

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON

Appellant,

vs.

RAMPARTS INC., LUXOR HOTEL &
CASINO, A DOMESTIC CORPORATION,

Respondent.

No. 78964

Electronically Filed
Dec 12 2019 08:33 a.m.

**AMENDED DOCKETING
STATEMENT
CIVIL APPEALS**

Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXIX
County Clark Judge David M. Jones
District Ct. Case No. A-16-732342-C

2. **Attorney filing this docketing statement:**

Attorney Micah S. Echols, Esq. and Tom W. Stewart, Esq.
Telephone 702-382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, NV 89145

Attorney Boyd B. Moss III, Esq.
Telephone 702-222-4555
Firm Moss Berg Injury Lawyers
Address 4101 Meadows Lane, Suite 110, Las Vegas, Nevada 89107

and

Attorney Matthew G. Pfau, Esq.
Telephone 702-879-9555
Firm Parry & Pfau
Address 880 Seven Hills Drive, Suite 210, Henderson, Nevada 89052

Client Vivia Harrison ("Plaintiff")

3. **Attorney representing respondent(s):**

Attorney Loren S. Young, Esq.
Telephone 702-257-1997
Firm Lincoln, Gustafson & Cercos, LLP
Address 3960 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169
Client Ramparts, Inc. dba Luxor Hotel & Casino ("Luxor")

4. **Nature of disposition below (check all that apply):**

- | | |
|---|---|
| ☐ Judgment after bench trial | ☐ Dismissal |
| ☐ Judgment after jury verdict | ☐ Lack of Jurisdiction |
| ☐ Summary judgment | ☐ Failure to state a claim |
| ☐ Default judgment | ☐ Failure to prosecute |
| ☐ Grant/Denial of NRCP 60(b) relief | ☐ Other (specify) |
| ☐ Grant/Denial of injunction | ☐ Divorce decree: |
| ☐ Grant/Denial of declaratory relief | ☐ Original ☐ Modification |
| ☐ Review of agency determination | ☒ Other disposition (specify) |
- (1) Order Granting Defendant Ramparts, Inc. dba Luxor Hotel & Casino's Motion for Attorney's Fees and Costs (filed 03/18/19) **Exhibit 7**;
- (2) Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset (filed 05/21/19) **Exhibit 9**; and
- (3) Stipulation and Order to Dismiss Defendant Desert Medical Equipment, Only (filed 11/26/19) **Exhibit 10**.

5. **Does this appeal raise issues concerning any of the following:** N/A.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

The underlying case has not been the subject of any other appeal or original proceedings before this Court.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

The underlying District Court case is *Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.*, Case No. A-16-732342-C.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

The underlying action arises from personal injuries sustained by Plaintiff when she was thrown from a motorized scooter on December 10, 2014. Plaintiff initiated the instant case on February 24, 2016.

In her second amended complaint, filed on August 19, 2016, Plaintiff alleged causes of action for (1) negligence; and (2) negligent hiring, training, maintenance, and supervision against Luxor; (3) negligence; and (4) negligent hiring, training, maintenance and supervision against Defendant Desert Medical Equipment (“Desert Medical”); and (5) negligence; and (6) strict products liability against Defendant Pride Mobility Products Corp. (“Pride Mobility”). See **Exhibit 1**. Plaintiff stipulated with Luxor to remove the second cause of action for negligent hiring, training, maintenance, and supervision. See **Exhibit 2**.

Pride Mobility filed a third-party complaint against Third-Party Defendant Stan Sawamoto (“Sawamoto”). See **Exhibit 3**. Pride Mobility stipulated to the dismissal of its claims against Sawamoto prior to trial. See **Exhibit 4**. At a hearing in August 2018, Pride Mobility had its motion for summary judgment granted, and the order granting summary judgment was filed on January 29, 2019. See **Exhibit 5**.

In December 2018, a nine-day trial took place. Prior to the jury’s verdict, Plaintiff and Desert Medical entered into a high-low settlement agreement. Pursuant to the settlement agreement, no matter what the jury’s verdict was, Desert Medical would be obligated to pay Plaintiff according to the terms of the high-low settlement agreement. A contract was entered into between the two parties, and the payment was not part of a net judgment. The settlement amount was not confidential.

On December 20, 2018, the jury returned a verdict in favor of Luxor and Desert Medical. See **Exhibit 6**. In light of the defense verdict, Desert Medical was required to pay Plaintiff \$150,000. Plaintiff’s counsel sent a notice of attorney lien to all parties on December 20, 2018 and January 8, 2019.

On January 17, 2019, Luxor filed a motion for attorney’s fees and costs, which was granted in the March 18, 2019 order granting Luxor’s motion for attorney’s fees and costs. See **Exhibit 7**. In the March 18, 2019 order, the District Court ordered that the judgment against Plaintiff must be offset from other settlement funds received by Plaintiff prior to any satisfaction of liens, including the lien

for attorney's fees and costs incurred by Plaintiff's counsel during the course of litigation. *Id.*

On March 28, 2019, Plaintiff filed a motion for reconsideration, asking the District Court to reconsider the attorney lien offset. See **Exhibit 8**. On May 10, 2019, the District Court issued a minute order denying Plaintiff's motion for reconsideration. A written order denying reconsideration was entered on May 21, 2019. See **Exhibit 9**.

Desert Medical filed a motion for interpleader and to deposit the funds with the District Court, which was granted on July 24, 2019.

Following the order denying reconsideration, Plaintiff filed her original notice of appeal on June 4, 2019, which was docketed to this Court as Case No. 78964. Plaintiff intended to appeal from the award of attorney's fees and costs, but only named the motion for reconsideration in her notice of appeal. However, this Court has previously held that a notice of appeal that does not identify the correct judgment or order does not warrant dismissal where "the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice and where the defect has not materially misled the respondent." *Collins v. Union Fed. Sav. & Loan Ass'n*, 97 Nev. 88, 90, 624 P.2d 496, 497 (1981).

Plaintiff's intent to appeal from the award of fees and costs can be reasonably inferred based on naming the denied reconsideration motion. See *Ross v. Giacomo*, 97 Nev. 550, 555, 635 P.2d 298, 301 (1981) (providing that an appeal from the denial of a post-judgment tolling motion may be viewed as an appeal from the final judgment), *abrogated on other grounds by Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006).

However, a final order disposing of all claims had not yet been entered, making Plaintiff's original notice of appeal premature. Plaintiff and counsel for Desert Medical entered into a stipulation and order for dismissal, which was filed on November 26, 2019. See **Exhibit 10**. This final order cures the jurisdictional defect in Plaintiff's original notice of appeal, and she now amends her appeal to include (1) the order granting Defendant Ramparts, Inc. dba Luxor Hotel & Casino's motion for attorney's fees and costs, which was filed on March 18, 2019 (**Exhibit 7**); (2) the order denying Plaintiff's motion to reconsider the Court's order granting Luxor an attorney lien offset, which was filed on May 21, 2019 (**Exhibit 9**); and (3) the stipulation and order to dismiss Defendant Desert Medical Equipment, only, which was filed on November 26, 2019 (**Exhibit 10**).

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) *Whether the rule in John W. Muije, Ltd. v. A North Las Vegas Cab Company, Inc.*, 106 Nev. 664, 798 P.2d 559 (1990) that an offset applies before an attorney's lien is limited to a relationship involving two parties. And, in a relationship with three parties, as the instant case, whether an attorney's lien for the plaintiff attaches first to a settlement with a first defendant, even though a second defendant later obtains an award of attorney fees and costs against the plaintiff.

(2) Whether the District Court abused its discretion in awarding attorney's fees to the Luxor based on an offer of judgment.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Plaintiff is not aware of any pending cases raising the same or similar issues.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: As outlined in the response to Question No. 9, Plaintiff asks this Court to limit the contours of *Muije* to the two-party relationship.

13. **Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Based upon NRAP 17(a)(11) and (12), the Supreme Court should retain this appeal based upon the *Muije* issue presented. The attorney's lien issue is a matter of statewide importance.

14. **Trial.** If this action proceeded to trial, how many days did the trial last?
9 days.

Was it a bench or jury trial? Jury.

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:**

(1) The order granting Defendant Ramparts, Inc. dba Luxor Hotel & Casino's motion for attorney's fees and costs was filed on March 18, 2019 (**Exhibit 7**);

(2) the order denying Plaintiff's motion to reconsider the Court's order granting Luxor an attorney lien offset was filed on May 21, 2019 (**Exhibit 8**); and

(3) the stipulation and order to dismiss Defendant Desert Medical Equipment, only, was filed on November 26, 2019 (**Exhibit 10**).

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served:

(1) The notice of entry of order granting Defendant Ramparts, Inc. dba Luxor Hotel & Casino's motion for attorney's fees and costs was filed on March 18, 2019 (**Exhibit 7**);

(2) the notice of entry of order denying Plaintiff's motion to reconsider the Court's order granting Luxor an attorney lien offset was filed on May 21, 2019 (**Exhibit 8**); and

(3) the notice of entry of stipulation and order to dismiss Defendant Desert Medical Equipment, only, was filed on December 5, 2019 (**Exhibit 10**).

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCp 50(b) Date of filing

☐ NRCp 52(b) Date of filing

☐ NRCp 59 Date of filing

NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____.

(c) Date written notice of entry of order resolving tolling motion was served _____.

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed:

Plaintiff's original notice of appeal was filed on June 4, 2019, following the entry of the order denying her motion for reconsideration, and Plaintiff's amended notice of appeal was filed on December 3, 2019, following the entry of the final order on November 26, 2019.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) *Consol. Generator-Nevada, Inc. v. Cummins Engine Company, Inc.*, 114 Nev. 1304, 971 P.2d 1251 (1998)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) provides for an appeal from a final judgment.

In *Consol. Generator-Nevada, Inc. v. Cummins Engine Company, Inc.*, 114 Nev. 1304, 971 P.2d 1251 (1998), this Court held that interlocutory orders are reviewable on appeal from the final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Vivia Harrison ("Plaintiff")

Defendant: MGM Resorts International dba Luxor Hotel & Casino ("MGM")

Defendant: Ramparts, Inc. dba Luxor Hotel & Casino ("Luxor")

Defendant: Pride Mobility Products Corp.

Defendant/Third-Party Plaintiff: Desert Medical Equipment (“Desert Medical”)

Third-Party Defendant: Stan Sawamoto (“Sawamoto”)

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

MGM was named and served, but never appeared in the case. They were replaced by the proper party, Luxor, in the amended complaint.

Pride Mobility stipulated to the dismissal of its third-party claims against Sawamoto prior to trial. See **Exhibit 4**. Pride Mobility had its motion for summary judgment granted in an order filed on January 29, 2019. See **Exhibit 5**.

Desert Medical settled during trial and was dismissed by stipulation and order on November 26, 2019. See **Exhibit 10**.

23. **Give a brief description (3 to 5 words) of each party’s separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

In her second amended complaint, filed on August 19, 2016, Plaintiff alleged causes of action for (1) negligence; and (2) negligent hiring, training, maintenance, and supervision against Luxor; (3) negligence; and (4) negligent hiring, training, maintenance and supervision against Desert Medical; and (5) negligence; and (6) strict products liability against Pride Mobility. See **Exhibit 1**. On May 1, 2017, Plaintiff stipulated with Luxor to remove the second cause of action for negligent hiring, training, maintenance, and supervision. See **Exhibit 2**. Pride Mobility had its motion for summary judgment granted in August 2018, and the order granting summary judgment was filed on January 29, 2019. See **Exhibit 5**. Prior to the verdict, Desert Medical entered into a high-low settlement agreement, with the payment amount dependant on the jury’s verdict. On December 20, 2018, the jury returned a verdict in favor of Luxor and Desert Medical, resolving all remaining claims by the Plaintiff. See **Exhibit 6**. After depositing the settlement funds with the District Court, Desert Medical was dismissed by stipulation and order, which was filed on November 26, 2019. See **Exhibit 10**.

January 16, 2018 Pride Mobility filed an amended third-party complaint against Sawamoto, alleging claims for breach of contract; breach of the implied covenant of good faith and fair dealing; contractual indemnity; implied or

equitable indemnity; contribution; and negligence. See **Exhibit 3**. In a stipulation and order filed on December 11, 2018, Pride Mobility stipulated to the dismissal of its claims against Sawamoto. See **Exhibit 4**.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered “No” to question 24, complete the following: N/A.

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCp 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCp 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCp 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal

- Any other order challenged on appeal
- Notices of entry for each attached order

Exhibit	Document Description
1	Second Amended Complaint (filed 08/19/16)
2	Stipulation and Order to Amend Complaint to Remove Cause of Action (filed 05/01/17)
3	Defendant Desert Medical Equipment's First Amended Third-Party Complaint Against Stan Sawamoto (filed 01/16/18)
4	Notice of Entry with Stipulation and Order to Dismiss Third-Party Defendant, Stan Sawamoto, with Prejudice (filed 12/11/18)
5	Notice of Entry with Order Granting Defendant, Pride Mobility Products Corp.'s Renewed motion for Summary Judgment (filed 01/29/19)
6	Verdict (filed 12/20/18)
7	Notice of Entry with Order Granting Defendant Ramparts, Inc. dba Luxor Hotel & Casino's Motion for Attorney's Fees and Costs (filed 03/18/19)
8	Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset (filed 03/29/19)
9	Notice of Entry with Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset (filed 05/21/19)
10	Notice of Entry with Stipulation and Order to Dismiss Defendant Desert Medical Equipment, Only (filed 12/06/19)

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Vivia Harrison

Name of appellant

December 12, 2019

Date

Clark County, Nevada

State and county where signed

Micah S. Echols, Esq. and Tom W.
Stewart of Marquis Aurbach Coffing;
Boyd B. Moss III, Esq. of Moss Berg
Injury Lawyers; and
Matthew G. Pfau, Esq. of Parry & Pfau

Name of counsel of record

/s/ Micah S. Echols

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 12th day of December, 2019, I served a copy of this completed amended docketing statement upon all counsel of record:

☒ By electronic Service in accordance with the Master Service List:

Loren Young, Esq.

☒ By mailing it by first class mail with sufficient postage prepaid to the following address:

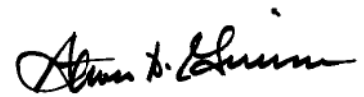
Thomas W. Maroney, Esq.
Lincoln, Gustafson & Cercos, LLP
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Attorney for Respondent

Dated this 12th day of December, 2019.

/s/ Leah Dell

Signature

Exhibit 1


CLERK OF THE COURT

ACOMP
Matthew G. Pfau, Esq.
Nevada Bar No.: 11439
PICKARD PARRY PFAU
10120 South Eastern Avenue, Suite 140
Henderson, Nevada 89052
702 910 4300 TEL
702 910 4303 FAX
matt@pickardparry.com

Attorneys for Plaintiff,
Vivia Harrison

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

Vivia Harrison, an individual

Case No.: A-16-732342-C

Dept. No.: I

Plaintiff,

vs.

Ramparts, Inc., dba Luxor Hotel & Casino, a Nevada Domestic Corporation; **Desert Medical Equipment**, a Nevada Domestic Corporation, **Pride Mobility Products Corp.**, a Nevada Domestic Corporation; Does I through XXX, inclusive and Roe Business Entities I through XXX, inclusive

Second Amended Complaint

Defendants.

Plaintiff, Vivia Harrison ("Ms. Harrison"), being represented by her attorney of record, Matthew G. Pfau, Esq. of PICKARD PARRY, PFAU, hereby complains against Defendants Ramparts, Inc., d/b/a Luxor Hotel & Casino ("Luxor), Desert Medical Equipment ("Desert") and Pride Mobility Corp. ("Pride Mobility") as follows:

Parties, Jurisdiction, and General Allegations

1. Ms. Harrison is a resident of Winston County, State of Alabama, and at all relevant times herein was a resident of Winston County, State of Alabama when the

PICKARD
PARRY
PFAU

1 incident occurred.

2 2. Ms. Harrison is informed and believes, and thereupon alleges, that Defendant
3 Luxor is a domestic corporation doing business in the State of Nevada.

4 3. Ms. Harrison is informed and believes, and thereupon alleges, that Defendant
5 Desert is a domestic corporation doing business in the State of Nevada.

6 4. Ms. Harrison is informed and believes, and thereupon alleges, that Defendant
7 Pride Mobility is a domestic corporation doing business in the State of Nevada.

