

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON, AN INDIVIDUAL,

Appellant,

vs.

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

Respondent.

No. 78964

Electronically Filed
Jan 21 2020 05:20 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable, David M. Jones
Presiding

REPLY TO THE RESPONSE TO THE COURT'S NOVEMBER 14, 2019

ORDER TO SHOW CAUSE

Lincoln Gustafson & Cercos

Loren s. Young, Esq.

Nevada Bar No. 7567

Mark B. Bailus, Esq.

Nevada Bar no. 2284

3960 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Telephone: (702) 257-1997

Facsimile: (702) 257-2203

lyoung@lgclawoffice.com

mbailus@lgclawoffice.com

Attorneys for Respondent, Ramparts Inc., Luxor Hotel & Casino

I. INTRODUCTION

This Court's preliminary review of this appeal identified a potential jurisdictional defect and the Court issued an order to show cause to the Appellant. It appeared to the Court the order indicated in the notice of appeal, *i.e.*, the order denying the motion to reconsider was not substantively appealable. Appellant has responded to the order to show cause by arguing a final judgement had not been previously entered and the new stipulation and order filed on November 26, 2019 (dismissing Desert Medical Equipment) was a final, appealable order. Simply put, Appellant is wrong. The new stipulation and order dismissing Desert Medical Equipment was merely a housekeeping matter that did not modify the underlying judgement and, as such, is not the final, appealable order. Appellant's amended notice of appeal did not cure the jurisdictional defect.

Even though substantively appealable, Appellant chose not to appeal from the order granting Luxor attorney fees and costs. Instead, Appellant filed a motion to reconsider, not challenging the award of attorney's fees and costs but asking the District Court to reconsider the attorney lien offset. The District Court denied Appellant's reconsideration motion and Appellant filed a notice of appeal therefrom. Unfortunately for Appellant, a denial of a motion for reconsideration is not substantively appealable. As such, this Court lacks appellate jurisdiction to consider this appeal and the same should be dismissed.

II. PROCEDURAL BACKGROUND

The underlying case relates to allegations by Appellant/Plaintiff, Vivian Harrison ("Plaintiff") against Respondent/Defendant, Luxor Hotel and Casino ("Luxor") from an incident that occurred at the Luxor on December 10, 2014. Plaintiff filed suit against Luxor, Desert Medical Equipment ("Desert Medical") and Pride Mobility on February 24, 2016. Before trial, Pride Mobility was dismissed pursuant to a motion for summary judgement.

In December, 2018, a nine (9) day trial took place. Before the jury's verdict, Plaintiff and Desert Medical purportedly entered a high-low (\$150,000/\$750,000) trial agreement. Pursuant to the unwritten trial agreement, no matter what the jury's verdict was, Desert Medical would be obligated to pay Plaintiff. On December 20, 2019, the jury returned a verdict in favor of Desert Medical and Luxor. The Judgement on Jury Verdict filed January 16, 2019, provided that Plaintiff "take nothing" from Desert Medical and Luxor. (See Exhibit "1"). Notwithstanding the Jury Verdict, Desert Medical was required to pay Plaintiff \$150,000.

After trial, on December 20, 2018 and January 8, 2019, Appellant's attorneys sent a Notice of Attorney Lien in the amount of \$169,246.73. On January 17, 2019, Luxor filed a Motion for Attorney's Fees and Costs. Plaintiff did not file a Motion to Retax. The District Court granted Luxor's motion for attorney's fees and costs and an Order and Notice of Entry of Order was entered on March 18, 2019. (See

Exhibit “2”). In the Order, Luxor was awarded \$109,285.28 in fees and costs and the order provided that the judgment against Plaintiff must be offset from other funds received by Plaintiff prior to any satisfaction of liens, including the Plaintiff’s counsel’s attorney lien for attorney’s fees and costs.

On March 28, 2019, Plaintiff filed a Motion to Reconsider asking the District Court to only reconsider its ruling on the attorney lien offset. (See Exhibit “3”). A Notice of Entry of Order and an Order denying Appellant’s Motion to Reconsider was filed on May 21, 2019. (See Exhibit “4”). On June 4, 2019, Plaintiff filed a Notice of Appeal, appealing only the order denying the reconsideration motion.

On May 20, 2019, Desert Medical filed a motion for interpleader and to deposit funds with the District Court, which was granted on July 24, 2019. A Stipulation and Order was filed on November 26, 2019, dismissing Desert Medical.

III. LEGAL ARGUMENT

On January 17, 2019, Luxor filed a motion for attorney’s fees and costs, which was granted and an Order and Notice of Entry of Order was entered on March 18, 2019 (“March 18 Order”). A post-judgement order awarding attorney fees and costs is considered a special order entered after final judgement and is substantively appealable. *See Winston v. DeBoer*, 22 Nev. 517, 134 P.3d 726 (2006). Notwithstanding, Plaintiff chose not to appeal from the March 18 Order. Instead, on March 28, 2019, Plaintiff filed a motion to reconsider, asking the District Court

to only reconsider its ruling regarding the attorney lien offset and did not contest the award of attorney's fees and costs. On May 21, 2019, the District Court entered a Notice of Entry of Order and Order denying Plaintiff's motion to reconsider ("May 21 Order"). On June 4, 2019, Plaintiff filed a Notice of Appeal, which provides that Plaintiff "hereby appeals to the Nevada Supreme Court Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset entered in this action on May 16, 2019." As evinced by the forgoing, Plaintiff did not intend to appeal from the Jury Verdict filed January 16, 2019 nor the March 18 Order but only from the order denying her motion to reconsider. Plaintiff did not file a timely notice of appeal from the March 18 Order. *See Rust v. Lark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)("[T]he proper and timely filing of a notice of appeal is jurisdictional.") Absent an appeal from the March 18 Order, a denial of a motion for reconsideration is not substantively appealable. *See Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P. 2d 980 (1983).

Notwithstanding, Plaintiff argues in her response (4) that she intended to appeal from the March 18 Order awarding Luxor attorney's fees and costs, but only named the motion for reconsideration in her notice of appeal. Nonsense. In deciding whether a notice of appeal confers appellate jurisdiction, courts are cognizant that "the notice afforded by a document, not the litigants motivation in filing it, determines the documents sufficiency." *See Kotler v. American Tobacco Co.*, 981

F. 2d 7, 10 (1st Cir. 1992). The gravamen of the issue presented herein is whether Plaintiff sufficiently manifested in her notice of appeal an intention to appeal from the March 18 Order, or stated another way, whether the notice adequately apprised Luxor of such an intention. The answer to the forgoing query is a resounding, “No.” By only naming the reconsideration motion in the notice of appeal, Plaintiff failed to adequately apprise Luxor of Plaintiff’s intent to appeal from any order other than the one designated in the notice, *i.e.*, the May 21 Order (denying Plaintiff’s motion to reconsider).

In her response (at 4), Plaintiff further argues that “Plaintiff’s intent to appeal from the award of fees and costs can be reasonably inferred based on naming the denied reconsideration motion.” Such is *non sequitur*, *i.e.*, an inference or conclusion that does not logically follow from the premises. Contrary to Plaintiff’s assertions, it cannot be reasonably inferred by only naming the reconsideration motion in the notice of appeal an intent to appeal from the March 18 Order. Just the opposite is true. Specifically, the notice of appeal states that Plaintiff “appeals to the Nevada Supreme Court Plaintiff’s Motion to Reconsider the Court’s Order Granting Luxor an Attorney Lien Offset entered in this action on May 16, 2019.” Since the notice of appeal makes no reference whatsoever to the March 18 Order, it cannot be reasonably inferred from the notice of appeal.

A notice of appeal must “designate the judgment, order or part thereof being appealed.” NRAP 3(c)(1)(b). Generally, a judgement or order that is not included in the notice of appeal is not considered on appeal. *See Collins v. Union Fed. Savings*, 97 Nev. 88, 89-90, 624 P.2d 496, 497 (1981). This general rule is not inflexible “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”. *See Collins v. Union Fed. Sav. and Loan Ass’n*, 97 Nev. 88, 90 624 P.2d 496, 497

Unlike *Collins*, the error in Plaintiff’s notice of appeal was not merely clerical. Although mere technical errors in a notice of appeal, absent a showing of prejudice to a respondent, may not render it ineffective, *e.g.*, *Collins*, 97 Nev. at 90, 624 P.2d at 497, such is not the case here where there is a complete absence of notice of the March 18 Order. The Plaintiff’s “amended” notice of appeal filed after the time for appeal of the March 18 Order had expired, if permitted would have the effect of allowing an appeal which had not actually been taken. Such an amendment should not be allowed. *See Welch v. State*, 80 Nev. 128, 390 P. 2d 35 (1964).

In the case *sub judice*, Plaintiff’s “intent” to appeal from the March 18 Order cannot be reasonably inferred from the text of the notice of appeal. It makes no reference whatsoever to the March 18 Order granting Luxor attorney fees and costs. Instead, it specifically references the reconsideration order, only. Omitting the

March 18 Order while at the same time designating a completely separate and distinct order loudly proclaims Plaintiff's intention not to appeal from the former order. *Cf. Kotler*, 981 F. 2d at 11("Omitting [one] order while at the same time, designating a completely separate and independent order loudly proclaims plaintiff's intention not to appeal the former order"). As such, the notice of appeal cannot be fairly said to give Luxor notice of Plaintiff's intent to appeal anything but the reconsideration order and, therefore, fails to meet NRAP 3(c) designation requirement as to any other order.

There is no question that Luxor has been materially misled by Plaintiff's notice of appeal. A fair reading of the notice of appeal and attendant docketing statement reveals that Plaintiff was not contesting the award of attorney fees and costs to Luxor, but only challenging the attorney lien offset. Such is evident from reading the docketing statement which only identifies one issue on appeal relating to the propriety of the attorney lien offset, which is the only issue identified in the reconsideration motion. (See Exhibit "5" and "6"). Now, the amended notice of appeal and amended docketing statement not only challenge the attorney lien offset but now include the award of attorney's fees and costs never previously disputed or identified. (See Exhibit "7"). If Plaintiff had truly intended to appeal from the March 18 Order as she now claims, it is curious that she did not identify any issues related to said order in her original docketing statement. The reason it was not included is

simple, at the time Plaintiff filed the original notice of appeal she only intended to appeal from reconsideration order regarding the attorney lien offset and not the March 18 Order (granting Luxor attorney's fees and costs). As such, Plaintiff gave neither this Court nor Luxor proper notice that she intended to dispute the earlier order granting Luxor attorney fees and costs. Luxor was entitled to rely on the plain language and apparent purport of the notice of appeal that Plaintiff was only appealing from the denial of the reconsideration motion.

In her response (at 5), Plaintiff argues "a final order disposing of all claims had not yet been entered, making Plaintiff's original notice of appeal premature." Luxor disagrees. In the case *sub judice*, the underlying judgment ordered that Plaintiff "take nothing" from Desert Medical and Luxor and, thus, adjudicated the rights and liabilities of the parties by way of a defense verdict. Plaintiff did not appeal from said judgement. The November 26 Order dismissing Desert Medical was more of a housekeeping matter and did not modify the underlying judgement. As such, the later order dismissing Desert Medical was superfluous and not appealable. *See e.g., Campos-Garcia v. Johnson*, 130 Nev. 610, 611-612, 331 P.3d 890, 891 (2014)(Indicating that the final judgment is the first order that adjudicates all rights and liabilities; subsequent judgments that do not modify settled legal rights and obligations are not appealable.)

Assuming *arguendo*, the November 26 Order was appealable, it is unclear what exactly Plaintiff is appealing. Said order is derived from a stipulation between Plaintiff and Desert Medical where Plaintiff stipulated to dismiss Desert Medical. Notwithstanding, in her ‘amended’ notice of appeal, Plaintiff is appealing from: (1) the order granting Defendant’s motion for attorney’s fees and costs, which was filed on March 18, 2019; (2) the order denying Plaintiff’s motion to reconsider the order granting Luxor an attorney lien setoff, filed on May 21, 2019; and (3) the stipulation and order to dismiss Defendant Desert Medical Equipment only, which was filed on November 26, 2019. The inclusion of the stipulation and order dismissing Desert Medical in the amended notice of appeal appears to be an attempt to rescue an otherwise defective notice of appeal. Interestingly, and more significantly, the amended docketing statement does not identify any issues on appeal related to the stipulation and order dismissing Desert Medical. This Court should not be swayed by Plaintiff’s contrived rescue mission by determining that the “amended” notice of appeal did not cure the jurisdictional defect in this appeal.

Next, Plaintiff argues in her response (5) that “this Court has confirmed the use of a stipulation to resolve outstanding claims by written order even after the entry of a judgement on the jury’s verdict.” In support thereof, Plaintiff quotes dicta from a footnote in the factual portion of *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 732 n. 4, 192 P.2d 243, 248 n. 4 (2008). Unfortunately for Plaintiff, dicta

is not controlling. *See Kaldi v. Farmers Inc. Exch.*, 117 Nev. 273, 282, 21 P.3d 16, 22 (2001). Failing to cite controlling authority is fatal to the claim that the final appealable order is the stipulation and order dismissing Desert Medical.

In the response (at 6), Plaintiff argues that “the Court should determine that the final appealable order was the stipulation that dismissed Plaintiff’s claims against Desert Medical. And, the Court should further determine that Plaintiff timely filed her amended notice of appeal.” Such is incorrect. As demonstrated above, the stipulation and order dismissing Desert Medical was merely a housekeeping matter that did not modify the underlying judgement on jury verdict that Plaintiff “take nothing” from Desert Medical and Luxor.

Further, Plaintiff’s amended notice of appeal does not relate back to the date of the original notice of appeal of June 4, 2019. *See Cruz v. Int’l. collection Corp.*, 673 F.3d 991 (9th Cir. 2011) (“Because of the ‘mandatory and jurisdictional’ nature of notices of appeal, the doctrine of ‘relation back’ that may apply to complaints does not apply to an amended notice of appeal.”) (Internal citation omitted.) *See id.* at 1000, n. 15. In the case *sub judice*, Plaintiff did not file her “amended” notice of appeal adding, *inter alia*, the March 18 Order until December 3, 2019. This was approximately 260 days after the March 18 Order. Thus, the amended notice of appeal was not a timely notice of appeal as to the March 18 Order as it was more than 30 days after said order. *See* NRAP 4(a)(1); *see also*, *Winston Products Co. v.*

DeBoer, 122 Nev. 517, 519, 134 P.3d 726, 728 (2006) (“This court lacks jurisdiction to consider an appeal filed beyond the time allowed under NRAP 4(a).”)¹

Finally, Plaintiff argues (at 6), that “[s]ince the stipulation and order dismissing Plaintiff’s claims against Desert Medical is the final, appealable order, the Court will review any challenged, interlocutory orders within this appeal, including orders named in Plaintiff’s amended notice of appeal.” Plaintiff heavily relies on *Consolidated Generator-Nevada Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256(1998). Such reliance is misplaced.

Unlike the orders in the *Consolidated* case, the March 18 Order granting Luxor attorney’s fees and costs was not an “interlocutory order” but rather, an independently appealable order. A post-judgment order awarding attorney fees and costs is considered a special order entered after final judgment and is substantively appealable under NRAP 3A(b)(8). *See Winston Products Co.*, 122 Nev. At 525, 134 P.3d at 731. Even though substantively appealable, Plaintiff did not appeal from the March 18 Order in her notice of appeal. As such, Plaintiff did not file a timely notice of appeal from the March 18 Order. Absent an appeal from the March 18 Order, the denial of Plaintiff’s motion to reconsider was not substantively appealable. *See, Alvis v. State, Gaming control Bd.*, 99 Nev. 184, 660 P.2d 980 (1983).

¹ Plaintiff filed her notice of appeal *after* the resolution of her motion to reconsider. Thus, although the notice of appeal from the May 21 Order was not premature, the May 21 Order is not independently appealable. See NRAP 4(a)(6)

IV. CONCLUSION

Plaintiff has acknowledged a jurisdictional defect in the original notice of appeal. To overcome the defect, Plaintiff has manufactured an argument that a final judgement had not been entered and the November 24 stipulation and order dismissing Desert Medical is the final, appealable order. The stipulation and order was merely a housekeeping matter that did not modify the underlying judgement on jury verdict that Plaintiff “take nothing”. As such, Plaintiff’s appeal from the stipulation and order did not confer appellate jurisdiction as to the March 18 Order granting Luxor attorney’s fees and costs as said order was substantively appealable and Plaintiff failed to file a timely notice of appeal therefrom.

Further, the order designated in the notice of appeal, *i.e.*, May 21 Order denying Plaintiff's motion to reconsider was not substantively appealable. Moreover, the notice of appeal did not manifest any intention to appeal from anything but the reconsideration order regarding the attorney lien offset issue. According this Court should conclude that it lacks appellate jurisdiction and dismiss this appeal.

DATED this 21 day of January, 2020.

LINCOLN, GUSTAFSON & CERCOS


LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

MARK B. BAILUS, ESQ.

Nevada Bar No. 2284

3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Attorneys for Defendants,
RAMPARTS, INC.

