

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.

Case No. 80167

MOTION TO DISMISS

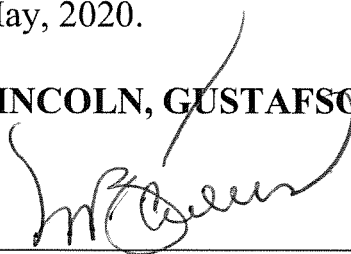
Electronically Filed
May 22 2020 02:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

COMES NOW, Respondent/Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO (“Luxor”), by and through their counsel of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, and hereby submits its Motion to Dismiss pursuant to NRAP 14(f).

This Motion is based on the papers, pleadings and records in the Court’s file and the following Points and Authorities and exhibits attached thereto.

DATED this 28 day of May, 2020.

LINCOLN, GUSTAFSON & CERCOS, LLP



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 Respondent/Defendant, Luxor

I. INTRODUCTION

A careful review of the docketing statement and documents before this Court reveals a jurisdictional defect. This Court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *See Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 676 P.2d 1152 (1984). No statute or court rule allows for an appeal from the final judgment appealed from by appellant in this matter. This is an appeal from a final judgment where appellant stipulated to dismiss all claims against defendant, Desert Medical Equipment (“Desert Medical”). Since appellant stipulated to Desert Medical’s dismissal, appellant is not aggrieved by that judgment and may not appeal the same. *See* NRAP 3A(a)(requiring a party to be aggrieved by an order or judgment to have standing to appeal); *Vinci v. Las Vegas Sands, Inc.*, 115 Nev. 243, 246, 984 P.2d 750, 752 (1999) (indicating that a party is not aggrieved where that party voluntarily stipulated to dismiss a claim). Moreover, Plaintiff’s ability to appeal from any interlocutory orders, including the order denying reconsideration of the offset, was contingent on the final judgment being appealable, which it is not. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1988) (recognizing that this court may review an interlocutory order in the context of an appeal from final judgment). Accordingly, as it appears that this Court lacks jurisdiction, this appeal should be dismissed.

II. RELEVANT PROCEDURAL BACKGROUND

In the case *sub judice*, a nine (9) day trial took place in December, 2018. Before the jury's verdict, Appellant/ Plaintiff, Vivian Harrison ("Plaintiff") and Desert Medical purportedly entered into a high-low settlement agreement. Because of such, 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 judgment 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, 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 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. An order denying

Plaintiff's motion to reconsider was filed on May 21, 2019. (See Exhibit "3"). On June 4, 2019, Plaintiff filed a notice of appeal, appealing only the order denying the reconsideration motion, which was docketed in this Court as Docket No. 78964. (See Exhibit "4").

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, voluntarily dismissing all claims against Desert Medical. (See Exhibit "5").

On December 3, 2019, the Plaintiff filed an amended notice of appeal, docketed in this Court as Docket No. 80167. (See Exhibit "6").¹

On November 14, 2019, this Court entered an order in Docket No. 78964 directing Plaintiff to show cause why the appeal should not be dismissed for lack of a substantively appealable order. Plaintiff responded to this Court's order and filed a motion to combine the two appeals and to waive the filing fee for Docket No. 80167.

On February 14, 2020, this Court entered an order which provided, *inter alia*, that "Docket No. 80167 is an appeal from the final order dismissing the

¹ In the amended notice of appeal, Plaintiff is appealing from: (1) the stipulation and order to dismiss Desert Medical only; (2) the order denying Plaintiff's motion to reconsider the court's order granting Luxor an attorney lien offset; and (3) the order granting Defendant's motion for attorney's fees and costs.

remaining defendant below [Desert Medical], thereby constituting the final judgment in the action below.” (See Exhibit “7”). This Court ordered that the appeal in Docket No. 78964 was dismissed for lack of jurisdiction. This Court further ordered that the appeal in Docket No. 80167 could proceed and the Plaintiff may challenge any interlocutory orders, including the order denying reconsideration of the offset, in the appeal from the final judgment. *See* NRAP 4(a)(6). The motion to waive the filing fee and combine cases was denied. On March 11, 2020, Plaintiff filed a Docketing Statement in the case *sub judice*. (See Exhibit “8”).