8 5. That the names and capacities, whether individual, corporate, associates, co-
9 partnership, or otherwise of Defendants, Jane Doe and Does I through X, are
10 unknown to Ms. Harrison who therefore sues said Defendants by such fictitious
11 names; once the true names are discovered, Ms. Harrison will ask leave to amend
12 this Complaint to substitute the true names of said Defendants. Ms. Harrison is
13 informed and believes and thereupon alleges that the Defendants so designated
14 herein are responsible in some manner for their agency, master/servant or joint
15 venture relationship with Defendants, or otherwise contributed to, as a proximate
16 cause, the damages to Ms. Harrison as herein alleged.

17 6. Ms. Harrison, is informed and believes, and thereupon alleges that at all
18 relevant times Defendant Luxor, and ROE Defendants mentioned herein owned,
19 managed, controlled, or in some other way were in charge of and responsible for a
20 certain premises known as the Luxor Grand located at 3799 South Las Vegas
21 Boulevard, Las Vegas, Nevada 89109 ("Subject Premises") and the safety of the
22 patrons and hotel guests of the aforementioned premises.

23 7. At all relevant times, Defendant Luxor were agents, servants, and employees
24 acting within the course and scope of said employment and agency.

25 8. At all relevant times, Defendants Luxor were the owners, operators, managers,
26 controllers, inspectors, supervisors and controllers of the premises and of the
27 common areas of the Subject Premises.

28 9. Ms. Harrison was an invited guest of Luxor and was legally on the premises

1 when the events mentioned herein occurred.

2 10. Ms. Harrison, on or around December 10, 2014, was operating a motorized
3 scooter rental ("Subject Scooter") in the restaurant area of Luxor; such scooter
4 rentals were in the custody and control of the Luxor and placed in the casino area
5 by said Defendant Desert for rent by guests of the Luxor, including Ms. Harrison.

6 11. As Mr. Harrison was entering the Backstage Deli, the Backstage Deli
7 employees, in an effort to accommodate the Subject Scooter's passageway,
8 proceeded to move the dining tables and chairs.

9 12. As Ms. Harrison unknowingly drove the Subject Scooter over the base of a table
10 ("Subject Table"), her scooter's front wheel gave way, and the scooter tipped over, to
11 the right.

12 13. No anti-tip or stabilization device was present on the front of the Subject
13 Scooter at the time of the incident.

14 14. Unaware of the present dangerous conditions, Ms. Harrison sustained
15 serious injuries, including a stroke and hip fracture.

17 **First Cause of Action**

18 **(Negligence - Luxor)**

19 15. Ms. Harrison repeats, realleges and incorporates by reference the preceding
20 paragraphs as if fully set forth herein.

21 16. Luxor was in custody and control of the Backstage Deli restaurant furnishings,
22 had a duty to maintain and inspect the tables, including the Subject Table on the
23 Subject Premises for the care, safety and protection of those persons present on the
24 Subject Premises, especially guests thereof, including Ms. Harrison.

25 17. Luxor was responsible for the safety of guests on the Subject Premises,
26 ensuring that dangerous conditions were not present on the Subject Premises, and
27 ensuring that guests thereof were warned of any and all dangerous conditions on
28 the Subject Premises, including Ms. Harrison.

1 18. Luxor negligently maintained and inspected the Subject Premises, including
2 the Subject Scooter on the Subject Premises, so that it was permitted to remain in
3 an unreasonably dangerous conditions, presenting a danger to unsuspecting guests,
4 including Ms. Harrison.

5 19. Luxor and/or their agents, employees and servants had actual or constructive
6 notice of the dangerous conditions, and therefore had full knowledge of, or should
7 have had full knowledge of, the dangerous conditions and failed to remedy the
8 dangerous conditions or otherwise take action to make it safe.

9 20. Luxor and/or their agents, employees and servants, breached the duty of care
10 owed to Ms. Harrison by negligently maintaining and inspecting the Subject Premises
11 and further failing to warn Ms. Harrison of the unreasonably dangerous conditions.

12 21. As a direct and proximate result of Luxor's negligence, Ms. Harrison has and
13 will continue to incur pain and suffering and emotional distress, in an amount in
14 excess of \$10,000.00.

15
16 **Second Cause of Action**

17 **(Negligent Hiring, Training, Maintenance and Supervision - Luxor)**

18 22. Ms. Harrison repeats, realleges and incorporates by reference the preceding
19 paragraphs as if fully set forth herein.

20 23. Luxor acted in a negligent matter, including, but not limited to, failure to:

- 21 a. Establish, implement, maintain, and enforce proper policies and
22 procedures for employees, including maintenance crew, security,
23 restaurant managers, and wait staff, under the control of Defendant
24 Luxor;
- 25 b. Establish, implement, maintain, and enforce proper policies and
26 procedures for maintenance, repair, inspection, and/or general upkeep of
27 the Subject Premises, including the restaurant's furnishing;
- 28 c. Establish, implement, maintain, and enforce proper policies and

- 1 procedures for warning guests, including Ms. Harrison of potentially
2 dangerous conditions;
- 3 d. Properly hire adequate, experienced, and competent employees who are
4 able to warn guests, including Ms. Harrison of potentially dangerous
5 conditions;
- 6 e. Properly pre-screen potential employees by conducting background
7 checks and other similar investigations into potential employee's resume,
8 prior to employment retention;
- 9 f. Properly and adequately supervise and/or manage employees once they
10 were hired;
- 11 g. Properly and adequately train employees and/or instruct them as to their
12 job duties and/or responsibilities;
- 13 h. Properly and adequately oversee, control, issue regulations regarding the
14 conduct of employees;
- 15 i. Properly and adequately delineate maintenance, inspection, and repair job
16 duties and/or responsibilities to employees, and/or agents, acting on their
17 behalf; and
- 18 j. Properly, adequately, and responsibly setup procedures and policies to
19 ensure that all floor areas and restaurant furnishings, including the Subject
20 Table, are reasonably up kept in proper and working order for guests,
21 including Ms. Harrison.

22 24.As a direct and proximate result of Luxor's negligent hiring, training,
23 maintenance, and supervision, Ms. Harrison has and will continue to incur pain and
24 suffering and emotional distress, in an amount in excess of \$10,000.00.

25 25.Ms. Harrison has been required to engage the services of Pickard Parry Pfau
26 to prosecute this matter, and Ms. Harrison is entitled to reasonable attorney's fees
27 and costs therefor.
28

Third Cause of Action
(Negligence - Desert)

26. Defendant Desert is in the business of scooter sales and rentals of various scooters, including the Subject Scooter.

27. Prior to Ms. Harrison's injury, Ms. Harrison, rented the Subject Scooter, from Desert.

28. On or about December 10, 2014, Ms. Harrison began to use the Subject Scooter, unknowingly to her, that the Subject Scooter was unstable, as it was missing the anti-tip wheels, and otherwise unsafe for usage.

29. On or about December 10, 2014, the Subject Scooter tipped over, and as a result, Ms. Harrison was injured.

30. Ms. Harrison, is informed and believes, and thereupon alleges that Desert negligently and carelessly, inspected, the Subject Scooter, as per the manufacturer, the Subject Scooter should have been equipped with ant-tip wheels, therefore Desert, knew that the Subject Scooter presented a dangerous condition and unsafe for its intended usage.

31. Ms. Harrison, is informed and believes, and thereupon alleges that Desert negligently and carelessly, failed to give proper operating instructions to Ms. Harrison, prior to her usage,

32. Ms. Harrison, is informed and believes, and thereupon alleges that Desert negligently and carelessly, removed the anti-tip wheels from the Subject Scooter, therefore presenting a dangerous condition, rendering the Subject Scooter unsafe for its intended usage.

33. As a direct and proximate result of Desert's negligence, Ms. Harrison has and will continue to incur pain and suffering and emotional distress, in an amount in excess of \$10,000.00.

Fourth Cause of Action
(Negligent Hiring, Training, Maintenance and Supervision –
Desert)

34. Ms. Harrison repeats, realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

35. Desert acted in a negligent matter, including, but not limited to, failure to:

- k. Establish, implement, maintain, and enforce proper policies and procedures for employees, including maintenance crew, and sales staff, under the control of Defendant Desert;
- l. Establish, implement, maintain, and enforce proper policies and procedures for maintenance, repair, inspection, and/or general upkeep of the Subject Scooter's safety features, including the anti-tip wheels;
- m. Establish, implement, maintain, and enforce proper policies and procedures for warning guests, including Ms. Harrison of potentially dangerous conditions;
- n. Properly hire adequate, experienced, and competent employees who are able to warn guests, including Ms. Harrison of potentially dangerous conditions;
- o. Properly pre-screen potential employees by conducting background checks and other similar investigations into potential employee's resume, prior to employment retention;
- p. Properly and adequately supervise and/or manage employees once they were hired;
- q. Properly and adequately train employees and/or instruct them as to their job duties and/or responsibilities;
- r. Properly and adequately oversee, control, issue regulations regarding the conduct of employees;
- s. Properly and adequately delineate maintenance, inspection, and repair job

1 duties and/or responsibilities to employees, and/or agents, acting on their
2 behalf; and

- 3 t. Properly, adequately, and responsibly setup procedures and policies to
4 ensure that all scooters are fully operational, including the Subject Scooter
5 are reasonably up kept in proper and working order for guests, including
6 Ms. Harrison.

7 36.As a direct and proximate result of Desert's negligent hiring, training,
8 maintenance, and supervision, Ms. Harrison has and will continue to incur pain and
9 suffering and emotional distress, in an amount in excess of \$10,000.00.

10 37.Ms. Harrison has been required to engage the services of Pickard Parry Pfau
11 to prosecute this matter, and Ms. Harrison is entitled to reasonable attorney's fees
12 and costs therefor.

13
14 **Fifth Cause of Action**
15 **(Negligence- Pride Mobility)**

16 38. Defendant Pride Mobility is in the business of manufacturing, designing and
17 distributing various motorized scooters, including the Subject Scooter for personal
18 use to the consuming public as well as to businesses, including the Luxor.

19 39.On December 10, 2014, Ms. Harrison began to use the Subject Scooter,
20 unknowingly to her, that the Subject Scooter was unstable, as it was missing front
21 anti-tip wheels, and otherwise unsafe for usage.

22 40.On or about December 10, 2014, the Subject Scooter tipped over, and as a
23 result, Ms. Harrison was injured.

24 41.Ms. Harrison, is informed and believes, and thereupon alleges that Pride
25 Mobility Corporation negligently and carelessly manufactured, inspected, and
26 designed the Subject Scooter, knowing that the Subject Scooter presented a
27 dangerous condition and unsafe for its intended usage.

28 42.As a direct and proximate result of Pride Mobility's negligence, Ms. Harrison

1 has and will continue to incur pain and suffering and emotional distress, in an
2 amount in excess of \$10,000.

3
4 **Sixth Cause of Action**

5 **(Strict Products Liability- Pride Mobility)**

6 43.Ms. Harrison repeats, realleges, and incorporates by reference the preceding
7 paragraphs as fully set forth herein.

8 44.Pride Mobility is the manufacturer, designer, and distributor of the Subject
9 Scooter.

10 45.Ms. Harrison was a foreseeable user of the Subject Scooter, using the Subject
11 Scooter in a foreseeable manner, within the scope of its intended use.

12 46.At all times herein, the Subject Scooter and its component parts were defective
13 as to manufacture, and warnings, causing the Subject Scooter to be in an
14 unreasonably dangerous and defective condition that made it unsafe for its
15 intended use.

16 47.The defect existed at the time the Subject Scooter left the manufacturer.

17 48.As a direct and proximate result of the defective and dangerous condition of the
18 Subject Scooter, Ms. Harrison was physically injured, suffered pain and suffering,
19 emotional damages, and other losses.

20 49.Ms. Harrison is entitled to punitive damages.

21 50.Ms. Harrison has been required to engage the services of Pickard Parry Pfau to
22 prosecute this matter, and Ms. Harrison is entitled to reasonable attorney's fees and
23 costs therefore.

24
25 **Prayer for Relief**

26 Wherefore, Ms. Harrison prays for judgment of this Court as follows:

- 27 1. General damages in excess of Ten Thousand Dollars (\$10,000.00);
28 2. Special Damages in excess of Ten Thousand Dollars (\$10,000.00);

3. Cost of Suit, and attorneys' fees as provided by law;
4. Prejudgment interest as provided by law; and
5. Such other and further relief as the Court may deem just and proper.

DATED this 19th day of August 2016.

PICKARD PARRY PFAU


Matthew G. Pfau, Esq.
Nevada Bar No.: 11439
10120 South Eastern Avenue, Suite 140
Henderson, Nevada 89052
702 910 4300 TEL
702 910 4303 FAX

Attorneys for Plaintiff,
Vivia Harrison

Certificate of Service

I hereby certify that on the 19th day of August 2016, service of the foregoing
Second Amended Complaint was made by required electronic service, to the
following individuals:

David J. Mortensen, Esq.
ALVERSON, TAYLOR
MORTENSEN & SANDERS
7401 West Charleston Boulevard
Las Vegas, Nevada 89117

Attorneys for Defendant,
Desert Medical Equipment

Troy E. Peyton, Esq.
71 East Harmon Avenue
Las Vegas, Nevada 89109

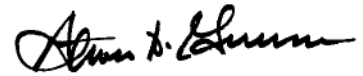
Attorneys for Defendant,
Ramparts, Inc., d/b/a Luxor Hotel & Casino

Joseph Burke, Esq.
Law Offices of Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, Pennsylvania 18704

Attorneys for Defendant,
Pride Mobility Corporation


An Employee of PICKARD PARRY PFAU

Exhibit 2


CLERK OF THE COURT

SAO
Matthew G. Pfau, Esq.
Nevada Bar No.: 11439
PARRY & PFAU
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAX
matt@p2lawyers.com

Attorneys for Plaintiff,
Vivia Harrison

DISTRICT COURT
CLARK COUNTY, NEVADA

Vivia Harrison, an individual

Case No.: A-16-732342-C

Dept. No.: XXIX

Plaintiff,

vs.

Ramparts, Inc., dba Luxor Hotel & Casino, a Nevada Domestic Corporation; **Desert Medical Equipment**, a Nevada Domestic Corporation; **Pride Mobility Products Corp.**, a Nevada Domestic Corporation; Does I-X; Roe Corporations I-X,

Stipulation and Order to Amend Complaint to Remove Cause of Action

Defendant.

Defendants.

It is hereby STIPULATED and AGREED, between Plaintiff Vivia Harrison ("Plaintiff") through her counsel of record, Matthew G. Pfau, Esq., of the law office of PARRY & PFAU and Defendant Ramparts, Inc., dba Luxor Hotel & Casino, by and through its counsel of record, Loren Young, Esq., of LINCOLN GUSTAFSON & CERCOS, Defendant Desert Medical Equipment, by and through its counsel of record, Jared F. Herling, Esq., of ALVERSON TAYLOR MORTENSEN SANDERS, and Defendant Pride Mobility Products Corp., by and through its counsel of record, Brian K. Terry,

PARRY & PFAU

Esq., of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, do hereby submit their Stipulation and Order for Leave to Amend the Complaint to remove the cause of action against Luxor for Negligent Hiring, Training, Maintenance and Supervision. A true and accurate copy of the proposed Third Amended Complaint, is attached hereto as Exhibit 1.

DATED this 20 day of April 2017,

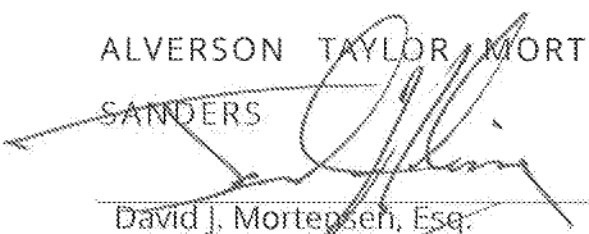
PARRY & PFAU


Matthew G. Pfau, Esq.
Nevada Bar No.: 11439
880 Seven Hills Dr., Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAX

Attorney for Plaintiff,
Vivia Harrison

DATED this 17 day of April 2017.

ALVERSON TAYLOR MORTENSEN
SANDERS


David J. Mortensen, Esq.
Nevada Bar No. 002547
ALVERSON TAYLOR MORTENSEN
SANDERS
Jared F. Herling, Esq.
Nevada Bar No. 13350
7401 West Charleston Boulevard
Las Vegas, NV 89117-1401
T: 702-384-7000
F: 702-385-7000

Attorneys for Defendant,
Desert Medical Equipment

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DATED this ____ day of April 2017.