CERTIFICATE OF SERVICE

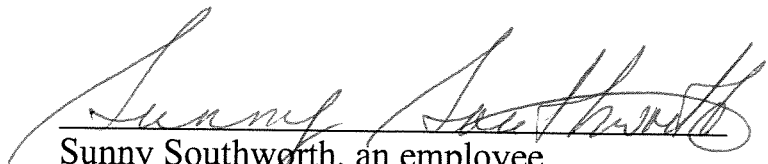
I HEREBY CERTIFY that on the 21st day of January 2020, I served a copy of this **REPLY TO THE RESPONSE TO THE COURT'S NOVEMBER 14, 2019 ORDER TO SHOW CAUSE** upon all counsel of record:

X By electronic service in accordance with the Master Service List to the following:

Micah S. Echols, Esq.
Tom W. Stewart, Esq.
Marquis Aurbach Coffing
1000 Park Run Drive
Las Vegas, NV 89145
Attorneys for Plaintiff

Boyd B. Moss III, Esq.
Moss Berg Injury Lawyers
4101 Meadows Lane, Suite 110
Las Vegas, NV 89107
Attorneys for Plaintiff

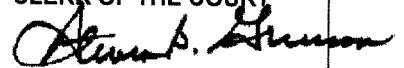
Matthew G. Pfau, Esq.
Parry & Pfau
880 Seven Hills Drive, Suite 210
Henderson, NV 89052
Attorneys for Plaintiff


Sunny Southworth, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLC

INDEX OF EXHIBITS

Exhibit	Description
1	Jury Verdict
2	Notice of Entry of Order and Order Granting Defendant Ramparts, Inc. and Notice Entry of Order, Inc. d/b/a Luxor Hotel & Casinos's Motion for Attorney's Fees and Costs
3	Motion to Reconsider the Court's Order Granting an Attorney Lien Offset
4	Notice of Entry of Order and Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset
5	Notice of Appeal
6	Docketing Statement Civil Appeals (without exhibits)
7	Amended Notice of Appeal (without exhibits)
8	Amended Docketing Statement Civil Appeals (without exhibits)

Exhibit 1



JGJV
LOREN S. YOUNG, ESQ.
Nevada Bar No. 7567
THOMAS W. MARONEY, ESQ.
Nevada Bar No. 13913
LINCOLN, GUSTAFSON & CERCOS, LLP
ATTORNEYS AT LAW
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Telephone: (702) 257-1997
Facsimile: (702) 257-2203
lyoung@lgclawoffice.com
tmaroney@lgclawoffice.com

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

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.

DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation,

Third-Party Plaintiff,

v.

STAN SAWAMOTO, an individual,

Third Party Defendant.

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

JUDGMENT ON JURY VERDICT

1 This action came on for trial before the Court and a Jury, the Honorable David M. Jones,
2 District Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered
3 its Verdict, a copy of the Jury's Verdict for Defendants is attached hereto and marked as Exhibit "A."

4 IT IS HEREBY ORDERED AND ADJUDGED:

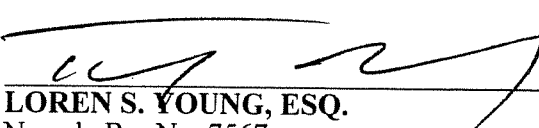
5 That the Plaintiff, VIVIA HARRISON, take nothing from Defendants, DESERT MEDICAL
6 EQUIPMENT and RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO.

7 DATED this 10 day of January, 2019.

8
9
10 
11 District Judge David M. Jones
12

13 Submitted by:

14 **LINCOLN GUSTAFSON & CERCOS, LLP**

15 
16 **LOREN S. YOUNG, ESQ.**

17 Nevada Bar No. 7567

18 **THOMAS W. MARONEY, ESQ.**

19 Nevada Bar No. 13913

20 3960 Howard Hughes Parkway, Suite 200

21 Las Vegas, Nevada 89169

22 Attorneys for Defendant, RAMPARTS, INC.

23 d/b/a LUXOR HOTEL & CASINO

24
25
26
27
28
29 v:\F-j\harrison_luxor\atty notes\drafts\pldgs\20190102_jgv_bjp.docx

Exhibit “A”

A-16-732342-C

VER

Verdict

4804731



ORIGINAL

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

DEC 20 2018

BY Natalie Ortega
NATALIE ORTEGA, DEPUTY

126 pm
12-20-18

VER

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an Individual,

Plaintiff,

CASE NO. A-16-732342-C

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 %

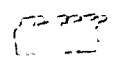
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Past Pain, Suffering, and Disability:	\$ _____
Future Pain, Suffering, and Disability:	\$ _____
Total Damages:	\$ _____

DATED this _____ day of _____, 2018.

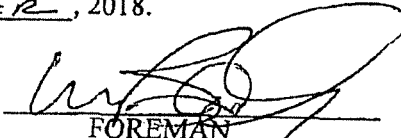
FOREPERSON



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

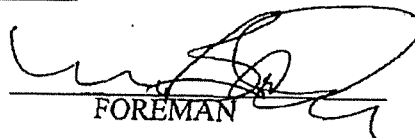
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



VERDICT FOR DEFENDANT

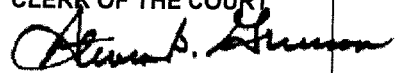
We, the jury in the above-entitled action, find for the defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, and against the plaintiff.

DATED this 20th day of DECEMBER, 2018.


FOREMAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2



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
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,
Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL &
CASINO, a Nevada Domestic Corporation;
DESERT MECHANICAL EQUIPMENT, 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,

v.

STAN SAWAMOTO, an individual,

Third Party Defendant.

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

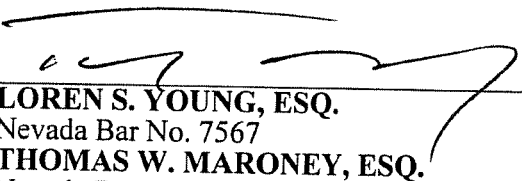
NOTICE OF ENTRY OF ORDER

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 
8 **LOREN S. YOUNG, ESQ.**

Nevada Bar No. 7567

THOMAS W. MARONEY, ESQ.

Nevada Bar No. 13913

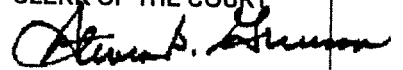
3960 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169

Attorneys for Defendant, RAMPARTS, INC.

d/b/a LUXOR HOTEL & CASINO

12
13 v:\f-j\harrison_luxor\atty notes\drafts\pldgs\20190318_neoj_bjp.docx
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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**
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
19
20
21
22
23
24
25
26
27
28
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

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

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

DATED this 15 day of March, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted by:

LINCOLN, GUSTAFSON & CERCOS, LLP


LOREN S. YOUNG, ESQ.

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

Approved as to form and content by:

PARRY & PFAU

MOSS BERG INJURY LAWYERS

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

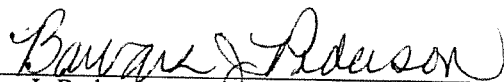
BOYD B. MOSS, ESQ.

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

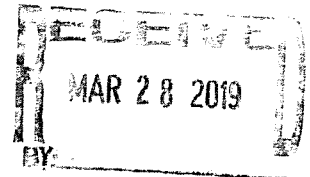
14 V:\F-Harrison_Luxor\POS\20190118_NEOJ_bjp.doc

Exhibit 3

twm

Electronically Filed
3/28/2019 3:21 PM
Steven D. Grlerson
CLERK OF THE COURT

Steven D. Grlerson



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.

Case No.: A-16-732342-C

Dept. No.: XXIX

HEARING REQUESTED

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.

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.

PARRY & PFAU

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).

27 ⁹ EDCR 2.24.

28 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.*

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

7

8 **2. Attorney's Liens Enjoy a Priority Over Other Liens When Properly** 9 **Noticed**

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

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

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

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

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

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

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

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

11 **3. Public Policy Supports Ms. Harrison's Position that Private Settlements** 12 **Should Not be Subject to Offset.**

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

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

26 _____
27 ³⁰ *Id.*

28 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

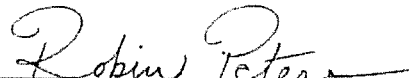
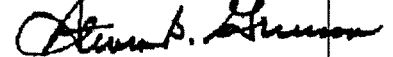

An Employee of Parry & Pfau

EXHIBIT "1"



1 **MAFC**
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
12 **DISTRICT COURT**
13 **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 MEDICAL EQUIPMENT, a Nevada
20 Domestic Corporation, DOES I through XXX,
21 inclusive, and ROE BUSINESS ENTITIES I
22 through XXX, inclusive,
23 Defendants.

22 DESERT MEDICAL EQUIPMENT, a Nevada
23 Domestic Corporation,

24 Third-Party Plaintiff,

25 v.

26 STAN SAWAMOTO, an individual,

27 Third Party Defendant.
28

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

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

Hearing Date:
Hearing Time:

1 COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO
2 (hereinafter referred to as "Luxor"), by and through its attorneys of record, the law firm of LINCOLN,
3 GUSTAFSON & CERCOS, LLP, and hereby submits the following Motion for Attorney's Fees and
4 Costs.

5 This Motion is made and based upon the attached Memorandum of Points and Authorities and
6 supporting documentation, the papers and pleadings on file in this action, and any oral argument this
7 Court may allow at the time of hearing.

8 DATED this 17 day of January, 2019.

9 LINCOLN, GUSTAFSON & CERCOS, LLP

10 
11 LOREN S. YOUNG, ESQ.

12 Nevada Bar No. 7567

13 THOMAS W. MARONEY, ESQ.

14 Nevada Bar No. 13913

15 3960 Howard Hughes Parkway, Suite 200

16 Las Vegas, NV 89169

17 Attorneys for Defendant, RAMPARTS, INC.


18 d/b/a LUXOR HOTEL & CASINO

19 NOTICE OF MOTION

20 YOU WILL PLEASE TAKE NOTICE that RAMPARTS, INC. d/b/a LUXOR HOTEL &
21 CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS will be brought before Department
22 XXIX of the above-entitled Court on the 27 day of Feb., 2019 at 9:00am a.m./p.m.

23 DATED this 17 day of January, 2019.

24 LINCOLN, GUSTAFSON & CERCOS, LLP

25 
26 LOREN S. YOUNG, ESQ.

27 Nevada Bar No. 7567

28 THOMAS W. MARONEY, ESQ.

Nevada Bar No. 13913

3960 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169

Attorneys for Defendant, RAMPARTS, INC.

d/b/a LUXOR HOTEL & CASINO

1 **DECLARATION OF THOMAS W. MARONEY, ESQ. IN SUPPORT OF**
2 **MOTION FOR ATTORNEY'S FEES AND COSTS**

3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss:

5 I, THOMAS W. MARONEY, ESQ., declare as follows:

6 1. I am a licensed attorney in good standing to practice law in the State of Nevada and
7 before this Court. I am an attorney in the law firm of Lincoln, Gustafson & Cercos, LLP (hereinafter
8 "LGC"), 3960 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169, and am trial counsel
9 representing Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino (hereinafter "Luxor") in the instant
10 matter. I have personal knowledge of the matters contained herein and am competent to testify
11 regarding the same.

12 2. LGC was retained to represent Defendant Luxor in the instant matter. Loren S. Young,
13 Esq. and I were the primary attorneys from LGC who represented Luxor at trial in the instant matter.

14 3. On March 23, 2017, Luxor served an Offer of Judgment ("Offer") on Plaintiff Vivia
15 Harrison for \$1,000.00. A true and correct copy of the Offer is attached hereto as Exhibit "A." The
16 Offer expired on April 10, 2017.

17 4. This matter proceeded to trial on December 10, 2018. The jury returned a verdict on
18 December 20, 2018. The jury found in favor of Defendant, Luxor and against Plaintiff.

19 5. From the time the Offer was served to the date the verdict was reached, 637 days
20 elapsed. Luxor incurred \$202,398.00 in attorney's fees defending this matter. True and correct copies
21 of Redacted Bills and Invoices from LGC for March 23, 2018 through December 20, 2018 will be
22 produced to the Court *in camera*, with copies of same served on counsel for all parties. On behalf of
23 Luxor, we engaged in extensive pretrial motion practice, diligently prepared for trial, and appeared
24 and defended Luxor at trial, resulting in a defense verdict.

25 6. The attorney's fees incurred were reasonable in light of the qualities of the advocates,
26 character of the work to be done, work actually performed, and the results obtained.

27 7. Loren S. Young has been licensed to practice law since 2000 and is licensed to practice
28 law in Nevada State and Federal Courts, and the U.S. Court of Appeals for the Ninth Circuit. Mr.

1 Young has litigated hundreds of complex matters ranging from personal injury to business litigation
2 since obtaining his license.

3 8. I have been licensed to practice law since 2015 and I am licensed to practice law in
4 Nevada State and Federal Courts. I have participated in and helped litigate numerous complex matters
5 ranging from personal injury to construction defect litigation since obtaining my license.

6 9. Mr. Young and I were assisted by several highly skilled associate attorneys, paralegals,
7 secretaries and assistants. All of their work was supervised by either Mr. Young or myself.

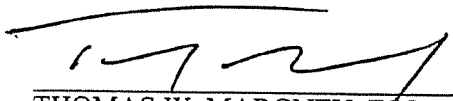
8 10. The rates charged in this matter were \$200.00 per hour for Partners, \$180.00 per hour
9 for Associates, and \$110.00 per hour for paralegals with LGC.

10 11. I am familiar with rates charged in similar litigation throughout United States, including
11 rates charged in the state of Nevada. The rates charged by LGC are reasonable based upon the
12 experience of the personnel and nature of the work performed.

13 12. I have reviewed the bills and redacted invoices which will be provided *in camera*. In
14 addition to the \$202,398.00 in fees incurred in the defense of this action from the date of the Offer
15 through the verdict, Luxor incurred \$53,160.03 in costs, as evidenced by its verified Memorandum of
16 Costs filed concurrently herewith.

17 13. The fees and expenses incurred by Luxor were reasonable and necessary.

18 14. I declare the foregoing is true and correct.

19
20 
21 THOMAS W. MARONEY, ESQ.
22
23
24
25
26
27
28

1 **MEMORANDUM OF LEGAL POINTS AND AUTHORITIES**

2 Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino (hereinafter “Luxor”) is entitled to an
3 award of reasonable attorney’s fees and costs. Luxor served a valid Offer of Judgment (“Offer”) for
4 \$1,000.00 on Plaintiff, Vivian Harrison (hereinafter “Plaintiff”) on March 23, 2017. Plaintiff rejected
5 this Offer, and this matter proceeded to trial on December 10, 2018. After nine days of trial spanning
6 December 10 through December 20, the jury returned a verdict in favor of the defense. As Plaintiff
7 failed to obtain a better result at trial than the March 23, 2017, Offer, Luxor is entitled to an award of
8 reasonable attorney’s fees and costs, pursuant to NRCP 68 and NRS 18.010.

9 From March 23, 2017, when the Offer was served, and December 20, 2018, 637 days elapsed.
10 From the time the Offer expired through the verdict, Luxor incurred \$202,398.00 in attorney’s fees
11 and \$53,160.03 in costs to litigate the matter and defend the matter at trial, and ultimately prevailing
12 by obtaining a defense verdict. The fees and costs incurred are more than reasonable, given the
13 qualities of the advocate, the character and nature of the work to be done, the work performed, and the
14 results obtained. Therefore, this Court should award Luxor its requested attorney’s fees and costs.¹

15 **I. FACTUAL BACKGROUND**

16 This case stems from allegations of personal injuries by Plaintiff against Luxor from an
17 incident that occurred at the Backstage Deli located with the Luxor Hotel & Casino on December 10,
18 2014. Plaintiff was injured when she inadvertently struck the base of a high top table with a rented
19 mobility scooter. The fall resulted in a broken femur and Plaintiff was transported to Spring Valley
20 Hospital for treatment. While undergoing surgery or shortly thereafter, Plaintiff sustained a stroke
21 leading to months of hospitalization and treatment. Further, the stroke resulted in a litany of ongoing
22 medical issues ultimately resulting in recommendations for future care and treatment.

23 Plaintiff originally alleged the Deli employees failed to properly maintain the premises, but
24 when that was found to be untrue, Plaintiff then alleged the Deli was improperly maintained and failed
25 to provide an accessible route pursuant to the Americans with Disabilities Act (hereinafter “ADA”)
26 despite the tables and furnishings in the Deli being entirely moveable. In addition, Plaintiff originally
27

28 ¹ A separate Memorandum of Costs is being filed concurrently herewith.

1 alleged the front wheel of her scooter struck the base of the high top table resulting in her fall.
2 However, when that was found to be impossible, Plaintiff then asserted the back wheel of the scooter
3 struck the base of the table resulting in the fall.

4 Plaintiff filed suit on February 24, 2016 and later amended the Complaint to include Ramparts, Inc.
5 d/b/a Luxor Hotel & Casino, alleging the following claims: (1) negligence; and (2) negligent hiring
6 training, maintenance, and supervision. (See Plaintiff's Complaint, filed February 24, 2016, attached hereto
7 as Exhibit "B"; See also Plaintiff's Second Amended Complaint, filed on August 19, 2016, attached hereto
8 as Exhibit "C").

9 The parties engaged in significant discovery regarding the liability and damages alleged in this
10 matter, and discovery formally closed in July 2018. Thereafter, Luxor filed a Motion for Summary
11 Judgment due to Plaintiff's lack of ability to demonstrate a dangerous condition existed at the Deli, which
12 the Court denied. Luxor also engaged in motion in limine practice wherein the Court agreed with Luxor's
13 Motion and Plaintiff's experts were limited because their opinions were based on speculation and
14 conjecture.

15 On March 23, 2017, Luxor served an Offer of Judgment for \$1,000.00 to Plaintiff. (See Exhibit
16 "A"). Plaintiff allowed the Offer to expire on April 10, 2018. Plaintiff then proceeded to trial on December
17 10, 2018. At no time during discovery did Plaintiff ever make a settlement demand to Luxor or respond to
18 the Offer of Judgment.

19 After 10 days of trial over the course two weeks, on December 20, 2018, a jury returned a verdict
20 in favor of Luxor. Luxor now seeks reimbursement for the fees it incurred from March 23, 2017 through
21 the present, pursuant to NRCP 68 and NRS 18.010; as well as, its costs.

22 **II. LEGAL ARGUMENT**

23 Nevada Revised Statute Rule (hereinafter "NRS") 18.010 states as follows:

24 **Award of attorney's fees.**

25 1. The compensation of an attorney and counselor for his or her services is
26 governed by agreement, express or implied, which is not restrained by law.

