoiled Anchor Failure Location

Photo Index



Photo 5: East End Retrofit Anchor Failure Location



Photo 6: East End Retrofit Anchor Failure Location

Photo Index



Photo 7: View of East End Spandrel Concrete Failure Depth at Retrofit Epoxy Anchor



Photo 8: Approximate Depth Measurement of Concrete Failure

Photo Index



Photo 9: Measurement of Panel Thickness at West End of Spandrel



Photo 10: Approximate Total Length Measurement of Spandrel Panel

Photo Index



Photo 11: Retrofit Epoxy Anchor Embedment Depth at West End of Spandrel



Photo 12: Close-up of Measurement of Retrofit Epoxy Anchor Embedment

Photo Index



Photo 13: Preserved Failed Concrete at East End Anchor of Spandrel



Photo 14: Repaired West End of Spandrel Barrier at Reif Crash Site

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Photo 15: Cut-off Anchor in Rectangular Column at West End of Spandrel



Photo 16: Repaired Spandrel Connections Configuration at Round Column (East End)

Photo Index



Photo 17: Repaired Lower Angle Panel Support at East End Round Column



Jerry L. Miles, P.E.

Civil Engineer

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Brigham Young University, Provo, UT; BS Civil Engineering
(1984)



Professional Engineer's License
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Professional Engineer's License
(Civil #42593) in California
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Professional Engineer's License
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EXPERIENCE

Mr. Miles has a diverse engineering background in design, fieldwork, and forensic work on a variety of different projects, ranging from custom residential homes to large scale commercial projects. His more than 26 years of engineering experience includes geotechnical evaluations, structural design of wood-framed, masonry, and concrete tilt-up buildings, small and large subdivision engineering construction/improvements plans, hydrology/hydraulic reports and design, forensic investigation and expert witness testimony. Mr. Miles has qualified as an expert in numerous jurisdictions and Federal court. He has given deposition testimony more than twenty-five times and has successfully testified at arbitration and trial.

Mr. Miles has been a licensed civil engineer in California since 1987, and has served as the lead civil engineer on many projects in several states. His experience includes contract administration services as the owner's representative on a variety of projects including mastered planned communities, residential subdivisions, shopping centers and multi-family residential projects. He has also been involved in providing water quality management plans and storm water pollution prevention plans. Mr. Miles has served on the Town of Apple Valley's Building Department Dispute Resolution Board.

Miles's career as an engineer saw him as a lead design civil engineer on several high profile projects throughout the US including the site engineering construction/improvement plans for the Monte Carlo Hotel/Casino in Las Vegas, Nevada; Raysor Ranch Planned Community ($\pm 1,200$ -acre mixed use community) in Denton County, Texas; Trophy Club Shopping Center (Award winning shopping center for design) in Trophy Club, Texas; and Sultana High School (± 20 -acre high school



campus through the Department of the State Architect) in Hesperia, California.

His forensic experience ranges from determining cause and repair recommendation for foundation problems on single family residence to large commercial buildings. As a Construction Specialist for Bert L. Howe & Associates Inc., Mr. Miles conducts investigations and database occurrence analysis, analysis of construction documents, comparative analysis between as designed to as-built conditions, development of repair protocols, contracts and mediation/settlement negotiations. He has provided expert witness testimony for metal building failures, collapsed roofs, construction defects, handicap accessibility issues, and building storm damage.

Mr. Miles spent several months in the New Orleans and east Texas area providing building damage assessments and repair recommendations after the Katrina and Rita hurricanes. He is also an Adjunct Faculty instructor at Victor Valley Community College teaching a CADD based course in civil engineering and surveying design and drafting.

AREAS OF SPECIALIZATION

- ▣ Mediation Support
- ▣ Allocation of Subcontractor Liability
- ▣ Land Acquisition Disputes
- ▣ Land Entitlement Issues
- ▣ Land Development Delay/Stoppage
- ▣ Development Agreement Liability
- ▣ Architectural Design Defects
- ▣ Specification Non-Compliance
- ▣ On-Site Construction Defects
- ▣ Off-Site Construction Failures
- ▣ AIA Contract(s) Analysis
- ▣ Subcontract Agreement Analysis
- ▣ Scope of Work Determination
- ▣ Change Order Analysis
- ▣ Construction Scheduling
- ▣ RFI Analysis/Construction Delay/Acceleration Claims
- ▣ Construction Means and Methods
- ▣ Billing Procedure Standards
- ▣ SB 800 Repair Recommendations
- ▣ New Construction Estimating



AREAS OF SPECIALIZATION *(continued)*

- ▣ Repair Estimating
- ▣ Water Intrusion Analysis
- ▣ Concrete Defect Analysis
- ▣ Framing Defect Analysis
- ▣ Stucco Defect Analysis
- ▣ EIFS Systems Evaluation
- ▣ Roofing And Waterproofing Defects
- ▣ Project Management Performance
- ▣ Job Site Personal Injuries
- ▣ Insurance Policy Conformance
- ▣ Fire Reconstruction
- ▣ Industry Breach of Standards Care
- ▣ Site Inspections and Analysis
- ▣ Personal Injury Responsibility

PROJECT EXPERIENCE

Condominiums/Multifamily
Medical Facilities
Public Universities
Schools/Educational
Production Homes
Hotels/Hospitality
Institutional Projects
Custom Homes
Commercial Developments
Mid-Rise
Retail/Regional Malls



CONTINUING EDUCATION

Slope Stability Course, Cal-Poly, Pomona University - 1986
Hydrology Software Seminar - 1990
Municipal Planning and Land Use Seminar -1992
Softdesk Software Training - 1999
Foundation Engineering Seminar, University of Wisconsin, Madison,
Wisconsin – 2003

PROFESSIONAL AFFILIATIONS

ASCE Wind Engineering Seminar, Las Vegas, NV - 2006
American Society of Civil Engineers - Member
American Concrete Institute - Associate

REPRESENTATIVE TESTIMONY EXPERIENCE

Case Name: Karifi v Inland Engineering

Location: Carlsbad, CA

Type: Deposition

Party: Inland (surveyor)

Description: Property Line Dispute

Case Name: Stater Bros v Hi-Desert Concrete

Location: Phelan, CA

Type: Deposition

Party: Stater Bros

Description: Concrete Wall Defect

Case Name: Gonzalez v Residence Inn

Location: Addison , TX

Type: Deposition

Party: Gonzalez

Description: Construction Defect

Case Name: Williams v State Farm Ins.

Location: Mesquite, TX



REPRESENTATIVE TESTIMONY EXPERIENCE (continued)

Type: Deposition

Party: State Farm Ins.

Description: Foundation Damage

Case Name: Bryce v 21st Century Insurance

Location: Garland, TX

Type: Deposition

Party: 21st Century Ins.

Description: Wind/Storm Damage

Case Name: Muscate v Warner Utilities

Location: Richland Hills, TX

Type: Deposition

Party: Warner Utilities

Description: Wall/Slope Failure

Case Name: Garland Auto v CNA

Location: Garland, TX

Type: Deposition

Party: CAN

Description: Concrete Defect

Case Name: City of Texoma v Mercury Ins.

Location: Texoma, TX

Type: Deposition

Party: City of Texoma

Description: Wind/Hail Damage

Case Name: Sheraton Hotel v Century Ins.

Location: Irving, TX

Type: Deposition

Party: Century Ins.

Description: Construction Defect

Case Name: Hickory Hill Baptist Church v Arkansas Erectors

Location: Texarkana, TX

Type: Deposition

Party: Arkansas Erectors

Description: Metal Building Collapse

Case Name: Montgomery v Liberty Ins.



REPRESENTATIVE TESTIMONY EXPERIENCE (continued)

Location: Longview, TX

Type: Deposition

Party: Liberty Ins.

Description: Pool Damage

Case Name: McAllen Produce v CNA Ins.

Location: McAllen, TX

Type: Deposition

Party: CNA Ins.

Description: Metal Building Damage

Case Name: Gomez v Allstate Insurance

Location: Farmer's Branch, TX

Type: Deposition

Party: Allstate Ins.

Description: Foundation Damage

Case Name: Deli Management v Allweather Roofs

Location: Arlington, TX

Type: Deposition

Party: Allweather Roofs

Description: Roof Collapse

Case Name: Pebblebrook Baptist v Foremost

Location: El Paso, TX

Type: Deposition

Party: Foremost Ins.

Description: Fire Damage Repairs

Case Name: Ft. Worth Art Museum v Gallego Construction

Location: Ft Worth, TX

Type: Deposition

Party: Gallego Construction

Description: Construction Defect

Case Name: Johnson v Farmer's Insurance

Location: Bedford, TX

Type: Deposition

Party: Farmer's Insurance

Description: Foundation Damage



REPRESENTATIVE TESTIMONY EXPERIENCE (continued)

Case Name: Hadley v State Farm Ins.

Location: Carrollton, TX

Type: Deposition

Party: State Farm Ins.

Description: Foundation Damage

Case Name: Marian v All-State Inspections

Location: Victorville, CA

Type: Deposition

Party: Marian

Description: Foundation Damage

Case Name: Potter v Frontier Homes

Location: Hesperia, CA

Type: Deposition

Party: Potter

Description: Construction Defects

Case Name: Tulsa Schools v Sooner Const.

Location: Tulsa, OK

Type: Deposition

Party: Sooner Const.

Description: Metal Building Collapse

Case Name: Franks v Mercedes Homes

Location: Plano, TX

Type: Arbitration

Party: Franks (Owner)

Description: Construction Defect/Backfill

Case Name: McAllen Produce v CNA Ins.

Location: McAllen, TX

Type: Trial

Party: CNA Ins

Description: Metal Building Damage

Case Name: Hickory Hill Baptist Church v Arkansas Erectors

Location: Texarkana, TX

Type: Trial

Party: Arkansas Erectors



REPRESENTATIVE TESTIMONY EXPERIENCE *(continued)*

Description: Metal Building Collapse

Case Name: Palmer v Farmers

Location: Waco, TX

Type: Arbitration

Party: Farmers

Description: Foundation Damage

Case Name: Hadley v State Farm Insurance

Location: Carrollton, TX

Type: Arbitration

Party: State Farm Insurance

Description: Foundation Damage

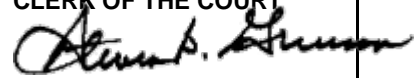
Case Name: Potter v Frontier Homes

Location: Hesperia, CA

Type: Arbitration

Party: Potter

Description: Construction Defects



MTD
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Attorneys for Aries Consultants, Inc.

**EIGHTH JUDICIAL 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, DOES1 through 5, and ROE)	
CORPORATIONS 1 through 5, inclusive,)	
)	
Defendants.)	

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

Defendant Aries Consultants, Inc., by and through its attorneys, Robert E. Schumacher,
Esq., and Brian K. Walters, Esq., of the law office of GORDON REES SCULLY
MANSUKHANI, LLP, hereby submits its Motion to Dismiss Plaintiff's Complaint in this
matter.

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1 This Motion is based on the pleadings and papers filed in this action, the attached
2 Memorandum of Points and Authorities, and any oral argument and evidence the Court may
3 allow at the hearing on the Motion.

4 DATED this 3rd day of April, 2018.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Brian K. Walters

Robert E. Schumacher, Esq.

Nevada Bar No. 7504

Brian K. Walters, Esq.

Nevada Bar No. 9711

300 South Fourth Street, Suite 1550

Las Vegas, Nevada 89101

Attorneys for Aries Consultants, Inc.

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD.

PLEASE TAKE NOTICE that Defendant Aries Consultants, Inc. will bring the foregoing **ARIES CONSULTANTS, INC.'S MOTION TO DISMISS** on for hearing in Department XXII of the above-entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the **10th** day of **May**, 2018, at the hour of **10:30 AM** ____m., or as soon thereafter as counsel can be heard.

DATED this 3rd day of April, 2018.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Brian K. Walters

Robert E. Schumacher, Esq.

Nevada Bar No. 7504

Brian K. Walters, Esq.

Nevada Bar No. 9711

300 South Fourth Street, Suite 1550

Las Vegas, Nevada 89101

Attorneys for Aries Consultants, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Before filing its Complaint in this case, Plaintiff already had an action pending against Defendant Aries Consultants Inc. (“Aries”) in Department 30 (A-17-752432-C) alleging the exact same causes of action based on the exact same set of facts.¹ Plaintiff failed to comply with NRS 11.258 in its initial pleading against Aries in that case. Plaintiff knows that the result of its failure to comply with NRS 11.258 will result in its Complaint in that case being deemed void *ab initio*, meaning that it cannot be cured by amendment.²

According to Plaintiff’s Complaint, the incident giving rise to Plaintiff’s negligence claims occurred on March 16, 2016. (Complaint, Para 1). In a desperate attempt to avoid his claims being time barred if Judge Wiese ultimately finds that Plaintiff did not comply with NRS 11.258, Plaintiff filed an identical Complaint in this Court three days before the expiration of the applicable statute of limitations. Plaintiff presumably intends to consolidate his Complaint in this case (A-18-770951-C) with his existing Complaint in case number A-17-752432-C.

However, Plaintiff’s filing of an identical Complaint in this Court is an improper attempt to amend or rehabilitate its Complaint in case number A-17-752432-C and must be dismissed. First, it violates the Single Cause of Action Rule, which prohibits a party from simultaneously maintaining identical causes of action in separate courts. Second, even if this Court finds that Plaintiff’s Complaint in this case does not violate the Single Cause of Action Rule, dismissal is still required based on Plaintiff’s failure to comply with NRS 11.258.