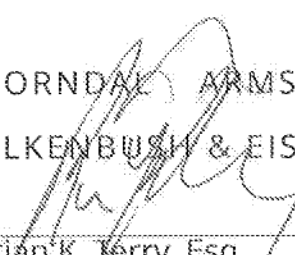
LINCOLN, GUSTAFSON & CERCOS,
LLP


Loren S. Young, Esq.
Nevada Bar No.: 7567
Kylee L. Gloeckner, Esq.
Nevada Bar No.: 14056
3960 Howard Hughes Parkway, Suite
200
Las Vegas, Nevada 89169

Attorneys for Defendant,
Ramparts, Inc. dba Luxor Hotel & Casino

DATED this 3rd day of April 2017.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER


Brian K. Terry, Esq.
Nevada Bar No.:
110 East Bridger Avenue
Las Vegas, Nevada 89101-5315

Attorneys for Defendant,
Pride Mobility Products Corp.

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Order

IT IS HEREBY ORDERED that Plaintiff be allowed leave to amend her Complaint to Remove a Cause of Action.

DATED this ²⁶26 day of ~~April~~th 2017.

DISTRICT COURT JUDGE


FOR DAVID M. JONES

Respectfully submitted by:

DATED this 30 day of April 2017.

PARRY & PFAU

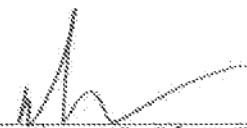
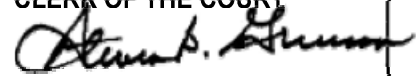

Matthew G. Pfau, Esq.
Nevada Bar No.: 11439
880 Seven Hills Dr., Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAXAttorney for Plaintiff,
Vivia Harrison

Exhibit 3



FAC
ALVERSON, TAYLOR, MORTENSEN & SANDERS
DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
JARED F. HERLING, ESQ.
Nevada Bar No. 13350
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
Facsimile: (702) 385-7000
E-File: efile@alversontaylor.com
Attorneys for Defendant and
Third-Party Plaintiff
Desert Medical Equipment

DISTRICT COURT
CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual

Plaintiff,

vs.

RAMPARTS, INC, dba Luxor Hotel & Casino, a
Nevada Domestic Corporation; DESERT MEDICAL
EQUIPMENT, a Nevada Domestic Corporation; PRIDE
MOBILITY PRODUCTS CORPORATION., a Nevada
Domestic Corporation; DOES I through XXX, inclusive
and ROE BUSINESS ENTITIEST I through XXX,
inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation

Third-Party Plaintiff,

vs.

STAN SAWAMOTO, an individual

Third-Party Defendant.

///

CASE NO.: A-16-732342-C
DEPT. NO.: 29

**DEFENDANT DESERT
MEDICAL EQUIPMENT'S
FIRST AMENDED THIRD-
PARTY COMPLAINT
AGAINST STAN SAWAMOTO**

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

COMES NOW Defendant/Third-Party Plaintiff, DESERT MEDICAL EQUIPMENT, by and through its attorneys of record, the law firm of ALVERSON, TAYLOR, MORTENSEN & SANDERS, and for its Third-Party Complaint against STAN SAWAMOTO alleges as follows:

PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS

1. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is and was at all relevant times a domestic corporation conducting business in the State of Nevada.

2. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is informed and believes and thereon alleges that Third-Party Defendant STAN SAWAMOTO is and was at all relevant times an individual residing in Haleyville, Alabama.

3. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO was physically present in the State of Nevada and conducted business with Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT by entering into a Terms and Conditions of Rental contract with Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT for the rental and temporary use of a mobility scooter (hereinafter, the "Subject Scooter").

4. Plaintiff VIVIA HARRISON filed her Amended Complaint on April 29, 2016, naming DESERT MEDICAL EQUIPMENT and RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO as Defendants.

5. Plaintiff alleges in her Amended Complaint that she suffered a fall on or about December 10, 2014, while using Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT's rental Subject Scooter while on RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO's property.

6. Plaintiff alleges that on or around December 10, 2014, she was "operating her Subject Scooter" over the base of a table at Luxor's Backstage Deli when "her scooter's front wheel gave way, and the scooter tipped over, to the right" causing her to suffer a "stroke and hip

1 fracture.”

2 7. Plaintiff did not rent the Subject Scooter nor receive possession of the Subject
3 Scooter directly from Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT.

4 8. The Subject Scooter was rented by Third-Party Defendant STAN SAWAMOTO,
5 as a customer, on or around December 10, 2014, pursuant to the Terms and Conditions of Rental
6 agreement by and between Third-Party Defendant STAN SAWAMOTO and Defendant/Third-
7 Party Plaintiff DESERT MEDICAL EQUIPMENT. Third-Party Defendant STAN
8 SAWAMOTO took physical possession of the Subject Scooter on or about December 10, 2014,
9 following his execution of the Terms and Conditions of Rental agreement.

10 9. On information and belief, Third-Party Defendant STAN SAWAMOTO was
11 Plaintiff VIVIA HARRISON’s husband, friend, acquaintance, relative, and/or traveling
12 companion on the date of Plaintiff VIVIA HARRISON’s alleged fall.

13 10. Notably, the Terms and Conditions of Rental entered into by Third-Party
14 Defendant STAN SAWAMOTO and Defendant/Third-Party Plaintiff DESERT MEDICAL
15 EQUIPMENT provided as follows:

16 The customer shall indemnify and hold harmless DESERT
17 MEDICAL/Luxor from and against any and all liability . . .
18 resulting from the actual or alleged presence, use, or operation of
19 the equipment, provided such injury, death or property damage is
20 not attributable to the negligence of DESERT MEDICAL/Luxor.
21 DESERT MEDICAL OWNS the equipment. The customer will
22 NOT give, transfer possession of the equipment to anyone else. . .

23 11. Upon information and belief, Third-Party Defendant STAN SAWAMOTO
24 breached the Terms and Conditions of Rental by giving/transferring possession of the Subject
25 Scooter to Plaintiff VIVIA HARRISON for her use, ultimately causing her alleged injuries.

26 12. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was not
27 responsible for the subject accident, which was caused by the breach of contract by Third-Party
28

1 Defendant STAN SAWAMOTO.

2 13. Upon information and belief, Third-Party Defendant STAN SAWAMOTO moved
3 furniture, including but not limited to possibly tables and/or chairs in the deli where Plaintiff
4 VIVIA HARRISON suffered her fall and immediately prior to the same.
5

6 14. As a result of STAN SAWAMOTO moving furniture (including but not limited to
7 tables and/or chairs) Plaintiff VIVIA HARRISON was directed into a path that caused her to hit
8 the base of a table and fall.

9 **FIRST CLAIM FOR RELIEF**
10 **(Breach of Contract)**

11 15. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and
12 realleges the allegations contained in Paragraphs 1 through 14, of its Third-Party Complaint as
13 though fully set forth herein.

14 16. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO
15 entered into a valid Terms and Conditions of Rental contract with Defendant/Third-Party
16 Plaintiff DESERT MEDICAL EQUIPMENT, which provided for the temporary rental of the
17 Subject Scooter to Third-Party Defendant STAN SAWAMOTO. Third-Party Defendant STAN
18 SAWAMOTO took physical possession of the Subject Scooter on or about December 10, 2014,
19 following his execution of the Terms and Conditions of Rental agreement.
20

21 17. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO
22 breached the Terms and Conditions of Rental contract by giving/transferring possession of the
23 Subject Scooter to Plaintiff, VIVIA HARRISON, ultimately causing the injuries alleged in her
24 Amended Complaint.
25

26 18. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT fully
27 performed all conditions, covenants, and promises required be performed in accordance with the
28

1 Terms and Conditions of Rental contract.

2 19. As a direct and proximate result of Third-Party Defendant STAN SAWAMOTO's
3 breach of contract, Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT has
4 suffered damages in excess of \$10,000.00.

5 20. As a further result of Third-Party Defendant STAN SAWAMOTO's conduct,
6 Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced to retain the
7 services of an attorney, for which Defendant/Third-Party Plaintiff DESERT MEDICAL
8 EQUIPMENT has incurred and will continue to incur attorneys' fees and costs.

9
10 **SECOND CLAIM FOR RELIEF**
11 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

12 21. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and
13 realleges the allegations contained in Paragraphs 1 through 20, of its Third-Party Complaint as
14 though fully set forth herein.

15 22. Nevada law recognizes that implied in every contract is a covenant of good faith
16 and fair dealing, which is a promise that neither party will do anything which will injure the right
17 of the other to receive the benefits of the agreement.

18 23. Third-Party Defendant STAN SAWAMOTO owed Defendant/Third-Party
19 Plaintiff DESERT MEDICAL EQUIPMENT a duty of good faith and fair dealing, inherent in
20 their contractual relationship arising out of the Terms and Conditions of Rental contract.

21 24. Third-Party Defendant STAN SAWAMOTO breached the implied covenant of
22 good faith and fair dealing owed to Defendant/Third-Party Plaintiff DESERT MEDICAL
23 EQUIPMENT by giving/transferring possession of the Subject Scooter to Plaintiff VIVIA
24 HARRISON in direct contravention of the Terms and Conditions of Rental contract, and as a
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1 direct or proximate result thereof, Defendant/Third-Party Plaintiff DESERT MEDICAL
2 EQUIPMENT has been damaged in excess of \$10,000.00.

3 25. As a further result of Third-Party Defendant STAN SAWAMOTO's conduct,
4 Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced to retain the
5 services of an attorney, for which Defendant/Third-Party Plaintiff DESERT MEDICAL
6 EQUIPMENT has incurred and will continue to incur attorneys' fees and costs.
7

8 **THIRD CLAIM FOR RELIEF**
9 **(Contractual Indemnity)**

10 26. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and
11 realleges the allegations contained in Paragraphs 1 through 25, of its Third-Party Complaint as
12 though fully set forth herein.

13 27. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO, as
14 a "customer", entered into a Terms and Conditions of Rental contract with Defendant/Third-
15 Party Plaintiff DESERT MEDICAL EQUIPMENT which provided as follows:

16 The customer shall indemnify and hold harmless DESERT
17 MEDICAL/Luxor from and against any and all liability . . .
18 resulting from the actual or alleged presence, use, or operation of
19 the equipment, provided such injury, death or property damage is
20 not attributable to the negligence of DESERT MEDICAL/Luxor
21 . . .

22 28. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO
23 breached the Terms and Conditions of Rental contract by giving/transferring possession of the
24 Subject Scooter to Plaintiff, VIVIA HARRISON, ultimately causing the injuries alleged in her
25 Amended Complaint.

26 29. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO
27 acted negligently by moving furniture which directed Plaintiff, VIVIA HARRISON, into the
28 base of a table causing her to fall.

1 30. Plaintiff VIVIA HARRISON's injuries are not attributable to the negligence of
2 Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT and Defendant/Third-Party
3 Plaintiff DESERT MEDICAL EQUIPMENT is entitled to contractual indemnity from Third-
4 Party Defendant STAN SAWAMOTO pursuant to the Terms and Conditions of Rental contract
5 for damages stemming from Plaintiff VIVIA HARRISON's alleged injuries, should liability
6 ultimately accrue to Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT.
7

8 31. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced
9 to retain the services of an attorney to pursue its claims against Third-Party Defendant STAN
10 SAWAMOTO, and therefore, Defendant/Third-Party Plaintiff DESERT MEDICAL
11 EQUIPMENT is entitled to recover reasonable attorney's fees and costs.
12

13 **FOURTH CLAIM FOR RELIEF**
14 **(Implied or Equitable Indemnity)**

15 32. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and
16 realleges the allegations contained in Paragraphs 1 through 31, of its Third-Party Complaint as
17 though fully set forth herein.

18 33. As a result of the breach of contract of Third-Party Defendant STAN
19 SAWAMOTO, claims have been made against Defendant/Third-Party Plaintiff DESERT
20 MEDICAL EQUIPMENT for alleged damages.

21 34. The damages alleged by Plaintiff VIVIA HARRISON against Defendant/Third-
22 Party Plaintiff DESERT MEDICAL EQUIPMENT, if any, were caused in whole or in part by
23 the actions and/or omissions of Third-Party Defendant STAN SAWAMOTO.
24

25 35. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO
26 acted negligently by moving furniture which directed Plaintiff, VIVIA HARRISON, into the
27 base of a table causing her to fall.
28

1 36. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT denies that it
2 was negligent, careless, and/or reckless, and denies that it was engaged in any tortious conduct,
3 and denies that it is liable under any theory alleged in Plaintiff VIVIA HARRISON's Amended
4 Complaint, or under any theory whatsoever for the damages allegedly sustained by Plaintiff
5 VIVIA HARRISON.
6

7 37. If Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is
8 determined to be liable, which it specifically denies, said liability would be passive or secondary
9 to the primary or active liability of Third-Party Defendant STAN SAWAMOTO.
10

11 38. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced
12 to retain the services of an attorney to pursue its claims against Third-Party Defendant STAN
13 SAWAMOTO, and therefore, Defendant/Third-Party Plaintiff DESERT MEDICAL
14 EQUIPMENT is entitled to recover reasonable attorney's fees and costs.
15

16 **FIFTH CLAIM FOR RELIEF**
17 **(Contribution)**
18

19 39. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and
20 realleges the allegations contained in Paragraphs 1 through 38, of its Third-Party Complaint as
21 though fully set forth herein.
22

23 40. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is informed,
24 believes, and alleges that the claims made by Plaintiff VIVIA HARRISON against
25 Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is, in whole or in part, the
26 result of the actions and/or omissions of Third-Party Defendant, STAN SAWAMOTO.
27

28 41. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO
acted negligently by moving furniture which directed Plaintiff, VIVIA HARRISON, into the
base of a table causing her to fall.

1 42. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is entitled to
2 contribution from Third-Party Defendant, STAN SAWAMOTO, for apportionment of all such
3 losses or damages as a result of any settlement, compromise, judgment, or award, which may
4 occur in this matter.

5 43. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced
6 to retain the services of an attorney to pursue its claims against Third-Party Defendant, STAN
7 SAWAMOTO; therefore, Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is
8 entitled to recover reasonable attorney's fees and costs.

9
10 **SIXTH CLAIM FOR RELIEF**
11 **(Negligence)**

12 44. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and
13 realleges the allegations contained in Paragraphs 1 through 43, of its Third-Party Complaint as
14 though fully set forth herein.

15 45. Upon information and belief, Third-Party Defendant STAN SAWAMOTO moved
16 furniture, including but not limited to possibly tables and/or chairs in the deli where Plaintiff
17 VIVIA HARRISON suffered her fall and immediately prior to the same.

18 46. As a result of STAN SAWAMOTO moving furniture (including but not limited to
19 tables and/or chairs) Plaintiff VIVIA HARRISON was directed into a path that caused her to hit
20 the base of a table and fall.

21 47. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT denies that it
22 was negligent, careless, and/or reckless, and denies that it was engaged in any tortious conduct,
23 and denies that it is liable under any theory alleged in Plaintiff VIVIA HARRISON's Amended
24 Complaint, or under any theory whatsoever for the damages allegedly sustained by Plaintiff
25 VIVIA HARRISON.
26
27
28

1 48. If Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT is
2 determined to be liable, which it specifically denies, said liability would be passive or secondary
3 to the primary or active liability of Third-Party Defendant STAN SAWAMOTO.

4 49. As a direct and proximate result of Third-Party Defendant STAN SAWAMOTO's
5 negligence, Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced to
6 retain the services of an attorney to pursue its claims against Third-Party Defendant STAN
7 SAWAMOTO, and therefore, Defendant/Third-Party Plaintiff DESERT MEDICAL
8 EQUIPMENT is entitled to recover reasonable attorney's fees and costs.
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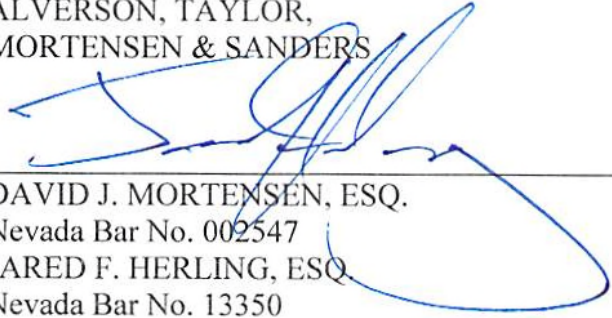
PRAYER FOR RELIEF

WHEREFORE, Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT
prays for judgment against Third-Party Defendant, STAN SAWAMOTO as follows:

1. For general and special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
2. For indemnity in favor of Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT in excess of \$10,000.00;
3. For contribution in favor of Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT in excess of \$10,000.00;
4. For prejudgment interest;
5. For reasonable legal expenses, attorney's fees, and costs in favor of Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT incurred in the prosecution of this matter; and
6. For such other and further relief as this Court deems just and proper.