27 2. In addition to the cases where an allowance is authorized by specific statute,
28 the court may make an allowance of attorney's fees to a prevailing party:

///

1 (a) When the prevailing party has not recovered more than \$20,000; or

2 (b) Without regard to the recovery sought, when the court finds that the claim,
3 counterclaim, cross-claim or third-party complaint or defense of the opposing party
4 was brought or maintained without reasonable ground or to harass the prevailing
5 party. The court shall *liberally* construe the provisions of this paragraph in favor of
6 awarding attorney's fees in all appropriate situations. It is the intent of the
7 Legislature that the court award attorney's fees pursuant to this paragraph and
8 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all
appropriate situations to punish for and deter frivolous or vexatious claims and
defenses because such claims and defenses overburden limited judicial resources,
hinder the timely resolution of meritorious claims and increase the costs of
engaging in business and providing professional services to the public. (Emphasis
added).

9 Nevada Rule of Civil Procedure 68 also allows for the recovery of reasonable attorney's fees
10 and costs if an offer of judgment is made more than ten (10) days before trial, the offer is rejected, and
11 the offeree fails to obtain a result more favorable than the offer: "A party who makes an unimproved-
12 upon offer of judgment—an offer that is more favorable to the opposing party than the judgment
13 ultimately rendered by the district court—is entitled to recover costs and reasonable attorney fees
14 incurred after making the offer of judgment." Nev. R. Civ. P. 68; *Logan v. Abe*, 131 Nev. Adv. Op.
15 31, 350 P.3d 1139, 1140 (2015).

16 "The purpose of NRCP 68 is to save time and money for the court system, the parties and the
17 taxpayers. They reward a party who makes a reasonable offer and punish the party who refuses to
18 accept such an offer." *Muije v. A North Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561
19 (1990); *Morgan v. Demille*, 106 Nev. 671, 674, 799 P.2d 561, 563 (1990). The purpose of the
20 requirement that an offer be made more than ten days prior to trial is to ensure that an offeree has
21 adequate time after service and before trial to consider the offer. *Morgan*, 106 Nev. at 674, 799 at 563.

22 For a Court to award fees and costs pursuant to an Offer of Judgment, the offer must be timely,
23 and it must satisfy the factors outlined by the Court in *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d
24 268, 274 (1983). Should the Court determine the offers of judgment are valid, then the Court *must*
25 make a finding that the fees and costs sought are reasonable under the factors outlined in *Brunzell v.*
26 *Golden Gate Nat. Bank.*, 85 Nev. 345, 455 P.2d 31 (1969)(Emphases added). Luxor's Offer to Plaintiff
27 in the instant matter was valid and more than reasonable based on the facts, allegations and pursuant
28 ///

1 to NRCP 68, and it satisfies all of the factors outlined in both *Beattie* and *Brunzell*. Therefore, Luxor
2 is entitled to an award of reasonable attorney's fees and costs.²

3 **A. Luxor Made a Valid Offer of Judgment Pursuant to NRCP 68.**

4 NRCP 68 states that for the penalties of an offer of judgment to be triggered, the offer must
5 have been served more than 10 days before trial. Luxor's Offer was timely made, as it was served on
6 March 23, 2017, and trial in the instant matter did not commence until December 10, 2018, with the
7 first witness being sworn in on December 12, 2018. Thus, service was effectuated 10 days before trial
8 commenced. Therefore, Luxor's Offer satisfies the time requirement of NRCP 68. The March 23, 2017
9 Offer of Judgment served by Luxor on Plaintiff was valid and Plaintiff's rejection of the Offer triggers
10 the penalties of NRCP 68.

11 **B. Luxor is Entitled to An Award of Reasonable Attorney's Fees.**

12 Once the Court determines an Offer of Judgment satisfies the requirements outlined in NRCP
13 68, it must then make further findings under the following four factors:

14 (1) whether the plaintiffs claim was brought in good faith; (2) whether
15 the defendants' offer of judgment was reasonable and in good faith in
16 both its timing and amount; (3) whether the plaintiff's decision to reject
the offer . . . was grossly unreasonable or in bad faith; and (4) whether
the fees sought by the offeror are reasonable and justified in amount.

17 *Beattie*, 99 Nev. at 588, 668 at 274. Each factor need not favor awarding attorney fees because "no
18 one factor under *Beattie* is determinative." *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252
19 n. 16, 955 P.2d 661, 673 n. 16 (1998). Instead, a district court must consider and balance the factors
20 in determining the reasonableness of an attorney fees award. After weighing the factors, the district
21 judge may, where warranted, award up to the full amount of fees requested. *Beattie*, 99 Nev. at 589,
22 668 P.2d at 274.

23 Once the Court determines the *Beattie* factors weigh in favor of an award of attorney's fees,
24 the Court must then determine the reasonableness of the fees requested. Courts determine
25 reasonableness by analyzing a separate set of factors outlined in *Brunzell v. Golden Gate Nat. Bank*.
26 In *Brunzell*, the Nevada Supreme Court stated that the reasonableness of attorney's fees depends on:

27
28 ² As noted above, the specific costs are set forth in Luxor's Memorandum of Costs, filed concurrently
herewith.

1 (1) the qualities of the advocate: his ability, his training, education,
2 experience, professional standing and skill; (2) the character of the
3 work to be done: its difficulty, its intricacy, its importance, time and
4 skill required, the responsibility imposed and the prominence and
5 character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill, time
and attention given to the work; (4) the result: whether the attorney was
successful and what benefits were derived.

6 *Brunzell*, 85 Nev. at 350, 455 P.2d at 33. Additionally, while it is preferable for a district court to
7 expressly analyze each factor relating to an award of attorney fees, express findings on each factor are
8 not necessary for a district court to properly award fees. *Certified Fire Prot. Inc. v. Precision Constr.*,
9 128 Nev. 371, 385, 283 P.3d 250, 258 (2012). Instead, the district court need only demonstrate that it
10 considered the required factors, and that the award was supported by substantial evidence. *See*
11 *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995) (superseded by
12 statute on other grounds).

13 Attorney's fees may be calculated two primary ways, (1) the equivalent to the contingency fee,
14 or (2) an hourly fee, or loadstar, including deviations up or down due to various factors, including the
15 existence of a contingency fee agreement. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837,
16 864–65, 124 P.3d 530, 549 (2005). In Nevada, the method upon which a reasonable fee is determined
17 is subject to the discretion of the court, which is tempered only by reason and fairness. *Id.* In
18 determining the amount of fees to award, the Court is not limited to one specific approach; its analysis
19 may begin with any method rationally designed to calculate a reasonable amount, including those
20 based on a "loadstar" amount or a contingency fee. *Id.* Regardless of the method used to calculate the
21 fees, the *Brunzell* factors still must be analyzed to determine the reasonableness of the fees incurred.

22 An analysis of the *Beattie* and *Brunzell* factors supports an award of \$202,326 in fees incurred
23 by Luxor from the time the Offer of Judgment was made on March 23, 2017, through the verdict
24 reached on December 20, 2018.

25 **i. Luxor's Offer of Judgment Satisfies the *Beattie* Factors.**

26 The *Beattie* factors support an award of Luxor's attorney's fees:

27 ///

28 ///

1 ***a. Good Faith of Plaintiff's Claims.***

2 Solely for the purposes of this Motion, Luxor does not wish to challenge whether Plaintiff's
3 claims were brought in good faith, but does believe Plaintiff's claims are highly suspect given her and
4 her counsel's constantly changing narrative. Certainly, Luxor contests the veracity and legal
5 sufficiency of Plaintiff's claims, but the veracity of such claims was left for the jury to decide.

6 ***b. Good Faith and Reasonableness of Luxor's Offer.***

7 Luxor's Offer was made in good faith and reasonable in light of the facts of the case. Although
8 Plaintiff claimed significant damages, at the time Luxor made the Offer, the facts of the case were well
9 established. Plaintiff's motorized scooter struck the base of a table resulting in her fall and injuries. At
10 no time did Plaintiff nor her experts ever provide evidence that the layout of the Deli or table itself
11 somehow created a dangerous condition and contributed to Plaintiff's fall. Luxor made the good faith
12 Offer based on its evaluation of potential liability and exposure at trial, and in light of the defense
13 costs it had already incurred and would anticipate occurring through the trial process. In considering
14 all of those factors, Luxor's Offer was clearly made in good faith and more than reasonable given
15 Plaintiff's own admission that she simply struck the base of a table and how knew it was her own
16 responsibility to drive the scooter safely.

17 The reasonableness of the Offer was justified when the jury reached its verdict in favor of
18 Luxor. This shows that, the offer Luxor made was in good faith, and in an effort to resolve a disputed
19 liability claim. Plaintiff's claims were contested and involved the retention of numerous experts with
20 a variety of specialties. The jury clearly took the experts' testimonies into consideration in rendering
21 their verdict. Against this backdrop, Luxor made a fair and reasonable settlement offer, to which
22 Plaintiff rejected.

23 When speaking with the jurors after the verdict, the jurors at no time believed a dangerous
24 condition existed at the Luxor Deli. Rather, the jurors focused on unrelated issues such as contract
25 language, type of scooter available, and Plaintiff's medical history. This demonstrates Plaintiff's claim
26 that an unreasonably dangerous condition existed in the Deli and caused her injuries was meritless.
27 Thus, Luxor's Offer was more than reasonable based upon the jury's examination of the available
28 evidence.

1 ***c. Plaintiff's Decision to Reject the Offer and Proceed to Trial.***

2 At the time Luxor extended the Offer to Plaintiff, Plaintiff already knew the pertinent facts of
3 the case. Plaintiff, with the assistance of her counsel, had the ability to narrow the scope of their claims
4 and could reasonably evaluate the reasonableness of Luxor's Offer. By rejecting the Offer and
5 choosing to go to trial against Luxor, Plaintiff was aware she was exposing herself to the risk of an
6 award of attorney's fees. Presumably she was thoroughly counseled by her attorneys and competently
7 chose to reject the Offer and gamble at trial. Plaintiff even ignored the Court's guidance when the
8 Court informed Plaintiff she was fighting an uphill battle. Therefore, Plaintiff deliberately chose to
9 disregard common sense and guidance from the Court when she rejected the Offer and continued to
10 trial.

11 ***d. Reasonableness of Fees Sought.***

12 Although an Offer was made, Luxor had to continue to litigate and defend this matter for 637
13 days, culminating in a verdict for Luxor. The \$202,398.00 in fees sought by Luxor are more than
14 reasonable and appropriately reflect the work performed by Luxor's defense team in litigating this
15 complex matter. The reasonableness of the fees are discussed in detail below, *infra*, with respect to
16 the *Brunzell* factors.

17 **ii. Luxor's Attorney's Fees Are Reasonable Under *Brunzell*.**

18 ***a. Qualities of the Advocates.***

19 The law firm of Lincoln, Gustafson & Cercos, LLP ("LGC") is a regional trial firm that has
20 successfully litigated matters in many states, including, Nevada, Arizona, and California. Since
21 opening its Nevada office in 1997, LGC has been involved in some of the largest and well-known
22 litigations in Clark County, involving personal injury and construction defect claims, including, but
23 not limited to the *Hayward v. Sun City* matter.

24 Trial counsel Loren S. Young, Esq. has been licensed to practice law since 2000, and is licensed
25 to practice law in Nevada State and Federal Courts and the Supreme Court of the United States of
26 America. He has tried numerous cases in Clark County. Mr. Young was the past President and founder
27 of the Las Vegas Defense Lawyers, and currently sits on the Nevada Rules of Civil Procedure
28 Committee.

1 Trial counsel Thomas W. Maroney, Esq. has been licensed to practice law since 2015 and is
2 licensed to practice law in Nevada State and Federal Courts. Mr. Maroney has participated in and
3 helped litigate numerous complex matters ranging from personal injury to construction defect
4 litigation since obtaining his license.

5 Mr. Young and Mr. Maroney were assisted throughout this matter by competent and highly
6 skilled associate attorneys, paralegals, and staff. Reasonable attorney's fees include the work
7 performed not only by licensed attorneys but also by paralegals, secretaries, and staff assistants. *See*
8 *LVMPD v. Yeghiazarian*, 129 Nev. 760, 769–70, 312 P.3d 503, 510 (2013) (citing to *Missouri v.*
9 *Jenkins*, 491 U.S. 274, 285, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989)).

10 ***b. Character of the Work Done and the Work Performed.***

11 The instant matter was highly contested and complex. Numerous witnesses, documents, and
12 evidence were disclosed at trial by all parties, and in order to adequately prepare for trial, Luxor's
13 counsel was required to efficiently and expertly process all such information to competently defend
14 against Plaintiff's multi-million dollar claims.

15 At the time of trial, Plaintiff valued her case at approximately \$12 million dollars. Although
16 Plaintiff only requested pain and suffering, Plaintiff's extensive medical history involved evaluation
17 of: (a) TIAs and an extensive pre-existing history of comorbidities; (b) stroke with cognitive and
18 memory difficulty and future treatment recommendations; and (c) ongoing treatment and in-home help
19 for the remainder of Plaintiff's life. Luxor's attorneys not only engaged in significant discovery
20 regarding liability and damages prior to the close of discovery, but after the Offer expired, Luxor's
21 counsel engaged in additional motion practice, including a Motion for Summary Judgment, the
22 completion of Motions in Limine arguments, preparation for trial, and defending the matter at trial.

23 Trial lasted nine days spanning over the course of two weeks. Testimony from at least ten (10)
24 witnesses and experts was presented at trial. Certainly, the work performed, and the time spent
25 defending the matter from the Offer through to the verdict is reasonable. Moreover, Luxor's counsel
26 utilized non-attorney staff (paralegals, secretaries, assistants) when feasible to minimize costs.

27 ///

28 ///

1 *c. Results Obtained.*

2 During closing arguments, Plaintiff requested that the jury render a verdict in favor of Plaintiff
3 anywhere from \$3,000,000.00 to \$12,000,000.00. Luxor's defense team's work resulted in a defense
4 verdict. Luxor's defense team obtained the expected result given the evidence in the case.

5
6 **A. Luxor is Entitled to An Award of Reasonable Costs Pursuant to NRCP 68 and NRS 18.020.**

7 As this Court is aware, NRCP 68 mandates an award of costs to a party that obtains a verdict
8 more favorable than a previously rejected offer of judgment submitted pursuant to these provisions.
9 Moreover, NRS 18.020 provides that costs *must* be allowed of course to the prevailing party, against
10 any adverse party against whom judgment is rendered, in an action for the recovery of money or
11 damages, where the plaintiff seeks to recover more than \$2,500. NRS 18.020(3) (Emphasis added).

12 The Nevada Supreme Court held a party moving for costs should "provide sufficient
13 documentation and itemization in their respective cost memorandum." *Berosini v. People for The*
14 *Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383 (1998). NRS § 18.005 defines
15 "costs" as:

- 16 1. Clerk's fees.
17 2. Reporters' fees for depositions, including a reporter's fee for one copy
18 3. Juror's fees and expenses, together with reasonable compensation of
19 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses,
20 5. Reasonable fees of not more than five expert witnesses in an amount
21 6. Reasonable fees of necessary interpreters.
22 7. The fee of any sheriff or licensed process server for the delivery of
23 8. The fees of the official reporter or reporter pro tempore.
24 9. Reasonable costs for any bond or undertaking required as part of the
25 10. Fees of a court bailiff who was required to work overtime.
26 11. Reasonable costs for telecopies.
27 12. Reasonable costs for photocopies.
28 13. Reasonable costs for long distance telephone calls.
 14. Reasonable costs for postage.

- 1 15. Reasonable costs for travel and lodging incurred taking depositions
2 and conducting discovery.
3 16. Any other reasonable and necessary expense incurred in connection
4 with the action, including reasonable and necessary expenses for
5 computerized services for legal research.

6 As noted above, at the conclusion of closing arguments, Plaintiff asked the jury to return a
7 verdict of approximately \$12,000,000.00, well in excess of the \$2,500 required by NRS 18.020.
8 Ultimately, a verdict for the defense was rendered. Thus, as Plaintiff failed to obtain a more favorable
9 judgment than the Offer, Luxor is entitled to recover the costs incurred during the litigation which
10 total \$53,160.03. These costs have been documented and itemized in detail in Luxor's Memorandum
11 of Costs and Disbursements submitted concurrently with this Motion. The costs sought by Luxor
12 include, but are not necessarily limited to: clerk costs, court reporter costs, transcription costs, expert
13 costs, deposition costs; and miscellaneous charges for transportation, meals, trial supply costs, postage
14 costs, and photocopies.

15 NRS 18.005(5) gives the Court discretion to award expert costs exceeding \$1,500 per witness
16 when circumstances surrounding the expert's testimony were of such necessity as to require the larger
17 fee. The circumstances of this case required fees in excess of \$1,500 per witness as contemplated by
18 the statute. As this Court is aware, this matter was complex, with many different liability issues and
19 claimed injuries along with future medical treatments. These issues included most notably: (a)
20 violation of the Americans with Disabilities Act; (b) negligent supervision, training, and evaluation;
21 (c) stroke with cognitive and memory difficulty and future treatment recommendations; and (d) future
22 lifecare plans. Plaintiff originally claimed medical costs in excess of \$400,000.00 in a future lifecare
23 plan. Please recall, Plaintiff's trial exhibits consisted of approximately ten binders and over 4000 pages
24 of medical records and bills that each of Luxor's attorneys and experts had to review to provide
25 accurate and complete opinions.