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¹ Complaint dated March 14, 2017 filed by Plaintiff Marcus Reif in case number A-17-752432-C. Aries requests that the Court take judicial notice of the documents filed in case number A-17-752432-C. *See Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (taking judicial notice of documents filed in a prior case because the prior case was closely related to the case currently before that court).

² *Otak Nev., LLC v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 593, 599, 260 P.3d 408, 412 (2011).

1 **II. RELEVANT FACTS**

2 **A. Plaintiff Fails to Comply with NRS 11.258 in its Initial Action Against Aries.**

3 Aries is a design professional as defined by NRS 11.2565. Therefore, any action against
4 Aries must comply with NRS 11.258. On March 14, 2017, Plaintiff filed a Complaint against
5 Aries and other defendants alleging causes of action for (1) negligence, (2) negligence *per se* and
6 (3) negligent performance of an undertaking. The Complaint did not include an attorney
7 affidavit or expert report as required by NRS 11.258. In the Complaint, Plaintiff alleged that he
8 was injured on March 16, 2016.

9 Plaintiff's initial action (A-17-752432-C) was assigned to the Hon. Jerry Wiese in
10 Department 30. On July 11, 2017, Aries filed a Motion to Dismiss Plaintiff's Complaint for
11 failure to comply with NRS 11.258.³ Plaintiff filed an Opposition to Aries' Motion in which it
12 argued that Aries was not a design professional and therefore NRS 11.258 did not apply.⁴ Aries
13 Motion was ultimately denied *without prejudice* pursuant to NRCP 56(f).⁵ Aries has made it
14 clear that it intends to renew its Motion and seek dismissal of Plaintiff's Complaint pursuant to
15 NRS 11.259.

16 **B. Plaintiff Attempts to Comply with NRS 11.258 Against Aries After the Fact.**

17 On November 7, 2017, Plaintiff filed a Motion to Amend Complaint "...primarily to
18 substitute Cindy Reif [Plaintiff's mother] as Conservator of the person and estate of
19 [Plaintiff]...and add Barker Drott Associates, LLC and related causes of action."⁶ Despite
20 Plaintiff's insistence that Aries was not a design professional (as expressed in its Opposition to
21 Aries Motion to Dismiss), Plaintiff's Motion to Amend included a proposed "First Amended
22 Complaint and Demand for Jury Trial" that included an attorney affidavit and expert report
23 implicating Aries in an apparent effort to satisfy the requirements of NRS 11.258.

24
25 ³ Aries Consultants, Inc.'s July 11, 2017 Motion to Dismiss or in the Alternative to Strike Complaint and Crossclaim
Pursuant to NRS 11.259 filed in case number A-17-752432-C.

26 ⁴ Plaintiff's July 28, 2017 Opposition to Aries Consultants, Inc.'s July 11, 2017 Motion to Dismiss or in the
Alternative to Strike Complaint and Crossclaim Pursuant to NRS 11.259 filed in case number A-17-752432-C.

27 ⁵ September 14, 2017 Order Denying Aries Consultants, Inc.'s Motion to Dismiss or in the Alternative to Strike
Complaint and Crossclaim Pursuant to NRS 11.259 filed in case number A-17-752432-C.

28 ⁶ Plaintiff's November 7, 2017 Motion to Amend Complaint on Order Shortening Time filed in case number A-17-
752432-C.

1 Aries filed a limited Opposition to Plaintiff's Motion to Amend in which it requested that
2 its arguments regarding Plaintiff's non-compliance with NRS 11.258 be reserved.⁷ In the
3 Court's Order granting Plaintiff's Motion to Amend, Aries' arguments regarding Plaintiff's non-
4 compliance with NRS 11.258 were specifically reserved.⁸

5 **C. Plaintiff Initiates a Separate Lawsuit Against Aries in Another Improper**
6 **Attempt to Comply with NRS 11.258 After the Fact.**

7 On March 13, 2018, three days before the statute of limitations⁹ was set to expire on its
8 negligence claims against Aries, Plaintiff filed a second, separate complaint entitled "Amended
9 Complaint and Demand for Jury Trial" in this Court. The Complaint filed by Plaintiff in this
10 Court includes the same attorney affidavit¹⁰ and expert report attached to its Amended Complaint
11 in case number A-17-752432-C. It also contains the exact same allegations and causes of action
12 against Aries as its Amended Complaint in Department 30. Plaintiff presumably intends to
13 consolidate its Complaint in this case with its deficient Complaint in case number A-17-752432-
14 C.

15 As demonstrated herein, Plaintiff's Complaint in this Court is procedurally improper and
16 must be dismissed.

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25 ⁷ Aries Consultants, Inc.'s November 17, 2017 Limited Opposition to Plaintiff's Motion to Amend Complaint on
Order Shortening Time filed in case number A-17-752432-C.

26 ⁸ December 28, 2017 Order Granting Plaintiff's Motion to Amend Complaint filed in case number A-17-752432-C.

27 ⁹ Actions seeking damages for personal injuries must be brought within two years from the date upon which the
cause of action arises. *Milton v. Nev. Dep't of Prisons*, 119 Nev. 163, 164 n.1, 68 P.3d 895, 895 (2003) citing NRS
11.190(4)(e).

28 ¹⁰ As discussed herein, the Affidavit submitted by Plaintiff in this case was neither executed or prepared by a
Nevada-licensed attorney.

1 **III. ARGUMENT**

2 **A. Plaintiff's Complaint in This Court Should be Dismissed for Violation of the**
3 **"Single Cause of Action Rule."**

4 This Court must dismiss Plaintiff's Complaint in this matter because it violates the Single
5 Cause of Action Rule. When identical causes of action are pending, involving the same parties
6 and arising from the same incident, this court has determined that a trial court may properly
7 dismiss the second action. *Rocovits v. Ilin Rocovits*, 2014 Nev. Dist. LEXIS 263, *3-4 citing
8 *Fitzharris v. Phillips*, 74 Nev. 371, 376-77, 333 P.2d 721, 724 (1958), *abrogated on other*
9 *grounds by Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). It would be "contrary to
10 fundamental judicial procedure to permit two actions to remain pending between the same
11 parties upon the identical cause." *Fernandez v. Infusaid Corp.*, 110 Nev. 187, 193, 871 P.2d 292,
12 295 (1994) *citing Fitzharris v. Phillips*, 74 Nev. 371, 333 P.2d 721 (1958). The great weight of
13 authority supports the Single Cause of Action Rule when the plaintiff in each case is the same
14 person. *Smith v. Hutchins*, 93 Nev. 431, 433, 566 P.2d 1136, 1137 (1977).

15 As a general proposition, a single cause of action may not be split and separate actions
16 maintained. *Reno Club v. Harrah Et Al.*, 70 Nev. 125, 129 260 P.2d 304, 306 (1953). The
17 wrongful act of the defendant creates the plaintiff's cause of action. *Smith*, 93 Nev. at 432, 566
18 P.2d at 1137. Policy demands that all forms of injury or damage sustained by the plaintiff as a
19 consequence of the defendant's wrongful act be recovered in one action rather than in multiple
20 actions. *Id.*

21 Plaintiff's Complaint in case number A-17-752432-C alleges the exact same causes of
22 action based on the exact same set of facts as those alleged by the Plaintiff in its Complaint filed
23 in this case. Therefore, dismissal of Plaintiff's Complaint *in this case* is mandated by the Single
24 Cause of Action Rule.

25 ///

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B. Plaintiff's Failure to File an NRS 11.258(1) Compliant Affidavit Mandates Dismissal Under NRS 11.259.

In the event this Court finds that Plaintiff's Complaint is not barred by the Single Cause of Action Rule, dismissal is nevertheless required because Plaintiff failed to comply with NRS 11.258. Specifically, NRS 11.258 requires that "...*the attorney for the complainant* shall file an affidavit with the court..." (Emphasis added). The Affidavit submitted with the Complaint was not filed by the "attorney for the complainant" in this case.

The affidavit submitted in support of the Complaint in this Court was executed by California attorney Philip Peche. According to the affidavit, Mr. Peche has been admitted *pro hac vice* in case number A-17-752432-C. (Complaint, Ex. 1). However, Mr. Peche has not been admitted *pro hac vice* in this case. Since Mr. Peche is not a member of the State Bar of Nevada and because he has not been admitted *pro hac vice* in this case,¹¹ Mr. Peche cannot be "the attorney for the complainant" in this case as required by NRS 11.258.

Plaintiff's submission of an affidavit signed by a non-licensed Nevada attorney in support of his Complaint is also problematic under NRCP 11. In *Naimo v. Fleming*, 95 Nev. 13, 588 P.2d 1025, (1979), the Nevada Supreme Court affirmed the dismissal of a plaintiff's complaint based on the fact that it was not signed by an active member of the State Bar of Nevada. *Id.* at 15, 1027. The Supreme Court reasoned that dismissal was proper based on NRCP 11(1), which provides, in pertinent part: "Every *pleading, ... and other paper shall be signed by at least one attorney of record* in the attorney's individual name..." *Id.* (Emphasis added).

A copy of any written instrument which is an exhibit to a pleading is a part thereof for *all purposes*. NRCP 10(c) (Emphasis added). Therefore, pursuant to Rule 10 the attorney affidavit submitted by Plaintiff is a pleading. Pursuant to Rule 11, "the pleading and other paper" must be signed by "the attorney of record."

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¹¹ Nevada Supreme Court Rule ("SCR") 42(5) provides: "An applicant *shall not* appear in a proceeding subject to this rule until the court, arbitrator, mediator, or administrative or governmental agency where the action is pending enters an order granting the motion to associate." SCR 42(5) (Emphasis added).

1 Mr. Peche is not a member of the State Bar of Nevada and has not been admitted *pro hac*
2 *vice* in this case. Therefore, Mr. Peche cannot be considered Plaintiff's attorney of record under
3 Rule 11 nor "attorney for the complainant" as contemplated by NRS 11.258. Therefore, the
4 Affidavit submitted by Plaintiff in support of his Complaint in this matter does not comply with
5 Rule 11 or NRS 11.258.

6 Pursuant to NRS 11.259(1)(a) "The court ***shall*** dismiss an action involving nonresidential
7 construction if the attorney for the complainant fails to...File an affidavit required pursuant to
8 NRS 11.258. NRS 11.259 (Emphasis added); *Otak Nevada, LLC v. Eighth Jud. Dist. Ct.*, 127
9 Nev. 593, 599, 260 P.3d 408, 409 (2011) ("This Court '***shall***' dismiss an action for failure to
10 comply with NRS 11.258"). The use of the word "shall" imposes a duty to act. *Id.* Since the
11 attorney affidavit submitted with Plaintiff's Complaint was neither prepared nor executed by the
12 "attorney for the complainant" in this case, dismissal is mandated under NRS 11.259.

13 **IV. CONCLUSION**

14 Based on the foregoing, Aries respectfully requests an Order from this Court dismissing
15 Plaintiff's Complaint in this case with prejudice.

16 DATED this 3rd day of April, 2018.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Brian K. Wallers

Robert E. Schumacher, Esq.

Nevada Bar No. 7504

Brian K. Walters, Esq.

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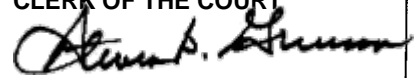
CERTIFICATE OF SERVICE

I HEREBY BY CERTIFY that on this 3rd day of April 2018, I did cause a true and correct copy of **DEFENDANT ARIES CONSULTANTS, INC.’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT** to be served via the Court’s electronic filing/service system upon all parties on the E-Service Master List:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

1 Plaintiff Marcus Reif, an incompetent person by and through his Conservator Cindy Reif,
2 (hereinafter "Plaintiff"), and by and through his attorneys of record, Glen Lerner Injury Attorneys
3 and Napoli Shkolnik, PLLC, hereby submits his Opposition to Defendant Aries Consultants, Inc.'s
4 (hereinafter "Defendant") Motion to Dismiss Plaintiff's Complaint (hereinafter "Defendant's
5 Motion").

6 This Opposition is based on the attached Memorandum of Points and Authorities, all
7 pleadings and papers on file with the Court, and any oral argument and evidence the Court may
8 allow at the hearing on Defendant's Motion.

9
10 DATED this 20th day of April, 2018.

11
12 Respectfully Submitted,

13 GLEN LERNER INJURY ATTORNEYS

14 NAPOLI SHKOLNIK, PLLC

15
16 By: /s/ Glen J. Lerner

17 Glen J. Lerner, Esq.
18 Nevada Bar No. 4314
4795 South Durango Drive
Las Vegas, Nevada 89147

19 *Attorneys for Plaintiff*
20
21
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23
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25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Plaintiff respectfully submits this Memorandum of Points and Authorities in opposition to
5 Defendant Aries Consultants, Inc.'s *Motion to Dismiss Plaintiff's Complaint*.

6 Defendant moves to dismiss Plaintiff's Complaint (hereinafter "subject complaint") pursuant
7 to the "Single Action" Rule, as well as Nevada Revised Statutes 11.256 *et seq.* In its' motion,
8 Defendant argues that the subject complaint violates the single action rule since there is a similar
9 litigation currently pending before Department 30 of this Court. In addition, Defendant further
10 alleges that the subject complaint is void *ab initio* under NRS 11.259 for failing to have a licensed
11 member of the Nevada State Bar sign the Attorney's Affidavit. Contrary to Defendant's claims, and
12 as set forth below, neither the single action rule nor NRS 11.259 apply to this instant action.
13 Therefore, Defendant's Motion should be denied.
14

15 **II. STATEMENT OF RELEVANT FACTS**

16 The comprehensive procedural history of this litigation predates the present action before
17 this Court. On March 14, 2017, Plaintiff filed suit in Department 30 of the District Court of Clark
18 County Nevada alleging tort causes of action against defendants Edgewater Gaming, LLC, Gillett
19 Construction, LLC, Aries Consultants, Inc., DOES 1 through 40, and ROE Corporations 1 through
20 40.¹ Approximately four months later, Defendant filed a *Motion to Dismiss* pursuant to NRS 11.259
21 for failure to include an expert report and attorney's affidavit with the filed complaint.² Plaintiff
22 opposed the motion, arguing against Defendant's status as a design professional.³ The Court heard
23 the arguments and subsequently denied Defendant's motion, finding genuine issues of material fact
24
25

26
27 ¹ Plaintiff's March 14, 2017 Complaint and Demand for Jury Trial, case number A-17-752432-C, ¶¶ 18-78.