III. LEGAL ARGUMENT

1. Plaintiff’s Stipulation Strategy Failed to Produce a Final Judgment that Conferred Appellate Jurisdiction on This Court

In response to the order to show cause in Docket No. 78964, Plaintiff acknowledged a jurisdictional defect and told this Court that a final, appealable order had not been entered, making Plaintiff’s original notice of appeal premature. Plaintiff then embarked on a strategy to cure the jurisdictional defect by entering into a stipulation with Desert Medical to voluntarily dismiss all claims against Desert Medical pursuant to a purported settlement agreement. The stipulation and order of dismissal was filed on November 26, 2019. After procuring an order dismissing all claims against Desert Medical, Plaintiff then filed an “amended” notice of appeal in Docket No. 80167. In the case *sub judice*, Plaintiff is appealing from the stipulation

and order dismissing Desert Medical, constituting the final judgment below, and interlocutory orders, including the order denying reconsideration of the offset. It appears that the purpose of the stipulation and order was merely a device to achieve appellate jurisdiction of the interlocutory orders.² Unfortunately for Plaintiff, her stipulation strategy produced a final judgment that fails to invoke this Court's appellate jurisdiction.

A review of the record demonstrates that this Court lacks jurisdiction over this appeal because the November 26, 2019 order voluntarily dismissing all claims against Desert Medical with prejudice pursuant to a settlement agreement is not appealable. *See e.g., Concha v. London*, 62 F.3d 1493, 1507 (9th Cir. 1995) (voluntary dismissal with prejudice not appealable if made pursuant to settlement agreement); *Plasterers Local Union No. 346 v. Wyland Enters. Inc.*, 819 F.2d 217, 219 (9th Cir. 1987) (“Generally, a party may not gain review of a stipulated judgment.”)

Another basis for the nonappealability of a voluntary dismissal is that a plaintiff may not appeal from an order which a plaintiff requested. This approach is consistent with the “invited error” doctrine of this state, which provides that errors

² In *Plasterers Local Union No. 346 v. Wyland Enterprises*, 819 F.2d, 218 (9th Cir. 1987), the Ninth Circuit rejected the proposition that “a stipulated judgment is appealable when the stipulation is merely a means of gaining appellate review of an interlocutory order.”

contributed to, induced or provoked are not reversible. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (“The doctrine of ‘invited error’ embodies the principle that a party may not be heard to complain on appeal of errors which he himself induced or provoked the [district] court . . .to commit.”); *see also, Rhyne v. State*, 118 Nev. 1, 9, 38 P.3d 163, 168 (2002) (recognizing that a defendant who invited the error would be estopped from raising the error as a claim on appeal).

A related theory is that after a voluntary dismissal, a plaintiff lacks standing to appeal. A plaintiff may not appeal a voluntary dismissal because there is no involuntary or adverse judgment. *See e.g., Seidamn v. City of Beverly Hills*, 785 F.2d 1447, 1448 (9th Cir. 1986) (“A plaintiff may not appeal a voluntary dismissal because it is not involuntary adverse judgment against him.”); *Bettys v. Quigley*, 765 Fed. Appx. 376 2019 U.S. App. LEXIS 11908, 2019 WL 1773132 (9th Cir. Apr. 23, 2019) (same)³.

As evident from the forgoing, the stipulation and order voluntarily dismissing all claims against Desert Medical constituting the final judgment is not an involuntary or adverse judgment against Plaintiff and as such, is not substantively appealable.

³ It is of import to note, unpublished opinions cited herein are cited for persuasive value, if any, and not as precedent. *See* NRAP 36(c)(6).