26 In response to Plaintiff's claimed injuries, Luxor had to retain the services of a number of
27 experts including: Dr. Clifford Segil (Neurologist); and Michelle Robbins (Architect and General
28 Contractor/ADA Issues). From the date of the Offer to verdict, Luxor's experts reasonably incurred
29 the following costs:

30 ///

- Dr. Clifford Segil - \$7,155.00
- Michelle Robbins - \$16,595.90

Based on Plaintiff's ADA complaints, the medical damages, and pain and suffering she intended and did seek at trial, it was reasonable for Luxor's experts to prepare for and attend trial, if called, and the costs incurred by Luxor's experts are reasonable in light of the complexity of this case.

Plaintiff also asserted economic damages in the form of past loss of household services and future loss of household services totaling over \$400,000.00. As this Court may recall, Plaintiff retained vocational expert Sarah Lustig to opine as to these losses. Ms. Lustig recommendations were based on discussion with Plaintiff and her treating physicians. In response to Plaintiff's economic claims, Luxor had prepared to and retained the services of a vocational/rehabilitation expert, Aubrey Corwin with Vocational Diagnostics. Ms. Corwin was at the courthouse and prepared to testify when Plaintiff informed Luxor they would no longer be seeking damages related to the lifecare plan. Instead, Plaintiff only sought damages related to Plaintiff's pain and suffering due to Ms. Lustig's lack of justification for the costs. From the date of the Offer to verdict, Ms. Corwin reasonably incurred \$7,311.05 to prepare for and attend trial to give testimony.

Thus, Luxor respectfully requests this Court exercise its discretion and award Luxor its experts' costs, as well as all other costs reasonably incurred, as laid out in the Memorandum of Costs and Disbursements.

///

///

///

///

///

///

///

///

///

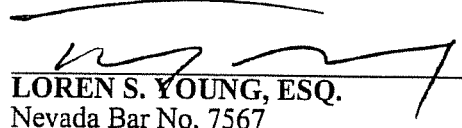
///

1 **III. CONCLUSION**

2 For the foregoing reasons, Defendant Luxor respectfully requests this Court grant its Request
3 for Attorney's Fees and Costs and award Defendant \$202,398.00 for reasonable attorney's fees
4 incurred and \$53,160.03 in costs as to Plaintiff and her counsel jointly and severally.

5 DATED this 17 day of January, 2019.

6 **LINCOLN, GUSTAFSON & CERCOS, LLP**

7
8 
LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

THOMAS W. MARONEY, ESQ.

Nevada Bar No. 13913

3960 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169

Attorneys for Defendant, RAMPARTS, INC.

d/b/a LUXOR HOTEL & CASINO

13
14
15
16 v:\fj\harrison_luxor\atty notes\drafts\pldgs\20190102_mafc_twm.docx
17
18
19
20
21
22
23
24
25
26
27
28

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 17th day of January, 2019, I served a copy of the attached
5 **DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S MOTION FOR**
6 **ATTORNEY'S FEES AND COSTS** via electronic service to all parties on the Odyssey E-Service
7 Master List.

8
9
10
11 

12 Staci D. Ibarra, an employee
13 of the law offices of
14 Lincoln, Gustafson & Cercos, LLP

15
16
17
18
19
20
21
22
23
24
25
26
27
28
V F J Harrison_Luxor POS\20190116_MAF_C_sdl.doc

EXHIBIT "2"

Case Number: A-16-732342-C

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 27, 2019

2 [CASE CALLED AT 9:27 A.M.]

3 *****

4 THE COURT: Page 13. A16-732342, Harrison versus
5 MGM Resorts.

6 MR. PFAU: Good morning, Your Honor. Matthew --

7 THE COURT: Good morning, Counsel.

8 MR. PFAU: -- Pfau for Plaintiff.

9 MR. MOSS: Good morning, Your Honor. Boyd Moss on
10 behalf of Ms. Harrison.

11 MR. YOUNG: Good morning, Your Honor. Loren Young
12 for Defendant Luxor.

13 THE COURT: Okay. Defendant's motion for fees and
14 costs.

15 MR. YOUNG: Thank you, Your Honor. I'll give you a
16 brief. I kind of have a slight cough. So I just want to
17 start with the cost issue. The -- I think I set out in reply
18 our mo- -- our memorandum was timely filed on the 17th. There
19 was no motion to reattached those costs. And so we believe
20 that those -- any objections to those costs would be weighed.
21 However, in abundance of caution, under the Gitter case I'd
22 like to make sure the Court provides a reasonable basis in
23 regard to the expert fees, in order to make sure there's no
24 appeal issues there, and that those issues are discussed.

1 In the Gitter case, it specifically states, for example,
2 if the plaintiff's opposition attempts to address this
3 untimely, that it's necessary for an expert to testify in
4 order to have their fees granted. However, the Gitter case
5 actually specifically clarified that issue. And just for your
6 Court reference, the citation for the Gitter case is -- well,
7 it was actually -- it's called Public Employees --

8 THE COURT: PERS --

9 MR. YOUNG: -- Retirement System versus Gitter.

10 THE COURT: We call it PERS.

11 MR. YOUNG: You call it what?

12 THE COURT: PERS.

13 MR. YOUNG: Oh, okay. I guess that makes it a
14 little bit better. Gitter's more remember -- more easier for
15 me to remember. But on page -- it looks like it's 16 of that
16 opinion -- I'm looking at the advanced print-out -- it
17 specifically says that they're taking the opportunity to
18 clarify that law. And it says, under 18.005, subsection five,
19 "An expert witness who does not testify and they recover costs
20 equal to, or under, 1,500, and consistent with Khoury" -- the
21 Khoury case -- "when a district court awards expert fees in
22 excess of 1,500 per expert, it must state the basis for its
23 decision."

24 So essentially, the Gitter case clarified that, if it's a

1 consultant and they don't testify at trial, you can get up to
2 1,500. But even if they're an expert and they're disclosed
3 and they have a report but don't testify, you can still get
4 above the 1,500 if it's reasonable and you state the basis
5 therefore. Just same for the other experts. And the reason
6 why I state that, or I've started with that, is because the
7 Plaintiffs complain that Aubrey Corwin, our vocational
8 diagnostic expert, did not testify at trial.

9 But if you recall, Your Honor, they spent about, you
10 know, a little bit more than a half a day with their life care
11 expert, and then when Ms. Corwin was in the hallway about to
12 come in to testify, there was a stipulation put on the record
13 that the Plaintiffs were not going to pursue any of the
14 damages put on by their life care planner. Thus, based on
15 that stipulation put on the record, we did not feel it
16 necessary to bring in a life care planner and waste another
17 half-day of the Court's time.

18 So that's why she was not -- she did not testify at
19 trial. But she was a designated expert. She did review all
20 the records. She did provide a very detailed expert report.
21 And then as for the other elements --

22 THE COURT: Counsel, the question there is --

23 MR. YOUNG: Sure.

24 THE COURT: -- did she charge you full price for her

1 appearance even though she didn't testify?

2 MR. YOUNG: She -- well, she did. I mean --

3 THE COURT: Okay.

4 MR. YOUNG: -- if you look on the memorandum of
5 costs --

6 THE COURT: I did. I just wanted to make sure that
7 that's how she did it, or she was an automatic once-I-appear.
8 Some experts it's "once I leave my threshold, my door of my
9 office and/or my house, I charge you whether we go forward or
10 not." Other ones do travel time, and then change it depending
11 on whether or not they've actually testified.

12 MR. YOUNG: Well, she did give a little bit of
13 break. I think if you look at her bill, I mean, she -- I
14 mean, before the December bill, which was the \$4,000 bill, and
15 that was because she had to travel from Colorado to here, the
16 -- you know, the other bills were only \$3,000 for reviewing
17 all the records and coming to her conclusions. And so that
18 cost was incurred, and, you know, we had asked prior to having
19 her come here whether they were going to pursue those issues,
20 and it wasn't done until at the moment that she was in the
21 hallway.

22 And then as for the other experts, you know, if you
23 recall, Your Honor, I believe all three experts it's
24 undisputed that they're all qualified. You know, Shelly --

1 Michelle Robbins was the architect expert. They -- there was
2 a motion in limine on her. The Court found that she was more
3 than qualified to talk about those issues, as well as Dr.
4 Siegel was the neurologist who came in and testified. And his
5 bill was approximately \$7,000. And if you recall, Your Honor,
6 the Plaintiff's exhibits alone were ten binders and over 4,000
7 pages, so there was a lot of records that Dr. Siegel had to,
8 you know, review, understand, and provide a very good not only
9 summary, but a very articulate testimony from the stand as
10 well.

11 So under the Frazier versus Drake case, Your Honor, which
12 is a court appeals case, September 3rd, 2015, they give
13 various factors to determine whether the court has exercised
14 sound discretion to award fees greater than 1,500 per expert.
15 And these particular factors include the importance of the
16 expert's testimony, whether it aided the trier of fact,
17 whether it was repetitive of other expert witnesses, the
18 extent and nature of the work or form by that expert, whether
19 the expert had conducted independent investigations or
20 testing, the amount of time the expert spent preparing a
21 report, preparing for trial, the expert's area of expertise,
22 education and training, the fee charged, comparable expert
23 fees, and whether the expert was retained outside the area
24 would've been comparable to -- well, no, that's combined --

1 and if the expert was retained outside the area where the
2 trial is held.

3 And so if we start with Michelle Robbins, who is here
4 locally Las Vegas, she is a qualified architectural expert.
5 She did all the investigation regarding these claims on
6 liability, whether there was an unreasonable dangerous
7 condition, the ADA requirements, the building codes. She did
8 an investigation into the history of what was applicable or
9 not at the time the Luxor was built. She gave testimony. She
10 gave multiple reports. And she was the one that had to
11 continually evaluate these new allegations being made by
12 Plaintiffs as they continually changed their theory on what
13 was going to be their allegations of what was wrong with the
14 Luxor deli.

15 And so that's why her -- and she actually had to attend
16 all the multiple inspections that were requested by multiple
17 experts at various times. And so that's why her fees and
18 costs are a little bit higher than the other ones, but then
19 she had majority of the work to do. And I think we can go
20 over those factors as we talked about. She did her reports.
21 She prepared for trial. You know, she is qualified as is
22 found by this Court in the motions in limine. And she did
23 multiple investigations, and an investigation into the codes
24 and requirements of the ADA.

1 If you go to Dr. Siegel, a qualified neurologist, he
2 provided an excellent summary of this significant volume of
3 medical records and issues related to the neurologic
4 condition, the mini-strokes, and such. Summarized the more
5 than 4,000 pages in reports. It wasn't repetitive of any
6 other experts. More than qualified and trained to do so.

7 And as well, as we already talked about with Ms. Corwin,
8 she's more than qualified. She's got an extensive background
9 in vocation rehabilitation, and she responded to all those
10 issues initially proposed by the Plaintiff's expert, who was
11 then withdrawn. So we would support, or we would move, that
12 all of those fees and expert costs be granted, not only as
13 because it was not moved to re-tax, but it's also reasonable
14 under the Frazier case.

15 THE COURT: Thank you, Counsel.

16 MR. YOUNG: Any questions on the costs?

17 THE COURT: Let's deal with this one, and then we'll
18 deal with fees after I hear from them.

19 MR. YOUNG: Okay.

20 THE COURT: Let's go ahead and do the costs.

21 MR. PFAU: Thank you, Your Honor. So addressing
22 each one of these, our argument is that these fees were not
23 reasonable, and they are based on the factors that were
24 represented by Defense counsel. First of all, just addressing

1 one by one, Ms. Corwin. Ms. Corwin's testimony, or her
2 report, was completely repetitive of our own expert's report,
3 with the exception of two minor expenses. She had determined
4 that there were distinguishing -- she thought that the value
5 of two different expenses were different. And the testimony
6 that she may have offered would have only been that
7 difference, because that was the only difference in her
8 report.

9 Everything that she did and everything that she analyzed
10 essentially supported our expert, with the exception of those
11 two things, so therefore her testimony was very much
12 unnecessary with the exception. Because we ended up waiving
13 those expenses and they had nothing else to -- they had
14 nothing else to testify to because of that, because her --
15 their testimony would've been, yes, she does need ongoing
16 care, and yes, she does need these different things, with the
17 exception of the value of the expenses.

18 Secondly, Ms. Robbins. Ms. Robbins's testimony was in
19 direct contradiction to the jury instructions that were
20 presented to the jury. Her testimony was not -- it was based
21 on her understanding of building codes, but it was not in
22 correlation with the law itself; and therefore, it was not
23 helpful to the triers of fact, it was not helpful to the jury.
24 The jury, in fact, in deliberations actually stated such.

1 They didn't like her demeanor; they didn't like what she was
2 presenting.

3 Mr. Siegel. The factor that Defense counsel did not
4 mention in his analysis was the one that is the biggest issue
5 with Mr. Siegel, is he is not from this state. There's
6 additional expense to flying him here, to get him here, and to
7 have him be part of this process; therefore, his expenses are
8 unreasonable for that reason.

9 Therefore, we ask the Court to award the amount of 1,500
10 for each one of these experts.

11 THE COURT: Okay. Counsel, rebuttal on that?

12 MR. YOUNG: Briefly, Your Honor. \$7,000 for a
13 neurologist from out of state is unreasonable? I couldn't get
14 an expert locally to do that, or to review 4,000 pages of
15 medical records and medical bills and then come to trial and
16 testify about that as well. I'm sorry, but that is clearly
17 well below what a lot of neurologists would charge here
18 locally. I would love to see what Plaintiff's expert charged
19 them to come to trial and testify at -- but with that said,
20 Your Honor, Dr. Siegel, although was out of state, there's
21 nothing that shows that his fees were out of the ordinary of
22 what would normally be charged of a neurologist here in the
23 Las Vegas community.

24 And I like the argument that Ms. Robbins, the jury didn't

1 like her demeanor. Well, that's not in the factors that set
2 out in the Frazier case, whether the jury liked her demeanor
3 or not. Although it was helpful, there was no other expert
4 that talked about the specific codes and requirements here in
5 Clark County. Their expert simply did not know, did not
6 understand it, and didn't investigate it. And that was a
7 different issue. And their expert also talked about the ADA
8 issues, which our expert had to address and rebut.

9 Now, whether it was successful or not, I don't know if
10 Plaintiff has a leg to stand on whether it was successful or
11 not since there was a Defense verdict here. And then as for
12 Corwin, the Frazier case says whether it's repetitive of other
13 experts on the -- well, it doesn't say on the same side, but
14 that's what it means. It means I don't want to be bringing
15 two of the same experts and saying the same thing. She's a
16 rebuttal expert to their expert, so of course she's going to
17 address the same issues. She's going to respond to those
18 issues. And his interpretation of what Corwin's testimony was
19 and her opinions about the costs is drastically contrary to
20 what she put in her report and what she was going to testify
21 at trial.

22 The reason why she was here is because she was going to
23 testify and rebut those opinions provided by the Plaintiff's
24 expert. Otherwise, if she was going to come here and testify

1 to the same thing, why would we have her here? Why would we
2 pay those expenses during trial? That just doesn't -- that's
3 -- just doesn't even make sense, Your Honor. And so we would
4 say that the -- and in addition, Your Honor, nobody addressed
5 the issue that they waived their objections for failing to
6 file a motion to re-tax the costs.

7 THE COURT: Okay. Based upon this, this is what I'm
8 going to do. Under the factors basically that's set forth by
9 the Nevada Supreme Court in regards to going over the
10 statutory limitation for experts, I think we all agree that
11 the expert fee number that we now have is probably a little
12 bit undervalued for what it goes on in today's life. Anybody
13 who's ever practiced in personal injury knows that -- I don't
14 even think you can get a chiropractor for \$1,500 to do the
15 work that is being requested of individuals at trial.

16 I'm going to allow expert fees in the amount of 5,000 and
17 then \$7,500. I'm going to reduce down the one that was
18 requested for 16,000 to \$7,500. The other requests that were
19 \$7,000 I went down and reduced them to \$5,000 apiece. Costs
20 in the amount of \$22,097.28 for the other costs that were not
21 opposed and re-taxed will be granted. Let's deal with fees.
22 Talking about your offer of judgment, Counsel. Because you
23 know what my concern is. Is it a valid offer of judgment, the
24 \$1,000?

1 MR. YOUNG: Thank you, Your Honor. Well, let's
2 start off with -- so an offer of judgment. We served an offer
3 of judgment for \$1,000, and it was back in -- I believe it was
4 March of 2017, almost two years before trial. All right. And
5 this was fairly close to the beginning of the case, but the
6 case had been going for some time. The Plaintiff had already
7 known about the facts. The Plaintiff had all the facts. The
8 Plaintiff's attorneys easily should have or did talk to all of
9 the family members that were there with the Plaintiff, and
10 knew all those facts.

11 And so the law requires that the offer has to be
12 reasonable and good faith. And so based upon the facts that
13 we do know -- and as I put in the reply, the complaint
14 included a lot of erroneous facts. A lot. And I just want to
15 make sure that those were clear. Because, Your Honor, we
16 pointed that out on several occasions. In the complaint, it
17 specifically alleged that Plaintiff was entering the deli at
18 the time the incident occurred. That was proven to be wrong
19 in the beginning of the case.

20 If you noted, in my reply brief I attached the letters
21 that I sent back in March 2017, and again I sent another
22 letter in June of 2017. That -- the one in June was after we
23 took some more depositions of the witnesses that clarified
24 these facts. So that was clearly wrong. We all know that.

1 And at trial it was proven that it wasn't true that this
2 incident occurred while she was entering.

3 The next fact that they alleged, that Luxor employees
4 moved the dining tables and chairs. Well, we know that that's
5 not true as well. The video showed that wasn't true. The
6 witnesses testified that that was not true. Luxor employees
7 moved furniture to accommodate Plaintiff's scooter. Well, we
8 know that's not true. I mean, that was proven before trial
9 and at trial. Plaintiff operated a scooter over the base of
10 the table, the front wheel gave way. Well, we know that's not
11 true because there were photographs taken after the fact, and
12 the Plaintiffs confirmed that there was nothing wrong. And we
13 saw in the video where they just rode the scooter back off the
14 screen.