DATED this 16 day of January, 2018.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
JARED F. HERLING, ESQ.
Nevada Bar No. 13350
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
Facsimile: (702) 385-7000

E-File: efile@alversontaylor.com

Attorneys for Defendant and
Third-Party Plaintiff

Desert Medical Equipment

CERTIFICATE OF SERVICE

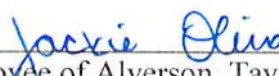
The undersigned hereby certifies that on the 16th day of January, 2018, the forgoing
**DEFENDANT DESERT MEDICAL EQUIPMENT'S FIRST AMENDED THIRD-PARTY
COMPLAINT AGAINST STAN SAWAMOTO** was served on the following by Electronic
Service to All parties on the Odyssey Service List. I further certify that I mailed via United
States Mail, first class, postage fully prepaid thereto, a true and correct copy of said document to
those parties not on the Odyssey Service List, addressed as follows:

Zachariah B. Parry, Esq.
Matthew G. Pfau, Esq.
PARRY & PFAU
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Phone: (702) 879-9555
Email: zach@p2lawyers.com
-and-
Boyd B. Moss III, Esq.
Marcus A. Berg, Esq.
MOSS BERG INJURY LAWYERS
4101 Meadows Lane, Suite 110
Las Vegas, Nevada 89107
Telephone: (702) 222-4555
Email: boyd@mossberglv.com
Attorneys for Plaintiff

Stacey A. Upson, Esq.
LAW OFFICES OF KARL H. SMITH
7455 Arroyo Crossing Pkwy, Suite 200
Las Vegas, NV 89113
Telephone: (702) 408-3800
Email: stacey.upson@farmersinsurance.com
*Attorneys for Third-Party Defendant
Stan Sawamoto*

Brian K. Terry, Esq.
THORNDAL, AMRSTRONG, DELK,
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, Nevada 89101
Phone: (702) 366-0622
Email: bterry@thorndal.com
*Attorneys for Defendant
Pride Mobility Products Corporation*

Loren S. Young, Esq.
LINCOLN, GUSTAFSON & CEROS
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Phone: (702) 257-1997
Email: lyoung@lgclawoffice.com
*Attorneys for Defendant
Ramparts, Inc., d/b/a Luxor Hotel & Casino*


An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT DESERT MEDICAL EQUIPMENT'S FIRST AMENDED THIRD-PARTY COMPLAINT AGAINST STAN SAWAMOTO** filed in District Court Case No. A-16-732342-C.

X Does not contain the social security number of any person.

-OR-

— Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

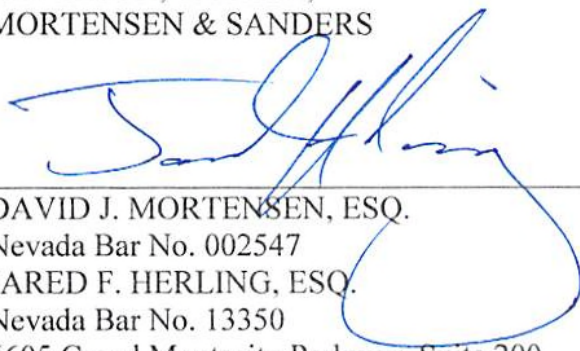
[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

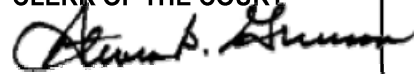
DATED this 16 day of January, 2018.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
JARED F. HERLING, ESQ.
Nevada Bar No. 13350
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
Facsimile: (702) 385-7000
E-File: efile@alversontaylor.com
Attorneys for Defendant and
Third-Party Plaintiff Desert Medical Equipment

Exhibit 4



1 NTSO
2 ALVERSON TAYLOR & SANDERS
3 LEANN SANDERS, ESQ.
4 Nevada Bar No. 390
5 COURTNEY CHRISTOPHER, ESQ.
6 Nevada Bar No. 12717
7 6605 Grand Montecito Parkway, Suite 200
8 Las Vegas, Nevada 89149
9 Phone: (702) 384-7000
10 E-File: efile@alversontaylor.com
11 Attorneys for Defendant and
12 Third-Party Plaintiff
13 DESERT MEDICAL EQUIPMENT

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 **

17 VIVIA HARRISON, an individual

18 Plaintiff,

19 vs.

20 RAMPARTS, INC, dba Luxor Hotel & Casino, a
21 Nevada Domestic Corporation; DESERT MEDICAL
22 EQUIPMENT, a Nevada Domestic Corporation; PRIDE
23 MOBILITY PRODUCTS CORPORATION., a Nevada
24 Domestic Corporation; DOES I through XXX, inclusive
25 and ROE BUSINESS ENTITIES I through XXX,
26 inclusive,

27 Defendants.

28 DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation

Third-Party Plaintiff,

vs.

STAN SAWAMOTO, an individual

Third-Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: 29

NOTICE OF ENTRY OF
STIPULATION AND ORDER
TO DISMISS THIRD-PARTY
DEFENDANT STAN
SAWAMOTO, WITH
PREJUDICE

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

1 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS THIRD-PARTY**
2 **DEFENDANT STAN SAWAMOTO, WITH PREJUDICE**

3 PLEASE TAKE NOTICE that on the 11th day of December, 2018, the Court entered a
4 Stipulation and Order in the above-entitled action. A copy of said Stipulation and Order is
5 attached hereto.

6 DATED this 11th day of December, 2018.

7 ALVERSON TAYLOR & SANDERS

8
9 

10 LEANN SANDERS, ESQ.

11 Nevada Bar No. 390

12 COURTNEY CHRISTOPHER, ESQ.

13 Nevada Bar No. 12717

14 6605 Grand Montecito Parkway, Suite 200

15 Las Vegas, Nevada 89149

16 Phone: (702) 384-7000

17 E-File: efile@alversontaylor.com

18 Attorneys for Defendant and

19 Third-Party Plaintiff

20 DESERT MEDICAL EQUIPMENT

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of December, 2018, the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS THIRD-PARTY DEFENDANT STAN SAWAMOTO, WITH PREJUDICE** was e-filed and e-served on the following by Electronic Service to all parties on the Odyssey Service List.

Zachariah B. Parry, Esq.
Matthew G. Pfau, Esq.
PARRY & PFAU
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Phone: (702) 879-9555
Email: zach@p2lawyers.com

-and-

Boyd B. Moss III, Esq.
Marcus A. Berg, Esq.
MOSS BERG INJURY LAWYERS
4101 Meadows Lane, Suite 110
Las Vegas, Nevada 89107
Telephone: (702) 222-4555
Email: boyd@mossberglv.com

Attorneys for Plaintiff

Loren S. Young, Esq.
LINCOLN, GUSTAFSON & CEROS
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Phone: (702) 257-1997
Email: lyoung@lgclawoffice.com
Attorneys for Defendant
Ramparts, Inc., d/b/a Luxor Hotel & Casino

Stacey A. Upson, Esq.
LAW OFFICES OF STACEY UPSON
7455 Arroyo Crossing Pkwy, Suite 200
Las Vegas, NV 89113
Telephone: (702) 408-3800
Email: stacey.upson@farmersinsurance.com
Attorneys for Third-Party Defendant
Stan Sawamoto

Brian K. Terry, Esq.
THORNDAL, AMRSTRONG, DELK,
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, Nevada 89101
Phone: (702) 366-0622
Email: bkterry@thorndal.com
Attorneys for Defendant
Pride Mobility Products Corporation

Rosemarie Frederick

An Employee of
Alverson Taylor & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS THIRD-PARTY DEFENDANT STAN SAWAMOTO, WITH PREJUDICE** filed in District Court Case No. A-16-732342-C.

X Does not contain the social security number of any person.

-OR-

— Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 16th day of December, 2018.

ALVERSON TAYLOR & SANDERS



LEANN SANDERS, ESQ.

Nevada Bar No. 390

COURTNEY CHRISTOPHER, ESQ.

Nevada Bar No. 12717

6605 Grand Montecito Parkway, Suite 200

Las Vegas, Nevada 89149

Phone: (702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for Defendant and

Third-Party Plaintiff

DESERT MEDICAL EQUIPMENT

ORIGINAL

Electronically Filed
12/11/2018 9:34 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

SODW
ALVERSON TAYLOR & SANDERS
LEANN SANDERS, ESQ.
Nevada Bar No. 390
COURTNEY CHRISTOPHER, ESQ.
Nevada Bar No. 12717
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
E-File: efile@alversontaylor.com
Attorneys for Defendant and
Third-Party Plaintiff
DESERT MEDICAL EQUIPMENT

DISTRICT COURT
CLARK COUNTY, NEVADA

**

VIVIA HARRISON, an individual

Plaintiff,

vs.

RAMPARTS, INC, dba Luxor Hotel & Casino, a
Nevada Domestic Corporation; DESERT MEDICAL
EQUIPMENT, a Nevada Domestic Corporation; PRIDE
MOBILITY PRODUCTS CORPORATION., a Nevada
Domestic Corporation; DOES I through XXX, inclusive
and ROE BUSINESS ENTITIES I through XXX,
inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation

Third-Party Plaintiff,

vs.

STAN SAWAMOTO, an individual

Third-Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: 29

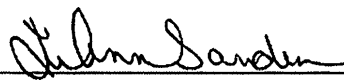
**STIPULATION AND ORDER
TO DISMISS THIRD-PARTY
DEFENDANT STAN
SAWAMOTO, WITH
PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, by
and through their counsel of record, that Third-Party Defendant, STAN SAWAMOTO be
dismissed from this matter *with prejudice*, the parties each to bear their own fees and costs.

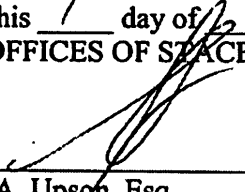
Harrison v. Ramparts Inc. et al
CASE NO.: A-16-732342-C
Stipulation and Order to Dismiss
Third-Party Defendant Stan
Sawamoto, With Prejudice

THE FOREGOING IS HEREBY STIPULATED AND AGREED.

Dated this 5th day of December 2018
ALVERSON TAYLOR & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 390
COURTNEY CHRISTOPHER, ESQ.
Nevada Bar No. 12717
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
E-File: efile@alversontaylor.com
Attorneys for Defendant and
Third-Party Plaintiff
DESERT MEDICAL EQUIPMENT

Dated this 1 day of December 2018
LAW OFFICES OF STACEY UPSON

By 
Stacey A. Upson, Esq.
7455 Arroyo Crossing Pkwy, Suite 200
Las Vegas, NV 89113
Telephone: (702) 408-3800
Email: stacey.upson@farmersinsurance.com
Attorneys for Third-Party Defendant
Stan Sawamoto

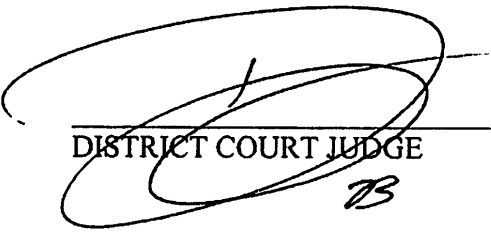
ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

Harrison v. Ramparts Inc. et al
CASE NO.: A-16-732342-C
Stipulation and Order to Dismiss
Third-Party Defendant Stan
Sawamoto, With Prejudice

ORDER

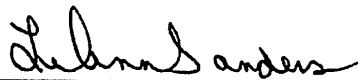
IT IS SO ORDERED that Third-Party Defendant Stan Sawamoto be dismissed, with prejudice, and with the parties herein each to bear their own attorney's fees and costs.

Dated this 7 day of Dec., 2018


DISTRICT COURT JUDGE
73

Submitted by:

ALVERSON TAYLOR & SANDERS



LEANN SANDERS, ESQ.

Nevada Bar No. 390

COURTNEY CHRISTOPHER, ESQ.

Nevada Bar No. 12717

6605 Grand Montecito Parkway, Suite 200

Las Vegas, Nevada 89149

Phone: (702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for Defendant and

Third-Party Plaintiff

DESERT MEDICAL EQUIPMENT

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of December, 2018, the foregoing **STIPULATION AND ORDER TO DISMISS THIRD-PARTY DEFENDANT STAN SAWAMOTO, WITH PREJUDICE** was served on the following by Electronic Service to all parties on the Odyssey Service List.

Zachariah B. Parry, Esq.
Matthew G. Pfau, Esq.
PARRY & PFAU
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Phone: (702) 879-9555
Email: zach@p2lawyers.com

-and-

Boyd B. Moss III, Esq.
Marcus A. Berg, Esq.
MOSS BERG INJURY LAWYERS
4101 Meadows Lane, Suite 110
Las Vegas, Nevada 89107
Telephone: (702) 222-4555
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Attorneys for Plaintiff

Loren S. Young, Esq.
LINCOLN, GUSTAFSON & CEROS
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Phone: (702) 257-1997
Email: lyoung@lgclawoffice.com
Attorneys for Defendant
Ramparts, Inc., d/b/a Luxor Hotel & Casino

Stacey A. Upson, Esq.
LAW OFFICES OF STACEY UPSON
7455 Arroyo Crossing Pkwy, Suite 200
Las Vegas, NV 89113
Telephone: (702) 408-3800
Email: stacey.upsen@farmersinsurance.com
Attorneys for Third-Party Defendant
Stan Sawamoto

Brian K. Terry, Esq.
**THORNDAL, AMRSTRONG, DELK,
BALKENBUSH & EISINGER**
1100 East Bridger Avenue
Las Vegas, Nevada 89101
Phone: (702) 366-0622
Email: bkterry@thorndal.com
Attorneys for Defendant
Pride Mobility Products Corporation

Rosemarie Frederick
An Employee of
Alverson Taylor & Sanders

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **STIPULATION AND ORDER TO DISMISS THIRD-PARTY DEFENDANT STAN SAWAMOTO, WITH PREJUDICE** filed in District Court Case No. A-16-732342-C;

X Does not contain the social security number of any person.

-OR-

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A. A specific state or federal law, to wit:

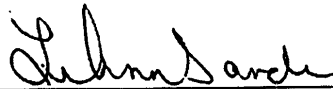
[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 5th day of December, 2018.

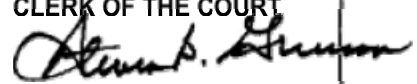
ALVERSON TAYLOR & SANDERS



LEANN SANDERS, ESQ.
Nevada Bar No. 390
COURTNEY CHRISTOPHER, ESQ.
Nevada Bar No. 12717
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
E-File: efile@alversontaylor.com
Attorneys for Defendant and
Third-Party Plaintiff
DESERT MEDICAL EQUIPMENT

n:\leann.grp\roc\w-hold for review\23646-sao to dismiss stan sawamoto with prej.doc

Exhibit 5



1 **NEOJ**
2 **BRIAN K. TERRY, ESQ.**
3 Nevada Bar No. 003171
4 **VINCENT M. GODINHO**
5 Nevada Bar No. 14205
6 **THORNDAL, ARMSTRONG, DELK,**
7 **BALKENBUSH & EISINGER**
8 1100 East Bridger Avenue
9 Las Vegas, NV 89101-5315
10 Mail To:
11 P.O. Box 2070
12 Las Vegas, NV 89125-2070
13 Tel.: (702) 366-0622
14 Fax: (702) 366-0327
15 E-Mail: bterry@thorndal.com
16 E-Mail: vmg@thorndal.com
17 Attorneys for Defendant, Pride
18 Mobility Products Corp.