2. The Stipulation and Order Voluntarily Dismissing all Claims Against Desert Medical is not Substantively Appealable

This Court has determined that the final judgment in the case *sub judice* is the November 26, 2019 order where Plaintiff stipulated to voluntarily dismiss all claims against Desert Medical. After reviewing Plaintiff's docketing statement, it is apparent that Plaintiff is not aggrieved by the stipulation and order voluntarily dismissing all claims against Desert Medical. Close scrutiny of the docketing statement reveals that it does not identify any issues on appeal related to the stipulation and order voluntarily dismissing Desert Medical. (See Exhibit "9," Docketing Statement, p. 6). Instead, Plaintiff only identifies issues on appeal related the interlocutory orders, *i.e.*, order awarding attorney fees and costs and the order denying reconsideration of the offset. (See *id.*) Clearly, the stipulation and order was a resourceful, albeit failed, attempt by Plaintiff to gain appellate review over the interlocutory orders. Unfortunately for Plaintiff, the stipulation and order voluntarily dismissing Desert Medical is not substantively appealable.

Since Plaintiff stipulated and agreed to voluntarily dismiss all claims against Desert Medical, Plaintiff is not aggrieved by that judgment and may not appeal from the same. See NRAP 3A(a)(allowing an appeal from an aggrieved party); *Vinci v. Las Vegas Sands, Inc.*, 115 Nev. 243, 984 P.2d 750 (1999) (indicating that a party is not aggrieved where the party voluntarily stipulated to dismiss a claim); *Aldrich v. Adlrich*, 126 Nev. 688 P.3d 743, 2010 Nev. LEXIS 660 (Nev. Jan. 11,

2010)(same); *Schricker v. Jayne- Schricker*, 2014 Nev. Unpub. LEXIS1137, 2014 WL 373 2030 (Nev. July 24, 2014) (same).

In *HOA Capital Advisors, LLC v. Bank of Am., N.A.*, 2019 Nev. Unpub. LEXIS 100, 433 P.3d 1258 (2019), the Nevada Supreme Court opined:

The final judgment in case A-17-758669 was entered pursuant to a stipulation to dismiss claims. Thus, appellant is not aggrieved by that judgment and may not appeal. *See* NRAP 3A(a) (allowing an appeal by an aggrieved party); *Vinci v. Las Vegas Sands, Inc.*, 115 Nev. 243, 984 P.2d 750 (1999) (indicating that a party is not aggrieved where that party voluntarily stipulated to dismiss a claim).

As evident from the forgoing, Plaintiff is not aggrieved by the final judgment because Plaintiff voluntarily stipulated to dismiss all claims against Desert Medical and thus, this Court lacks jurisdiction to address any challenge to the dismissal on appeal.

3. Since the Final Judgment is Not Substantively Appealable, This Court Lacks Jurisdiction to Hear Any Interlocutory Orders, Including the Order Denying Reconsideration of the Offset.

In the case *sub judice*. Plaintiff is challenging various interlocutory orders made by the district court prior to the November 26, 2019, dismissal order which this Court has determined constitutes the final judgment. Since the interlocutory orders, *i.e.*, order awarding attorney fees and costs and the order denying reconsideration of the offset, were made before the final judgment, any challenge to these interlocutory orders may only be made in the context of Plaintiff's appeal from the final judgment. *See Afrand v. Reo Asset Servs., LLC*, 2011 Nev. Unpub. LEXIS

1476, 2011 WL 4711892 (Nev. Oct. 6, 2011) (an interlocutory order awarding attorney fees and costs may be challenged in the context of an appeal from the final judgment); *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (recognizing that this court may review an interlocutory order in the context of an appeal from the final judgment).

Applying the forgoing, Plaintiff's ability to appeal any interlocutory orders was contingent on the final judgment being appealable, which it is not. *See id.* Since the final judgment is not substantively appealable, this Court lacks jurisdiction to entertain any interlocutory orders, including the order awarding attorney fees and costs and the order denying reconsideration of the offset.