15 The next one, Plaintiff struck the base of the table and
16 Plaintiff fell to the right. Well, we know that's not true.
17 Plaintiff was unaware of a dangerous condition. Well, we know
18 that's not true because there was no dangerous condition
19 there, and the Plaintiff also testified that she was aware
20 that there were tables and chairs. And then she was also
21 aware that their -- her family or friends are the ones that
22 moved the tables and chairs, and that the table was a
23 dangerous condition to unsuspecting guests. Plaintiff
24 testified to the contrary to that.

1 These are all the allegations that they were claiming
2 supported a premises liability case against the Luxor. We
3 told them, we asked them in telephone calls and in the
4 multiple letters that we sent, where's the basis for your
5 premises liability claim against the Luxor. What was the
6 dangerous condition. What did we do. They never, ever even
7 fixed these allegations. They never gave us any type of a
8 response when we sent these letters, when we did the phone
9 calls. No response. We sent the offer of judgment for
10 \$1,000, no response.

11 I mean, generally, as Your Honor is more than well aware,
12 generally in these cases the plaintiffs will send a letter,
13 and say, "Look, here's why you guys are at fault. Here's how
14 much my damages are, I want this much money to settle." We
15 didn't even get that in response to our offer of judgment. So
16 then, when I followed up with another letter, saying, "Look,
17 we just took these depositions, that confirmed that your
18 allegations are wrong. Dismiss us. And now I've incurred a
19 lot of fees and costs. I'll be willing to even waive that."
20 No response. No demand. Not one settlement demand from the
21 Plaintiffs during discovery in this case. None.

22 THE COURT: Is that one of the factors I'm to
23 consider, Counsel?

24 MR. YOUNG: But this is the --

1 THE COURT: Is that one of the factors I'm to
2 consider?

3 MR. YOUNG: I think it goes to the good faith nature
4 --

5 THE COURT: Okay.

6 MR. YOUNG: -- of this claim. And I think -- so for
7 purposes of the offer of judgment, was it reasonable? I
8 believe it was for the fact that there was no evidence to show
9 liability on Luxor. Whether there was liability on the other
10 defendants is another question. But as to the Luxor there was
11 no evidence of liability. And in addition, Plaintiffs claimed
12 that the \$1,000 was too low. Well, the \$1,000, if you take
13 into consideration based upon what they presented at trial,
14 they presented not one shred of evidence of medical bills
15 incurred. Not one. They didn't ask for medical bills
16 incurred. They didn't ask for future medical bills.

17 At trial they only asked for pain and suffering. So if
18 you take that into consideration, and the evidence that shows
19 liability was not going to lie with Luxor, \$1,000 based upon
20 zero medical bills is not unreasonable. It is a reasonable
21 offer.

22 THE COURT: For a fractured bone.

23 MR. YOUNG: Well, when it's not your fault, Your
24 Honor. I mean, and the evidence shows that. And I tried to

1 clarify, if there's something else I'm missing, tell me, and
2 they don't give it to me. And then they haven't presented any
3 evidence during discovery to prove their medical bills. You
4 know, Your Honor, I mean, sometimes you look at these facts,
5 and the facts are completely in opposite of what their own
6 witnesses testified to, I believe that's maintained in bad
7 faith.

8 I think that qualifies under Rule 18 as well as 7.085
9 that shows that they had the ability to evaluate this case,
10 and they could've said, well, you know what? It doesn't look
11 like these facts are turning out the way we alleged them. And
12 they could've had that chance to resolve the case, but they
13 didn't. And they could've dismissed the case. They could've
14 responded to my letters. They could've done something, but
15 they didn't. And they maintained this action. And if you
16 recall, we filed a motion for summary judgment. Your Honor
17 denied that motion for summary judgment, and specifically told
18 them, look, you got a major uphill battle.

19 And the main thing that only -- the main question in this
20 case that they finally landed on at the end of discovery and
21 for trial was their hired gun from across the country came out
22 here and testified that it was plausible. That was what their
23 case was based upon against the Luxor. It was plausible.
24 That was it. That's what they were hanging their hat on

1 against Luxor. That's why the offer was reasonable, the
2 rejection was clearly unreasonable, the amount was based upon
3 what the damages were at that time, and they weren't seeking
4 -- they didn't have the ability to prove that \$400,000 in
5 medical bills. And so we believe that was reasonable. We
6 believe that it was maintained contrary to the law, and I
7 believe I set that out in my brief. I don't need to -- I
8 don't think I need to go through that --

9 THE COURT: You don't need to go through --

10 MR. YOUNG: -- again.

11 THE COURT: -- all the factors. I was just asking
12 if that one is one that I'm to consider.

13 MR. YOUNG: Yeah. And the other thing I just wanted
14 to point out, Your Honor, you know, because there's those two
15 issues of why I believe we're entitled to attorney's fees, is
16 under the offer of judgment -- we meet the offer of judgment
17 -- but then, in addition, it was maintained not grounded in
18 fact, and it was unreasonable. And I look to the statute
19 under NRS 18 as well as 7.085, and it specifically states that
20 if the case was filed, maintained, or defended -- so that
21 means it has to -- it can be maintained, a civil action or
22 proceeding that is not well grounded in fact. It was not well
23 grounded in fact.

24 The facts show that the Plaintiff's family moved these

1 tables and chairs, created a larger pathway for this Plaintiff
2 to exit, and this Plaintiff struck a stationary table and fell
3 over and injured herself. It was not the Luxor's fault. The
4 jury agreed and found for the Defense. It was -- the facts,
5 that's -- I mean, there was just no -- it wasn't grounded in
6 any specific fact. It was pointed out to them several times,
7 and we -- I believe we should be entitled to our fees. Thank
8 you, Your Honor.

9 THE COURT: Counsel.

10 MR. PFAU: Thank you, Your Honor. So I think what
11 we're arguing is what facts were known at the time this offer
12 of judgment was presented, and it's clear that at the time the
13 offer of judgment was presented discovery was not done yet.
14 There were no 30B(6) depositions done of Luxor. There was no
15 investigation as to what Luxor knew, that they should've done,
16 or did do at the time of the events. There was no floor plans
17 available to us.

18 The 30B(6) representatives at the time when they were
19 actually deposed gave us the information we needed, which was
20 the basis of our case. And as it was mentioned, and I think
21 you read and you of course sat through the trial, the
22 information presented by Lindsay Stoll [phonetic] that the --
23 that floor plan was approved by the safety director and didn't
24 show all the tables that were actually present, the fact that

1 there was -- Lindsay Stoll stated that there was supposed to
2 be somebody on that dining room floor all the time to keep it
3 and maintain it. There was no evidence that there was anybody
4 there.

5 And finally, from their other representative that -- I
6 can't remember her name -- DiGiacomo -- Kimberly DiGiacomo
7 [phonetic], that said that they didn't have a screening policy
8 at the desk where they actually rent these scooters, the bell
9 desk. Just gave a scooter to anybody, and that was their
10 policy and that's what they did for everybody. And both of
11 those issues remain issues in this case. And without having
12 the full scope of knowledge, it's true, we didn't have all the
13 facts, we didn't know all the information. We knew what we
14 were being told. And until discovery's done, we don't know
15 everything, and that's -- that is the main issue here, is
16 because discovery wasn't complete, and they didn't renew an
17 offer of judgment after they knew all the facts.

18 There was no discussion need to be had. They were at the
19 same depositions we were. They heard all the same facts we
20 heard, and we'll always have a -- you know, plaintiffs and
21 defense will never agree that Lindsay Stoll's testimony was
22 bad for the Luxor. They just won't agree to that. But they
23 knew the information at that point, and if they still felt it
24 was worth \$1,000, or \$1,001, they could've renewed that offer

1 of judgment knowing everything that was out there, and they
2 chose not to do that. And we --

3 THE COURT: When were the 30B(6) depositions
4 completed? I know we had some issues with those.

5 MR. PFAU: The offer of judgment was presented on
6 March 23rd --

7 THE COURT: I know it's March for the offer --

8 MR. PFAU: 20- -- yeah. And December 20th is when
9 the 30B(6)s were done.

10 THE COURT: That's what I thought --

11 MR. PFAU: But that's --

12 THE COURT: -- it was almost the end of the year.

13 MR. PFAU: Yes. So we don't have -- we didn't have
14 evidence of -- you know, we didn't have the facts. That is
15 what evi- -- that's what discovery is, is presenting the
16 facts, getting the facts on the table, knowing what is
17 actually out there. And without those facts, there's no way
18 to accept an offer of judgment of \$1,000, especially when you
19 have a severely injured client. And that is not in good
20 faith. A good faith represent -- offer is one that is --
21 could be accepted knowing all the facts. There were no facts.
22 It couldn't be accepted because we didn't know all the facts,
23 and if they really wanted to give an offer of judgment that
24 would be valid before the Court today, they could've presented

1 a new one after discovery was completed.

2 THE COURT: After the 30B(6), after discovery was
3 completed, did you attempt to resolve the matter by sending
4 them an offer of judgment, or asking or making a demand?

5 MR. PFAU: Your Honor, in all communications they
6 continued to state that they were -- they didn't have any
7 liability. They felt like they had zero liability, and
8 therefore they weren't -- there was conversations that were
9 had about liability and about whether or not they wanted to
10 pay everything that was stated in conversations between
11 Defense and Plaintiffs. There is nothing in writing related
12 to any offers we made --

13 THE COURT: So no demands were made --

14 MR. PFAU: -- because --

15 THE COURT: -- after the discovery was completed.

16 MR. PFAU: Not from us, Your Honor.

17 THE COURT: Okay. Counsel?

18 MR. YOUNG: As just admitted, no demands were ever
19 made to the Luxor, whether during discovery or after
20 discovery. Not one. And I pose the question, after
21 discovery, why would Luxor renew its offer of judgment that it
22 previously did, when the case law specifically says a newer or
23 more recent offer of judgment basically extinguishes your
24 first one, and then I lose all that time of fees and costs?

1 That's just nonsense.

2 THE COURT: That's what the old rule says. The new
3 rule is going to change that, Counsel.

4 MR. YOUNG: Thanks goodness. Thank goodness. So,
5 Your Honor, that just doesn't make sense. There's no reason
6 why I would renew my offer of judgment if my position was the
7 same. There would be no reason why I would bet against myself
8 if Plaintiff never gives me any type of demand, never gives me
9 any evaluation or response as to why my client was at fault.
10 Not one.

11 THE COURT: Okay. Let's deal with the delay on the
12 30B(6)s. If I recall, the [indiscernible] fell on Luxor
13 because they didn't have someone or they couldn't produce
14 someone or there's all those issues going back and forth as to
15 the delay in getting the 30B(6)s done.

16 MR. YOUNG: Well, actually, that's -- I think you're
17 mis- --

18 THE COURT: Like, I remember, because I've got
19 multiple cases with this same issue; so --

20 MR. YOUNG: I think you're misremembering that.
21 Because on this particular one, at trial our 30B(6) was no
22 longer available. She had moved already.

23 THE COURT: That's the one. Okay.

24 MR. YOUNG: But it --

1 THE COURT: I knew there was some facts about 30B(6)
2 being no longer --

3 MR. YOUNG: Exactly.

4 THE COURT: -- available.

5 MR. YOUNG: But these depositions, the 30B(6)
6 depositions were not requested by the Plaintiffs until these
7 depositions were taken. There was some dispute as to the
8 topics, which we worked out within a couple weeks or so, and
9 then we had arranged for three independent witnesses to talk
10 about the topics and areas that they wanted to hear. But it
11 wasn't requested by the Plaintiffs until the -- until that
12 date, until that time period in December.

13 And so any delay was not on the Luxor. And the fact that
14 Plaintiffs allege they did not have the facts to evaluate an
15 offer of judgment just blows my mind, because they say that
16 the things they discover was the floor plan. Well, okay, they
17 had already done an inspection. They had the photographs.
18 They had already seen what it looked like. They had the video
19 of the incident. How did the floor plan change that?

20 THE COURT: Well, Counsel, what if you didn't -- if
21 you had a floor plan that you approved through your safety
22 director, and it was completely opposite of that, wouldn't
23 that have been evidence?

24 MR. YOUNG: But it --

1 THE COURT: That you didn't even follow your own
2 safety plan?

3 MR. YOUNG: But it -- but that's a hypothetical.
4 But it didn't happen. And if it did, that wasn't the cause of
5 action. Their cause of action was that there was some type of
6 dangerous condition, and the only thing they could finally
7 develop was they went and hired somebody to say something was
8 plausible under the ADA. That was all they had.

9 THE COURT: So if your floor plan through your
10 safety director called for 12 tables and 26 chairs, and you
11 guys snuck in two or three more, would that be in clear --
12 through the safety director -- would that be evidence?

13 MR. YOUNG: Would it be evidence?

14 THE COURT: Would that go -- yeah. Could that be
15 evidence --

16 MR. YOUNG: It could be.

17 THE COURT: -- that the trier of fact would've look
18 at, and said, okay, well, this company set up through its own
19 safety director what they considered a valid safety plan for
20 ingress and egress going through this area, noting we would
21 have handicapped individuals. I mean, it's why your safety
22 directors go through it. And then after he approved it,
23 someone at the deli or the Luxor said, look, we've got a ton
24 of people wanting service at the deli, want to go in there, we

1 need to throw a couple more tables in there.

2 Okay. So if that had occurred -- because they didn't
3 have the floor plan. They didn't know what the original
4 design was -- and those facts had occurred, that would be
5 valid evidence at least the trier of fact could look at, and
6 say, look, the company didn't even follow their own plan.

7 MR. YOUNG: Exactly.

8 THE COURT: Okay.

9 MR. YOUNG: Had that occurred --

10 THE COURT: So it wasn't until that 30B -- isn't
11 until that, quote, "floor plan" gets disseminated that we can
12 say that they didn't do it? You're saying, we'll take a look
13 at the video, they could look at the pictures, but if the
14 safety plan was totally different than what was represented in
15 the pictures, isn't that evidence that they could've presented
16 to the trier of fact, and said, look, they don't even follow
17 their own safety plans?

18 MR. YOUNG: Sure. In theory. But it didn't happen
19 here.

20 THE COURT: Right.

21 MR. YOUNG: And --

22 THE COURT: But didn't they need to discover that?

23 MR. YOUNG: Well, sure. And then so why didn't they
24 notice the depositions? Why didn't they then call me, and

1 say, "You know what? I want to consider your offer, but I
2 need that deposition first. Let's take a look at that."
3 Nothing. Radio silence until December. And in addition, Your
4 Honor, and the reason why during trial that I was trying to
5 get a live -- excuse me -- a live witness here in place of
6 Lindsay Stoll, is because they were taking her testimony out
7 of context in that deposition.

8 But when they finally pieced it together, it still didn't
9 make sense, and I didn't want to fight it. But they were
10 taking her testimony out of context, that that particular pink
11 plan, if you remember, that pink background, that was the
12 final plan, and those were exactly where all the tables were.
13 That was completely out of context, and it was not the
14 questions that were being posed to her, and it was not the
15 answers that she was providing. So that's the reason why I
16 was trying to get a live person here, to clarify that issue.
17 But it just didn't make sense the way they were playing it
18 anyway, so it didn't -- I didn't want to muddle up the waters.

19 But given the fact is, if they were going to try to prove
20 that claim, why didn't they bring that forward? Why didn't
21 they put that in their interrogatory responses? Why didn't
22 they just respond to me and look right, and say, "This is what
23 I want to do. I need this information before I can consider
24 you offer"? I send those letters all the time. "I can't

1 consider your offer of judgment until I get this information."

2 Not -- nothing. Nothing was done.

3 And how -- a person to monitor the deli? A person to
4 monitor the deli and a screening policy to rent the scooter.
5 Well, screening policy to rent the scooter, that was Desert
6 Medical's issue. That was Desert Medical, and that deals with
7 a whole other thing. As for the deli itself, even the 30B(6)
8 witnesses didn't develop any type of evidence to support their
9 theory that there was a dangerous condition. And so if we
10 come all back to what we're really here about, we're here
11 about whether this re- -- this offer was reasonable in time as
12 well as in amount.

13 At the time that I made the offer, I included a letter as
14 well after I had phone calls with the Plaintiff's attorney
15 explaining our position, explaining why we believe that their
16 allegations are wrong. We even told them, talk to Mr.
17 Sawamoto's counsel who told us this stuff. Because we hadn't
18 taken Plaintiff's deposition yet at that time. And I agree,
19 we hadn't taken Plaintiff's deposition, but they should've
20 talked to their own client. Their own client --

21 THE COURT: That's what my problem is, Counsel, is
22 you sit here and talk about developing of evidence, you don't
23 even know what the Plaintiff was going to say and you shoot
24 over a \$1,000 OJ. So if your own logic is, we did it based

1 upon the facts, the primary fact finder or the primary fact
2 witness on the Plaintiff's side would've been the Plaintiff.

3 MR. YOUNG: Exactly.

4 THE COURT: So you didn't have those facts. You
5 didn't even know what she was going to say when you made an
6 offer judgment of \$1,000.

7 MR. YOUNG: Well, I didn't have her deposition
8 testimony, but I did have her responses to interrogatories. I
9 had the other statements in her medical records. I also had
10 --

11 THE COURT: So you didn't need to take her
12 deposition?

13 MR. YOUNG: Well, no. I didn't say that. I didn't
14 -- actually, I didn't notice it, but I went there. But --

15 THE COURT: And you asked questions.

16 MR. YOUNG: Yeah.

17 THE COURT: I saw it.

18 MR. YOUNG: Yeah. And I mean, but --

19 THE COURT: So it was important to get her
20 information.

21 MR. YOUNG: Well --

22 THE COURT: You had something you wanted. You had
23 little holes you wanted to fill in.

24 MR. YOUNG: Exactly. And if you remember, Your

1 Honor -- excuse me -- I'm choking here. The Plaintiff has a
2 hard time remembering this stuff. That was -- with
3 remembering --

4 THE COURT: Okay.

5 MR. YOUNG: -- was testified to or represented at
6 trial. And so at the time of her deposition that was also an
7 issue. So that's how come in my letter I specifically said,
8 "This is what Mr. Sawamoto's counsel is representing to us
9 that he is going to testify to. Ask him. Confirm that.
10 Let's find these facts out." And then we went and took the
11 depositions because they wouldn't confirm that stuff, or
12 didn't want to acknowledge that stuff. And then we had to
13 incur more fees and costs going to Alabama, and then we had to
14 go to Florida as well to take these depositions.