28 ² Aries Consultants, Inc.'s Motion to Dismiss or in the Alternative to Strike Complaint and Crossclaim Pursuant to NRS 11.259, filed on July 11, 2017 in case number A-17-752432-C.

³ Plaintiff's Opposition to Defendant Aries Consultants, Inc.'s Motion to Dismiss or in the Alternative to Strike Complaint and Crossclaim Pursuant to NRS 11.259, filed on July 28, 2017 in case number A-17-752432-C.

1 remaining as to the whether Defendant was in fact a design professional under NRS 11.256, et seq.⁴
2 The parties were thus granted time to conduct discovery, pursuant to NRCP 56(f).⁵ While
3 conducting initial discovery, Plaintiff learned that Defendant provided special inspection and quality
4 assurance services for the nonresidential construction performed to Defendant Edgewater Gaming,
5 LLC's parking structure in 2015. Plaintiff subsequently consulted with an engineering expert to
6 evaluate whether the allegations set forth in the initial complaint had a reasonable basis in law and
7 fact.⁶ Based upon the findings in the Expert Report, Plaintiff filed a motion to amend the complaint
8 on November 7, 2017.⁷ After reviewing the proposed First Amended Complaint, Attorney's
9 Affidavit and Expert Report, the Court granted Plaintiff's motion on November 28, 2017.

11 On December 28, 2017, an Order Granting Plaintiff's Motion to Amend Complaint was
12 filed, which included as exhibits the First Amended Complaint, Attorney's Affidavit and Expert
13 Report.⁸ Plaintiff filed the First Amended Complaint on December 29, 2017, to which Defendant
14 filed an Answer on January 1, 2018.⁹ In addition, Plaintiff filed a separate complaint against
15 Defendant on March 13, 2018, bearing case number A-18-770951-C. Defendant was served a copy
16 of the subject complaint on March 14, 2018, and now brings this instant motion to dismiss.

18 **III. LEGAL STANDARD**

19 Pursuant to NRCP 12(b)(5), "[a] complaint [shall] not be dismissed for failure to state a
20 claim *unless* it appears beyond a doubt that the plaintiff could prove no set of facts which, [if true],
21

22 ⁴ See Minutes from the August 15, 2017 Hearing on All Pending Motions, in case number A-17-752432-C.

23 ⁵ Order Denying Defendant Aries Consultants, Inc.'s Motion to Dismiss or in the Alternative to Strike Complaint and
Crossclaim Pursuant to NRS 11.259, filed on September 14, 2017 in case number A-17-752432-C.

24 ⁶ September 28, 2017 Affidavit of F. Phillip Peche, Esquire (hereinafter "Attorney's Affidavit"); Preliminary Report of
Findings for Spandrel Vehicle Barrier Anchors on Parking Structure of the Edgewater Hotel Casino at 2020 Casino
25 Drive in Laughlin, Nevada (hereinafter "Expert Report"). Both documents were attached as exhibits to the subject
complaint.

26 ⁷ Plaintiff's Motion to Amend Complaint on Order Shortening Time, filed on November 7, 2017 in case number A-17-
752432-C. Both the Attorney's Affidavit, prepared and signed by F. Phillip Peche, Esq., and the Expert Report,
27 prepared by Jerry L. Miles, P.E. of Bert L. Howe & Associates, Inc., were included as exhibits to Plaintiff's Motion to
Amend Complaint on Order Shortening Time.

28 ⁸ Order Granting Plaintiff's Motion to Amend Complaint, filed on December 28, 2017 in case number A-17-752432-C.

⁹ Plaintiff's First Amended Complaint and Demand for Jury Trial, filed on December 28, 2017 in case number A-17-
752432-C.

1 would entitle him to relief.” *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 (1993)
2 (emphasis added); *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 1217
3 (2000). When deciding a motion to dismiss, the Court “must construe the pleading liberally and
4 draw every fair intendment in favor of the [non-moving party].” *Vacation Village, Inc. v. Hitachi*
5 *America, Ltd.*, 110 Nev. 481,484 (1994); *see Simpson v. Mars Inc.*, 929 P.2d 966, 967 (Nev. 1997)
6 (quoting *Squires v. Sierra Nev. Educational Found.*, 823 P.2d 256, 257 (Nev. 1991); *see also*
7 *Capital Mortgage Holding v. Hahn*, 705 P.2d 126, 126 (1985) (“Allegations in the complaint must
8 be accepted as true”).

10 IV. ARGUMENT

11 A. THE SINGLE CAUSE OF ACTION RULE DOES NOT APPLY TO PLAINTIFF’S 12 FILED COMPLAINT AND IS THEREFORE INSUFFICIENT GROUNDS FOR 13 DISMISSAL

14 Defendant’s haphazard reliance on the “single action” rule is misplaced in this present
15 circumstance. Established through case law, the single action rule bars attempts to maintain
16 separate actions for different elements of damage. *See Reno Club v. Harrah*, 70 Nev. 125, 129
17 (1953) (“[A] single cause of action or entire claim or demand cannot be split up or divided and
18 separate suits maintained for the various parts thereof”); *Smith v. Hutchins*, 93 Nev. 431, 432-33
19 (1977). However, despite Defendant’s argument to the contrary, Plaintiff’s filing of the subject
20 complaint, bearing case number A-18-770951-C, does not trigger this limited rule. *See Laughon v.*
21 *Silver State Shopping Ctr.*, 109 Nev. 820 (1993) (per curium) (holding that the single action rule did
22 not apply where appellants alleged identical causes of action in two separate suits brought against
23 the same defendant).

24 1. The Single Action Rule Is Not Triggered Since Plaintiff Alleges The Same Causes of 25 Action In Both Complaints At Issue.

26 There is no dispute that Plaintiff alleges the same damages against Defendant in the separate
27 complaints now at issue. In the filed First Amended Complaint, bearing case number A-17-752432-
28 C, Plaintiff asserts claims of negligence, negligence per se, and negligent performance of an
undertaking against several defendants, including Aries Consultants, Inc. Likewise, in the subject

1 complaint recently filed, bearing case number A-18-770951-C, Plaintiff alleges the exact same
2 causes of action solely against Defendant as a design professional.

3 The facts presented here are comparable to those in *Laughon*, a decision noticeably absent
4 from Defendant's Motion. In *Laughon*, appellants initially filed a complaint against two defendants
5 for personal injuries sustained as a result of a slip and fall on the premises of a shopping center.¹⁰
6 *Id.* at 821. Approximately one year later, appellants filed a second complaint against the same
7 defendants, as well as additional entities. *Id.* As indicated by the court, the body of the second
8 complaint was completely identical to the first. *Id.* In a *per curiam* decision, the court opined that
9 the mere fact that appellants' second complaint was identical to the first did not provide sufficient
10 grounds for dismissal. *Id.* at 822. Importantly, since the second complaint did not allege different
11 causes of action from the first, the single action rule was not applicable. *Id.* at 822-23 ("[B]ecause
12 appellants did not attempt to sue the same defendant in separate actions for different elements of
13 damage, the rule against splitting causes of action does not apply").

14 Plaintiff's second complaint, directed solely against Defendant, does not attempt to "split"
15 different causes of action into separate filings. As such, the single action rule has no bearing on this
16 particular motion and must not be used to justify Defendant's feeble attempt at dismissal.

17 **2. The Single Action Rule Is Not Triggered Since There Has Been No Final Judgment In**
18 **The First Action.**

19 Defendant attempts to bolster its argument by erroneously citing to case law focused
20 exclusively on the single action rule. Yet none of the cases cited form a basis for dismissal under
21 the circumstances present in this instant action. Although trial courts in this State may properly
22 dismiss a complaint when identical causes of action are pending, courts have consistently applied
23 their discretion to situations in which final judgments have been rendered in the initial cases.¹¹
24 "Concomitantly, the single cause of action rule bars one who has...prosecuted to judgment a suit for
25 either of his two elements of damage from thereafter suing to recover the remaining element."

26 ¹⁰ The Court in *Laughon* did note that the first complaint filed by the appellants appeared to never have been served on
the defendants. *Id.* at 822. However, it does not appear to have factored heavily into the Court's overall opinion.

27 ¹¹ See generally *Reno Club v. Harrah*, 70 Nev. 125 (1953); *Fitzharris v. Phillips*, 74 Nev. 371 (1958); *Smith v. Hutchins*,
93 Nev. 431 (1977); *Rocovitis v. Ilin Rocovits*, 2014 Nev. Dist. LEXIS 263. But see *Fernandez v. Infusaid Corp.*, 110
28 Nev. 187 (1994) (holding that dismissal was not appropriate where two identical actions were not pending at the same
time). Of note however, the *Fernandez* court made reference to the fact that the two actions, prior to dismissal, were
afforded a chance to be heard on a motion to consolidate, which was subsequently denied. *Id.* at 189.

1 *Smith v. Hutchins*, 93 Nev. 431, 432-33 (1977). In essence, the single action rule acts similarly to
2 res judicata and collateral estoppel; once a final judgment is rendered, plaintiffs are precluded from
3 attempting to re-litigate the same claim for different damages.

4 Once again, the facts of the present litigation fail to trigger the single action rule. To date, a
5 final judgment has yet to be rendered in case number A-17-752432-C. Moreover, Plaintiff's filing
6 of case number A-18-770951-C does not attempt to further split causes of action against this
7 Defendant since each and every claim alleged remains identical to the main suit, A-17-752432-C.
8 Accordingly, Defendant's reliance on the single action rule is premature and dismissal should
9 therefore be denied.

10 **3. This Court Should Either Allow For Consolidation Or, In The Alternative, Stay Further**
11 **Proceedings.**

12 Contrary to Defendant's petition to this Court, dismissal is not the appropriate remedy.
13 Where two separate actions alleging identical claims have been filed, courts should instead
14 consolidate the actions or, in the alternative, stay the proceedings. See *Laughon*, 109 Nev. 820;
15 *State Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 32 (1995), *overruled on other*
16 *grounds by Am. Home Assur. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229 ("Moreover, with
17 two identical actions pending, the court would be well-advised to consolidate").

18 Pursuant to E.J.C.R. 2.50, "[m]otions for consolidation of two or more cases must be heard
19 by the judge assigned to the case first commenced." Plaintiff is currently seeking consolidation in
20 Department 30 before the Hon. Jerry Wiese, set for hearing on May 24, 2018 at 9:00a.m. Therefore,
21 Plaintiff respectfully requests this Court deny Defendant's Motion until this matter can be fully
22 heard on the merits.

23 Alternately, Plaintiff requests this Court¹² stay further proceedings on Defendant's Motion
24 until final judgment is rendered in case number A-17-752432-C. "When dual actions exist
25 involving the same subject matter and substantially the same parties, the second action must be
26 stayed until the first is finally determined." *Laughon v. Silver State Shopping Ctr.*, 109 Nev. 820

27 ¹² The Nevada Supreme Court has noted, "[T]he power to stay proceedings is incidental to the power inherent in every
28 court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for
litigants." *Maheu v. Dist Ct.*, 510 P.2d 627, 629 (Nev. 1973), quoting *Landis v. North American Co.*, 299 U.S. 248, 254-
55 (1936).

1 (1993) citing *Wiltgen v. Berg*, 435 P.2d 378 (Colo. 1967). As a result, this Court should set aside
2 Defendant's Motion until such time as the proceedings in Department 30 have concluded.

3 **B. NRS 11.256 ET SEQ. DOES NOT APPLY SINCE PLAINTIFF'S COMPLAINT WAS**
4 **SIGNED BY A STATE-LICENSED ATTORNEY IN COMPLIANCE WITH NRCP 11**

5 Defendant misconstrues NRS 11.258 in a baseless attempt to dismiss this present action.
6 While the code section does specify that an "attorney for the complainant" submit an affidavit, NRS
7 11.258 does not explicitly require the attorney signing the affidavit to be licensed in Nevada. *See*
8 NRS § 11.258. Napoli Shkolnik, PLLC is the attorney of record for the Plaintiff, in association with
9 co-counsel Glen Lerner Injury Attorneys, a Nevada-licensed law firm. And while attorneys for
10 Napoli Shkolnik, PLLC have not yet been admitted to practice in the State for this particular case,
11 "an out-of-state attorney may be permitted to appear in the courts of this state provided that an
12 active member of the State Bar of Nevada is associated as counsel of record." *Naimo v. Fleming*, 95
13 Nev. 13, 14 n.1 (1979).