IV. CONCLUSION

For the forgoing reasons, Luxor's motion should be granted, and this appeal dismissed for lack of jurisdiction by this Court to entertain the same.

DATED this 28 day of May, 2020.

LINCOLN, GUSTAFSON & CERCOS, LLP



LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

MARK B. BAILUS, ESQ.

Nevada Bar No. 2284

3960 Howard Hughes Parkway, Suite 200

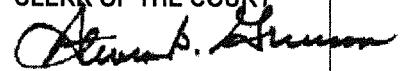
Las Vegas, Nevada 89169

Attorneys for Respondent/Defendant, Luxor

INDEX OF EXHIBITS

Exhibit 1	Judgment on Jury Verdict and Verdict
Exhibit 2	Notice of Entry of Order and Order Granting Defendant Luxor's Motion for Attorney's Fees and Costs
Exhibit 3	Notice of Entry of Order and Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset
Exhibit 4	Notice of Appeal
Exhibit 5	Notice of Entry and Stipulation and Order to Dismiss Defendant Desert Medical Equipment Only
Exhibit 6	Amended Notice of Appeal (without exhibits)
Exhibit 7	Order Dismissing Appeal and Regarding Motions
Exhibit 8	Docketing Statement (without exhibits)

EXHIBIT “1”



1 **JGJV**
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 **DISTRICT COURT**
23 **CLARK COUNTY, NEVADA**
24
25
26
27
28

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.

24 DESERT MEDICAL EQUIPMENT, a Nevada
25 Domestic Corporation,

26 Third-Party Plaintiff,

27 v.

28 STAN SAWAMOTO, an individual,

Third Party Defendant.

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

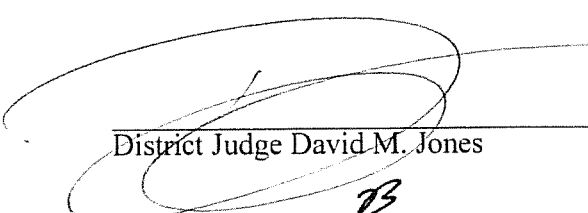
JUDGMENT ON JURY VERDICT

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:

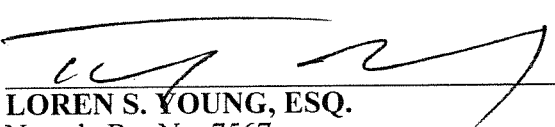
5 That the Plaintiff, VIVIA HARRISON, take nothing from Defendants, DESERT MEDICAL
6 EQUIPMENT and RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO.

7 DATED this 10 day of January, 2019.

8
9
10 
11 District Judge David M. Jones
12 *JB*

12 Submitted by:

13 **LINCOLN GUSTAFSON & CERCOS, LLP**

14 
15 **LOREN S. YOUNG, ESQ.**

Nevada Bar No. 7567

16 **THOMAS W. MARONEY, ESQ.**

Nevada Bar No. 13913

17 3960 Howard Hughes Parkway, Suite 200

18 Las Vegas, Nevada 89169

Attorneys for Defendant, RAMPARTS, INC.

19 d/b/a LUXOR HOTEL & CASINO

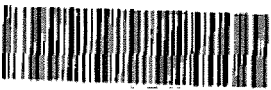
20
21 v:\f-j\harrison_luxor\atty notes\drafts\pldgs\20190102_jgfv_bjp.docx
22
23
24
25
26
27
28

A-16-732342-C

VER

Verdict

4804731



ORIGINAL

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

DEC 20 2018

VER

DISTRICT COURT

BY Natalie Ortega 126 pm
NATALIE ORTEGA, DEPUTY 12-20-18

CLARK COUNTY, NEVADA

VIVIA HARRISON, an Individual,

CASE NO. A-16-732342-C

Plaintiff,

DEPT. NO. 29

v.

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

Defendants.