15 Then after -- even after we had those sworn testimony,
16 still nothing. That's how come I believe it was maintained
17 and unreasonable, Your Honor.

18 THE COURT: Okay. This is what I'm going to do,
19 Counsel. In regards to the offer of judgments, when I get
20 numbers like this -- and I understand, because it's always
21 this turmoil. You know, you say you have \$420,000 in medical
22 bills, so \$1,000 isn't reasonable. But 420,000 in medical
23 bills, \$200,000 might not be reasonable, \$300,000 might not be
24 reasonable. All the years of my practice, both on the

1 plaintiff and defense side, we looked at these \$1,000 offers
2 of judgment from the plaintiff's side as just ludicrous.
3 There's no way we could settle it. We got more than that in
4 just our initial costs.

5 But once all the facts were generated and all the parties
6 knew exactly what the positions were going to be, that's when
7 I consider what should've been done. As a result therein, I'm
8 going to allow the fees that were incurred in December. My
9 total is \$69,688. Counsel for the Defendant, go ahead and
10 prepare the order. You got that number?

11 MR. YOUNG: 69,688?

12 THE COURT: Yes, sir.

13 MR. YOUNG: And, Your Honor, I actually didn't get
14 the numbers on the --

15 THE COURT: Okay.

16 MR. YOUNG: -- costs.

17 THE COURT: The costs were \$22,097.28, excluding the
18 experts. The total for experts, I broke it down five, five,
19 and 7.5, for a total of 17,500.

20 MR. YOUNG: Okay.

21 THE COURT: Total costs, then, would be \$39,597.28.
22 Go ahead and prepare the order, Counsel.

23 MR. YOUNG: Thank you, Your Honor.

24 THE COURT: Thank you.

1 MR. PFAU: Thank you, Your Honor.

2 MR. MOSS: Thank you.

3 [HEARING CONCLUDED AT 10:04 A.M.]

4 *****

5
6 ATTEST: I do hereby certify that I have truly and correctly
7 transcribed the audio-video recording of this proceeding in
8 the above-entitled case.


9
10 
11 _____
12 Zach Von Kimble
13 Transcriber
14
15
16
17
18
19
20
21
22
23
24

EXHIBIT "3"

Subject: RE: Harrison v. Luxor
Date: Monday, March 4, 2019 at 3:24:08 PM Pacific Standard Time
From: Loren Young
To: Boyd Moss, Matthew Pfau
CC: Barbara Pederson, Courtney Christopher, Bruce Alverson, Brian K. Terry, Stacey Upson (stacey.upson@farmersinsurance.com)
Attachments: image001.jpg, image002.png, image003.png, image004.png, image005.jpg, image006.png

Dear Mr. Moss:

In anticipation of a potential phone call, I revised the paragraph on page 4 and let me know if this is better:

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

As for the second paragraph objected to on page 6, this is was addressed in the briefing. See my reply brief on page 3:16 – page 4:11. Not sure why you believe that the *Muije* case does not support the statement. Here is a quote from the case with my added emphasis:

"Many cases in other jurisdictions have held that an **offset** is part of the trial judgment, and thus it **takes priority** over an attorney's lien. *Salaman v. Bolt*, 141 Cal.Rptr. 841 (Ct.App. 1977); *Galbreath v. Armstrong*, 193 P.2d 630 (Mont. 1948); *Hobson Constr. Co., Inc. v. Max Drill, Inc.*, 385 A.2d 1256 (N.J. Super.App.Div. 1978); *Johnson v. Johnston*, 254 P. 494 (Okla. 1927).

In *Salaman*, the court **gave priority to an offset arising from an unrelated matter between the two parties**. In explaining that an offset must be satisfied before attorney's fees, the court stated:

[E]quitable offset is a means by which a debtor may satisfy in whole or in part a judgment or claim held against him out of a judgment or claim which he has subsequently acquired against his judgment creditor. The right exists independently of statute and rests upon the inherent power of the court to do justice to the parties before it.

Salaman, 141 Cal.Rptr. at 847.

Thus, the *Salaman* court determined that equity **requires** settlement of the net verdict between the two parties **before** attorneys' liens may attach.

The argument that Cab Company is not a lienholder nor a secured creditor **ignores Cab Company's status as a party to the case.** The purpose of the suit was to determine what Cab Company owed, and the net result of the suit was that Cab Company owed nothing. In *Hobson*, the plaintiff won a judgment in the Law Division but lost a greater judgment in a related action in the Chancery Division. The court held that, "[u]nder such circumstances the attorney's lien could not be enforced for there would be no judgment or fund available to the client to which it could attach. . . ." *Hobson*, 385 A.2d at 1258. The *Hobson* court reasons that the prevailing party should not be burdened by the claims asserted by the losing party's attorney. *Id.* at 1258. **The purpose of a lawsuit is to settle a dispute between two parties. Only after that dispute is settled,** should the courts or legislature supervise the division of a recovery between attorney and client.

John J. Muije, Ltd. v. North Las Vegas Cab Co., 106 Nev. 664, 666-667, 799 P.2d 559, 560-561, (1990). Clearly, equity requires the offset before the attorneys' lien attaches. I believe this is an accurate statement of the law. However, if you believe this is inaccurate, I believe it will be necessary for you to file a motion to adjudicate the lien.

If you would like to discuss the proposed changes, give me a call. However, since the second paragraph is going to remain in the proposed order, I understand that you will still object, so I will submit the order with the above changes. If your position has changed, please let me know. Thanks.

Loren S. Young, Esq.

Managing Partner - Nevada

LINCOLN, GUSTAFSON & CERCOS LLP

Experience. Integrity. Results.

California Nevada Arizona

550 West "C" Street, Suite 1400
San Diego, California 92101
619.233.1150; 619.233.6949 Fax

3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
702.257.1997; 702.257.2203 Fax

2415 E. Camelback Rd., Suite 7
Phoenix, Arizona 85016
602.606.5735; 602.508.6099 F.

www.lgclawoffice.com

The information contained in the text (and attachments) of this e-mail is privileged, confidential and only intended for the addressee(s). Nothing in this email or attachments is intended as tax advice and must not be relied upon in that regard. Please consult your tax advisors. You are not authorized to forward this email or attachments to anyone without the express written consent of the sender.

From: Boyd Moss <Boyd@mossberglv.com>

Sent: Friday, March 1, 2019 3:46 PM

To: Loren Young <lyoung@lgclawoffice.com>; Matthew Pfau <matt@p2lawyers.com>

Cc: Barbara Pederson <BPederson@lgclawoffice.com>; Courtney Christopher <cchristopher@alversontaylor.com>; Bruce Alverson <BAlverson@AlversonTaylor.com>; Brian K. Terry <BKT@thorndal.com>; Stacey Upson (stacey.upson@farmersinsurance.com) <stacey.upson@farmersinsurance.com>

Subject: RE: Harrison v. Luxor

Mr. Young:

Please be advised that object to the following paragraphs of the order:

Page 4, lines 19-25:

"On March 23, 2017, Luxor served an offer of judgment to Plaintiff for \$1,000.00 pursuant to NRCP 68. Pursuant to the rule, if an offeree rejects an offer and fails to obtain a more favorable judgment, the Court may order the offeree to pay reasonable attorney's fees incurred from the date of the service of the offer. Given the fact that Plaintiff has not provided any proof to support a claim against Luxor, this Court finds the offer served by Luxor was reasonable and Plaintiff did not obtain a more favorable judgment than the offer. Thus, the Court finds that Luxor is entitled to a partial award of attorney's fees incurred from the date of the offer."

We believe that the judge said that the OOJ was not the reasonable value under NRCP 68 and the award for fees was for the month of December (the trial) based on NRS 18.010. Additionally, I think the two jurors that did not vote in favor of a defense verdict would indicate that the statement "Plaintiff did not provide any proof to support a claim against Luxor" is not accurate.

Page 6, lines 5-9:

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

This issue was never addressed in briefing or oral argument. Accordingly, our position that it would be improper to include any ruling on this issue as part of the Order. We have an attorney lien for services against any recovery on Ms. Harrison's behalf. Your client has a judgment for attorneys' fees and costs.

We are unaware of any Nevada authority that would support the position that your client's "judgement" for attorney's fees and costs takes priority over our attorney lien for fees and costs on a prior recovery. The case cited certainly doesn't stand for that.

If you are agreeable to either re-work the first paragraph we object to and remove the second, we can agree to sign the order. If not, we will file our own competing order that removes the two paragraphs.

On a related note, if you want to brief the issue regarding your client's judgement and where it falls in line of priority with our attorney lien we will hold the money in trust until the issue is adjudicated, but this issue was ever addressed by the Court.

BOYD B. MOSS III, ESQ.
MOSS BERG INJURY LAWYERS
4101 MEADOWS LN. SUITE 110

LAS VEGAS, NV 89107
P: (702) 222-4555
F: (702) 222-4556
boyd@mossberglv.com
www.mossberginjurylaw.com



CONFIDENTIALITY NOTICE: The information contained in this e-mail message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. Nothing in this e-mail should be construed as an electronic signature or an act constituting a binding contract. If you have received this communication in error, please immediately notify us at (702) 222-4555. Thank you.

From: Loren Young <lyoung@lgclawoffice.com>
Sent: Thursday, February 28, 2019 12:21 PM
To: Boyd Moss <Boyd@mossberglv.com>; Matthew Pfau <matt@p2lawyers.com>
Cc: Barbara Pederson <BPederson@lgclawoffice.com>; Courtney Christopher <cchristopher@alversontaylor.com>; Bruce Alverson <BAlverson@AlversonTaylor.com>; Brian K. Terry <BKT@thorndal.com>; Stacey Upson (stacey.upson@farmersinsurance.com) <stacey.upson@farmersinsurance.com>
Subject: Harrison v. Luxor

Mr. Moss and Mr. Pfau:

Please find attached a proposed order and judgment regarding the Court's ruling yesterday on Luxor's motion for fees and costs. Please advise by March 1, 2019 or any objections or requested changes. If acceptable, please sign and return to my office for handling with the court.

As noted, this award must first be offset from other funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment and take priority over any other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990). Thus, please refrain from distribution of any funds received from other sources and settlements until this judgment is entered and paid. Thank you.

Loren S. Young, Esq.

Managing Partner - Nevada

LINCOLN, GUSTAFSON & CERCOS LLP

Experience. Integrity. Results.

California Nevada Arizona

550 West "C" Street, Suite 1400
San Diego, California 92101
619.233.1150; 619.233.6949 Fax

3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
702.257.1997; 702.257.2203 Fax

2415 E. Camelback Rd., Suite 100
Phoenix, Arizona 85016
602.606.5735; 602.508.6099 Fax

www.lgclawoffice.com

The information contained in the text (and attachments) of this e-mail is privileged, confidential and only intended for the addressee(s). Nothing in this email or attachments is intended as tax advice and must not be relied upon in that regard. Please consult your tax advisors. You are not authorized to forward this email or attachments to anyone without the express written consent of the sender.

EXHIBIT "4"



1 **RPLY**
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 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 **VIVIA HARRISON, an individual,**
20 **Plaintiff,**

21 **v.**

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

28 **Defendants.**

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

DEFENDANT RAMPARTS, INC. d/b/a
LUXOR HOTEL & CASINO'S REPLY IN
SUPPORT OF ITS MOTION FOR
ATTORNEY'S FEES AND COSTS

Hearing Date: February 27, 2019
Hearing Time: 9:00 a.m.

29 **DESERT MEDICAL EQUIPMENT, a Nevada**
30 **Domestic Corporation,**

31 **Third-Party Plaintiff,**

32 **v.**

33 **STAN SAWAMOTO, an individual,**

34 **Third Party Defendant.**

1 COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO
2 (hereinafter referred to as "Luxor"), by and through its attorneys of record, the law firm of LINCOLN,
3 GUSTAFSON & CERCOS, LLP, and hereby submits the following Points and Authorities in support
4 of its Reply to Plaintiff's Opposition to Luxor's Motion for Attorney's Fees and Costs.

5 This Reply is made and based upon the attached Memorandum of Points and Authorities and
6 supporting documentation, the papers and pleadings on file in this action, and any oral argument this
7 Court may allow at the time of hearing.

8 DATED this 20th day of February, 2019.

9 LINCOLN, GUSTAFSON & CERCOS, LLP

10
11 
12 LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

13 THOMAS W. MARONEY, ESQ.

Nevada Bar No. 13913

14 3960 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169

15 Attorneys for Defendant, RAMPARTS, INC.

d/b/a LUXOR HOTEL & CASINO

16
17 I.

18 **INTRODUCTION**

19 As this Court is aware, trial started on December 10, 2018 and concluded on December 20,
20 2018 with the Jury returning a Defense Verdict against Plaintiff and in Luxor's favor. As such, Luxor
21 is the prevailing party and, thus, entitled to award of costs pursuant to NRS §18.005 and NRS §18.020.
22 Pursuant to NRS §18.110 and case law, a memorandum of costs must be filed within 5 days after the
23 entry of order or judgment. Here, the Entry of Judgment on the Verdict was filed and served on January
24 16, 2019 and the Memorandum of Costs was timely filed on January 17, 2019. As the prevailing party,
25 Luxor respectfully requests the Court grant its costs incurred in this matter to defend the allegations
26 made by Plaintiff.

27 NRS §18.110(4) expressly provides that if Plaintiff wished to dispute and/or retax and settle
28 those costs, "**Within 3 days after service** of a copy of the memorandum, the adverse party may move

1 the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and
2 served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall
3 settle the costs." See Nev. Rev. Stat. Ann. § 18.110(4). Thus, Plaintiff's motion to retax and settle
4 Luxor's costs was due on or before January 28, 2019. Plaintiff did not file a motion to retax and settle
5 Luxor's costs and, thus, Plaintiff has waived any objection to the Memorandum of Costs and the Court
6 should enter an order granting Luxor's costs totaling **\$53,160.03**. *Sheehan & Sheehan v. Nelson*
7 *Malley & Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005). Plaintiff's faltering argument that Luxor
8 is not entitled to recover costs pursuant to NRCP 68 is inapplicable here.

9 Plaintiff's opposition fails to cite any applicable law or statute in support of the arguments
10 made. In fact, Plaintiff contends that the standard of care in considering an award of attorney's fees
11 is that Defendant must show Plaintiff "brought forth this lawsuit and proceeded to trial in 'bad faith'."
12 (See Plaintiff's Opposition, Page 2; See also Page 3 line 15, which contradictorily states "Defendant
13 concedes the argument that Vivia's claims were not in good faith..."). Tellingly, although Plaintiff
14 includes quotation marks, there is no citation for the argument. Plaintiff is clearly flummoxed
15 regarding legal arguments of "good faith" and "bad faith," which are not equal opposites.

16 As a preliminary matter, it must be brought to the Court's attention that Luxor seeks recovery
17 of costs and fees against Plaintiff and Plaintiff's counsel, which award should be offset from settlement
18 funds received by Plaintiff from other sources. It is Luxor's understanding that during trial and before
19 the jury verdict, Plaintiff reached a high/low agreement with Desert Medical Equipment that
20 guaranteed Plaintiff would receive a certain amount no matter what the verdict would be. In Nevada,
21 as well as in other jurisdictions, "an offset is part of the trial judgment, and thus it takes priority over
22 an attorney's lien." *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559,
23 560 (1990)(citing *Salaman v. Bolt*, 141 Cal.Rptr. 841 (Ct.App. 1977); *Galbreath v. Armstrong*, 193
24 P.2d 630 (Mont. 1948); *Hobson Constr. Co., Inc. v. Max Drill, Inc.*, 385 A.2d 1256 (N.J.
25 Super.App.Div. 1978); *Johnson v. Johnston*, 254 P. 494 (Okla. 1927)).

26 It is anticipated Plaintiff may argue that Plaintiff's counsel has perfected an attorney's lien and,
27 thus, the attorney's lien takes priority over everything, including any award of fees and costs to Luxor.
28 This is incorrect. In *Salaman*, the court gave priority to an offset arising from an unrelated matter

1 between the two parties. The Court explained that an offset must be satisfied before attorney's fees are
2 calculated. The *Salaman* court determined that equity requires settlement of the net verdict between
3 the two parties before an attorney's liens may attach. *Salaman*, 141 Cal.Rptr. 841. A perfected
4 attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that
5 action have been paid. See *John J. Muije, Ltd.*, 106 Nev. at 667. After the net judgment is finalized,
6 then the attorney's lien will be superior to a later lien asserted. (*Id. citing See United States Fidelity &*
7 *Guarantee v. Levy*, 77 F.2d 972 (5th Cir. 1935) (attorney's lien is superior to offset from a claim arising
8 out of a different matter from which the judgment arose); *Cetenko v. United California Bank*, 638 P.2d
9 1299 (Cal. 1982) (attorney's lien is superior to that of another creditor who obtained a lien on the same
10 judgment); *Haupt v. Charlie's Kosher Market*, 112 P.2d 627 (Cal. 1941) (attorney's lien is superior to
11 that of third-party judgment creditor).