14
15 Further, despite Defendant's misguided efforts, the complaint filed, bearing case number A-
16 18-770951-C, fully complies with NRCP 11.¹³ Pursuant to this rule, "[e]very pleading, written
17 motion, and other paper shall be signed by *at least one* attorney of record." N.R.C.P. 11(a)
18 (emphasis added). As evidenced by the filing on March 13, 2018, the complaint was signed by
19 Nevada-licensed attorney Glen J. Lerner, State Bar No. 4314.¹⁴ Moreover, in accordance with
20 NRCP 10, all exhibits to a pleading are a part thereof. *See* N.R.C.P. 10(c). Consequently, since the
21 Attorney's Affidavit was attached as an exhibit to the complaint, the statements within the affidavit
22 were adopted by reference to the pleading itself. *See* N.R.C.P. 10(c) ("Statements in a pleading
23
24

25
26 ¹³ "NRCP 11 provides that the person signing the pleading: (1) certifies that he has read the paper; (2) that to the best of
his knowledge, information or belief, formed after a reasonable inquiry, the paper is well grounded in fact; and (3) that
the paper is not interposed for any improper purpose." *Ford Motor Credit Co. v. Crawford*, 109 Nev. 616, 620 (1993).

27 ¹⁴ The facts of the present action vary significantly from *Naimo v. Fleming*, 95 Nev. 13 (1979), as cited by Defendant.
28 In *Naimo*, the Supreme Court dismissed plaintiff's action for failure to have an active member of the State Bar of
Nevada sign the complaint. *Id.* at 15. Here however, the subject complaint was in fact signed by an active member of
the State Bar.

1 may be adopted by reference in a different part of the same pleading or in another pleading or in any
2 motion”).

3 Although not admitted to practice in this particular case, attorneys for Napoli Shkolnik,
4 PLLC have been admitted *pro hac vice* under case number A-17-752432-C. The subject complaint
5 was filed with the intent to consolidate the action into the main litigation currently before the Hon.
6 Jerry Wiese. Thus, the exhibits accompanying the subject complaint, including the Attorney’s
7 Affidavit, remain identical to the original exhibits approved of and filed in Department 30.¹⁵

8
9 **V. CONCLUSION**

10 For the foregoing reasons, Plaintiff respectfully requests that the Court DENY Defendant’s
11 Motion to dismiss Plaintiff’s Complaint.

12
13 DATED this 20th day of April, 2018.

14
15 GLEN LERNER INJURY ATTORNEYS

16 NAPOLI SHKOLNIK, PLLC

17 By: /s/ Glen J. Lerner

18 Glen J. Lerner, Esq.
19 Nevada Bar No. 4314
20 4795 South Durango Drive
21 Las Vegas, Nevada 89147

22 *Attorneys for Plaintiff*

23
24
25
26
27
28 ¹⁵ See Order Granting Plaintiff’s Motion to Amend Complaint, filed on December 28, 2017 in case number A-17-752432-C.

1 **CERTIFICATE OF SERVICE**


2 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
3 employee of GLEN LERNER INJURY ATTORNEYS, and on the 20th day of April, 2018 the
4 foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT ARIES' MOTION TO DISMISS**
5 **PLAINTIFF'S COMPLAINT** was served by electronic copy via the Eighth Judicial Court's
6 Odyssey E-File and Serve system, to the following counsel of record:

7 M. Craig Murdy, Esq.
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12 *Attorney for Defendant/Cross Claimant Edgewater Gaming, LLC*

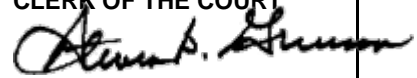
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Attorneys for Aries Consultants, Inc.

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, DOES1 through 5, and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

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

) Dept. No.: XXII

DEFENDANT ARIES CONSULTANTS, INC.'S

REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant Aries Consultants, Inc., by and through its attorneys, Craig J. Mariam, Esq., Robert E. Schumacher, Esq., and Brian K. Walters, Esq., of the law office of GORDON REES SCULLY MANSUKHANI, LLP, hereby submits its Reply in Support of Motion to Dismiss Plaintiff's Complaint in this matter.

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1 This Reply is based on the pleadings and papers filed in this action, the attached
2 Memorandum of Points and Authorities, and any oral argument and evidence the Court may
3 allow at the hearing on the Motion.

4 DATED this 2nd day of May, 2018.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Brian K. Walters

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Nevada Bar No. 10926
Robert E. Schumacher, Esq.
Nevada Bar No. 7504
Brian K. Walters, Esq.
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300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101

Attorneys for Aries Consultants, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

Plaintiff's Complaint against Aries in this case (Department 22, Case Number A-18-770951-C) is the mirror image of his Complaint that is also pending in Department 30 (Case Number A-17-752432-C). Discovery is well underway in that case. Presumably out of concern that its action in Department 30 (Case Number A-17-752432-C) may be dismissed due to its failure to comply with NRS 11.258¹, Plaintiff initiated a second identical action against Aries in this Court in which it half heartedly *tried* to comply with NRS 11.258. However, Plaintiff did not bother to obtain an affidavit from Plaintiff's counsel of record in this case in order to meet the specific requirements of NRS 11.258. Instead, it recycled an affidavit it used in an effort to cure its failure to comply with the statute in Department 30 (Case Number A-17-752432-C). The attorney Affidavit submitted by Plaintiff in this case (Department 22, Case Number A-18-770951-C) is defective and does not comply with NRS 11.258 and as such, dismissal is mandatory under well-established Nevada precedent. Alternatively, Plaintiff's Complaint in this case violates the single cause of action rule and/or the closely related "first-to-file" rule. Finally, this Court possesses the inherent authority to economically and fairly manage litigation and as such, may dismiss Plaintiff's procedurally improper Complaint. For these reasons, Plaintiff's Complaint in this case (Department 22, Case Number A-18-770951-C) must be dismissed.

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¹ Plaintiff has also filed a *third* separate complaint against Barker Drott Associates, LLC in Department 24 after its claims against Barker Drott Associates, LLC in case number A-17-752432-C were dismissed for failure to comply with NRS 11.258.

1 **II. ARGUMENT**

2 **A. Plaintiff's Recycled Attorney Affidavit from Case Number A-17-752432-C**
3 **Does Not Comply with NRS 11.258.**

4 The attorney Affidavit submitted by Plaintiff in support of its Complaint in this case
5 (Department 22, Case Number A-18-770951-C) does not conform to the requirements of NRS
6 11.258. It was not signed by the "attorney for the complainant" and it clearly was not prepared
7 for this specific case (Department 22, Case Number A-18-770951-C). Although not
8 acknowledged by Plaintiff, it is readily apparent that Plaintiff repurposed an attorney affidavit
9 and expert report that were prepared for its action in Department 30 (case number A-17-752432-
10 C). As such, the attorney affidavit does not meet the mandatory requirements of NRS 11.258,
11 which provides, in pertinent part:

12 Except as otherwise provided in subsection 2, in an action
13 involving nonresidential construction, *the attorney for the*
14 *complainant* shall file an affidavit with the court concurrently with
the service of the first pleading in the action stating that the
attorney:

15 (a) Has reviewed the facts of the case;

16 (b) Has consulted with an expert;

17 (c) Reasonably believes the expert who was consulted is
18 knowledgeable in the relevant discipline involved in the action;
and

19 (d) Has concluded on the basis of the review and the
20 consultation with the expert that the action has a reasonable basis
in law and fact.

21 (Emphasis added).

22 There are several reasons why Plaintiff's repurposed attorney affidavit fails to meet the
23 requirements of NRS 11.258:

24 ///

25 ///

26 ///

27 ///

28 ///

1. The affidavit is not signed by “the attorney for the complainant” as required by NRS 11.258.

This Court should reject the attorney affidavit submitted with Plaintiff’s Complaint in this case (Department 22, Case Number A-18-770951-C) because it was not signed by the “attorney for the complainant” as required by NRS 11.258. The affidavit was signed by California attorney F. Phillip Peche, who is not licensed in Nevada. In its Opposition, Plaintiff represented that “Napoli Shkolnik, PLLC (Mr. Peche’s firm) *is the attorney of record for the Plaintiff*, in association with co-counsel Glen Lerner Injury Attorneys, a Nevada-licensed law firm.” (Opp., pg. 8) (Emphasis added). That statement is false. Napoli Shkolnik, PLLC is *not* Plaintiff’s attorney of record in this case (Department 22, Case Number A-18-770951-C).²

Plaintiff also cited to *Naimo v. Fleming* for the proposition that “...an out of state attorney may be permitted to appear in the courts of this state provided that an active member of the State Bar of Nevada is associated as counsel of record.” (Opp. Pg. 8 citing *Naimo v. Fleming*, 95 Nev. 13, 14 n.1 (1979). This statement is technically true, but in order to appear, out-of-state counsel must first “...file a written application to appear as counsel in that action.” SCR 42(2). Mr. Peche has filed no such application in this case (Department 22, Case Number A-18-770951-C). In fact, SCR 42(5) provides, in pertinent part:

An applicant *shall not*³ appear in a proceeding subject to this rule until the court...where the action is pending enters an order granting the motion to associate.

(Emphasis added).

Plaintiff’s reliance on *Naimo* is interesting, as that case involved the dismissal of a complaint that was signed by out-of-state counsel. *Naimo*, 95 Nev. a 14, 1026. In that case, the Nevada Supreme Court affirmed the trial court’s dismissal based in part, on the following finding :

² On the next page, Plaintiff acknowledged that Napoli Shkolnik, PLLC is “...not admitted to practice in this particular case....” (Opp. Pg. 9).

³ “Shall” is a mandatory term indicative of the Legislature’s intent that the statutory provision be compulsory, thus creating a duty rather than conferring discretion. *Leven v. Frey*, 123 Nev. 399, 407 n.29, 168 P.3d 712, 718 (2007).

The district court found that ‘plaintiff’s California counsel and/or the plaintiff deliberately violated NRCPC 11, Supreme Court Rule 42, and District Court Rule 30 in an effort to keep their lawsuit viable *but avoid the cost of associating Nevada counsel.*’

Id. at 14, 1026 (Emphasis added).

In this case (Department 22, Case Number A-18-770951-C), it appears that Plaintiff’s Nevada counsel did not want to incur the time and/or expense of preparing a new affidavit for the Complaint it filed in this case (Department 22, Case Number A-18-770951-C). Instead, Plaintiff chose to recycle the affidavit submitted in case number A-17-752432-C (Department 30). Mr. Peche is admitted *pro hac vice* in that case. He is not authorized to appear in this case (Department 22, Case Number A-18-770951-C). The affidavit clearly does not comply with NRS 11.258.

Since the attorney affidavit upon which Plaintiff’s Complaint is based was not signed by the attorney for the complainant as required by NRS 11.258, Plaintiff has not complied with the statute. Therefore, dismissal is required pursuant to NRS 11.259(1)(a) (“The court shall dismiss an action involving nonresidential construction if the attorney for the complainant fails to...File an affidavit required pursuant to NRS 11.258.”).

2. Plaintiff’s Affidavit was not prepared for this case, rendering it defective under NRS 11.258.

Not only is the affidavit defective due to the fact that it was not signed by the “attorney for the complainant” as mandated by NRS 11.258, it is also defective because it was not specifically prepared for this case (Department 22, Case Number A-18-770951-C). The Affidavit is dated September 28, 2017. Therefore it is impossible for the Affidavit to relate to this case (Department 22, Case Number A-18-770951-C), which was not initiated until March 12, 2018.

The Affidavit is riddled with statements indicating that it was not prepared for this case (Department 22, Case Number A-18-770951-C). Paragraph 2 of the Affidavit states that Mr. Peche has been admitted *pro hac vice* “...for the action *REIF v. EDGEWATER GAMING, LLC et al.*, case number A-17-752432-C.” As discussed above, Mr. Peche has not been admitted to practice in this case (Department 22, Case Number A-18-770951-C).

Also, “Edgewater Gaming, LLC” is not a party to the case currently before this Court.

Paragraph 4 of the attorney affidavit states:

4. ***I have reviewed the facts of this case***, and pursuant to NRS 11.258 requirements for bringing an “Action involving non-residential construction” against a “design professional,” shall file this affidavit concurrently with service of the ***First Amended Complaint, which names design professional BARKER DROTTAR ASSOCIATES, LLC (“Barkar Drottat”) as a Defendant in this case. Defendant ARIES CONSULTANTS, INC. (“Aries”) has moved to dismiss the instant action*** against it on the grounds that it is a design professional within the meaning of NRS 11.256 et seq. and that Plaintiff did not comply with the pre-filing requirements set forth in the same. Independent of the Court’s ruling on the pending legal issue, this Affidavit and attached expert report comport with the spirit and legislative intent of NRS 11.256 et seq. such that ***Aries pending motion to dismiss*** will become moot upon the filing and service of Plaintiff’s First Amended Complaint.

(Emphasis added).⁴

Paragraphs for of Plaintiff’s attorney Affidavit is defective for the following reasons:

- Paragraph 4 indicates that Mr. Peche has “...reviewed the facts of this case...” By “this case,” the affidavit is clearly referring to case number A-17-752432-C that is currently pending in Department 30, not the matter currently before this Court (Department 22, Case Number A-18-770951-C).
- Further, there is no “First Amended Complaint” pending and Barkar Drottat Associates, LLC is not a party to this case (Department 22, Case Number A-18-770951-C).
- The affidavit makes reference to a “...motion to dismiss the instant action.” The Affidavit is dated September 28, 2017. Aries’ Motion to Dismiss in this case (Department 22, Case Number A-18-770951-C) was filed on April 3, 2018. Therefore, that reference is not related to any motion filed by Aries in this case (Department 22, Case Number A-18-770951-C).

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⁴ Plaintiff’s statement that the Affidavit comports with “the spirit and legislative intent of NRS 11.256 et seq.” lacks merit. Where the language of a statute is plain and unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself. *Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003).