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **VIVIA HARRISON, an individual,**
15 **Plaintiff,**
16 **vs.**

CASE NO.: A-16-732342-C

DEPT. NO.: XXIX

17 **RAMPARTS, INC., dba LUXOR HOTEL &**
18 **CASINO, a Nevada Domestic Corporation;**
19 **DESERT MEDICAL EQUIPMENT, a Nevada**
20 **Domestic Corporation; PRIDE MOBILITY**
21 **PRODUCTS CORP., a Nevada Domestic**
22 **Corporation; DOES I through XXX, inclusive**
23 **and ROE BUSINESS ENTITIES I through**
24 **XXX, inclusive,**
25 **Defendants.**

NOTICE OF ENTRY OF ORDER

23 **DESERT MEDICAL EQUIPMENT, a Nevada**
24 **Domestic Corporation**

25 **Third-Party Plaintiff,**

26 **vs.**

27 **STAN SAWAMOTO, an individual**

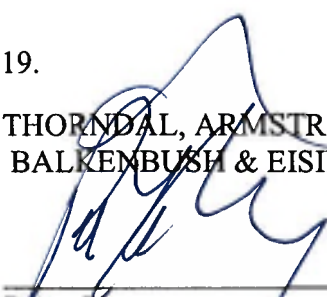
28 **Third-Party Defendant.**

1 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

2 PLEASE TAKE NOTICE that the court entered the order granting defendant, Pride
3 Mobility Products Corp.'s, renewed motion for summary judgment on the 23rd day of January,
4 2019, in the above-captioned matter, a copy of which is attached hereto as Exhibit "A".

5 DATED this 29th day of January, 2019.

6
7 THORNDAL, ARMSTRONG, DELK,
8 BALKENBUSH & EISINGER

9
10 
11 Brian K. Terry, Esq.
12 Nevada Bar No. 3171
13 Vincent M. Godinho, Esq.
14 Nevada Bar No. 14205
15 1100 East Bridger Avenue
16 Las Vegas, NV 89101-5315
17 Mail To:
18 P.O. Box 2070
19 Las Vegas, NV 89125-2070
20 Tel.: (702) 366-0622
21 Fax: (702) 366-0327
22 E-Mail: bterry@thorndal.com
23 E-Mail: vmg@thorndal.com
24 Attorneys for Defendant, Pride Mobility
25 Products Corp.
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCF Rule 5(b), on the 29th day of January, 2019, service of **NOTICE OF ENTRY OF ORDER** was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

NAME	TEL., FAX & E-MAILS	PARTY REPRESENTING
Matthew G. Pfau, Esq. Parry & Pfau 880 Seven Hills Dr. Suite 210 Henderson, Nevada 89052	Tel.: (702) 879-9555 Fax: (702) 879-9556 E-Mail: matt@P2lawyers.com	Co-Counsel for Plaintiff, Vivian Harrison
Boyd B. Moss, III, Esq. Marcus Berg, Esq. Moss Berg Injury Lawyers 4101 Meadows Lane Suite 110 Las Vegas, NV 89107	Tel.: (702) 222-4555 Fax: (702) 222-4556 E-Mail: boyd@mossberglv.com	Co-Counsel for Plaintiff, Vivian Harrison
LeAnn Sanders, Esq. Courtney Christopher, Esq. Alverson, Taylor & Sanders 6605 Grand Montecito kwy. Suite 200 Las Vegas, Nevada 89149	Tel.: (702) 384-7000 Fax: (702) 385-7000 E-Mail: lsanders@alversontaylor.com E-Mail: cchristopher@alversontaylor.com	Defendant/Third- Party Plaintiff, Desert Medical Equipment
Loren S. Young, Esq. Thomas W. Maroney, Esq. Lincoln, Gustafson & Cercos 3960 Howard Hughes Pkwy. Suite 200 Las Vegas, Nevada 89169	Tel.: (702) 257-1997 Fax: (702) 257-2203 E-Mail: lyoung@lgclawoffice.com E-Mail: tmaroney@lgclawoffice.com	Defendant, Ramparts, Inc. dba Luxor Hotel & Casino
Stacey A. Upson, Esq. Law Offices of Karl H. Smith 7455 Arroyo Crossing Pkwy. Suite 200 Las Vegas, NV 89113	Tel: (702) 408-3800 Fax: (855) 472-9294 E-Mail: Stacey.upson@farmersinsurance.com	Third-Party Defendant, Stan Sawamoto

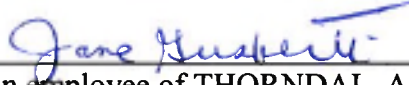

An employee of THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

EXHIBIT “A”

ORIGINAL

Electronically Filed
1/29/2019 12:48 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

OGSJ (CIV)

BRIAN K. TERRY, ESQ.

Nevada Bar No. 003171

VINCENT M. GODINHO

Nevada Bar No. 14205

THORNDAL, ARMSTRONG, DELK,

BALKENBUSH & EISINGER

1100 East Bridger Avenue

Las Vegas, NV 89101-5315

Mail To:

P.O. Box 2070

Las Vegas, NV 89125-2070

Tel.: (702) 366-0622

Fax: (702) 366-0327

E-Mail: bterry@thorndal.com

E-Mail: vmg@thorndal.com

Attorneys for Defendant, Pride

Mobility Products Corp.

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

vs.

RAMPARTS, INC., dba LUXOR HOTEL &
CASINO, a Nevada Domestic Corporation;
DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation; PRIDE MOBILITY
PRODUCTS CORP., a Nevada Domestic
Corporation; DOES I through XXX, inclusive
and ROE BUSINESS ENTITIES I through
XXX, inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation

Third-Party Plaintiff,

vs.

STAN SAWAMOTO, an individual

Third-Party Defendant.

CASE NO.: A-16-732342-C

DEPT. NO.: XXIX

**ORDER GRANTING DEFENDANT,
PRIDE MOBILITY PRODUCTS CORP.'S,
RENEWED MOTION FOR SUMMARY
JUDGMENT**

Date of Hearing: 08/29/18

Time of Hearing: 9:00 a.m.

1 On August 29, 2018, defendant, Pride Mobility's renewed motion for summary judgment
2 came on for hearing. In attendance on behalf of plaintiff were Matthew Pfau and Boyd B. Moss.
3 On behalf of defendant, Pride Mobility Products Corp., was Brian K. Terry. On behalf of
4 Ramparts, Inc. d/b/a Luxor Hotel & Casino was Thomas Maroney. On behalf of defendant/third
5 party-plaintiff, Desert Medical Equipment was Courtney Christopher. Appearing on behalf of
6 third-party defendant, Stan Sawamoto, was Stacey Upson. The court, after being advised of the
7 various arguments of counsel and entertaining lengthy argument, and after having reviewed the
8 briefs and attachments thereto, issues the following findings of facts and conclusions of law.
9

10 I.

11 **FINDINGS OF FACT**

12 1. Defendant, Pride Mobility, initially filed a motion for summary judgment seeking
13 dismissal of the claims against it on grounds that there was no product for it to inspect. A
14 hearing on the matter was held on June 26, 2017, and this court denied the motion without
15 prejudice, and allowed plaintiff to proceed forward on a design defect claim.
16

17 2. Discovery ensued, with experts designated on behalf of all parties. After
18 deposition of plaintiff's design expert, Pride determined to re-file its motion for summary
19 judgment asserting plaintiff's expert failed to opine that any alleged defect in the design
20 proximately caused the injuries sustained by plaintiff. Moreover, plaintiff's expert failed to
21 opine that any alternative design would have prevented the accident involving plaintiff.
22

23 3. In the pleadings provided to the court in support and in opposition to the motion,
24 copies of the various expert reports were provided in total. Those reports included the report
25 prepared by Timothy M. Hicks, P.E., of Professional Analysis and Consulting on behalf of
26 plaintiff. Also attached was the report of Kenneth A. Solomon, Ph.D., P.E., of the Institute of
27 Risk & Safety Analysis on behalf of Pride Mobility, as well as the report of Michael Zablocky,
28 also in support of Pride Mobility. Lastly, the complete report of William A. Ammer, of Ammer

1 Consulting was provided, which was prepared on behalf of Desert Medical Equipment. In
2 preparation for the oral argument and hearing, the court reviewed all expert reports.

3 4. On August 29, 2018, the renewed motion for summary judgment by Pride
4 Mobility came on for hearing. Lengthy oral argument was entertained by Brian K. Terry, on
5 behalf of Pride Mobility, as well as by Matthew Pfau on behalf of plaintiff.

6 5. During oral argument, the court specifically inquired of Matthew Pfau on behalf
7 of plaintiff regarding the alternative design referenced by plaintiff's expert and the anti-tip
8 wheels which could have been installed on the front of the scooter.

10 6. The court specifically inquired and indicated that even though an alternative
11 design theory was argued, nowhere in the expert report of Mr. Hicks did he indicate the
12 alternative design, if implemented, would have prevented the incident from happening. It is the
13 court's determination this is a predicate finding in order to support the validity of the alternative
14 design and to overcome defendant's renewed motion for summary judgment. There was no such
15 finding nor opinion contained anywhere in Mr. Hicks' report.

17 II.

18 CONCLUSIONS OF LAW

19 1. Expert testimony regarding causation must be made to a reasonable degree of
20 scientific probability in order to assist a trier of fact. *Williams v. Eighth Judicial District Court*
21 *of Nevada*, 127 Nev. 518, 529, 262 P.2d. 360, 367 (2011).

23 2. In a product liability case, plaintiff must establish the product was defective, that
24 the defect existed at the time the product left the manufacturer and the defect caused plaintiff's
25 injuries. *Ford Motor Company v. Trejo*, 402 P.3d. 649, 653 Nev. (2017). See also, *Shoshone*
26 *Coca Cola Company*, 82 Nev. 439, 443, 420 P.2d. 855 (1996).

27 3. In order for plaintiff to prevail that an alternative design was available, expert
28 testimony is required to establish the availability and reasonableness of the alternative design and

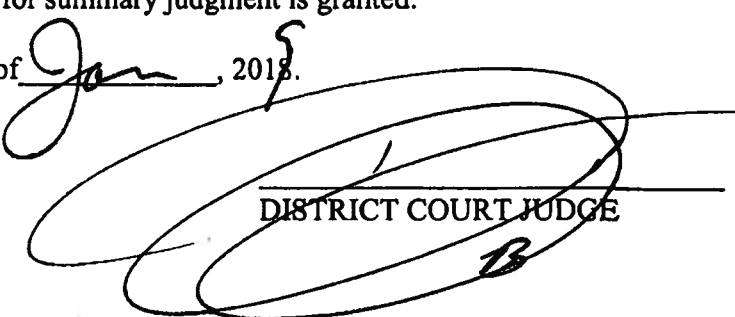
1 that if said alternative design had been implemented, it would have prevented the incident in
2 question.

3 4. Plaintiff's expert failed to opine that if the anti-tip wheels had been added to the
4 front of the scooter, the incident would not have happened. This opinion must be present in
5 order to prevail on an alternative design theory.

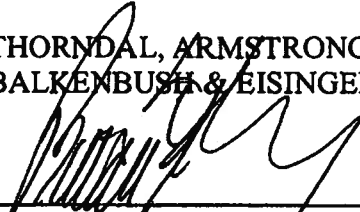
6 Based on the above findings of facts and conclusions of law, it is hereby

7 **ORDERED, ADJUDGED AND DECREED** that defendant, Pride Mobility Products
8 Corporations' renewed motion for summary judgment is granted.

9 DATED this 23 day of Jan, 2018.

10
11
12 
13 DISTRICT COURT JUDGE
14

14 Submitted by:

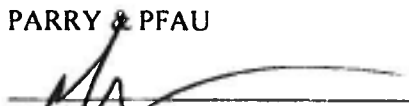
15 THORNDAL, ARMSTRONG, DELK,
16 BALKENBUSH & EISINGER
17 

18 Brian K. Terry, Esq.
19 Nevada Bar No. 3171
20 Vincent M. Godinho, Esq.
21 Nevada Bar No. 14205
22 1100 East Bridger Avenue
23 P. O. Drawer 2070
24 Las Vegas, Nevada 89125-2070
25 Tel.: (702) 366-0622
26 Fax: (702) 366-0327
27 E-Mail: bterry@thorndal.com
28 Attorneys for Defendant, Pride Mobility
Products Corporation

Vivia Harrison v. Ramparts, Inc.
dba Luxor Hotel & Casino, et al.
Case No. A-16-732342-C
Dept. No. XXIX
Order Granting Defendant, Pride
Mobility Products Corp.'s, Renewed
Motion for Summary Judgment

APPROVED AS TO FORM AND CONTENT.

PARRY & PFAU


Matthew C. Pfau, Esq.
Attorney for Plaintiff, Vivia Harrison

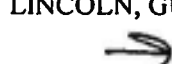
MOSS BERG INJURY LAWYERS


Boyd B. Moss, III, Esq.
Attorney for Plaintiff, Vivia Harris

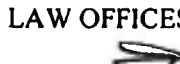
ALVERSON, TAYLOR & SANDERS


Courtney Christopher, Esq.
Attorney for Defendant/Third-Party
Plaintiff, Desert Medical Equipment

LINCOLN, GUSTAFSON & CERCOS


Thomas W. Maroney, Esq.
Attorney for Defendant, Ramparts, Inc. d/b/a
Luxor Hotel & Casino

LAW OFFICES OF KARL H. SMITH


Stacey A. Upson, Esq.
Attorney for Third-Party Defendant,
Stan Sawamoto

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Attorney for Plaintiff, Vivia Harrison

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PARRY & PFAU



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Attorney for Plaintiff, Vivia Harrison

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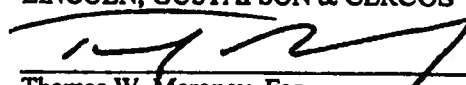
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LAW OFFICES OF KARL H. SMITH



Stacey A. Upson, Esq.
Attorney for Third-Party Defendant,
Stan Sawamoto

Case # A-16-732342-C - Vivia Harrison, Plaintiff(s)vs.MGM**Envelope Information****Envelope Id**

3770442

Submitted Date

1/29/2019 12:48 PM PST

Submitted User Name

jmg@thorndal.com

Case Information**Location**

Department 29

Category

Civil

Case Type

Negligence - Premises Liability

Case Initiation Date

2/24/2016

Case #

A-16-732342-C

Assigned to Judge

Jones, David M

Filings**Filing Type**

EFileAndServe

Filing CodeOrder Granting Summary
Judgment - OGSJ (CIV)**Filing Description**Order Granting Defendant, Pride
Mobility Products Corp.'s Renewed
Motion for Summary Judgment**Client Reference Number**

Pridemo-Harris/BKT-jmg

Filing on Behalf of

Pride Mobility Products Corp

Filing Status

Accepted

Accepted Date

1/29/2019 1:13 PM PST

Lead Document

File Name	Description	Security	Download
Order Granting Def. Pride Mobility's Renewed MSJ.pdf	Order Granting Summary Judgment - OGSJ (CIV)		Original File Court Copy

eService Details

Status	Name	Firm	Served	Date
Sent	Boyd B. Moss	Moss Berg Injury Lawyers	Yes	Not
Sent	Cynthia Fears	Moss Berg Injury Lawyers	Yes	Not
Sent	Kay Crabb	Thorndal Armstrong Delk Balkenbush & Eisinger	Yes	Not
Sent	Jane M. Gusberti	Thorndal Armstrong Delk Balkenbush & Eisinger	Yes	Not
Sent	Kathryn Hendricks	Law Office of Stacey A. Upson	Yes	Not
Sent	Stacey A. Upson	Law Office of Stacey A. Upson	Yes	Not
Sent	"Brian K. Terry, Esq. "		Yes	Not
Sent	Brian K. Terry	Thorndal Armstrong Delk Balkenbush & Eisinger	Yes	Not
Sent	Master Calendar	Thorndal Armstrong Delk Balkenbush & Eisinger	Yes	Not
Sent	Vincent M. Godinho	Thorndal Armstrong Delk Balkenbush & Eisinger	Yes	Not
Sent	Staci D. Ibarra	Lincoln, Gustafson & Cercos	Yes	Not
Sent	Thomas W. Maroney	Lincoln, Gustafson & Cercos, LLP	Yes	Not
Sent	"Paul Sheldon, Paralegal" .		Yes	Not
Sent	"Troy A. Clark, Esq." .		Yes	Not
Sent	Amree Stellabotte .		Yes	Not
Sent	Barbara Pederson .		Yes	Not
Sent	Calendar .		Yes	Not
Sent	Dave Hess .		Yes	Not
Sent	David J. Mortensen .		Yes	1/29
Sent	Jane Gusberti .		Yes	Not
Sent	Kaylee Calaguas .		Yes	Not
Sent	Loren Young .		Yes	Not
Sent	Matt Pfau .		Yes	Not
Sent	Ofelia Acevedo .		Yes	Not
Sent	Ofelia Acevedo .		Yes	Not
Sent	receptionist .		Yes	Not
Sent	Samantha Duome .		Yes	1/29
Sent	Zachariah Parry .		Yes	Not

Status	Name	Firm	Served	Date
Sent	LeAnn Sanders	Alverson Taylor & Sanders	Yes	Not
Sent	Julie Kraig	Alverson Taylor & Sanders	Yes	Not
Sent	Courtney Christopher	Alverson Taylor & Sanders	Yes	Not
Sent	Michael Madden		Yes	1/29
Sent	Front Desk	Parry & Pfau	Yes	1/29
Sent	Admin Clerk	Law Office of Stacey A. Upson	Yes	1/29
Sent	Rosemarie Frederick		Yes	1/29
Sent	Dalilia Baza	Lincoln, Gustafson & Cercos LLP	Yes	Not

Parties with No eService

Name **Address**
Desert Medical Equipment

Name **Address**
MGM Resorts International

Fees

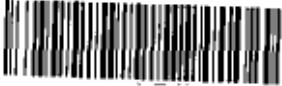
Order Granting Summary Judgment - OGSJ (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total:	\$3.50

Party Responsible for Fees	Pride Mobility Prod...	Transaction Amount	\$3.50
Payment Account	Thorndal Armstron...	Transaction Id	4634307
Filing Attorney	Brian Terry	Order Id	003770442-0
Transaction Response	Payment Complete		

Exhibit 6



ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 20 2018

VER

DISTRICT COURT

BY: Natalie Ortega
NATALIE ORTEGA, DEPUTY126 pm
12-20-18

CLARK COUNTY, NEVADA

VIVIA HARRISON, an Individual,

CASE NO. A-16-732342-C

Plaintiff,

DEPT. NO. 29

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL
& CASINO, a Nevada Domestic
Corporation; DESERT MEDICAL
EQUIPMENT, a Nevada Domestic
Corporation; PRIDE MOBILITY
PRODUCTS CORPORATION, a Nevada
Domestic Corporation; DOES I through X,
inclusive; and ROE BUSINESS ENTITIES I
through X, inclusive,

Defendants.