12 Plaintiff's opposition attempts to utilize the *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d
13 268, 274 (1983), factors to oppose Luxor's request for attorney's fees based on the following:

- 14 • Luxor's Offer was not in good faith
- 15 • Luxor should not be awarded attorney's fees pursuant to NRS 18.010

16 As noted, Plaintiff's opposition is void of any supporting case law or statute. Plaintiff's
17 opposition is fatally flawed based on the forgoing;

- 18 • Based on the lack of evidence to support liability against Luxor, and no special damages
19 sought, the offer of judgment was reasonable, timely and in good faith; and
- 20 • Plaintiff and Plaintiff's Counsel unreasonably maintained and extended the action
21 against Luxor and, thus, is subject to an award of attorney's fees.

22 In addition to Luxor's argument as the prevailing party and obtaining a judgment more
23 favorable than its' NRCP 68 offer of judgment, Luxor respectfully requests the Court award Luxor's
24 attorneys' fees incurred in this action to defend the baseless, unreasonable, and frivolous allegations
25 made by Plaintiff pursuant to NRS §18.010 and NRS §7.085. All the jurors concluded, including the
26 two dissenters, that all the evidence showed that Plaintiff was at a minimum of 51% at fault and, thus,
27 no recovery. The evidence and trial confirmed that the action was maintained without reasonable
28 grounds triggering an award of attorney's fees pursuant NRS §18.010(2)(b). Because Plaintiff brought

1 and maintained this lawsuit against Luxor "without reasonable ground," Defendant is entitled to an
2 award of attorney fees. The Nevada legislature requires courts to "liberally construe" NRS §
3 18.010(2)(b)'s allowance for attorney fees to a prevailing party in groundless lawsuits "in favor of
4 awarding attorney's fees in all appropriate situations."

5 II.

6 ARGUMENT

7 1. **Based on the lack of evidence to support liability against Luxor, and no special damages 8 sought, the offer of judgment was reasonable, timely and in good faith**

9 The purpose of offers of judgment is to promote settlement of suits by rewarding defendants
10 who make reasonable offers and penalizing plaintiffs who refuse to accept them. Early settlement
11 saves time and money for the court system, the parties, and the taxpayers. NRCP 68 requires a
12 plaintiff's attorney to advise his or her client to accept reasonable offers. The possibility that a client
13 will not heed sound advice is a risk that the attorney, not the opposing party, must bear. *John J. Muije,*
14 *Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

15 Plaintiff complains that Luxor's offer was too little and too early and, thus, not in good faith.
16 Plaintiff asserts that at the time of the offer was made (March 23, 2017), little information was known
17 to allow Plaintiff to evaluate the claim. This argument is ironic given that Plaintiff was the keeper of
18 the facts from the beginning with knowledge of the accident and statements from Plaintiff and her
19 family showing there was little to no chance Plaintiff would not be found at least 51% at fault for
20 driving her scooter into a stationary table.

21 Plaintiff claims that the \$1,000 was too little given that Plaintiff had over \$400,000 in medical
22 bills. This argument is twisted since Plaintiff did not present any evidence of medical bills at trial.
23 Although Plaintiff presented a life care planner at trial, Plaintiff later stipulated on the record during
24 trial that Plaintiff would not be asking the jury to award any damages for past medical bills or future
25 medical bills. Therefore, given that Plaintiff's medical bills sought at trial was Zero, and liability was
26 unlikely against Luxor, an offer of \$1,000 early in the case, almost two years before trial, and months
27 before incurring substantial fees and costs in taking depositions, retaining experts, and other discovery,
28 was not only reasonable, but predictive.

1 This case against Luxor was never about damages. It was about liability. Was Luxor
2 responsible for Plaintiff's injuries because Plaintiff drove her scooter into a table at Luxor's Deli; the
3 unequivocal answer was No. Luxor informed Plaintiff of that position early on in the litigation. On
4 February 21, 2017, Luxor's counsel discussed the allegations in the complaint, how the allegations
5 were inaccurate, false, and did not support a negligence claim against Luxor. (See letter to Matthew
6 Pfau, Esq., dated March 23, 2017, a true and correct copy is attached hereto as Exhibit "A"). Luxor
7 confirmed the inaccurate and false allegations in the complaint, confirmed the facts that Plaintiff and
8 her family moved the furniture causing any "obstruction" and, thus, requested a dismissal. *Id.* At this
9 point, Luxor also served the offer of judgment. After incurring substantial fees and costs, as well as
10 fees and costs to travel to Alabama to take depositions of Plaintiff and Plaintiff's family, Luxor again
11 attempted to encourage Plaintiff to resolve the claim against Luxor and even offered to waive its
12 attorney's fees and costs, which were substantial. (See letter to Matthew Pfau, Esq., dated June 15,
13 2017, a true and correct copy is attached hereto as Exhibit "B"). Plaintiff continued to ignore Luxor's
14 requests and maintained the frivolous action.

15 "The district court may consider the oral offers of settlement in determining whether
16 discretionary fees should be awarded under NRS Chapter 18 or the amount of fees." *Parodi v. Budetti*,
17 115 Nev. 236, 242 (1999). When considering a motion for attorney's fees pursuant to subdivision
18 (2)(a) in a case in which a non-statutory offer of settlement has been rejected, the district court must
19 consider the reasonableness of the rejection. Factors which go to reasonableness include whether the
20 offeree eventually recovered more than the rejected offer and whether the offeree's rejection
21 unreasonably delayed the litigation with no hope of greater recovery. *Cormier v. Manke*, 108 Nev.
22 316, 830 P.2d 1327 (1992).

23 Subsequently, on August 20, 2018, Luxor moved for summary judgment. Plaintiff mainly
24 relied on an expert opinion to defeat the motion. The expert opinion suggested that it was "plausible"
25 that there was an ADA violation in the Deli. This Court narrowly denied Luxor's motion for summary
26 judgment and stated: "Counsel, I can tell you this: I'm gonna deny it this time. Major uphill battle.
27 Major uphill battle in this case; okay? Gonna deny it at this time without prejudice." (See Hearing
28

1 Transcript of hearings on September 24, 2108, Page 26:18-20, a true and correct copy is attached
2 hereto as Exhibit "C").

3 As shown at trial, there was never any evidence to suggest a dangerous condition existed inside
4 the Deli at the time of the incident. On December 10, 2018, this matter proceeded to trial resulting in
5 a full defense verdict in favor of Luxor. Plaintiff at no time in this case, whether in discovery or at
6 trial, provided any facts to establish a dangerous condition existed at the time of the incident. Thus,
7 Plaintiff failed to demonstrate any reasonable basis to support its case against Luxor and no
8 justification for rejecting the offer of judgment. As such, Plaintiff acted unreasonably by rejecting the
9 Offer of Judgment and proceeding to trial. Therefore, Luxor should be entitled to any attorney's fees
10 incurred after service of the offer of judgment pursuant to NRCP 68, totaling \$207,323.00 incurred in
11 defending Plaintiff's allegations, as Luxor received a more favorable judgment at the time of trial and
12 Plaintiff rejected a reasonable offer.

13 **2. Plaintiff and Plaintiff's Counsel unreasonably maintained and extended the action**
14 **against Luxor and, thus, is subject to an award of attorney's fees**

15 As shown above and in the original Motion, Luxor is entitled to an award of costs totaling
16 \$53,182.77 as the prevailing party pursuant to NRS 18.020. Plaintiff did not file a motion to retax
17 those costs and, thus, waived any objection. Luxor also seeks an award of \$207,323.00 in attorney's
18 fees pursuant to NRCP 68, NRS 7.085 and NRS 18.010.

19 Although Plaintiff submits an opposition to Luxor's request for fees under NRS 18.010,
20 Plaintiff concedes that "Defendant should not be entitled for attorney's fees for work completing in
21 preparing for trial, including time to prepare and perform depositions and time preparing and
22 defending Motions. If they [sic] court were to grant Defendants [sic] any fees in this case they should
23 be limited to the time spent during the 9 days of trial." (See Plaintiff's opposition, Page 5 line 26
24 through Page 6 line 4). Based on Plaintiff's logic and opposition, Luxor should be granted, at a
25 minimum, an award of \$45,207.00 in attorney's fees incurred for trial.

26 In addition to the concession, Luxor seeks the remaining attorney's fees incurred as Plaintiff
27 maintained this action and extended the litigation without reasonable grounds against Luxor and, thus,
28 is subject to the additional penalties under NRS 18.010 and NRS 7.085.

1 Nevada Revised Statute § 7.085 provides:

2 1. If a court finds that an attorney has:

3 (a) Filed, maintained or defended a civil action or proceeding
4 in any court in this State and such action or defense is not well-
5 grounded in fact or is not warranted by existing law or by an
6 argument for changing the existing law that is made in good faith;
7 or

8 (b) Unreasonably and vexatiously extended a civil action or
9 proceeding before any court in this State, the court shall require the
10 attorney personally to pay the additional costs, expenses and
11 attorney's fees reasonably incurred because of such conduct.

12 2. The court **shall** liberally construe the provisions of this section in
13 **favor of awarding costs, expenses and attorney's fees** in all
14 appropriate situations. It is the intent of the Legislature that the court
15 award costs, expenses and attorney's fees pursuant to this section and
16 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil
17 Procedure in all appropriate situations to punish for and deter frivolous
18 or vexatious claims and defenses because such claims and defenses
19 overburden limited judicial resources, hinder the timely resolution of
20 meritorious claims and increase the costs of engaging in business and
21 providing professional services to the public. (emphasis added).

22 A "groundless" claim is synonymous with a "frivolous" claim. *See United States v. Capener*, 590 F.3d
23 1058, 1066 (9th Cir. 2010). Under Nevada law, a claim is frivolous if "it is not well grounded in fact
24 or warranted either by existing law or by a good faith argument for the extension, modification, or
25 reversal of existing law." *Simonian v. Univ. & Cmty. College Sys. of Nev.*, 122 Nev. 187, 196, 128
26 P.3d 1057, 1063 (2006). "A frivolous claim is one that is legally unreasonable, or without legal
27 foundation." *In re Grantham Bros.*, 922 F.2d 1438, 1442 (9th Cir. 1991) (internal quotations omitted).
28 "A claim is frivolous if it is utterly lacking in legal merit" *United States ex rel. J. Cooper &*
Assocs. v. Bernard Hodes Group, Inc., 422 F. Supp. 2d 225, 238 (D.D.C. 2006). "A trial court is not
required to find an improper motive to support an award of attorney fees; rather, an award may be
based solely upon the lack of a good faith and rational argument in support of the claim." *Breining v.*
Harkness, 872 N.E.2d 155, 161 (Ind. App. 2007) (applying an attorney fees statute substantively
similar to Nevada's). A claim lacks reasonable grounds if it is "**not supported by any credible**
evidence at trial." *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998)
(internal quotation marks omitted)(emphasis added). Courts must "liberally construe [NRS
18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations."

1 In the opposition, Plaintiff asserts that there is no legal authority that would support an award
2 of fees and costs against Plaintiff and Plaintiff's counsel jointly and severally. (See Opposition, Page
3 7 lines 9-17). Under NRS 7.085(1), the district court can hold an attorney personally liable for the
4 attorney fees and costs an opponent incurs when the attorney "[u]nreasonably and vexatiously extends
5 a civil action or proceeding" or "[f]ile[s], maintain[s] or defend[s] a civil action . . . not well-grounded
6 in fact or is not warranted by existing law or by an argument for changing the existing law that is made
7 in good faith." *Public Employees' Ret. Sys. v. Gitter*, 393 P.3d 673, 682, 133 Nev. Adv. Rep. 18 (April
8 27, 2017). When awarding attorney fees, "a district court abuses its discretion by making such an
9 award without including in its order sufficient reasoning and findings in support of its ultimate
10 determination." *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228 at 233, 131 Nev.
11 Adv. Rep. 79 (September 24, 2015). Thus, the District Court may order and find the Plaintiff and
12 Plaintiff's attorney jointly and severally liable for an award of attorney's fees and costs if the District
13 Court's order sufficiently explains why and articulates sufficient facts under NRS 7.085 for the order.
14 *Id.* The court shall liberally construe the statute in favor of awarding attorney's fees

15 As noted in prior pleadings, motion for summary judgment, and again at trial, Plaintiff asserted
16 many different facts, allegations, and theories against Luxor that were not grounded in any fact.
17 Plaintiff fails to acknowledge the evidence did not change at any time throughout discovery or at trial
18 and that the lack of evidence demonstrating a dangerous condition was present from the outset. There
19 was no evidence of a dangerous condition nor was there any evidence to suggest the deli was
20 maintained in an unreasonable condition. Plaintiff's narrative throughout the case changed, but Luxor
21 maintained the same position throughout the entirety of the case. This was a simple case, Plaintiff
22 struck the base of a table with her scooter. The Court recognized it, Luxor recognized it, yet Plaintiff
23 still believes that because she sustained injuries, liability must lie with someone else.

24 The following is a list of allegations maintained in Plaintiff's complaint that were proven to be
25 false:

- 26 1. Plaintiff was entering the Deli at the time of the incident - ¶10
- 27 2. Luxor (Deli) employees moved dining tables and chairs- ¶10
- 28 3. Luxor (Deli) employees moved furniture to accommodate Plaintiff's scooter- ¶10

4. As Plaintiff operated the scooter over the base of the table, the front wheel gave way- ¶11

5. After Plaintiff struck the based of the table, Plaintiff fell to the right - 11

6. Plaintiff was unaware of a dangerous condition - ¶12

7. That the table was a dangerous condition to unsuspecting guests, including Plaintiff

- ¶16

(See Complaint, attached as Exhibit B to Luxor's original Motion for Attorney's fees and costs). After the inaccuracies were brought to Plaintiff's attention, Plaintiff refused to withdraw the false allegations, refused to amend the complaint, refused to dismiss Luxor, and maintained a civil action not well-grounded in fact, and unreasonably and vexatiously extended a civil action against Luxor requiring Luxor to incur substantial attorney's fees and costs reasonably incurred because of such conduct. NRS §7.085

From the date of the offer of judgment almost two years ago, Luxor has incurred \$207,323 in fees, which are more than reasonable and appropriately reflect the work performed by Luxor's team in litigating this matter as demonstrated by the outcome. This total does not include all fees and costs incurred by Luxor before the offer.

After the Offer was made, Luxor was forced to continue to litigate and defend this matter for twenty-one months. This time included extensive preparation for trial and intensive document review due to Plaintiff unjustifiably redacting entire pages of medical records. Luxor was forced to participate in lengthy motion work, including motions in limine, a motion for summary judgment, and several other motions, and culminating in a two week trial that resulted in a justifiable defense verdict. Thus, the *Brunzell* factors are satisfied and \$207,323.00 in fees is reasonable and should be awarded.

III.

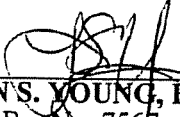
CONCLUSION

For the foregoing reasons, Defendant RAMPARTS, INC. dba LUXOR HOTEL & CASINO respectfully requests this Court grant its Motion for Attorney's Fees and Costs and award Luxor its' costs incurred in this matter totaling \$53,160.03 pursuant to NRS 18.020 and 18.005. Further, Defendant RAMPARTS, INC. dba LUXOR HOTEL & CASINO respectfully requests this Court grant

1 its Motion for Attorney's Fees and award Luxor \$207,323.00 for the reasonable attorney's fees
2 incurred in defending against Plaintiff's unfounded allegations, entering a total award in favor of
3 Luxor and against Plaintiff and Plaintiff's counsel for \$260,505.77 pursuant to NRCP 68, NRS
4 18.010(2)(b), NRS 18.020 and NRS 7.085. Further, this award must first be offset from other funds
5 received by Plaintiff and Plaintiff's attorney as part of the trial judgment and take priority over any
6 other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev.
7 664, 666, 799 P.2d 559, 560 (1990).

8 DATED this 20 day of February, 2019.

9 LINCOLN, GUSTAFSON & CERCOS, LLP

10
11 
12 LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

13 THOMAS W. MARONEY, ESQ.

Nevada Bar No. 13913

3960 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169

Attorneys for Defendant, RAMPARTS, INC.

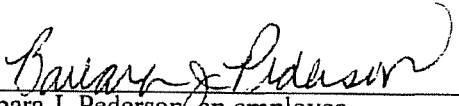
d/b/a LUXOR HOTEL & CASINO

14
15
16 v:\fj harrison_luxor\atty notes\drafts\pidge\20190220 rply_fees costs_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 20th day of February, 2019, I served a copy of the attached
5 **DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S REPLY IN**
6 **SUPPORT OF ITS MOTION FOR ATTORNEY'S FEES AND COSTS** via electronic service to
7 all parties on the Odyssey E-Service Master List.

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

14 V:\F-Harrison_Luxor\POS\2019\1220_RPLY_MFAC_bjp.doc

EXHIBIT "5"

**PICKARD
PARRY
PFAU**

KEITH F. PICKARD, ESQ.*†
ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

10120 SOUTH EASTERN
AVENUE, SUITE 140
HENDERSON, NEVADA 89052
702 910 4300 TEL
702 910 4303 FAX

www.pickardparry.com

* licensed in Nevada
† licensed in Utah
‡ licensed in California

September 29, 2016

Via Certified Mail No.: 7015 0640 0002 1611 1975

Loren S. Young, Esq.
LINCOLN, GUSTAFSON, & CERCOS, LLP
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

RE: Our Client: Vivian Harrison
Date of Loss: 12/01/2014

NOTICE OF ATTORNEY LIEN

Ms. Young,

This correspondence serves as notice of our right to an attorney lien for injuries arising from a slip and fall which occurred on or around December 1, 2014.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PICKARD PARRY PFAU is entitled to 33¹/₃% of all sums recovered prelitigation and 40% for all sums recovered after litigation is commenced.

We also claim a right to recover all costs advanced in an amount to be determined at the time of disbursement of any award or settlement.

Sincerely,

PICKARD PARRY PFAU


Matthew G. Pfau, Esq.