1 The fact that Plaintiff's Affidavit was not prepared for this particular case is dispositive.
2 NRS 11.258(d) *specifically* requires the attorney affidavit to include a statement from the
3 attorney for the complainant that he or she "Has concluded on the basis of the review and the
4 consultation with the expert that ***the action*** has a reasonable basis in law and fact." (Emphasis
5 added). The term "action" in NRS 11.258 and NRS 11.259 is synonymous with "pleading."
6 *Converse Prof'l Grp. v. Eighth Judicial Dist. Grp. (In re CityCenter Constr.)*, 310 P.3d 574, 580
7 (Nev. 2013). Therefore, each "action" (pleading) must be supported by its own attorney affidavit
8 under NRS 11.258.

9 Here, Paragraph 7 of Plaintiff's Affidavit contains a statement that "...***the instant action***
10 has a reasonable basis in law and fact." As discussed above, "the instant action" referenced in
11 the Affidavit refers to the Complaint filed in Department 30 (Case Number A-17-752432-C), not
12 the Complaint filed in this Court (Department 22, Case Number A-18-770951-C). Therefore,
13 Plaintiff has not complied with NRS 11.258(1)(d) because there is no statement from an attorney
14 for the complainant that "...the action has a reasonable basis in law and fact." In other words,
15 Plaintiff's Affidavit attests to case number A-17-752432-C, not this case (Department 22, Case
16 Number A-18-770951-C).

17 NRS 11.259(1) provides that the district court "***shall*** dismiss an action involving
18 nonresidential construction" where the complainant fails to comply with NRS 11.258's attorney
19 affidavit and expert report requirements. *In re CityCenter Constr.*, 310 P.3d at 580 (Emphasis
20 added). The Legislature's use of "shall" in NRS 11.259 demonstrates its intent to prohibit
21 judicial discretion and, consequently, mandates automatic dismissal if the pleading is served
22 without the complaining party concurrently filing the required affidavit and report. *Otak Nev.,*
23 *LLC v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 593, 598, 260 P.3d 408, 411 (2011).
24 Therefore, Plaintiff's defective Affidavit mandates dismissal of Plaintiff's Complaint under NRS
25 11.259.

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1 **B. The Single Cause of Action Rule Bar’s Plaintiff’s Complaint in this Case.**

2 Plaintiff’s failure to comply with NRS 11.258 mandates dismissal. However, even if
3 Plaintiff complied with NRS 11.258, this Court should nevertheless dismiss Plaintiff’s
4 Complaint based on the single cause of action rule.

5 In its Opposition, Plaintiff acknowledged that “...trial courts in this state may properly
6 dismiss a complaint when identical causes of action are pending...” (Opp., pg. 6). That was the
7 exact rationale that the Nevada Supreme Court applied in *Fitzharris v. Phillips*, 74 Nev. 371,
8 376, 333 P.2d 721, 724 (1958). In *Fitzharris*, the plaintiff brought an action for restitution for
9 certain real property. *Fitzharris*, 74 Nev. at 372-373. The trial court granted summary judgment
10 against the plaintiff upon a showing by defendants of a deed conveyed to them by plaintiff. *Id.* at
11 373. However, the order formally granting summary judgment was not entered by the court. *Id.*
12 Approximately one week later, the plaintiff brought a second suit to set aside the deed upon
13 which the court based its decision to grant summary judgment in the first case. *Id.* Plaintiff’s
14 second action proceeded to trial. *Id.* During the pendency of the trial in the second case, the
15 plaintiff moved to set aside the order granting summary judgment in the first case. *Id.* However,
16 before that motion was resolved, the court in the second case mistakenly entered judgment in
17 favor of defendant based on the preclusive effect of the judgment (which had not been entered)
18 in the first case. *Id.*

19 Both matters were appealed. The Nevada Supreme Court determined that the second
20 case should be dismissed. *Id.* at 377. Specifically, the Supreme Court remanded the second
21 action “...with instructions that the judgment be set aside and that the district court proceed to
22 order that action dismissed...” because the first action was still pending. *Id.* at 376-77. The
23 Court explained its holding thusly: “*It would be contrary to fundamental judicial procedure to*
24 *permit two actions to remain pending between the same parties upon the identical cause.*” *Id.*
25 at 377 (Emphasis added).

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1 Similarly, it would be contrary to fundamental judicial procedure to permit Plaintiff to
2 proceed with his Complaint in this case (Department 22, Case Number A-18-770951-C) while
3 asserting the exact same causes of action in Department 30 (Case Number A-17-752432-C).
4 Plaintiff has abused the judicial process. If the Court does not follow the clear and binding
5 judicial precedent that mandates dismissal of the second Complaint, it will effectively deny
6 Aries' procedural due process. The Court should apply the same rationale as the Nevada
7 Supreme Court applied in *Fitzharris v. Phillips* and dismiss the duplicative and improper
8 Complaint filed in this case (Department 22, Case Number A-18-770951-C).

9 Plaintiff also cited to *Laughon v. Silver State Shopping Ctr.*, 109 Nev. 820, 858 P.2d 44
10 (1993) for the proposition that "...the single action rule did not apply where appellants alleged
11 identical causes of action in two separate suits brought against the same defendant." (Opp., pg.
12 5). However, that case is easily distinguishable from the case at bar as the initial complaint filed
13 by the plaintiff in *Laughon* was never served on any defendant. *Id.* at 821,45.

14 In a footnote, Plaintiff disingenuously attempted to explain away this glaring distinction
15 by suggesting that "...it does not appear to have factored heavily into the Court's overall
16 opinion." (Opp., pg. 6 n. 10). To the contrary, the *Laughon* court specifically cited to the fact
17 that the initial complaint in that case had not been served as the very first reason for affirming
18 dismissal in that case. *Id.* ("***We note particularly*** that at the time the district court dismissed case
19 no. CV90-7198, the complaint in case no. CV89-7013 had never been served.") (Emphasis
20 added).

21 In the case at bar, not only was the first Complaint served, it was later amended and
22 discovery has been ongoing for more than one year. Here, Plaintiff has concurrent Complaints
23 alleging the same causes of action in three separate courts. It would be contrary to fundamental
24 judicial procedure to permit Plaintiff to proceed with his action in this Court. Therefore,
25 Plaintiff's Complaint in this matter should be dismissed.

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C. Alternatively, the Court Should Apply the “First-to-File” Rule and Dismiss Plaintiff’s Subsequent Complaint Against Aries.

In the event Plaintiff’s Complaint in this case (Department 22, Case Number A-18-770951-C) is not barred by sheer procedural impropriety or the single cause of action rule, dismissal is nevertheless appropriate under the “first-to-file” rule, which authorizes district courts to decline jurisdiction over an action if a complaint involving the same parties and issues has already been filed in another trial court. *Anders v. Anders*, 2017 Nev. App. Unpub. LEXIS 913, *1-2, 2017 WL 6547399 citing *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982).

Because litigants typically do not file separate actions in the same district (state or federal), the majority of cases addressing the first-to-file rule involve actions filed in different districts. However, the rule also applies to instances, such as here, where two separate actions are filed in the same district. *See Keen v. Omni Limousine*, No. 2:16-cv-01903-JCM-GWF, 2016 U.S. Dist. LEXIS 160311, at *5 (D. Nev. Nov. 18, 2016); *Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1294 (N.D. Cal. 2013) (“[T]he first-to-file rule is not limited to cases brought in different districts.”).

While the first-to-file rule does not arise often in Nevada, it was recently addressed in an unpublished order issued by the Nevada Court of Appeals. In *Anders v. Anders*, the Nevada Court of Appeals, specifically citing the first-to-file rule, affirmed a district court order dismissing a Nevada annulment action based on the existence of a concurrent annulment action in another state court. 2017 Nev. App. Unpub. LEXIS 913, *4, 2017 WL 6547399 (“...[W]e conclude that the district court did not abuse its discretion when it invoked the first-to-file rule and dismissed Jonah's annulment claim.”). Therefore, the first-to-file rule is available to this Court to dismiss Plaintiff’s procedurally improper Complaint and the rationale for its application fits this case perfectly.

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1 When applying the first-to-file rule, courts look to three threshold factors: "(1) the
2 chronology of the two actions; (2) the similarity of the parties, and (3) the similarity of the
3 issues." *King v. Standard Metals Processing, Inc.*, No. 2:14-CV-751 JCM (NJK), 2014 U.S. Dist.
4 LEXIS 171585, at *7 (D. Nev. Dec. 9, 2014). Dismissal is proper where the court of first filing
5 provides adequate remedies. *Id.* at *13.

6 As to chronology, Plaintiff's Complaint in Department 30 (Case Number A-17-752432-
7 C) was clearly filed before his Complaint in this matter (Department 22, Case Number A-18-
8 770951-C). With respect to similarity of the parties and issues, Plaintiff concedes this point in
9 his Opposition:

10 There is no dispute that Plaintiff alleges the same damages against
11 Defendant in the separate complaints now at issue. In the filed First
12 Amended Complaint, bearing case number A-17-752432-C,
13 Plaintiff asserts claims of negligence, negligence per se, and
14 negligent performance of an undertaking against several
15 defendants, including Aries Consultants, Inc. Likewise, in the
16 subject complaint recently filed, bearing case number A-18-
17 770951-C, Plaintiff alleges the exact same causes of action solely
18 against Defendant as a design professional.

19 (Opp. Pgs. 5-6).

20 The two actions are based on the exact same underlying facts and allege the exact same
21 damages. When two actions are functionally the same and both actions are pending in the same
22 district court the first-to-file rule provides a reasonable means to determine which action should
23 be dismissed. *Blanchard Training & Dev., Inc. v. Leadership Studies, Inc.*, No. 15cv2142 WQH
24 (KSC), 2016 U.S. Dist. LEXIS 25526, at *10-11 (S.D. Cal. Feb. 29, 2016) citing *Intervet, Inc. v.*
25 *Merial Ltd.*, 535 F. Supp. 2d 112, 115 (D.D.C. 2008). Generally, sound judicial administration
26 would indicate that when two identical actions are filed in courts of concurrent jurisdiction, the
27 court that first acquired jurisdiction should try the lawsuit **and a second action would not serve**
28 **any purpose**. *Jhangmen Kinwai Furniture Decoration Co. v. Int'l Mkt. Ctrs., Inc.*, No. 2:15-CV-
1419 JCM (PAL), 2016 U.S. Dist. LEXIS 20370, at *5 (D. Nev. Feb. 18, 2016) (Emphasis
added).

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1 Plaintiff argues that the Court should either “allow for consolidation or, in the alternative,
2 stay further proceedings.” (Opp., pg. 7). However, dismissal of a concurrently filed complaint is
3 proper where the court of first filing provides adequate remedies. *King*, No. 2:14-CV-751 JCM
4 (NJK), 2014 U.S. Dist. LEXIS 171585, at *13. Plaintiff does not argue that the Court of first
5 filing (here, Department 30) cannot provide adequate remedies. Accordingly, there is no
6 justification for Plaintiff to be permitted to proceed with an identical Complaint in this
7 Department. This Court should therefore apply the first-to-file rule and dismiss Plaintiff’s
8 Complaint in this Department so that the action in Department 30 can proceed.

9 **D. This Court Should Exercise its Inherent Power to Manage Litigation and**
10 **Dismiss Plaintiff’s Procedurally Improper Pleading.**

11 The Complaint filed by Plaintiff in this Court is essentially a sham law suit submitted for
12 the singular purpose of trying to correct deficiencies with its original pleading in Department 30.
13 Plaintiff has absolutely no intention of litigating the case in this Court. Plaintiff does not dispute
14 this fact. On April 20, 2018, Plaintiff filed a Motion to Consolidate the Complaint in this case
15 (Department 22, Case Number A-18-770951-C) with his Complaint filed in Department 30
16 (Case Number A-17-752432-C). On that basis alone, the Complaint in this case (Department 22,
17 Case Number A-18-770951-C) should be dismissed.

18 The Nevada Supreme Court has recognized "the inherent power of the judiciary to
19 economically and fairly manage litigation." *Dornbach v. Tenth Jud. Dist. Ct. of Nev.*, 324 P.3d
20 369, 373 (Nev. 2014) citing *Borger v. Eighth Jud. Dist. Ct.*, 120 Nev. 1021, 1029, 102 P.3d 600,
21 606 (2004). Courts have "inherent equitable powers to dismiss actions or enter default
22 judgments for . . . abusive litigation practices." *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 92,
23 787 P.2d 777, 779 (1990) citing *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th
24 Cir. 1987) (citations omitted).

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1 Notwithstanding Plaintiff's failure to comply with NRS 11.258 or application of the
2 single cause of action rule and/or the first-to-file rule, this Court possesses the inherent authority
3 to dismiss Plaintiff's procedurally improper Complaint. Therefore, dismissal of Plaintiff's
4 Complaint in this case (Department 22, Case Number A-18-770951-C) is justified.

5 **III. CONCLUSION**

6 Based on the foregoing, Aries respectfully requests an Order from this Court dismissing
7 Plaintiff's Complaint in this case (Department 22, Case Number A-18-770951-C) with prejudice.

8 DATED this 2nd day of May, 2018.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Brian K. Wallers

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Attorneys for Aries Consultants, Inc.

CERTIFICATE OF SERVICE

I HEREBY BY CERTIFY that on this 2nd day of May 2018, I did cause a true and correct copy of **DEFENDANT ARIES CONSULTANTS, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT** to be served via the Court's electronic filing/service system upon all parties on the E-Service Master List:

Glen J. Lerner
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MANSUKHANI, LLP



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCUS REIF,

Plaintiff,

vs.

ARIES CONSULTANTS, INC.,

Defendant.

CASE NO. A-18-770951-C

DEPT. XXII

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

MAY 10, 2018

RECORDER'S TRANSCRIPT OF HEARING RE

DEFENDANT ARIES CONSULTANTS, INC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

APPEARANCES:

For the Plaintiff:

RANDY WESTBROOK, ESQ.
JENNIFER LIAKOS, ESQ.