VERDICT

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

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

was: _____ %

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

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

TOTAL: _____ 100 %

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

3 we find:

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

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

6 Total Damages: \$ _____

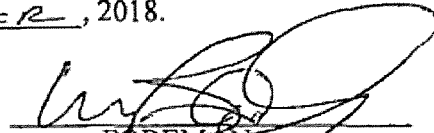
7
8
9 DATED this _____ day of _____, 2018.

10
11
12 _____
13 FOREPERSON
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 DESERT MECHANICAL
EQUIPMENT and against the plaintiff.

DATED this 20th day of December, 2018.


FOREMAN

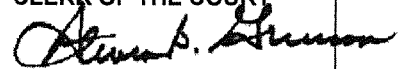
VERDICT FOR DEFENDANT

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

DATED this 20th day of DECEMBER, 2018.


FOREMAN

EXHIBIT “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

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 MECHANICAL EQUIPMENT, a
20 Nevada Domestic Corporation, DOES I through
21 XXX, inclusive, and ROE BUSINESS
22 ENTITIES I through XXX, inclusive,
23
24 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 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

4 DATED this 18th day of March, 2019.

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

6
7 
LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

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

Nevada Bar No. 13913

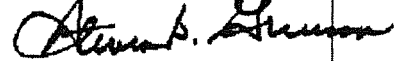
9 3960 Howard Hughes Parkway, Suite 200

10 Las Vegas, NV 89169

11 Attorneys for Defendant, RAMPARTS, INC.

12 d/b/a LUXOR HOTEL & CASINO

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



1 **OGM**
2 **LOREN S. YOUNG, ESQ.**
3 Nevada Bar No. 7567
4 **THOMAS W. MARONEY, ESQ.**
5 Nevada Bar No. 13913
6 **LINCOLN, GUSTAFSON & CERCOS, LLP**
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 again 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**).

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


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

10 DATED this 15 day of March, 2019.

11
12
13 
14 DISTRICT COURT JUDGE 73

15 Respectfully Submitted by:

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

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

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

24 Approved as to form and content by:

25 **PARRY & PFAU**

MOSS BERG INJURY LAWYERS

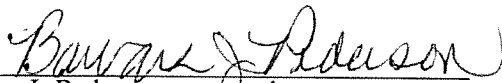
26 Refused to Sign
27 **MATTHEW G. PFAU, ESQ.**
28 Nevada Bar No. 11439
880 Seven Hills Drive, Suite 210
Henderson, NV 89052
Attorneys for Plaintiff, VIVIA HARRISON

Refused to Sign
BOYD B. MOSS, ESQ.
Nevada Bar No. 8856
4101 Meadows Lane, Suite 110
Las Vegas, NV 89107
Attorneys for Plaintiff, VIVIA HARRISON

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

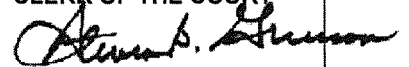
3 **CERTIFICATE OF SERVICE**

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

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

13 V:\F-J\Harrison_Luxor\POS\20190318_NEQJ_bjp.doc
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “3”



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

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

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

14 VIVIA HARRISON, an individual,
15 Plaintiff,

16 v.

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

22 DESERT MEDICAL EQUIPMENT, a Nevada
23 Domestic Corporation,

24 Third-Party Plaintiff,

25 v.

26 STAN SAWAMOTO, an individual,

27 Third Party Defendant.

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

NOTICE OF ENTRY OF ORDER

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

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

4 DATED this 21st day of May, 2019.

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

6
7 
LOREN S. YOUNG, ESQ.

Nevada Bar No. 7567

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

Nevada Bar No. 13913

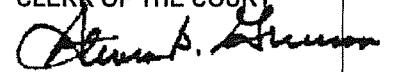
9 3960 Howard Hughes Parkway, Suite 200

10 Las Vegas, NV 89169

11 Attorneys for Defendant, RAMPARTS, INC.

12 d/b/a LUXOR HOTEL & CASINO

13 v:\fj\harrison_luxor\atty notes\drafts\pldgs\20190521_neoj_bjp.docx



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 #2764
DISTRICT COURT JUDGE
9 #29

10 Respectfully Submitted by:

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

12
13 
LOREN S. YOUNG, ESQ.