PICKARD PARRY PFAU

KEITH F. PICKARD, ESQ.*†
ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

10120 SOUTH EASTERN
AVENUE, SUITE 140
HENDERSON, NEVADA 89052
702 910 4300 TEL
702 910 4303 FAX

www.pickardparry.com

* licensed in Nevada
† licensed in Utah
‡ licensed in California

September 29, 2016

Via Certified Mail No.: 7015 0640 0002 1611 1982

David J. Mortensen, Esq.
Jared F. Herling, Esq.
ALVERSON TAYLOR MORTENSEN SANDERS
7401 West Charleston Blvd
Las Vegas, Nevada 89117-1401

RE: Our Client: Vivian Harrison
Date of Loss: 12/01/2014

NOTICE OF ATTORNEY LIEN

Mr. Mortensen & Mr. Herling,

This correspondence serves as notice of our right to an attorney lien for injuries arising from a slip and fall which occurred on or around December 1, 2014.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PICKARD PARRY PFAU is entitled to 33 $\frac{1}{3}$ % of all sums recovered prelitigation and 40% for all sums recovered after litigation is commenced.

We also claim a right to recover all costs advanced in an amount to be determined at the time of disbursement of any award or settlement.

Sincerely,

PICKARD PARRY PFAU


Matthew G. Pfau, Esq.

**PICKARD
PARRY
PFAU**

KEITH F. PICKARD, ESQ.*†
ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

10120 SOUTH EASTERN
AVENUE, SUITE 140
HENDERSON, NEVADA 89052
702 910 4300 TEL
702 910 4303 FAX

www.pickardparry.com

* licensed in Nevada
† licensed in Utah
‡ licensed in California

September 29, 2016

Via Certified Mail No.: 7015 0640 0002 1611 1968

Vivia Harrison
491 Country Road, #404
Haleyville, Alabama 35565

RE: Our Clients: Vivia Harrison
Date of Loss: 12/01/2014

NOTICE OF ATTORNEY LIEN

Ms. Harrison,

This correspondence serves as notice of our right to an attorney lien for injuries arising from a slip and fall which occurred on or around December 1, 2014.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PICKARD PARRY PFAU is entitled to 33¹/₃% of all sums recovered prelitigation and 40% for all sums recovered after litigation is commenced.

We also claim a right to recover all costs advanced in an amount to be determined at the time of disbursal of any award or settlement.

Sincerely,

PICKARD PARRY PFAU


Matthew G. Pfau, Esq.

EXHIBIT "6"



ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

880 SEVEN HILLS DRIVE,
SUITE 210
HENDERSON, NEVADA 89052
702 879 9555 TEL
702 879 9556 FAX

www.p2lawyers.com

* licensed in Nevada

† licensed in Utah

‡ licensed in California

January 8, 2019

Via Certified US Mail: 7015 0640 0002 1611 2750

ALVERSON TAYLOR & SANDERS
Attn: Courtney Christopher, Esq.
Attn: LeAnn Sanders, Esq.
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel
& Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

Ms. Christopher and Ms. Sanders,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to 33¹/₃% of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are \$169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.



ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

880 SEVEN HILLS DRIVE,
SUITE 210
HENDERSON, NEVADA 89052
702 879 9555 TEL
702 879 9556 FAX

www.p2lawyers.com

* licensed in Nevada

† licensed in Utah

‡ licensed in California

January 24, 2019

Via Certified US Mail: 7018 1830 0001 0148 7272

David and Vivia Harrison
491 Country Road, # 404
Haleyville, Alabama 35565

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel
& Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

David and Vivia,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to 33 $\frac{1}{3}$ % of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are \$169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.



ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

880 SEVEN HILLS DRIVE,
SUITE 210
HENDERSON, NEVADA 89052
702 879 9555 TEL
702 879 9556 FAX

www.p2lawyers.com

* licensed in Nevada
† licensed in Utah
‡ licensed in California

January 8, 2019

Via Certified US Mail: 7015 0640 0002 1611 2767

LINCOLN, GUSTAFSON & CERCOS
Attn: Loren S. Young, Esq.
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel
& Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

Mr. Young,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to 33 $\frac{1}{3}$ % of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are \$169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.



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
19
20
21
22
23
24
25
26
27
28

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 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 fr
DISTRICT COURT JUDGE
9 #29

10 Respectfully Submitted by:

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

12
13 
LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

14 3960 Howard Hughes Pkwy, Suite 200

Las Vegas, NV 89169

15 Attorneys for Defendant, RAMPARTS, INC.

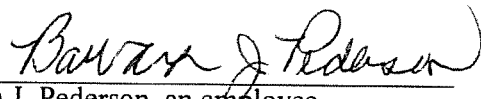
16 d/b/a LUXOR HOTEL & CASINO

17
18 v:\f-j\harrison_luxor\atty notes\drafts\pldgs\20190513 ordr_mrcn_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**

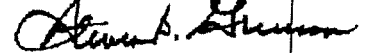
4 I HEREBY CERTIFY that on the 21st day of May, 2019, I served a copy of the attached
5 **NOTICE OF ENTRY OF ORDER** via electronic service to all parties on the Odyssey E-Service
6 Master List.

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\2019\521_NEOJ_bjp.doc
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 4



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
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
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.

22 DESERT MEDICAL EQUIPMENT, a Nevada
23 Domestic Corporation,

24 Third-Party Plaintiff,

25 v.

26 STAN SAWAMOTO, an individual,

27 Third Party Defendant.
28

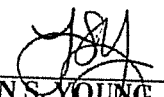
CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

NOTICE OF ENTRY OF ORDER

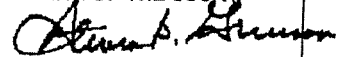
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:
YOU AND EACH OF YOU will please take notice that an Order was entered on the 21st day
of May, 2019; a true and correct copy is attached hereto.
DATED this 21st day of May, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP


LOREN S. YOUNG, ESQ.
Nevada Bar No. 7567
THOMAS W. MARONEY, ESQ.
Nevada Bar No. 13913
3960 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

v:\fj\harrison_luxor\atty notes\drafts\p\dgs120190521_ncoj_bjp.docx



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

8 Attorneys for Defendant, RAMPARTS, INC.
9 d/b/a LUXOR HOTEL & CASINO

10
11
12 DISTRICT COURT

13
14 CLARK COUNTY, NEVADA

15 VIVIA HARRISON, an individual,
16 Plaintiff,

17
18 v.

19
20 RAMPARTS, INC. d/b/a LUXOR HOTEL &
CASINO, a Nevada Domestic Corporation;
21 DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation, DOES I through XXX,
22 inclusive, and ROE BUSINESS ENTITIES I
through XXX, inclusive,
23 Defendants.
24

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

25 Plaintiff VIVIA HARRISON's Motion to Reconsider the Court's Order Granting Luxor an
26 Attorney Lien Offset, and Defendant RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO's
27 Opposition to Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien
28 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.

8 Nancy L. Alf #276
9 DISTRICT COURT JUDGE
#29

10 Respectfully Submitted by:

11 LINCOLN, GUSTAFSON & CERCOS, LLP

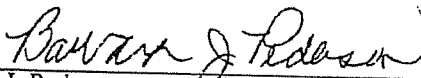
12 
13 LOREN S. YOUNG, ESQ.
14 Nevada Bar No. 7567
15 3960 Howard Hughes Pkwy, Suite 200
16 Las Vegas, NV 89169
17 Attorneys for Defendant, RAMPARTS, INC.
18 d/b/a LUXOR HOTEL & CASINO

19 v:\fj\harrison_luxor\atty notes\drafts\p\ldgs\20190513 order_mrcn_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 
11 Barbara J. Pederson, an employee
12 of the law offices of
13 Lincoln, Gustafson & Cercos, LLP

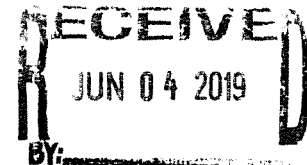
14 V:\F:\N\Harrison_Luxor\PCS2019\521_NEOL_bjp.doc

Exhibit 5

twm

Electronically Filed
6/4/2019 2:26 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson



1 NOA
2 BOYD B. MOSS III, ESQ.
3 Nevada Bar No. 8856
4 boyd@mossberglv.com
5 MOSS BERG INJURY LAWYERS
6 4101 Meadows Lane, Suite 110
7 Las Vegas, Nevada 89107
8 Telephone: (702) 222-4555
9 Facsimile: (702) 222-4556
10 *Attorneys for Plaintiff*

11 MATTHEW G. PFAU, ESQ.
12 Nevada Bar No. 11439
13 matt@p2lawyers.com
14 PARRY & PFAU
15 880 Seven Hills Drive, Suite 210
16 Henderson, Nevada 89052
17 Telephone: (702) 879-9555
18 Facsimile: (702) 879-9556
19 *Attorneys for Plaintiff*

20 DISTRICT COURT

21 CLARK COUNTY, NEVADA

22 VIVIA HARRISON, an Individual,
23 Plaintiff,

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

24 v.

25 RAMPARTS, INC. d/b/a LUXOR HOTEL &
26 CASINO, a Nevada Domestic Corporation;
27 DESERT MEDICAL EQUIPMENT, a
28 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.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff, VIVIA HARRISON, by and through her

1 LAWYERS, and MATTHEW G. PFAU, ESQ. of the law firm of PARRY & PFAU hereby
2 appeals to the Supreme Court of Nevada, Plaintiff's Motion to Reconsider the Court's Order
3 Granting Luxor an Attorney Lien Offset entered in this action on the 16th day of May, 2019.

4 DATED this 21 day of June, 2019.

6 MOSS BERG INJURY LAWYERS

8 By: 

9 BOYD B. MOSS III, ESQ.

Nevada Bar No. 8856

boyd@mossberglv.com

11 MARCUS A. BERG, ESQ.

Nevada Bar No. 9760

marcus@mossberglv.com

12 4101 Meadows Lane, Suite 110

13 Las Vegas, Nevada 89107

14 Telephone: (702) 222-4555

15 Facsimile: (702) 222-4556

Attorneys for Plaintiff

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b) and Administrative Order 14-02 of the Eighth Judicial District
5 Court, I hereby certify that I am an employee of MOSS BERG INJURY LAWYERS and that on
6 the 11 day of June, 2019, I served the above and foregoing **NOTICE OF APPEAL** on the
7 following parties in compliance with the Nevada Electronic Filing and Conversion Rules:
8
9

10 Matthew G. Pfau, Esq.
11 PARRY & PFAU
12 880 Seven Hills Drive, Suite 210
13 Henderson, Nevada 89052
14 *Co-Counsel for Plaintiff*

15 Loren S. Young, Esq.
16 LINCOLN GUSTAFSON & CERCOS
17 3960 Howard Hughes Pkwy., Suite 200
18 Las Vegas, Nevada 89169
19 *Attorneys for Defendant,*
20 *RAMPARTS, INC.*

21 Brian K. Terry, Esq.
22 THORNDAL ARMSTRONG, et al.
23 1100 East Bridger Avenue
24 Las Vegas, Nevada 89101
25 *Attorneys for Defendant, PRIDE*
26 *MOBILITY PRODUCTS CORP.*

27 LeAnn Sanders, Esq.
28 ALVERSON TAYLOR et al.
6605 Grand Montecito Pkwy., Suite 200
Las Vegas, Nevada 89149
Attorneys for Defendant/Third-Party
Plaintiff, DESERT MEDICAL

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

An Employee of MOSS BERG INJURY LAWYERS

Exhibit 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

VIVIA HARRISON

Appellants

v.

RAMPARTS INC., dba LUXOR HOTEL &
CASINO

No. 78964

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme 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 27 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 8th Department 29
County of Clark Judge David Jones
District Ct. Case No. A-16-732342-C

2. Attorney filing this docketing statement:

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

Client(s) Vivia Harrison

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Loren S. Young Telephone (702) 257-1997
Firm Lincoln Gustafson & Cercos
Address 3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

Client(s) Ramparts, Inc., dba Luxor Hotel & Casino

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ 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:

None.

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:

None.

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

This is an action for personal injuries sustained on December 10, 2014. In December 2018 a nine day trial took place. Prior to the Jury's verdict Plaintiff and Defendant Desert Medical Equipment entered into a high-low settlement agreement. Pursuant to the contract Desert Medical was obligated to pay a minimum of \$150,000 regardless of the verdict. On December 20, 2018 the Jury returned a verdict in favor of the Defendants. On December 20, 2018 Plaintiff's counsel sent a Notice of Attorney Lien to all interested parties. On January 17, 2019 Defendant Luxor filed a Motion For Attorney's Fees and Costs that Plaintiff opposed. Defendant filed a reply that argued under John J. Muije v. North Las Vegas Cab Co., 106 Nev. 664, 799 P.2d559 (1990), any attorney's fees and costs awarded to Luxor should be subject to an equitable offset from the settlement reached with Luxor. On February 27, 2019, the Court granted the Defendant's motion without Plaintiff having an opportunity to brief the issue. This ruling effectively allowed Luxor to take priority over Plaintiff's counsel attorney lien on a settlement with another party. On March 28, 2019, Plaintiff's counsel filed a Motion for Reconsideration that was denied.

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

Whether the Defendant's are entitled to an equitable offset under John J. Muije v. North Las Vegas Cab Co., 106 Nev. 664, 799 P.2d559 (1990), and whether any offset would take priority over Plaintiff's own attorney's fees and costs from the seperate settlement. In Muije the Plaintiff rejected offers of judgment from the Defendant and then got less at trial. The Nevada Supreme Court held in that case the 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. In this case, prior to the jury's verdict, Ms. Harrison entered in to a settlement agreement with Desert Medical Equipment. This was not part of any judgment, but a contract to resolve Plaintiff's claims against that Defendant.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings 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:

None.

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:

13. Assignment to the 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:

This matter is to be assigned to the Court of Appeals under NRAP 17 (2) and (8).

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

Was it a bench or jury trial? Jury Trial

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?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from May 10, 2019

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 May 21, 2019

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 June 4, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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) _____

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

NRAP 3A(b)(1)- A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered

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

(a) Parties:

Plaintiff Vivia Harrison

Defendant, Rampart, Inc.

Defendant, Desert Medical Equipment

(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:

Plaintiff entered into a high-low settlement agreement with Desert Medical Equipment during the trial.

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.

Vivia Harrison - Negligence

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:

(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)):

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

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

7/2/19
Date

Boyd B. Moss III, Esq.
Name of counsel of record

[Signature]
Signature of counsel of record

Nevada and Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 2nd day of July, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☒ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Loren S. Young, Esq.
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Attorneys for Respondents

Dated this 2nd day of July, 2019

[Signature]
Signature

Exhibit 7

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **Moss Berg Injury Lawyers**
2 Boyd B. Moss III, Esq.
3 Nevada Bar No. 8856
4 4101 Meadows Lane, Suite 110
5 Las Vegas, Nevada 89107
6 Telephone: (702) 222-4555
7 Facsimile: (702) 222-4556
8 boyd@mossberglv.com

9 **Parry & Pfau**
10 Matthew G. Pfau, Esq.
11 Nevada Bar No. 11439
12 880 Seven Hills Drive, Suite 210
13 Henderson, Nevada 89052
14 Telephone: (702) 879-9555
15 Facsimile: (702) 879-9556
16 matt@p2lawyers.com

17 **Marquis Aurbach Coffing**
18 Micah S. Echols, Esq.
19 Nevada Bar No. 8437
20 Tom W. Stewart, Esq.
21 Nevada Bar No. 14280
22 10001 Park Run Drive
23 Las Vegas, Nevada 89145
24 Telephone: (702) 382-0711
25 Facsimile: (702) 382-5816
26 mechols@maclaw.com
27 tstewart@maclaw.com

28 *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.

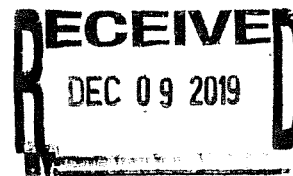
Case No.: A-16-732342-C
Dept. No.: XXIX

AMENDED NOTICE OF APPEAL

159
Electronically Filed
12/3/2019 4:39 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

Electronically Filed
Dec 06 2019 03:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court



MAC:15877-001 3899474_1

Docket 80167 Document 2019-49634

Case Number: A-16-732342-C

1 Plaintiff, Vivian Harrison, by and through her attorneys of record, Marquis Aurbach
2 Coffing; Moss Berg Injury Lawyers; and Parry & Pfau, hereby files this amended appeal to the
3 Supreme Court of Nevada from: (1) the order granting Defendant Ramparts, Inc. dba Luxor
4 Hotel & Casino's motion for attorney's fees and costs, which was filed on March 18, 2019 and
5 attached as **Exhibit 1**; (2) the order denying Plaintiff's motion to reconsider the Court's order
6 granting Luxor an attorney lien offset, which was filed on May 21, 2019 and attached as
7 **Exhibit 2**; and (3) the stipulation and order to dismiss Defendant Desert Medical Equipment,
8 only, which was filed on November 26, 2019 and is attached as **Exhibit 3**.

9 Dated this 3rd day of December, 2019.

10
11 MARQUIS AURBACH COFFING

12
13 By /s/ Micah S. Echols
14 Micah S. Echols, Esq.
15 Nevada Bar No. 8437
16 Tom W. Stewart, Esq.
17 Nevada Bar No. 14280
18 10001 Park Run Drive
19 Las Vegas, Nevada 89145
20 *Attorneys for Plaintiff, Vivian Harrison*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AMENDED NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 3rd 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 8

usy

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.

Elizabeth A. Brown
Clerk of Supreme Court
**AMENDED DOCKETING
STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

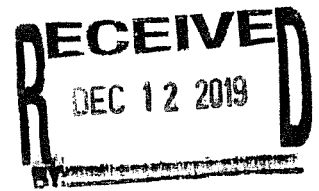
All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> 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

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