For the Defendant:

BRIAN K. WALTERS, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 THURSDAY, MAY 10, 2018 AT 12:39:02 P.M.

2
3 THE COURT: Okay. I'm calling the case of Reif versus Aries Consultants,
4 Inc., case number A18-770951-C. Would you announce your appearances for the
5 record?

6 MR. WALTERS: Good afternoon, Your Honor. Brian Walters for Defendant,
7 Aries Consultants.

8 MR. WESTBROOK: Randy Westbrook for Plaintiff, Marcus Reif.

9 MS. LIAKOS: Jennifer Liakos also for Plaintiff, Marcus Reif.

10 THE COURT: Okay. And this is Aries Consultants' Motion to Dismiss
11 Plaintiff's Complaint and it deals with 11.258.

12 MR. WALTERS: That's correct, Your Honor.

13 THE COURT: Okay.

14 MR. WALTERS: That was part of the topic of discussion of the earlier matter.

15 THE COURT: Yes.

16 MR. WALTERS: This lawsuit in this court is – was filed for one reason and
17 that's because the Plaintiff did not comply with 11.258 in a matter that is currently
18 pending before Department 30. That lawsuit was filed over a year ago and it's in
19 discovery and it's – and it's pretty advanced in its status.

20 THE COURT: By the way, I haven't gone through that case yet, I was
21 preparing for my own, but when I was reading that in the paperwork 11.258
22 subsection 2 does say: "The attorney for the complainant may file the affidavit
23 required pursuant to subsection one at a later time if the attorney could not consult
24 with an expert and prepare the affidavit before filing the action." So, I guess I'm
25 having a problem understanding. If they supplemented why there is a rub? Did they

1 supplement in that case?

2 MR. WALTERS: The – it's a little bit tricky to summarize the procedural
3 history. But what happened was they filed the complaint, there was no 11.258
4 attorney affidavit –

5 THE COURT: Right.

6 MR. WALTERS: -- and report. So, they filed an amended complaint seeking
7 to bring in another design professional, the architect that was – or the structural
8 engineer that was responsible for designing the facility. And in the proposed
9 amended complaint they added our client without really disclosing that in the motion
10 to amend. But what we did, we filed a limited opposition, we asked the Court
11 pursuant to Otak to recognize the fact that there was no compliance with 11.258 in
12 the initial pleading which is what is required under the statute and therefore under
13 Otak the initial pleading is void ab initio if the Court eventually determines that Aries
14 is a design professional. And what happened then was – before that we had filed a
15 motion to dismiss for – on 11.258 arguing that – on Otak, and for all those reasons
16 the motion was denied without prejudice because there was a question of whether
17 Aries is a design professional. So, the Court permitted some discovery to take place
18 into that finite issue.

19 We are in the process of doing that discovery; we're wrapping up to file
20 another motion. And just kind of by way of background, Aries is a Clark County
21 special inspector; they're required to submit reports that are signed by a Nevada
22 professional engineer so I'm not really sure how that can be considered not a design
23 professional. But that's not before the Court today, the only issue before the Court
24 today is whether Plaintiff's lawsuit in this case has complied with 11.258. And
25 there's another issue too – there's a couple of other issues but I don't know if the

1 Court wants to get into those because I think 11.258 is dispositive here.

2 THE COURT: Go ahead. I'm listening.

3 MR. WALTERS: Now, I don't know if I answered your original question. But
4 there is a – there is a safe harbor in 11.258 –

5 THE COURT: Right.

6 MR. WALTERS: -- to –

7 THE COURT: Subsection 2.

8 MR. WALTERS: -- to file a later affidavit. But --

9 THE COURT: Right.

10 MR. WALTERS: -- what you have to is you have to submit a – an affidavit at
11 the time saying that you weren't able to consult with an expert and that was never
12 done.

13 THE COURT: Okay.

14 MR. WALTERS: So, the safe harbor –

15 THE COURT: I didn't read –

16 MR. WALTERS: -- is off –

17 THE COURT: -- that further –

18 MR. WALTERS: -- the table.

19 THE COURT: -- okay.

20 MR. WALTERS: So, what happened I referenced the motion to amend and
21 the amended complaint in the initial case. So, Plaintiff's submitted an amended
22 complaint in the initial case which included an attorney affidavit and an expert report.
23 So, in this case what they did was they took that same attorney affidavit, same
24 report and attached it to the complaint in this case and that's problematic for a
25 couple of reasons. First of all, it wasn't signed by the attorney for the complainant.

1 And the reason that we're making that argument is because the attorney that signed
2 the affidavit in the other case –

3 THE COURT: Is a California lawyer.

4 MR. WALTERS: Is the California attorney is not admitted to practice in this
5 Court. And it's my understanding that that attorney is no longer even affiliated with
6 any of the law firms representing the Plaintiff in this matter.

7 It's also problematic just on the shear basis that it wasn't prepared for
8 this case. There's some pretty good authority from the Converse case which is one
9 the cases dealing with this issue in the context of the City Center matter. And in the
10 Converse case the Nevada Supreme Court that the term action as used in 11.258 is
11 synonymous with the pleading. So, what that means is under 11.258 you have to
12 have an affidavit from the attorney with each pleading. So, what we have here is we
13 have a separate pleading, separate action but it's using the same attorney affidavit
14 that was submitted in the original case.

15 And I don't think there's any dispute that, you know, Plaintiffs aren't
16 gonna get up here and argue to the Court that it was prepared for this case, it clearly
17 was not. It references the case number from the earlier case. And that's important
18 because some of the requirements and 11.258 specifically require that the attorney
19 attest to the reasonableness of that particular action. You can't just keep recycling
20 these attorney affidavits because it's specific to each individual case as discussed in
21 the Converse matter, specifically 11.258 subsection D and it goes through some
22 requirements that the affidavit must have. One other requirement is that the
23 attorney has concluded on the basis of the review and the consultation with the
24 expert that the action has a reasonable basis in law and fact, the action. And
25 remember what Converse said, action is a pleading. So, in this case the attorney

1 affidavit references the case number in Department 30 not this case. So, there is no
2 statement from an attorney in that affidavit that this action has a reasonable basis in
3 law and in fact. That affidavit refers to the action filed in Department 30. 11.259
4 mandates dismissal if the Court finds that the attorney affidavit was not submitted in
5 compliance with 11.258. The line of cases following Otak the Court is probably well
6 aware that the District Court doesn't have any discretion in that regard. If there's no
7 compliance with 11.258 the complaint shall be dismissed and it's considered void ab
8 initio.

9 There's a couple other basis that we're arguing mandate dismissal of
10 Plaintiff's complaint in this case because remember there's an identical case
11 pending in Department 30. Same causes of action, same set of facts, all --
12 everything is the same. This is just an end-run around 11.258. The second basis
13 that we cited to was the first filed rule and that's kind of related to the single cause of
14 action rule which we also point out. But the first to file rule authorizes District
15 Court's to decline jurisdiction over an action if a complaint involving the same
16 parties and issues has already been filed in another trial court. In support of that
17 argument we cited to the Anders case which is an unpublished Nevada Court of
18 Appeals decision but that decision cited to some Ninth Circuit cases. And this is a
19 well-established rule in federal courts, the Ninth Circuit and the Nevada District
20 Court has addressed this rule. Basically what court's look at in applying the first to
21 file rule is three factors: The chronology of the two actions, similarity of the parties,
22 similarity of the issues. Chronology here, you had a complaint filed more than a
23 year ago, you gotta complaint filed now so the earlier action takes precedence.
24 Similarity of the parties. Aries was named in the initial complaint. Same Plaintiffs,
25 same Plaintiff's attorneys. Similarity of the issues. And I think the Plaintiffs actually

1 acknowledged this in their moving papers that it's the exact same thing, same set of
2 facts that give rise to their cause of action in this case are the same set of facts that
3 gave rise to their cause of action in the initial matter in Department 30.

4 THE COURT: What about the – was it the Laughon, L-a-u-g-h-o-n case
5 where I thought in my reading of it that the decision was – you know, we weren't
6 splitting causes of action, it was the same identical complaint filed in two different
7 courtrooms and that it wouldn't be appropriate to dismiss the second lawsuit, that it
8 made more sense to consolidate it possibly in the other one. But of course there's –
9 I'm not gonna be – there's no motion to consolidate in front of me and then plus I
10 can't consolidate it since I'm the newer case into the older case in front of Judge
11 Wiese --

12 MR. WALTERS: Correct.

13 THE COURT: -- I think it'd be more appropriate to bring that motion before
14 him. But that troubled me.

15 MR. WALTERS: Well, Plaintiffs did file a motion to consolidate and they set it
16 on an OST and it was considered in Department 30 on Monday I believe.

17 THE COURT: Okay.

18 MR. WALTERS: And Judge Wiese deferred to determine what happens in
19 this court. And basically we cited to I believe it's rule 2.50 that says that
20 consolidation is improper unless there's an answer filed in the second lawsuit and
21 there's no answer filed in this case. So, Judge Wiese wanted to see what happened
22 in this court before making a ruling on consolidation.

23 THE COURT: Okay. And you can't consolidate a dismissed case into an
24 active case too.

25 MR. WALTERS: Right. Right. And that's our argument. Our argument is

1 that because the Plaintiffs failed to comply with 258 it's void ab initio and there's
2 nothing to consolidate. They've got an action in Department 30; let them proceed
3 with that case and save the time and effort of filing multiple motions in this Court and
4 that Court to get them all together.

5 THE COURT: But won't I act in derogation of -- was it Laughon if I were to
6 dismiss the case?

7 MR. WALTERS: Not necessarily. I believe the Laughon case was a case
8 considered under the single cause of action rule. And there's another case that we
9 cited to, I believe it was the Fitzsimmons case. It's Harris. I'm sorry.

10 THE COURT: Okay.

11 MR. WALTERS: And that's another case that addressed the single cause of
12 action rule. And in that case the Court said: "That it would be contrary to
13 fundamental judicial procedure to permit two actions to remain pending between the
14 same parties upon the identical cause."

15 THE COURT: Right.

16 MR. WALTERS: So, our argument is that this matter should be dismissed
17 because there's already an action pending and it has been pending in Department
18 30. Going back to the first file rule -- and I think this kind of ties it all together. In
19 cases -- looking at the first to file rule the courts have said: "When the Court of the
20 first filing provides adequate remedies dismissal of the second action is
21 appropriate." There's no purpose for this case. They've already filed their case in
22 Department 30 so dismissal of this case is appropriate.

23 THE COURT: And you would -- can see that if I dismiss the case it should be
24 without prejudice so it doesn't affect the other case.

25 MR. WALTERS: I don't agree with that because -- well, it would depend --

1 THE COURT: Well –

2 MR. WALTERS: -- on what the basis for dismissal would be.

3 THE COURT: -- well, I was gonna say, if I were to dismiss based upon the –
4 what you've got in your papers that they don't – didn't comply with 11.258, well, that
5 would be binding on Judge Wiese wouldn't it if I did it with prejudice?

6 MR. WALTERS: That's a tricky procedural question and I don't know if –

7 THE COURT: Well, if I were you on that -- if I were to do that I would think
8 about filing a motion for claim preclusion because it's already decided in this case.

9 MR. WALTERS: That's – that's a good point, Your Honor. And –

10 THE COURT: But if it's without prejudice then they could still raise it there.

11 MR. WALTERS: Right. Right. But I think the easier route here is that there's
12 no compliance with 11.258, the attorney affidavit just does not meet the
13 requirements. It was provided for another case, it wasn't provided for this particular
14 case and under Converse each action is a pleading and in each pleading it requires
15 a separate attorney affidavit.

16 The last argument is kind of a more common sense argument. And
17 we're asking the Court to exercise its inherent powers to manage its docket. I don't
18 think there's any dispute that the case in Department 30 was filed and is pending
19 and it's the exact same issues as this case and the purpose for filing this case was
20 to do an end-run around 11.258. So, we think the Court has within its inherent
21 powers the authority to just dismiss this action and defer jurisdiction to Department
22 30.

23 So, based on all that, Your Honor, we ask that Plaintiff's complaint in
24 this case be dismissed with prejudice. Thank you.

25 THE COURT: Okay. Counsel.

1 MS. LIAKOS: I had prepared to argue the opposition but my pro hac is still
2 pending in this court. I am admitted –

3 THE COURT: Oh, you can't – you can't say anything.

4 MS. LIAKOS: Okay. I am admitted in Department 30 but I'm still pending
5 here.

6 THE COURT: Right.

7 MS. LIAKOS: Okay.

8 THE COURT: Counsel.

9 MR. WESTBROOK: Good morning, Your Honor. Or afternoon.

10 THE COURT: I apologize for that.

11 MR. WESTBROOK: All right. I think I should start by reminding this Court
12 that in motions to dismiss all reasonable inferences are given to the non-moving
13 party. So, here if there's any kind of grey area or anything I believe it weighs in our
14 favor.

15 THE COURT: Why did you file a complaint in this court when –

16 MR. WESTBROOK: So –

17 THE COURT: -- you've already got an action in –

18 MR. WESTBROOK: -- in –

19 THE COURT: -- Department 30?

20 MR. WESTBROOK: -- in the Department 30 action based on our limited
21 knowledge of Aries we didn't see them as a design professional so we moved ahead
22 with that. And Judge Wiese agreed with us in the extent that he allowed us to
23 complete discovery and then to address the issue later but through discovery they
24 produced some documents that confirmed with us, okay, they are in fact the design
25 professional, but the issue of 11.258 is we aren't allowed to amend the complaint.

1 So, what other option will we have? We couldn't just simply let the statute run so
2 we, you know, filed another action in this court.