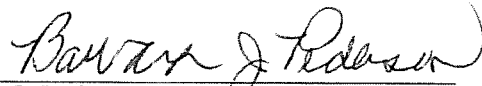
14 Nevada Bar No. 7367
15 3960 Howard Hughes Pkwy, Suite 200
16 Las Vegas, NV 89169
17 Attorneys for Defendant, RAMPARTS, INC.
18 d/b/a LUXOR HOTEL & CASINO

19
20
21
22
23
24
25
26
27
28
v:\f-j\harrison_luxor\atty notes\drafts\pldgs\20190513 ord_r_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**

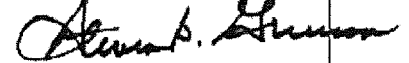
4 I HEREBY CERTIFY that on the 21st day of May, 2019, I served a copy of the attached
5 **NOTICE OF ENTRY OF ORDER** via electronic service to all parties on the Odyssey E-Service
6 Master List.

7
8
9 

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

13 V:\F:\Hamison_Luxor\POS\2019\521_NEOJ_bjp.doc

EXHIBIT “4”



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,

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.

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

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 4 day of June, 2019.

6 MOSS BERG INJURY LAWYERS

8 By: _____

9 BOYD B. MOSS III, ESQ.

10 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

16 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

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

Matthew G. Pfau, Esq.
PARRY & PFAU
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Co-Counsel for Plaintiff

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

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

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

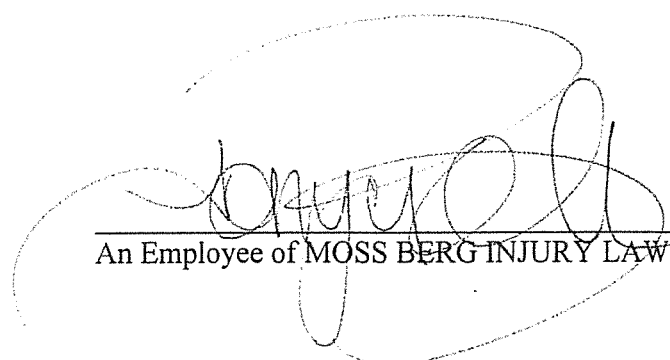

An Employee of MOSS BERG INJURY LAWYERS

EXHIBIT “5”

MARQUIS AURBACH COFFING

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

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

Parry & Pfau
Matthew G. Pfau, Esq.
Nevada Bar No. 11439
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Telephone: (702) 879-9555
Facsimile: (702) 879-9556
matt@p2lawyers.com

Marquis Aurbach Coffing
Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
tstewart@maclaw.com

Attorneys for Plaintiff, Vivia Harrison

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

vs.


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

Defendants.

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

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

Electronically Filed
12/6/2019 8:26 AM
Steven D. Grierson
CLERK OF THE COURT



MAC:15877-001 3918169_1

MARQUIS AURBACH COFFING

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

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

4 Dated this 6th day of December, 2019.

5
6 MARQUIS AURBACH COFFING

7
8 By /s/ Micah S. Echols
9 Micah S. Echols, Esq.
10 Nevada Bar No. 8437
11 Tom W. Stewart, Esq.
12 Nevada Bar No. 14280
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 *Attorneys for Plaintiff, Vivia Harrison*
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

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

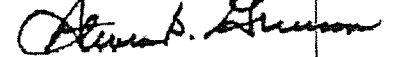
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A.