VERDICT

We, the jury in the above-entitled action, find as follows:

1. The percentage of negligence on the part of the Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO, which was the proximate cause of Plaintiff's injury,

was: _____ %

2. The percentage of negligence on the part of the Defendant, DESERT MEDICAL
EQUIPMENT, which was the proximate cause of Plaintiff's injury, was: _____ %3. The percentage of negligence on the part of the Plaintiff, VIVIA HARRISON, if
any, which was the proximate cause of Plaintiff's injury, was: _____ %

TOTAL:

100 %

1 Having found for the Plaintiff, VIVIA HARRISON, and against the Defendants,
2 RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO and DESERT MEDICAL EQUIPMENT,
3 we find:

4 Past Pain, Suffering, and Disability: \$ _____

5 Future Pain, Suffering, and Disability: \$ _____

6 Total Damages: \$ _____

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9 DATED this _____ day of _____, 2018.

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12 _____
13 FOREPERSON
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VERDICT FOR DEFENDANT

We, the jury in the above-entitled action, find for the defendant DESERT MECHANICAL EQUIPMENT and against the plaintiff.

DATED this 20th day of DECEMBER, 2018.


FOREMAN



VERDICT FOR DEFENDANT

We, the jury in the above-entitled action, find for the defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, and against the plaintiff.

DATED this 20th day of DECEMBER, 2018.


FOREMAN

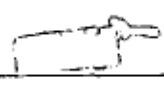
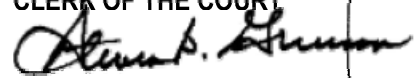


Exhibit 7



1 **NEOJ**
2 **LOREN S. YOUNG, ESQ.**
3 Nevada Bar No. 7567
4 **THOMAS W. MARONEY, ESQ.**
5 Nevada Bar No. 13913
6 **LINCOLN, GUSTAFSON & CERCOS, LLP**
7 **ATTORNEYS AT LAW**
8 3960 Howard Hughes Parkway, Suite 200
9 Las Vegas, Nevada 89169
10 Telephone: (702) 257-1997
11 Facsimile: (702) 257-2203
12 lyoung@lgclawoffice.com
13 tmaroney@lgclawoffice.com

14 Attorneys for Defendant, RAMPARTS, INC.
15 d/b/a LUXOR HOTEL & CASINO

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

14 VIVIA HARRISON, an individual,
15 Plaintiff,

16 v.

17 RAMPARTS, INC. d/b/a LUXOR HOTEL &
18 CASINO, a Nevada Domestic Corporation;
19 DESERT MECHANICAL EQUIPMENT, a
20 Nevada Domestic Corporation, DOES I through
21 XXX, inclusive, and ROE BUSINESS
22 ENTITIES I through XXX, inclusive,

23 Defendants.

24 DESERT MEDICAL EQUIPMENT, a Nevada
25 Domestic Corporation,

26 Third-Party Plaintiff,

27 v.

28 STAN SAWAMOTO, an individual,

Third Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

NOTICE OF ENTRY OF ORDER

1 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

2 YOU AND EACH OF YOU will please take notice that an Order was entered on the 18th day
3 of March, 2019; a true and correct copy is attached hereto.

4 DATED this 18th day of March, 2019.

5 **LINCOLN, GUSTAFSON & CERCOS, LLP**

6 

7 **LOREN S. YOUNG, ESQ.**

8 Nevada Bar No. 7567

9 **THOMAS W. MARONEY, ESQ.**

10 Nevada Bar No. 13913

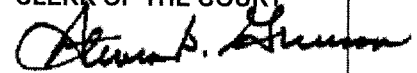
11 3960 Howard Hughes Parkway, Suite 200

12 Las Vegas, NV 89169

13 Attorneys for Defendant, RAMPARTS, INC.

14 d/b/a LUXOR HOTEL & CASINO

15 v:\f-j\harrison_luxor\atty notes\drafts\pldgs\20190318_neoj_bjp.docx



1 **OGM**
2 **LOREN S. YOUNG, ESQ.**
3 Nevada Bar No. 7567
4 **THOMAS W. MARONEY, ESQ.**
5 Nevada Bar No. 13913
6 **LINCOLN, GUSTAFSON & CERCOS, LLP**
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8 3960 Howard Hughes Parkway
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13 lyoung@lgclawoffice.com
14 tmaroney@lgclawoffice.com

15 Attorneys for Defendant, RAMPARTS, INC.
16 d/b/a LUXOR HOTEL & CASINO

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DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,
Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL &
CASINO, a Nevada Domestic Corporation;
DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation, DOES I through XXX,
inclusive, and ROE BUSINESS ENTITIES I
through XXX, inclusive,
Defendants.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

**ORDER GRANTING DEFENDANT
RAMPARTS, INC. d/b/a LUXOR HOTEL &
CASINO'S MOTION FOR ATTORNEY'S
FEES AND COSTS**

Defendant RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO's Motion for Attorney's
Fees and Costs and Memorandum of Costs and Disbursements coming on for hearing on February 27,
2019; the Honorable David M. Jones presiding with appearances by Loren S. Young, Esq. appearing
on behalf of Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO; Boyd B. Moss, Esq.

1 of Moss Berg Injury Lawyers and Matthew Pfau, Esq. of Parry & Pfau appearing on behalf of Plaintiff,
2 VIVIA HARRISON; the Court, having reviewed the papers and pleadings on file herein, having heard
3 the arguments of counsel, and good cause appearing therefore, the Court hereby finds and enters the
4 following:

5 FINDINGS OF FACT

6 Trial in this matter started on December 10, 2018 and concluded on December 20, 2018 with
7 the Jury returning a Defense Verdict against Plaintiff and in Luxor's favor. Thus, Luxor is the
8 prevailing party pursuant to NRS §18.000 et seq.

9 Judgment was entered on the Jury Verdict on January 16, 2019. As the prevailing party, Luxor
10 moved for recovery of costs pursuant to NRS §18.020 and NRS §18.005 by filing a memorandum of
11 costs and disbursements on January 17, 2019. Plaintiff did not file a motion to re-tax the costs.

12 Luxor also filed a motion for recovery of attorney's fees and costs on January 17, 2019
13 pursuant to NRS §18.010, NRS §18.020, NRS §18.005, NRS 7.085, and NRCP 68. Plaintiff filed an
14 Opposition to the Motion for attorney's fees and costs on February 4, 2019 opposing the award of fees
15 and only disputing costs of the experts. Luxor filed a Reply brief on February 20, 2019.

16 CONCLUSIONS OF LAW

17 As the prevailing party, Luxor is entitled to award of costs pursuant to NRS §18.005 and NRS
18 §18.020. Pursuant to NRS §18.110, a memorandum of costs must be filed within 5 days after the entry
19 of order or judgment. NRS §18.110(4) provides, "Within 3 days after service of a copy of the
20 memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs,
21 notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the
22 hearing of the motion the court or judge shall settle the costs." See Nev. Rev. Stat. Ann. § 18.110(4).

23 Under NRS 18.005(5), an expert witness who does not testify may recover costs equal to or
24 under \$1,500, and consistent with *Khoury*, "[w]hen a district court awards expert fees in excess of
25 \$1,500 per expert, it must state the basis for its decision." *Public Employees' Ret. Sys. v. Gitter*, 393
26 P.3d 673, 681, 133 Nev. Adv. Rep. 18 (April 27, 2017).

27 Any award of expert witness fees in excess of \$1,500 per expert under NRS 18.005(5) must be
28 supported by an express, careful, and preferably written explanation of the court's analysis of factors

1 pertinent to determining the reasonableness of the requested fees and whether "the circumstances
2 surrounding the expert's testimony were of such necessity as to require the larger fee." *Frazier v.*
3 *Drake*, 357 P.3d 365, 377-378, 131 Nev. Adv. Rep. 64 (Nev. 2015).

4 In evaluating requests for such awards, district courts should consider the importance of the
5 expert's testimony to the party's case; the degree to which the expert's opinion aided the trier of fact in
6 deciding the case; whether the expert's reports or testimony were repetitive of other expert witnesses;
7 the extent and nature of the work performed by the expert; whether the expert had to conduct
8 independent investigations or testing; the amount of time the expert spent in court, preparing a report,
9 and preparing for trial; the expert's area of expertise; the expert's education and training; the fee
10 actually charged to the party who retained the expert; the fees traditionally charged by the expert on
11 related matters; comparable experts' fees charged in similar cases; and, if an expert is retained from
12 outside the area where the trial is held, the fees and costs that would have been incurred to hire a
13 comparable expert where the trial was held. *Id.*

14 From review of the Memorandum, Motion, and related briefs, the Court finds the uncontested
15 costs incurred by Luxor were reasonable and necessary pursuant to NRS §18.005 and NRS §18.020.
16 Costs must be allowed of course to the prevailing party against an adverse party against whom judgment
17 is rendered when money damages of \$2,500 or greater is sought. Here, Plaintiff sought recovery of
18 damages in excess of \$2,500. Thus, the Court finds that Luxor is entitled to an award of reasonable
19 and necessary costs incurred that were uncontested totaling **\$22,097.28**.

20 From review of the Memorandum, Motion, and related briefs, and the factors identified in
21 *Frazier v. Drake*, the Court finds the contested costs incurred by Luxor for the three experts were
22 reasonable and necessary pursuant to NRS §18.005 and NRS §18.020, however, the Court hereby
23 exercises its' discretion and reduces the recoverable expert costs to the following amounts to be
24 awarded to Luxor as follows: Dr. Clifford Segil = \$5,000.00; Michelle Robbins = \$7,500.00; Aubrey
25 Corwin = \$5,000.00. Thus, the Court finds that Luxor is entitled to an award of reasonable and
26 necessary expert costs incurred that were contested totaling **\$17,500.00**, for a total award of costs to
27 Luxor equaling **\$39,597.28**.

1 The Nevada Supreme Court outlined a four factor test for awarding discretionary attorneys'
2 fees under NRCP 68 in *Beattie v. Thomas*, 99 Nev. 579, 588 (1983). The four *Beattie* factors include:
3 (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer of
4 judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's
5 decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4)
6 whether the fees sought by the offeror are reasonable and justified in amount. As the prevailing party,
7 Luxor seeks recovery of attorney's fees incurred pursuant to NRCP 68, NRS §18.010(2)(b), and NRS
8 7.085. Nevada's statute provides that a prevailing party may also be awarded attorney's fees if a claim
9 is brought or maintained without reasonable ground. *Id.*

10 To apply the *Beattie* factors to the case at bar, the Court finds: (1) Plaintiff's complaint included
11 many statements of fact and allegations contrary to their own witnesses testimony; (2) Luxor's offer
12 of judgment was made after some discovery was conducted and renewed after additional discovery
13 was performed, and prior to trial; however, deposition of Luxor's witnesses were not conducted until
14 much later in discovery; (3) Plaintiff was aware of the substantial defects in the case and still rejected
15 Luxor's offer of judgment; and (4) Luxor's requested attorneys' fees, in the amount of \$202,398.00,
16 reflect the actual and reasonable attorneys' fees incurred by Luxor from the date of service on the offer
17 of judgment to the date of entry of the final judgment. Thus, under the *Beattie* factors, this Court finds
18 an award of a portion of the post-offer attorneys' fees is appropriate.

19 On March 23, 2017, Luxor served an offer of judgment to Plaintiff for \$1,000.00 pursuant to
20 NRCP 68. Pursuant to the rule, if an offeree rejects an offer and fails to obtain a more favorable
21 judgment, the Court may order the offeree to pay reasonable attorney's fees incurred from the date of
22 the service of the offer. As Plaintiff did not prove a claim or damages against Luxor, leading to a
23 defense verdict, this Court finds the offer served by Luxor was reasonable and Plaintiff did not obtain
24 a more favorable judgment than the offer. Thus, the Court finds that Luxor is entitled to a partial
25 award of attorney's fees incurred during the month of December only.

26 In considering an award of attorney's fees, the Court examines: (1) the qualities of the
27 advocate; (2) the character of the work to be done; (3) the work actually performed; and (4) the result.
28

1 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). "Hourly time schedules
2 are helpful in establishing the value of counsel services." Id.

3 After analyzing a request attorney's fees, this Court finds Luxor's Counsel, Loren S. Young,
4 Esq. and Thomas W. Maroney, Esq. are qualified, competent, and experienced attorneys and are
5 respected and qualified attorneys. The character of the work involved legal issues, medical complaints
6 and damages, as well as oral arguments that required a competent and skilled trial attorney. The work
7 actually performed by Luxor's Counsel was significant in time and effort, preparing the motion work,
8 trial preparation, and attendance at the two week trial. The result obtain by way of a defense verdict
9 was a success in Luxor's favor. Thus, this Court finds that Luxor's motion fully addressed and
10 satisfied the factors enumerated in *Brunzell*, namely, the advocate's professional qualities, the nature
11 of the litigation, the work performed, and the result. *Brunzell*, 85 Nev. 345, 349, 455 P.2d 31, 33
12 (1969).

13 The Court finds that Luxor is entitled to recover attorney's fees pursuant to the *Brunzell* factors,
14 however, the Court exercises its discretion to reduce the amount of fees based on the forgoing facts
15 and findings. The Court reviewed Luxor's attorneys' invoices and affidavits and finds that Luxor's
16 attorneys' fees are reasonable and utilizes its discretion to award a portion of Luxor's attorney's fees
17 for the month of December 2018 that would include trial preparation and trial. Accordingly, Luxor
18 shall be awarded attorneys' fees in the total amount of **\$69,688.00**.

19 **ORDER AND JUDGMENT**

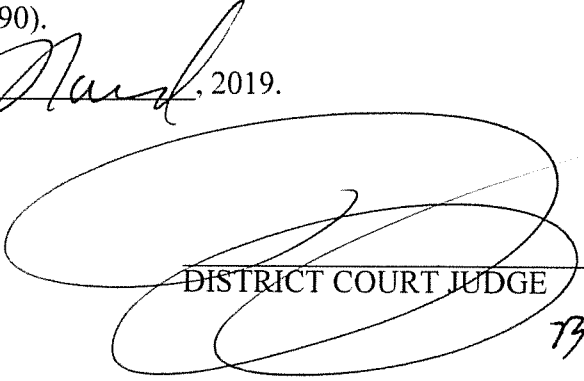
20 Based on the forgoing, and for good cause shown, **IT IS HEREBY ORDERED** that
21 Defendant Luxor's Memorandum of Allocated Costs and Disbursements and Motion and Application
22 for Costs is hereby **GRANTED** in the amount of Thirty Nine Thousand Five Hundred and Ninety
23 Seven Dollars and Twenty-Eight Cents (**\$39,597.28**).