3 THE COURT: Okay.

4 MR. WESTBROOK: Based on – I'm sorry.

5 THE COURT: So, are you gonna be dismissing your claims against Aries in
6 the other case since you found out that they are a design professional?

7 MR. WESTBROOK: Oh no, we're gonna move to consolidate the claims
8 because at this point the statute of limitations has run on the underlying incident. It
9 happened March of 2016.

10 THE COURT: Okay.

11 MR. WESTBROOK: So, the plan is to, you know, once all procedure issues
12 are determined and sorted out we're gonna consolidate the cases and hear them in
13 front of Judge Wiese. Defense counsel makes, you know, a great deal about the
14 actual affidavit itself but the affidavit itself is based on the same facts as the case in
15 front of Judge Wiese. There is no difference. It's – we admit that's the same action
16 so for him – just because the case number isn't – doesn't match up with the case
17 number in this case doesn't necessarily preclude us or doesn't invalidate the
18 affidavit somehow. The purpose of the affidavit is to show that we have a claim that
19 has merit. We had a design professional come out, expert, examine the building,
20 examine the garage and his findings were present in the affidavit. What Defense
21 counsel is pointing to is I believe any consequential deficiencies in the affidavit. The
22 facts are that the expert lays out that we do have a valid basis for bringing this
23 complaint.

24 Also, Peche he was the Plaintiff's counsel in the other case. He was
25 pro hac'd in; at the time he signed the affidavit he was counsel. Unfortunately he

1 was recalled to the military.

2 THE COURT: Okay. So, he – you say he was pro hac'd in?

3 MR. WESTBROOK: Yes, he was pro hac'd in. He was valid under the
4 Nevada State Bar. We have the documentation. We don't – I don't have it with me
5 but I could present it to you. At the time that he signed the affidavit, at the time of
6 the original complaint he was pro hac'd in. When I said original complaint I'm
7 referring to the action pending in Department 30.

8 THE COURT: Right. Because I – I've got that here. So, I –

9 MR. WALTERS: Your Honor –

10 THE COURT: -- pulled it up.

11 MR. WALTERS: -- Your Honor, we don't dispute that and we weren't trying to
12 conceal that from the Court at all. The argument was that he wasn't admitted in this
13 case.

14 THE COURT: Okay.

15 MR. WESTBROOK: And for that – so, the attorney who signed the complaint
16 is Glen Lerner, licensed in Nevada, that's undisputed. The affidavit is an attachment
17 to the complaint. So, whether or not a Nevada attorney signed the affidavit doesn't
18 bear on to the actual complaint itself because the complaint is the pleading and then
19 the documents attached to the complaint simply support the pleadings.

20 THE COURT: Now, I'm looking at the complaint that was in front of Judge
21 Wiese and I don't see any affidavit attached to that one.

22 MR. WESTBROOK: There – there should be an amended one in that one.

23 THE COURT: Do you know when your amended complaint was filed?

24 MR. WESTBROOK: Not off the top of my head, Your Honor. I apologize.

25 THE COURT: That's all right. Continue.

1 MR. WESTBROOK: Okay. So, basically what Defense counsel is attempting
2 to do is imply additional requirements on 11.258 that aren't there. If you look at the
3 rule we met the rule. While, yes, the case numbers don't match up but that's
4 nowhere listed in the rule if the case numbers don't match up in the affidavit then the
5 complaint is void ab initio or the complaint must be dismissed. The facts in both
6 cases, both in Department 30 and pending before this Court, are the same. So –
7 and the expert's affidavit wouldn't necessarily be the same because nobody's knows
8 the substantial differences between the two because it's the same issue.

9 Regarding this – the single cause of action rule, we aren't splitting
10 claims here. You know, as this Court pointed out in the Laughon case –

11 THE COURT: But aren't you? If you are having non-professional – the non-
12 design professional claims against Aries there and then you're doing the design
13 professional claims here that is splitting causes of action.

14 MR. WESTBROOK: Well, the causes of action are the same in both, it's just
15 if they're design professional there's a certain height and standard that you have to
16 meet in order to bring the claims. But the claims are the same, they're –

17 THE COURT: Well –

18 MR. WESTBROOK: -- both negligence claims. There are no separate or
19 different claims between either one, it's just, okay, we do recognized that Aries is a
20 design professional based on the discovery that occurred after, you know, we filed
21 the complaint. We have no other remedy because based on the language of the
22 statute an affidavit has to be filed. At the time we filed it we didn't believe they were.
23 And like I said, the Court looked at everything that each side presented it couldn't
24 make a decision either way so you allowed us to do discovery. But we can't go back
25 and amend that complaint to change Aries to say, okay, we're gonna add this now

1 because Aries is in fact the design professional.

2 THE COURT: And that is because of 11.258 subsection 2?

3 MR. WESTBROOK: Well, that and the case law out there. So, I believe it's
4 the Otak case where they don't allow you to amend the complaint if you fail to satisfy
5 11.258 because in the Court's mind it's void ab initio. You can – the complaint
6 never existed and you can't amend a complaint that didn't exist. So, we're kind
7 stuck essentially.

8 THE COURT: Well, don't you have the same problem? I mean, by just – I
9 mean, aren't you just taking an end-run then?

10 MR. WESTBROOK: No, no, I wouldn't say an end-run, Judge. If we were
11 allowed to – in the normal course of [indecipherable] you don't have this – this
12 imposing statute with the draconian sanctions attached to it, we would just simply be
13 allowed to amend the complaint. We would bring that in front of Judge Wiese to
14 say, hey, based on the new discovery evidence we find that, yes, they are a design
15 professional and, yes, we have to submit an affidavit; here's the affidavit, it's
16 important to our claims but we aren't allowed to do that.

17 So, we aren't trying to do anything untoward, we aren't trying do to an
18 end-run, it's just the only option we had and hence why we're trying to consolidate
19 the cases. You know, we aren't trying to maintain two separate actions, that's not
20 our intent here.

21 THE COURT: Okay.

22 MR. WESTBROOK: So, yes – so, like I'm saying, we aren't actually splitting
23 claims. And the case that Defense counsel cited Fitzsimmons where the – the
24 District Court said that they can't have – we can't allow two cases pending at the
25 same time. That was actually heard on appeal and the Supreme Court reversed the

1 District Court because the Supreme Court determined that those two cases weren't
2 pending at the same time so one case had already been resolved prior to the
3 second – the subsequent case being dismissed. So, the District Court's
4 determination or statement on that doesn't bear any weight on this Court because
5 that one the District Court – the Court had the facts wrong and the Nevada Supreme
6 Court ended up reversing the District Court's official decision.

7 I believe the Laughon case is more appropriate in this instance, it's two
8 identical claims. In that case the Court said just because they're two identical claims
9 we don't see a basis for a –

10 THE COURT: But –

11 MR. WESTBROOK: -- dismissal.

12 THE COURT: -- you're telling me it's not two identical claims. You got one
13 against Aries Consulting in a non-design professional claim and then you've got a
14 claim here as a design professional.

15 MR. WESTBROOK: Well, the – our – the causes of action that we're bringing
16 against Aries are the same in both actions, it's just because through our
17 determination of discovery we determined, okay, they likely are a design
18 professional and since they are a design professional then, yes, 11.258 would apply.
19 If this statute actually applies then we have to comply with it.

20 Like I said before, we ordinarily would have just amended it but weren't
21 allowed to. So, I mean, what could we possibly do? Even a judge himself couldn't
22 determine whether or not Aries was a design professional based on information that
23 was present – that was available to the parties at the time we had the hearing on the
24 motion for summary judgment. So, he allowed us to conduct discovery for the very
25 reason of finding out whether or not Aries was in fact a design professional and

1 through that we determined they likely are. So, then we're in a situation of, well,
2 how do we comply with the statute? If we can't amend it then, you know, what is our
3 option? At that point the only option was to file another claim. And we aren't trying
4 to maintain both actions at the same time, that's not the plan here. The plan is to
5 consolidate the actions in front of George Wiese. Excuse me, Judge Wiese. The
6 plan is to consolidate the actions in front of Judge Wiese, you know, otherwise the
7 consequences of, you know, us not having enough information prior to discovery
8 which would be – I don't want to say unfair, it would be hard to fault us for, would be
9 us losing the claim against Aries because based on our discovery we learned that
10 they were a design professional. So, they're – while they are -- in one instance it's
11 presented as they are not a design professional but through our discovery in that
12 proceeding we found out that they are. So, we're bringing the exact same claims
13 against Aries in another court, in another action, and seeking consolidation because
14 in our view we don't have any other options.

15 And another reason why the first to file rule I don't believe is applicable
16 here (1) it's a federal court jurisdiction rule (2) courts have full discretion and
17 whatnot to apply it (3) there, to my knowledge, isn't a situation where a party can
18 bring a complaint and then if the complaint is somehow deficient they cannot amend
19 the complaint to cure the deficiencies.

20 THE COURT: Another thing I'm concerned about is if I were inclined to deny
21 the motion will my decision in effect render Otak meaningless?

22 MR. WESTBROOK: No, no, no. I wouldn't say that at all because in denying
23 the motion – essentially what you're saying is – you're not saying that we didn't
24 comply with 11.258, in denying the motion you're saying, yes, they did comply with
25 11.258 despite the, you know, typographical errors in the affidavit. So, I don't

1 believe that runs contrary to Otak at all because in this instance we apply – we
2 supplied the affidavit from the expert and the attorney showing that we had a basis
3 for the claim against Aries.

4 THE COURT: Okay.

5 MR. WESTBROOK: And just one moment. That's all I have.

6 THE COURT: Okay. It's your motion, counsel.

7 MR. WALTERS: I think what you just heard the Plaintiff tell you is that they're
8 splitting causes of action, their independent argument – or inconsistent arguments
9 being made in – before Judge Wiese and before you. Initially they're arguing that
10 Aries is not a design professional, now they're here arguing that Aries is a design
11 professional. So, they are splitting causes of action so therefore we argue that the
12 single cause of action rule does apply and that these claims should be dismissed.
13 But more importantly – more to the point and I think the more direct argument is that
14 the affidavit they submitted in support of this case, the one they recycled from the
15 original matter that refers to another lawsuit does not comply with the strict
16 requirements of NRS 11.258.

17 The legislature made it a point to require that an attorney chime in on
18 each lawsuit, not just an expert saying that, yeah, there's a reasonable basis of fact
19 but also an attorney to chime in that there's a reasonable basis in law. And you
20 don't have that before you, you have an affidavit from an attorney who attested to
21 the reasonableness of the lawsuit in Department 30 but you don't have anything
22 before you describing the circumstances that are before this Court saying that, yeah,
23 even though we filed a lawsuit in Department 30 there's still a reasonable basis for
24 this case because that's just not before the Court and therefore we think that under
25 11.258 the affidavit is non-compliant and as a result 11.259 requires dismissal.

1 Thank you.

2 THE COURT: Counsel, I gotta chance to read the Laughon case yesterday
3 but I did – I want to re-read Otak. It's been a while since I read Otak and I just didn't
4 get a chance to read it yesterday in preparing. So, I want to read that and I will get
5 you out a decision on this. So, I hate to punt but I always like to be sure on these
6 things, okay?

7 MR. WESTBROOK: We appreciate it –

8 MR. WALTERS: All right.

9 MR. WESTBROOK: -- Your Honor.

10 THE COURT: All right. Thank you.

11 MR. WALTERS: And thank you to you and your staff for sticking around.

12 THE COURT: Well, thank you for staying.

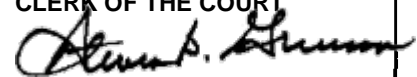
13 [Proceedings concluded at 1:06:43 p.m.]

14 * * * * *

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16
17
18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio/video recording in the above-entitled case to the best of my ability.

20 
21 _____

22 NORMA RAMIREZ
23 Court Recorder
24 District Court Dept. XXII
25 702 671-0572



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
the relevant discipline involved in the action; and
- 26 (d) Has concluded on the basis of the review and the consultation with the
expert that the action has a reasonable basis in law and fact.

27 2. The attorney for the complainant may file the affidavit required pursuant to
28 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,

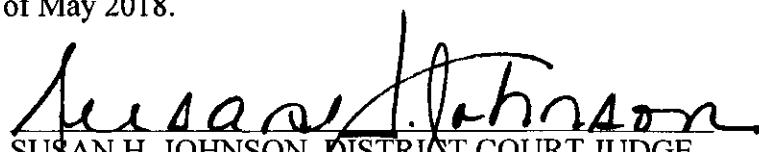
1 consequently, mandates automatic dismissal if the pleading is served without the complaining party
2 concurrently filing the required affidavit and report. Id.

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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

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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

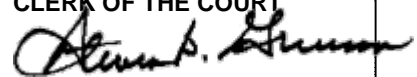
I hereby certify, on the 11th day of May 2018, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S 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.
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Laura Banks, Judicial Executive Assistant



1 **MRCN**
Glen J. Lerner, Esq.
2 Nevada Bar No. 4314
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3 4795 South Durango Drive
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4 Telephone: (702) 877-1500
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5 glerner@glenlerner.com
Attorneys for Plaintiff

6 Jennifer Liakos, Esq.
7 *Pro Hac Vice Pending*,
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8 525 South Douglas Street, Suite 260
El Segundo, CA 90245
9 Telephone: (310) 331-8224
JLiakos@NapoliLaw.com
10 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

15 Plaintiff,
16 vs.

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

18 Defendants.

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

**PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Hearing Date:
Hearing Time:

19 Plaintiff Marcus Reif, an incompetent person by and through his Conservator Cindy Reif,
20 and by and through his attorneys, Glen Lerner Injury Attorneys and Napoli Shkolnik, PLLC, hereby
21 submits their Motion for Reconsideration.

22 This motion is based upon the attached Memorandum of Points and Authorities, the papers
23 and pleadings on file with this Court, and any oral argument and evidence that may be presented at
24 the hearing.

GLEN LERNER INJURY ATTORNEYS

26 By: /s/ Glen J. Lerner
Glen J. Lerner (NV SBN 4314)
27 4795 S. Durango Drive
Las Vegas, NV 89147
28 *Attorney for Plaintiff*

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1 the Court's docket without the accompanying attachments due to an error in the Court's Odyssey E-
2 File and Serve system. This error was caught and immediately fixed by Plaintiff's counsel in the
3 exact manner instructed by the Court's Clerk. Therefore, as Plaintiff complied with NRS 11.258
4 when filing his compliant, Plaintiff's Motion for Reconsideration should be granted.

5 **II. STATEMENT OF RELEVANT FACTS**

6 Plaintiff filed an action which is currently pending in Department 30 against Aries
7 Consultants, Inc., (hereinafter "Aries"), and other Defendants arising out of the life-threatening and
8 permanent injuries Plaintiff sustained when the car he was operating fell five stories from a parking
9 structure, the repairs of which were previously inspected by Aries. In that action, Aries was not
10 plead as a design professional, and the Court denied Aries motion to dismiss the complaint for
11 failure to comply with NRS 11.256. Aries has since repeatedly claimed that it is entitled to the
12 protection of NRS 11.256 and in the abundance of caution plaintiffs decided to file the instant *new*
13 independent action (not an Amended action) to cure any alleged deficiencies. Because NRS 11.258
14 does not permit a Plaintiff to amend a complaint to add design-professional allegations, Plaintiff had
15 no choice but to file a new action which would then be consolidated into the initial case.¹ In fact,
16 there is a Motion to Consolidate this case currently pending in Department 30, a motion that cannot
17 be considered by the Court until Aries answers this Complaint. *See* EDCR 2.50(a)(1).

18 Plaintiff filed the present complaint in this Court against Aries Construction on March 12,
19 2018, bearing case number A-18-770951-C.² This action is not an "Amended" Complaint as the
20 Court so found in the Order dated May 11, 2018. On March 12, 2018 the paralegal at Glen Lerner's
21 office, Miriam Alvarez, uploaded the Complaint, the attorney affidavit and expert report. Upon
22 receipt of a conformed copy of the complaint from the electronic filing system, Ms. Alvarez
23 immediately noticed there had been a technical error and for some reason the filing system did not
24 attach the attorney's affidavit and expert report to the complaint. Ms. Alvarez immediately called
25 the Court to make sure the attachments had uploaded on the Court's end. *See* Affidavit of Miriam
26 Alvarez attached hereto as Exhibit 1. After consultation with the Court Clerk, Ms. Alvarez was
27 instructed to refile the complaint and the corresponding attachments as an "amended pleading" the

28 ¹ Plaintiff filed this action on March 12, 2018.

² Plaintiff's Complaint and Demand for Jury Trial, filed on March 12, 2018 in case number A-18-770951-C.

1 following day, March 13, 2018.³ Ms. Alvarez explained the concerns to the Court and the Court
2 noted that the attachments would be related back to the initial filing. Clearly, that was not relayed to
3 this Court. Plaintiff now brings this instant motion for reconsideration.

4 **III. LEGAL STANDARD**

5 Pursuant to EDCR 2.24, a party may file a motion for relief seeking “reconsideration of a
6 ruling of the court.” EDCR 2.24(b). “A district court may reconsider a previously decided issue if
7 substantially different evidence is subsequently introduced.” *Masonry & Tile v. Jolley*, 113 Nev.
8 737, 741 (1997); *see Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976) (holding that a motion
9 for rehearing should be granted for “instances in which new issues of fact or law are raised
10 supporting a ruling contrary to the ruling already reached”).

11 **IV. LEGAL ARGUMENT**

12 This Court issued an order on May 11, 2018, granting Defendant Aries Consultants, Inc.’s
13 Motion to Dismiss. The decision was based on facts outside the pleadings or oral argument with the
14 Court. Plaintiff’s initial complaint was timely filed by Plaintiff’s counsel with the appropriate
15 attachments. The procedural history behind the filing of this particular complaint was not contested
16 by either party in the briefs, nor was the issue raised during the scheduled hearing. As such,
17 Plaintiff believed the initial filing issues with the system had been corrected. If provided the
18 opportunity, Plaintiff would have been able to offer additional information regarding the filing of
19 the original complaint to the Court.

20 On March 12, 2018, Plaintiff’s Counsel filed the original complaint and exhibits against sole
21 defendant, Aries Consultants, Inc., via the Court’s Odyssey E-File and Serve system in accordance
22 with the system’s instructions. On March 13, 2018, Plaintiff’s Counsel received a stamped copy of
23 the filed complaint with the attachments missing. Upon receipt, a call was made to this Court
24 requesting further information and assistance. Counsel explained that the attachments must be filed
25 with the Complaint and asked the Court how to correct the Odyssey System error. Counsel was
26 advised there was a malfunction by the Odyssey System after the documents were uploaded and the
27 Court had not received a copy of the attachments. The Court Clerk requested Plaintiff’s Counsel

28 _____
³ Plaintiff’s Amended Complaint and Demand for Jury Trial, filed on March 13, 2018 in case number A-18-770951-C.

1 refile the complaint, along with the accompanying attachments, as an amended filing and explained
2 the attachments would be related back to the original filing. Following the Court's direction,
3 Plaintiff's Counsel refiled the documents accordingly. During oral argument on May 10, 2018,
4 neither party presented arguments for or against the filing, nor did this Court indicate the filing to
5 have been problematic. Therefore, Plaintiff believed the filing had been corrected as the Clerk
6 indicated.

7 Moreover, in its Order on May 11, 2018, this Court concluded that Plaintiff's attorney
8 affidavit lacked a statement regarding the reason for failing to attach the exhibits to the original
9 complaint filed on March 12, 2018. However, Plaintiff's affidavit was in compliance with NRS
10 11.258. Pursuant to the Nevada Revised Statutes, Plaintiff is required to provide a reason for failing
11 to comply with NRS 11.258 *only if* unable to contact the expert prior to filing the complaint:

12 The attorney for the complainant may file the affidavit required pursuant to
13 subsection 1 at a later time if the attorney could not consult with an expert and
14 prepare the affidavit before filing the action without causing the action to be
15 impaired or barred by the statute of limitations or repose, or other limitations
16 prescribed by law. If the attorney must submit the affidavit late, the attorney shall
file an affidavit concurrently with the service of the first pleading in the action
stating the reason for failing to comply with subsection 1 and the attorney shall
consult with an expert and file the affidavit required pursuant to subsection 1 not
later than 45 days after filing the action.

17 NRS 11.258(2). Here, Plaintiff did in fact contact his engineering expert, Jerry L. Miles, prior to
18 filing the original complaint on March 12, 2018. Further, he submitted a report from Mr. Miles with
19 the Complaint. However, due to an error with the Court's filing system, the report, along with the
20 attorney affidavit, was not uploaded on the date the original complaint was filed. Following this
21 Court's instruction, Plaintiff refiled the complaint, as an amended pleading. Since NRS 11.258 does
22 not provide instruction on clerical issues with the Court's filing system, the unedited affidavit
23 remains in compliance with the statute.

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V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court GRANT his Motion for Reconsideration.

GLEN LERNER INJURY ATTORNEYS

By: /s/ Glen J. Lerner
Glen J. Lerner, Esq.
Nevada Bar No. 4314
4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 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
3 employee of GLEN LERNER INJURY ATTORNEYS, and on the 22nd day of May, 2018 the
4 foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION** was served by electronic copy
5 via the Eighth Judicial Court's Odyssey E-File and Serve system, to the following counsel of record:

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

10
11
12 /s/ Miriam Alvarez
An Employee of GLEN LERNER INJURY
13 ATTORNEYS
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EXHIBIT 1

EXHIBIT 1

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AFFIDAVIT OF MIRIAM ALVAREZ

STATE OF NEVADA)
) cc:
COUNTY OF CLARK)

Miriam Alvarez, being first duly sworn, states as follows:

1. I am a paralegal in the law firm of Glen Lerner Injury Attorneys. I have personal knowledge of the matters set forth herein and I am competent to testify thereto.

2. This Affidavit is made in support of Plaintiff's Motion for Reconsideration of the Motion to Dismiss Defendant, Aries Consultants, Inc.

3. On March 12, 2018, I filed the Complaint against Aries Consultants, Inc in this Court and the Demand for Jury Trial. When I filed the Complaint, I uploaded the Exhibits to the Complaint in the same filing. The exhibits included the attorney declaration and expert declaration as required by NRS 11.258.

4. I complied with Odyssey EfileNV filing requirements.

5. On March 13, 2018, we received notification of acceptance of the filed Complaint. When I downloaded the filed Complaint the exhibits were not attached.

6. Due to a computer system failure the exhibits did not upload.

7. I tried to fix the computer error as soon as I became aware of the issue by contacting the Court for instruction.

8. Odyssey eFileNV did not allow me to re-upload the exhibits to fix the computer system error.

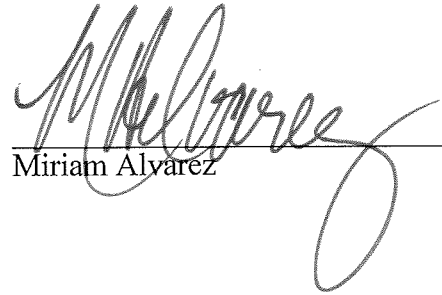
9. I contacted the Clerk's office to inquire why the exhibits were not included in the filing. The Clerk's office told me that they did not receive the documents and only filed the Complaint and if we wanted to include the exhibits that I would have to file an Amended Complaint and attach the exhibits in one filing.

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1 10. One March 13, 2018, per the Clerk's instruction, I filed the Amended Complaint with
2 the exhibits attached in the same document.

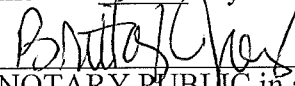
3 Further your affiant sayeth naught.

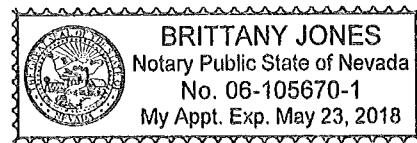
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Miriam Alvarez

6 SUBSCRIBED AND SWORN to before
7 me this 22 day of May, 2018.

8 
9 NOTARY PUBLIC in and for
said County and State



ORDD

CRAIG J. MARIAM, ESQ.

Nevada Bar No. 10926

ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

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Attorneys for 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, DOES1 through 5, and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

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

) Dept. No.: XXII

) **ORDER DENYING PLAINTIFF'S**
) **MOTION FOR**
) **RECONSIDERATION**

Plaintiff's Motion for Reconsideration of this Court's May 11, 2018 Order ("Motion") came on for hearing before the Court on June 26, 2018 in Department 22 of the above-entitled Court, the Honorable Susan H. Johnson presiding. Brian K. Walters, Esq. of the law firm GORDON REES SCULLY MANSUKHANI, LLP appeared on behalf of Defendant Aries Consultants, Inc. Randolph Westbrook of GLEN LERNER INJURY ATTORNEYS appeared on behalf of Plaintiff Marcus A. Reif.

Having considered Plaintiff's Motion, Defendant's Opposition and Countermotion and Plaintiff's Reply, and for good cause appearing,

Gordon Rees Scully Mansukhani, LLP
300 S. 4th Street, Suite 1550
Las Vegas, NV 89101

1 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Reconsideration of this Court's
2 May 11, 2018 Order is DENIED.


3 DATED this 17th day of July, 2018

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6 
DISTRICT COURT JUDGE
A-18-770951-C

7 *Respectfully submitted by:*

8 Dated this ____ day of July, 2018.


9 **GORDON REES SCULLY**
10 **MANSUKHANI, LLP**

11  660 7185
12 CRAIG J. MARIAM, ESQ.
13 Nevada Bar No. 10926
14 ROBERT E. SCHUMACHER, ESQ.
15 Nevada Bar No. 7504
16 BRIAN K. WALTERS, ESQ.
17 Nevada Bar No. 9711
18 300 S. 4th Street, Suite 1550
19 Las Vegas, Nevada 89101
20 *Attorneys for Defendant Aries Consultants, Inc.*

21 Approved as to Form and Content by:

22 Dated this 16th day of July, 2018.

23 **GLEN LERNER INJURY ATTORNEYS**

24  bar # 12893
25 GLEN J. LENNER, ESQ.
26 Nevada Bar No. 4314
27 RANDOLPH WESTBROOK, ESQ.
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Attorneys for Plaintiff

1 **NOTC**

2 Glen J. Lerner, Esq.
3 Nevada Bar No. 4314
4 Randolph L. Westbrook III, Esq.
5 Nevada Bar No. 12893
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12 rwestbrook@glenlerner.com
13 Attorneys for Plaintiff

8 Jennifer Liakos, Esq.
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11 525 South Douglas Street, Suite 260
12 El Segundo, CA 90245
13 Telephone: (310) 331-8224
14 JLiakos@NapoliLaw.com
15 Attorneys for Plaintiff

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

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

16 Plaintiff,

16 vs.

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

19 Defendants.

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

**PLAINTIFF'S NOTICE OF
APPEAL**

Hearing Date:
Hearing Time:

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

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

25 GLEN LERNER INJURY ATTORNEYS

26 By: /s/ Glen J. Lerner

27 Glen J. Lerner (NV SBN 4314)
28 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