24 Based on the forgoing, and for good cause shown, **IT IS HEREBY FURTHER ORDERED**
25 that Defendant, Luxor's Motion and Application for Attorney's Fees is hereby **GRANTED** pursuant
26 to NRCP 68 from the date of the offer of judgment totaling Sixty Nine Thousand Six Hundred and
27 Eighty Eight Dollars and No Cents (**\$69,688.00**).
28

1 Based on the forgoing, **IT IS HEREBY FURTHER ORDERED** that total final judgment is
2 entered against Plaintiff, VIVIA HARRISON, in favor of Defendant, RAMPARTS, INC. d/b/a
3 LUXOR HOTEL & CASINO, totaling One Hundred and Nine Thousand Two Hundred and Eighty
4 Five Dollars and Twenty-Eight cents (\$109,285.28).

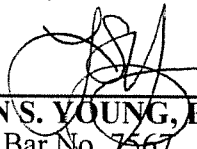
5 Based on the forgoing, **IT IS HEREBY FURTHER ORDERED** that this total final judgment
6 must first be offset from other settlement funds received by Plaintiff and Plaintiff's attorney as part of
7 the trial judgment before any distribution and this total final judgment in favor of Luxor takes priority
8 over any other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106
9 Nev. 664, 666, 799 P.2d 559, 560 (1990).

10 DATED this 15 day of March, 2019.

11
12
13 
14 DISTRICT COURT JUDGE 73

15 Respectfully Submitted by:

16 **LINCOLN, GUSTAFSON & CERCOS, LLP**

17
18 
19 **LOREN S. YOUNG, ESQ.**

20 Nevada Bar No. 7567
21 3960 Howard Hughes Pkwy, Suite 200
22 Las Vegas, NV 89169
23 Attorneys for Defendant, RAMPARTS, INC.
24 d/b/a LUXOR HOTEL & CASINO

25 Approved as to form and content by:

26 **PARRY & PFAU**

27 **MOSS BERG INJURY LAWYERS**

28 Refused to Sign

MATTHEW G. PFAU, ESQ.

Nevada Bar No. 11439
880 Seven Hills Drive, Suite 210
Henderson, NV 89052
Attorneys for Plaintiff, VIVIA HARRISON

Refused to Sign

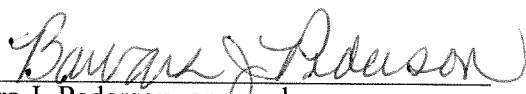
BOYD B. MOSS, ESQ.

Nevada Bar No. 8856
4101 Meadows Lane, Suite 110
Las Vegas, NV 89107
Attorneys for Plaintiff, VIVIA HARRISON

1 Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
2 Clark County Case No. A-16-732342-C

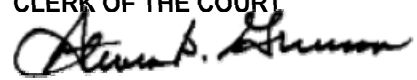
3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY that on the 18th day of March, 2019, I served a copy of the attached
5 **NOTICE OF ENTRY OF ORDER** via electronic service to all parties on the Odyssey E-Service
6 Master List.

7
8
9 
10 Barbara J. Pederson, an employee
11 of the law offices of
12 Lincoln, Gustafson & Cercos, LLP

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Exhibit 8



MRCN

Matthew G. Pfau, Esq.
Nevada Bar No.: 11439
PARRY & PFAU
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAX
matt@p2lawyers.com

Attorneys for Plaintiff,
Vivia Harrison

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

Vivia Harrison, an individual

Plaintiff,

vs.

Ramparts, Inc., dba Luxor Hotel & Casino, a Nevada Domestic Corporation;
Desert Medical Equipment, a Nevada Domestic Corporation; Does I-X; Roe Corporations I-X,

Defendants.

Case No.: A-16-732342-C

Dept. No.: XXIX

HEARING REQUESTED

**Motion to Reconsider the Court's
Order Granting Luxor an Attorney
Lien Offset**

Notice of Motion

Plaintiffs will bring this Motion for hearing on the ____ day of _____ 2019 in Department 29 of the Eighth Judicial District Court at the hour of _____.m. or as soon thereafter as counsel may be heard.

I.

Statement of Facts

Ms. Harrison's personal injury lawsuit arises from injured sustained as she was thrown from a motorized scooter. The motorized scooter tipped over when she was navigating out of a restaurant owned by Ramparts Inc., dba Luxor Hotel & Casino ("Luxor"). Ms. Harrison filed suit against Luxor, Desert Medical Equipment ("DME") and Pride Mobility on February 24, 2016.

Luxor served an Offer of Judgment for \$1,000 to plaintiff on March 23, 2017. The Offer was served before Luxor's 30(b)6 representatives had been deposed, before Ms. Harrison had conducted an inspection of the Luxor's Deli and before Ms. Harrison had been deposed by the defendants.

On December 20, 2018, a jury returned a verdict in favor of Luxor. Luxor sought reimbursement for the fees it incurred from March 23, 2017 through present. In Luxor's Motion for Fees and Costs filed on January 17, 2019, they did not brief the attorney lien offset issue that they raised in their Reply.¹

A hearing was held on February 27, 2019, where this Court denied Luxor's request for fees from the time of the Offer of Judgment stating that it was unreasonable.² This Court cited the amount of Vivia's medical bills and the fact that the Offer was made before substantial discovery had completed as reasons for its decision.³ The Court granted Luxor's fees for trial prep and for trial in the month of December.⁴ No oral argument was heard regarding the attorney lien offset issue that Luxor raised in their Reply.⁵

On March 5, 2019, Luxor filed a proposed Order that was not agreed upon by the Ms. Harrison. Luxor and Ms. Harrison's counsel had discussed the proposed

¹ See Exhibit 1, Luxor's Motion for Fees and Costs.

² See Exhibit 2, Harrison v. Rampart 2/27/19 Hearing Transcript.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

1 language via email but before a phone conversation could be held, Luxor filed their
2 proposed Order to the Court.⁶ The primary disputes with Luxor's proposed Order
3 were 1) that it did not properly reflect the Court's reasoning behind its ruling that the
4 Offer was unreasonable and 2) that the Order language giving Luxor an offset from
5 other settlement funds does not properly apply Nevada law and does not reflect
6 Luxor's Order regarding attorney lien offsets.⁷ Ms. Harrison objected to the attorney
7 offset issue because it was not briefed by Ms. Harrison's counsel and because it was
8 not addressed by the Court in its ruling.

9 On March 11, 2019, Plaintiff filed an alternate proposed Order that reflects this
10 Court's reasoning in its ruling and that did not include the additional language
11 regarding the attorney offset. On March 18, 2019, this Court signed the Luxor's
12 proposed Order without entertaining a rebuttal argument from Ms. Harrison so that
13 the Court could consider all aspects of the attorney lien offset issue as it related to
14 this case.

16 II.

17 Law and Argument

18 This Court has authority to reconsider its own decision where a party asserts that
19 a mistake has been made.⁸ Such a motion must be brought within 10 days of service
20 of notice of the order or judgment,⁹ and where a post-judgment motion for
21 consideration it is in writing, timely filed, states its grounds with particularity, and
22 requests a substantive alteration of a judgment, it also tolls the 30-day time limit to
23 file a notice of appeal.¹⁰

25 ⁶ See Exhibit 3, Luxor Emails Regarding Proposed Harrison Order.

26 ⁷ *Id.*

27 ⁸ See N.R.C.P. 60(b)(1); N.R.C.P. 59(e).

28 ⁹ EDCR 2.24.

¹⁰ *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010); NRAP 4(a)(4)(C).

A. The Court's Order Does Not Properly Reflect the Nevada Supreme Court's Position on Attorney's Liens

Ms. Harrison contends that the Court should have permitted a proper briefing of the lien offset issue addressed in Luxors Reply and in Luxor's proposed Order signed by the Court. Accordingly, Ms. Harrison's attorney's have briefed herein the issue of an attorney's liens priority over other liens according to the Nevada Supreme Court. Further, Ms. Harrison's attorney's, contend that the cases cited by the Luxor to support the contradiction of the Supreme Court's ruling are not on point and are not applicable in this case.

1. Case Law Cited by the Defendant Does Not Support a Ruling that Makes Private Out of Court Settlements Subject to Offset.

Luxor sites *Muije, Ltd. v. North Las Vegas Cab Co.* as their primary authority in support of their claim for attorney lien offset.¹¹ However, *Muije* is unrelated because it deals with a jury verdict in favor of the Plaintiff against a single defendant which did not cover the Offer of Judgment.¹² The *Muije* facts are distinctly different than the facts at issue as this case involves monies recieved from a private settlment with another defendant who is not a party to the award for fees and costs.

In *Muije*, the Nevada Supreme Court held that an equitable offset took priority over a perfected attorney lien because the attorney lien attached solely to the net judgment after the offset was taken.¹³ In so concluding, this court then observed that, "[o]nce a net judgment is determined, then the attorney lien is superior to any later lien asserted against that judgment."¹⁴ The Nevada Supreme Court found that "equity" requires settlement of the net verdict between the two parties before

¹¹ *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664 (1990).

¹² *Id.*

¹³ *Id.* at 667, 799 P.2d at 561.

¹⁴ *Id.*

1 attorneys' liens may attach.¹⁵

2 The Nevada Supreme Court based its holding in *Muije* on the basis that the court's
3 award to the defendant of attorney's fees and costs was part of the trial judgment
4 and therefore held that plaintiff's counsel lien was only attached to the net judgment
5 after the defendant's attorney's fees and costs were satisfied.¹⁶ However, the issue
6 in this case is not solely whether an attorney lien attached to a plaintiff's recovery
7 from a judgment has priority over the defendant's award of attorney's fees and costs
8 in this case as it was in *Muije*.

9 In this case, prior to the jury's verdict, Ms. Harrison entered into a private
10 agreement with DME. DME is not seeking an award for fees and costs in this case.
11 Pursuant to this private agreement, no matter what the jury's verdict was, DME
12 would be obligated to pay Ms. Harrison according to the terms of a high low
13 agreement. This was a contract entered into between Ms. Harrison and DME and is
14 not a part of the net judgment. Luxor was not privy to this contract and therefore
15 has no claim to any part of this recovery.

16 Since there were no moneys awarded from the Luxor and therefore there is no
17 "net judgment" against Luxor that can take priority over an attorney's lien, *Muije* does
18 not apply. Further, since there were multiple defendants and attorney's fees or costs
19 were only awarded to Luxor, *Muije* cannot be applied. The agreement with DME –
20 created before the verdict – was also not a part of the net judgment and not
21 connected to Luxor in any way, further disconnecting this case from *Muije's* decision.
22 Given these facts, Ms. Harrison's attorney's lien would have priority by perfecting the
23 lien (as discussed below) and by contract.

24 Luxor further cites *Salaman v. Bolt* in their Reply to support their argument for
25 offset.¹⁷ Luxor cites *Salaman* to argue that an offset arising from an unrelated matter

26 ¹⁵ *Id.*

27 ¹⁶ *Id.*

28 ¹⁷ See Exhibit 4, Defendant's Reply in Support of Motion for Fees and Costs.

1 should get priority and that an attorney's lien attaches to the net judgment after all
2 offsets from that action have been paid. However, they fail to address the facts of
3 *Salaman* and how the California Supreme Court arrived at its decision.

4 In *Salaman*, the dispute arose between a lessee and lessor.¹⁸ The lessee sued the
5 lessor.¹⁹ The lessor hired counsel to defend him.²⁰ The lessor got a judgment in his
6 favor and was awarded \$8k in attorney's fees.²¹ The lessor's attorney had an attorney
7 lien on the lessor's recovery in the amount of \$32K.²² Then, in a completely unrelated
8 matter that the Court does not even go into, the lessee gets a judgment against the
9 lessor.²³ In summary now, the lessee owes the lessor money and the lessor owes the
10 lessee money. This issue before the California Supreme Court in *Salaman* is whether
11 the attorney's lien has priority over the \$8K before there is an offset between the two
12 unrelated judgments.

13 The Court defined "Equitable Offset" as a means by which a debtor may satisfy in
14 whole or in part a judgment or claim held against him out of a judgment or claim
15 which he has subsequently acquired against his judgment creditor.²⁴ The court
16 found that an equitable offset applied to the facts and circumstances in *Salaman*,
17 and that the equitable offset had priority over the attorney lien.²⁵

18 The facts and the issue before the court in *Salaman* are entirely different than this
19 case. The Court in *Salaman* based its entire decision on the fact that these two parties
20 owed each other money pursuant to two judgments and this idea about an
21 "equitable offset."²⁶ Here "equitable offset" does not apply. There is no lessee/lessor
22

23 ¹⁸ *Salaman v. Bolt*, 74 Cal. App. 3d 907 (1977).

24 ¹⁹ *Id.*

25 ²⁰ *Id.*

26 ²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴

²⁵

²⁶ *Id.*

relationship between the parties. Unlike *Salaman*, this is not a situation where Defendant owes Harrison money and Harrison owes Defendant money that would require an offset between judgments. The California Supreme Court in *Salaman* gave priority to an offset on completely different facts, and on a completely different basis than what exists in the present case. Therefore, *Salaman* does not support Luxor's argument for an offset.

2. Attorney's Liens Enjoy a Priority Over Other Liens When Properly Noticed

The Nevada Supreme Court determined that attorney liens have precedence over other liens, and attorney liens are not subject to distribution on a pro rata basis in the event of a dispute among lienholders.²⁷ In *Cetenko v. United California Bank*, cited with approval by the Nevada Supreme Court in *Muije*, the California Supreme Court explained the policy rationale for holding an attorney lien superior to that of a judgment creditor when the funds from the judgment are insufficient to satisfy all liens:

"[P]ersons with meritorious claims might well be deprived of legal representation because of their inability to pay legal fees or to assure that such fees will be paid out of the sum recovered in the latest lawsuit. Such a result would be detrimental not only to prospective litigants, but to their creditors as well."²⁸

In *Golightly & Vannah, PLLC v. TJ Allen, LLC*, the Nevada Supreme Court provided more clarification about how attorneys can secure payment in their cases using the statutory attorney lien created by Nevada Revised Statutes ("NRS") 18.015.²⁹ In *Golightly & Vannah*, the Nevada Supreme Court clarified that the plaintiff's attorney must serve written notice, in person or by certified mail, return receipt requested,

²⁷ *Michel v. Eighth Jud. Dist. Ct.*, 117 Nev. 145, 150-151, 17 P.3d 1003, 1007 (2001).

²⁸ *Cetenko v. United California Bank*, 30 Cal.3d 528, 179 Cal.Rptr. 902, 638 P.2d 1299, 1301 (1982).

²⁹ *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Rep. 41 (2016).

upon the plaintiff's client and the defendant claiming the lien and stating the amount of the lien.³⁰

Ms. Harrison's attorneys sent notice to all parties on two separate occasions. The first notice was sent on September 20, 2016.³¹ The second notice was sent on January 8, 2019 for the purposes of updating the costs of the case up to that date.³² Given that these notices conformed with the *Golightly* decision, Ms. Harrison's attorneys liens were perfected on September 20, 2016 and then renewed again on January 8, 2019. Since the attorney's liens were perfected, they have priority over other liens.

3. Public Policy Supports Ms. Harrison's Position that Private Settlements Should Not be Subject to Offset.

In addition to the arguments above, the Court should consider the implications of a ruling permitting private settlements to be subject to later awards for fees and costs. If a party settles out of court a year before a verdict with one of two defendants and the second defendant prevails at trial, any settlement proceeds recieved a year before would be subject to the second defendant's potential award for fees and costs.

If this were the scenario that all plaintiffs faced when deciding whether to settle with a single defendant before trial, there would be a chilling effect on any settlment negotiations held in private with separate defendants. If an agreement cannot be reached with all parties in a case with multiple defendants, a ruling like this would possibly incentivise plaintiffs to forgo settlment with any one of the parties for fear that the settlment would be subject to an award for attorney fees and costs. A ruling like this could therefore chill the impact of the ADR's Mediation program and all work

³⁰ *Id.*

³¹ See Exhibit 5, Notice of Attorney's Lien sent 9/20/16.

³² See Exhibit 6, Notice of Attorney's Lien sent 1/8/19.

1 that the settlement judges engage in regularly to aid in settlement.

2
3 **B. The Lien Offset Issue Raised in Luxor's Reply is Not Properly Before the**
4 **Court Because There Was no Opportunity for Ms. Harrison to Brief the**
5 **Cited Cases and for the Court to Hear the Issue on its Merits**

6 According to Rule 2.23(c), the judge may consider a Reply to a Motion on its merits
7 at any time with or without oral argument. In this case, Luxor cited cases and
8 arguments in their Reply that Ms. Harrison had no opportunity to brief. Therefore,
9 the new issues brought up in the Reply could not have been heard on its merits since
10 only one party presented their view of the case history and evidence. Ms. Harrison
11 hereby makes a briefing of the issues raised in Luxor's Reply for the Court's full
12 consideration in this Motion for Reconsideration.

13
14 **III.**

15 **Conclusion**

16 Vivian Harrison's private out of court settlement should not be subject to offset
17 based on Luxor's award for fees and costs based on the arguments made herein.
18 The attorney's lien was properly noticed and *Mujie* and *Salaman* do not apply to this
19 factual scenario. This Court should accordingly reconsider the form and content of
20 the signed order for Luxor's fees and costs.

1 DATED this 28th day of March 2019.

PARRY & PFAU



Matthew G. Pfau, Esq.
Nevada Bar No.: 11439
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAX

Attorney for Plaintiff,
Vivia Harrison

Certificate of Service

I hereby certify that on the 28th day of March 2019, service of the foregoing
Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset
 was made by required electronic service to the following individuals:

Loren S. Young, Esq.
 Nevada Bar No.: 007567
 LINCOLN, GUSTAFSON & CERCOS
 3960 Howard Hughes Parkway
 Suite 200
 Las Vegas, Nevada 89169

Attorney for Defendant,
Ramparts, Inc. d/b/a Luxor Hotel & Casino

Boyd B. Moss, Esq.
 Nevada Bar No.: 008856
 MOSS BERG INJURY LAWYERS
 4101 Meadows Ln., #110
 Las Vegas, Nevada 89107

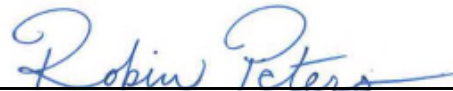
Co-Counsel for Plaintiff,
Vivia Harrison

LeAnn Sanders, Esq.
 Nevada Bar No.: 000390
 Courtney Christopher, Esq.
 Nevada Bar No.: 012717
 ALVERSON, TAYLOR, & SANDERS
 6605 Grand Montecito Pkwy, Suite 200
 Las Vegas, Nevada 89149

Attorneys for Defendant,
Desert Medical Equipment

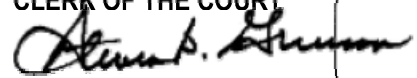
Stacey A. Upson, Esq.
 Nevada Bar No.: 004773
 LAW OFFICES OF STACEY A.
 UPSON
 7455 Arroyo Crossing Pkwy., Suite 200
 Las Vegas, NV 89113

Attorney for Third-Party Defendant,
Stan Sawamoto



 An Employee of Parry & Pfau

Exhibit 9



1 **NEOJ**
2 **LOREN S. YOUNG, ESQ.**
3 Nevada Bar No. 7567
4 **THOMAS W. MARONEY, ESQ.**
5 Nevada Bar No. 13913
6 **LINCOLN, GUSTAFSON & CERCOS, LLP**
7 **ATTORNEYS AT LAW**
8 3960 Howard Hughes Parkway, Suite 200
9 Las Vegas, Nevada 89169
10 Telephone: (702) 257-1997
11 Facsimile: (702) 257-2203
12 lyoung@lgclawoffice.com
13 tmaroney@lgclawoffice.com

14 Attorneys for Defendant, RAMPARTS, INC.
15 d/b/a LUXOR HOTEL & CASINO

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

14 VIVIA HARRISON, an individual,
15 Plaintiff,

16 v.

17 RAMPARTS, INC. d/b/a LUXOR HOTEL &
18 CASINO, a Nevada Domestic Corporation;
19 DESERT MECHANICAL EQUIPMENT, a
20 Nevada Domestic Corporation, DOES I through
21 XXX, inclusive, and ROE BUSINESS
22 ENTITIES I through XXX, inclusive,

23 Defendants.

24 DESERT MEDICAL EQUIPMENT, a Nevada
25 Domestic Corporation,

26 Third-Party Plaintiff,

27 v.

28 STAN SAWAMOTO, an individual,

Third Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

NOTICE OF ENTRY OF ORDER

1 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

2 YOU AND EACH OF YOU will please take notice that an Order was entered on the 21st day
3 of May, 2019; a true and correct copy is attached hereto.

4 DATED this 21st day of May, 2019.

5 **LINCOLN, GUSTAFSON & CERCOS, LLP**

6
7 
LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

8 **THOMAS W. MARONEY, ESQ.**

Nevada Bar No. 13913

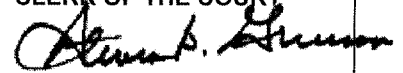
9 3960 Howard Hughes Parkway, Suite 200

10 Las Vegas, NV 89169

11 Attorneys for Defendant, RAMPARTS, INC.

d/b/a LUXOR HOTEL & CASINO

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1 **ODM**
2 **LOREN S. YOUNG, ESQ.**
3 Nevada Bar No. 7567
4 **THOMAS W. MARONEY, ESQ.**
5 Nevada Bar No. 13913
6 **LINCOLN, GUSTAFSON & CERCOS, LLP**
7 **ATTORNEYS AT LAW**
8 3960 Howard Hughes Parkway
9 Suite 200
10 Las Vegas, Nevada 89169
11 Telephone: (702) 257-1997
12 Facsimile: (702) 257-2203
13 lyoung@lgclawoffice.com
14 tmaroney@lgclawoffice.com

15 Attorneys for Defendant, RAMPARTS, INC.
16 d/b/a LUXOR HOTEL & CASINO

17
18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 VIVIA HARRISON, an individual,
21
22 Plaintiff,

23 v.

24 RAMPARTS, INC. d/b/a LUXOR HOTEL &
25 CASINO, a Nevada Domestic Corporation;
26 DESERT MEDICAL EQUIPMENT, a Nevada
27 Domestic Corporation, DOES I through XXX,
28 inclusive, and ROE BUSINESS ENTITIES I
through XXX, inclusive,

Defendants.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER THE
COURT'S ORDER GRANTING LUXOR
AN ATTORNEY LIEN OFFSET**

Plaintiff VIVIA HARRISON's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset, and Defendant RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO's Opposition to Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset coming on for hearing on May 10, 2019 (in chambers); the Court, having reviewed the papers

1 and pleadings on file herein, and good cause appearing therefore, the Court hereby finds and enters
2 the following:

3 IT IS HEREBY ORDERED that Plaintiff VIVIA HARRISON's Motion to Reconsider the
4 Court's Order Granting Luxor an Attorney Lien Offset is DENIED.

5 DATED this 16 day of May, 2019.

6
7
8 Nancy L Alf #27 Gr
DISTRICT COURT JUDGE
9 #29

10 Respectfully Submitted by:

11 **LINCOLN, GUSTAFSON & CERCOS, LLP**

12
13 LOREN S. YOUNG, ESQ.

Nevada Bar No. 7367

14 3960 Howard Hughes Pkwy, Suite 200

Las Vegas, NV 89169

15 Attorneys for Defendant, RAMPARTS, INC.

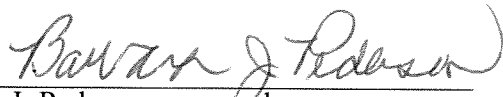
16 d/b/a LUXOR HOTEL & CASINO

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18 v:\f-j\harrison_luxor\atty notes\drafts\p\dgs\20190513 odr_nrcn_plf_lsy.docx

1 Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
2 Clark County Case No. A-16-732342-C

3 **CERTIFICATE OF SERVICE**

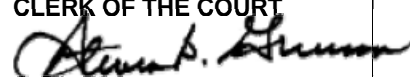
4 I HEREBY CERTIFY that on the 21st day of May, 2019, I served a copy of the attached
5 **NOTICE OF ENTRY OF ORDER** via electronic service to all parties on the Odyssey E-Service
6 Master List.

7
8
9 

10 Barbara J. Pederson, an employee
11 of the law offices of
12 Lincoln, Gustafson & Cercos, LLP

13 V:\F-J\Harrison_Luxor\POS\20190521_NEOJ_bjp.doc
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Exhibit 10

**Moss Berg Injury Lawyers**Boyd B. Moss III, Esq.
Nevada Bar No. 8856
4101 Meadows Lane, Suite 110
Las Vegas, Nevada 89107
Telephone: (702) 222-4555
Facsimile: (702) 222-4556
boyd@mossberglv.com**Parry & Pfau**Matthew G. Pfau, Esq.
Nevada Bar No. 11439
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Telephone: (702) 879-9555
Facsimile: (702) 879-9556
matt@p2lawyers.com**Marquis Aurbach Coffing**Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
tstewart@maclaw.com*Attorneys for Plaintiff, Vivia Harrison***DISTRICT COURT****CLARK COUNTY, NEVADA**

VIVIA HARRISON, an individual,

Plaintiff,

vs.

RAMPARTS INC. dba LUXOR HOTEL &
CASINO, a Nevada Domestic Corporation;
DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation; PRIDE MOBILITY
PRODUCTS CORPORATION, a Nevada
Domestic Corporation; DOES I through X,
inclusive; and ROE BUSINESS ENTITIES I
through X, inclusive,

Defendants.

Case No.: A-16-732342-C

Dept. No.: XXIX

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO DISMISS DEFENDANT
DESERT MEDICAL EQUIPMENT, ONLY**

1 Please take notice that a Stipulation and Order to Dismiss Defendant Desert Medical
2 Equipment, Only was entered in the above-captioned matter on November 26, 2019, a copy of
3 which is attached as **Exhibit 1**.

4 Dated this 6th day of December, 2019.

5
6 MARQUIS AURBACH COFFING

7
8 By /s/ Micah S. Echols
9 Micah S. Echols, Esq.
10 Nevada Bar No. 8437
11 Tom W. Stewart, Esq.
12 Nevada Bar No. 14280
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 *Attorneys for Plaintiff, Vivia Harrison*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS DEFENDANT DESERT MEDICAL EQUIPMENT, ONLY** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 6th day of December, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Tonya Baltazar	tonya@mossberglv.com
Boyd B. Moss	boyd@mossberglv.com
Mark B. Bailus	mbailus@lgclawoffice.com
Troy A. Clark, Esq.	tclark@bremerwhyte.com
Amree Stellabotte .	astellabotte@bremerwhyte.com
Barbara Pederson	bpederson@lgclawoffice.com
Dave Hess	dave@p2lawyers.com
David J. Mortensen	efile@alversontaylor.com
Kaylee Calaguas	kaylee@p2lawyers.com
Loren Young	lyoung@lgclawoffice.com
Matt Pfau	matt@p2lawyers.com
Ofelia Acevedo	ofelia@p2lawyers.com
Ofelia Acevedo	ofelia@p2lawyers.com
Samantha Duome	samantha@p2lawyers.com
Zachariah Parry	zach@p2lawyers.com
Dalilia Baza	dbazaflores@lgclawoffice.com
Courtney Christopher	cchristopher@alversontaylor.com
Admin Clerk	lasvegaslegal4@farmersinsurance.com
Front Desk	receptionist@p2lawyers.com
Rosemarie Frederick	RFrederick@AlversonTaylor.com
Kathryn Hendricks	kathryn.hendricks@farmersinsurance.com
Julie Kraig	jkraig@alversontaylor.com
Michael Madden	Michael@p2lawyers.com
Adam Noyce	adnoyce@alversontaylor.com
LeAnn Sanders	lsanders@alversontaylor.com
Stacey A. Upson	stacey.upson@farmersinsurance.com

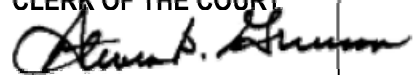
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A.

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1



1 **SAO**
2 BOYD B. MOSS III, ESQ.
3 Nevada Bar No. 8856
4 Boyd@mossberglv.com
5 MARCUS A. BERG, ESQ.
6 Nevada Bar No. 9760
7 marcus@mossberglv.com
8 MOSS BERG INJURY LAWYERS
9 4101 Meadows Lane, Suite 110
10 Las Vegas, Nevada 89107
11 Telephone: (702) 222-4555
12 *Attorneys for Plaintiff*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 VIVIA HARRISON, an individual;
11
12 Plaintiff,

CASE NO. A-16-732342-C
DEPT. NO. 29

13 v.

14 RAMPARTS, INC. d/b/a LUXOR HOTEL &
15 CASINO, a Nevada Domestic Corporation;
16 DESERT MEDICAL EQUIPMENT, a
17 Nevada Domestic Corporation, PRIDE
18 MOBILITY PRODUCTS CORPORATION,
19 a Nevada Domestic Corporation; DOES I
20 through X; and ROE CORPORATIONS I
21 and X, inclusive,

22 Defendants.

21 **STIPULATION AND ORDER TO DISMISS DEFENDANT DESERT MEDICAL**
22 **EQUIPMENT, ONLY**

23 Plaintiff, Vivian Harrison ("Plaintiff"), by and through her counsel of record, Moss Berg
24 Injury Lawyers and Parry & Pfau, and Defendant Desert Medical Equipment ("Desert Medical"),
25 by and through its counsel of record, Alverson Taylor & Sanders, hereby stipulate as follows:
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1. Plaintiff alleged claims for negligence, and negligent hiring, training, maintenance, and supervision against Desert Medical in her second amended complaint, filed on August 19, 2016.
2. In December 2018, Plaintiff and Desert Medical reached a settlement during trial but before the verdict was reached.
3. Settlement documents have been executed, and the settlement funds have been deposited with the Court pursuant to the Court's July 23, 2019 order granting Desert Medical Equipment's motion for interpleader and to deposit funds with the Court.
4. All of Plaintiff's claims against Desert Medical only are hereby dismissed and Desert Medical is hereby dismissed, with prejudice.

IT IS SO STIPULATED.

CASE NO. A-16-732342-C

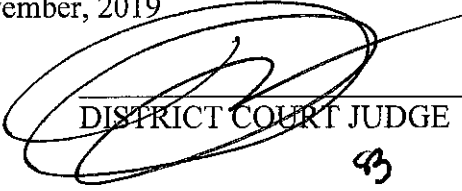
ORDER

Based upon the foregoing stipulation, and good cause appearing, **IT IS HEREBY ORDERED:**

1. Plaintiff, Vivia Harrison's, claims of negligence, and negligent hiring, training, maintenance, and supervision against Defendant Desert Medical Equipment are hereby dismissed, with prejudice.
2. Defendant Desert Medical Equipment is dismissed, with prejudice.

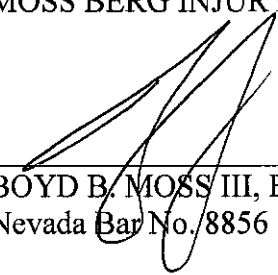
IT IS SO ORDERED.

DATED this 21 day of November, 2019


DISTRICT COURT JUDGE

SUBMITTED BY:

MOSS BERG INJURY LAWYERS


BOYD B. MOSS III, ESQ.
Nevada Bar No. 8856

1 APPROVED AS TO FORM AND CONTENT

2

3 PARRY & PFAU

MOSS BERG INJURY LAWYERS

4

5 MATTHEW G. PFAU, ESQ.
6 Attorney for Plaintiff, Vivia Harrison

BOYD B. MOSS, III, ESQ.
Attorney for Plaintiff Vivia Harrison

7 ALVERSON, TAYLOR & SANDERS

8

9 COURTNEY CHRISTOPHER, ESQ.
10 Attorney for Defendant
Desert Medical Equipment

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1 APPROVED AS TO FORM AND CONTENT

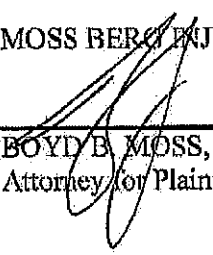
2

3 PARRY & PFAU

MOSS BERG INJURY LAWYERS

4

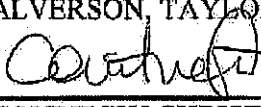

MATTHEW G. PFAU, ESQ.
Attorney for Plaintiff, Vivia Harrison


BOYD B. MOSS, III, ESQ.
Attorney for Plaintiff Vivia Harrison

6

7 ALVERSON, TAYLOR & SANDERS

8


COURTNEY CHRISTOPHER, ESQ.
Attorney for Defendant
Desert Medical Equipment

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