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

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

Exhibit 1



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

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **VIVIA HARRISON, an individual;**
11 **Plaintiff,**

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

12
13 **v.**

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

22 **Defendants.**

23 **STIPULATION AND ORDER TO DISMISS DEFENDANT DESERT MEDICAL**
24 **EQUIPMENT, ONLY**

25 Plaintiff, Vivian Harrison ("Plaintiff"), by and through her counsel of record, Moss Berg
26 Injury Lawyers and Parry & Pfau, and Defendant Desert Medical Equipment ("Desert Medical"),
27 by and through its counsel of record, Alverson Taylor & Sanders, hereby stipulate as follows:
28

1. Plaintiff alleged claims for negligence, and negligent hiring, training, maintenance, and supervision against Desert Medical in her second amended complaint, filed on August 19, 2016.
2. In December 2018, Plaintiff and Desert Medical reached a settlement during trial but before the verdict was reached.
3. Settlement documents have been executed, and the settlement funds have been deposited with the Court pursuant to the Court's July 23, 2019 order granting Desert Medical Equipment's motion for interpleader and to deposit funds with the Court.
4. All of Plaintiff's claims against Desert Medical only are hereby dismissed and Desert Medical is hereby dismissed, with prejudice.

IT IS SO STIPULATED.

CASE NO. A-16-732342-C

ORDER

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

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

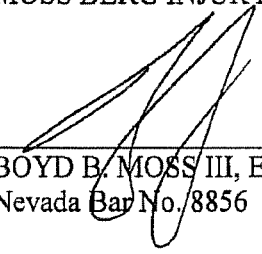
IT IS SO ORDERED.

DATED this 21 day of November, 2019


DISTRICT COURT JUDGE

SUBMITTED BY:

MOSS BERG INJURY LAWYERS


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

1 APPROVED AS TO FORM AND CONTENT

2

3 PARRY & PFAU

MOSS BERGEN INJURY LAWYERS

4

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

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

6

7 ALVERSON, TAYLOR & SANDERS

8

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

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27


28

1 APPROVED AS TO FORM AND CONTENT

2

3 PARRY & PFAU

MOSS BERG INJURY LAWYERS

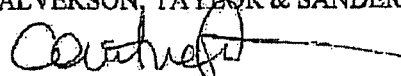
4 



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

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

7 ALVERSON, TAYLOR & SANDERS

8 

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

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT “6”

MARQUIS AURBACH COFFING

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

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

Parry & Pfau
Matthew G. Pfau, Esq.
Nevada Bar No. 11439
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Telephone: (702) 879-9555
Facsimile: (702) 879-9556
matt@p2lawyers.com

Marquis Aurbach Coffing
Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
tstewart@maclaw.com

Attorneys for Plaintiff, Vivia Harrison

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

vs.

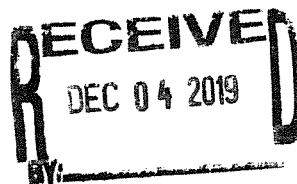
RAMPARTS INC. dba LUXOR HOTEL &
CASINO, a Nevada Domestic Corporation;
DESERT MEDICAL EQUIPMENT, a Nevada
Domestic Corporation; PRIDE MOBILITY
PRODUCTS CORPORATION, a Nevada
Domestic Corporation; DOES I through X,
inclusive; and ROE BUSINESS ENTITIES I
through X, inclusive,

Defendants.

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

AMENDED NOTICE OF APPEAL

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



MAC:15877-001 3899474_1

MARQUIS AURBACH COFFING

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

1 Plaintiff, Vivia 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 MARQUIS AURBACH COFFING

11
12 By /s/ Micah S. Echols
13 Micah S. Echols, Esq.
14 Nevada Bar No. 8437
15 Tom W. Stewart, Esq.
16 Nevada Bar No. 14280
17 10001 Park Run Drive
18 Las Vegas, Nevada 89145
19 *Attorneys for Plaintiff, Vivia Harrison*
20
21
22
23
24
25
26
27
28

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	dbazaflares@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 “7”

Copy

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON, AN INDIVIDUAL,
Appellant,

vs.

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

Respondents.

VIVIA HARRISON, AN INDIVIDUAL,
Appellant,

vs.

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

Respondents.

No. 78964

No. 80167✓

FILED

FEB 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL AND REGARDING MOTIONS

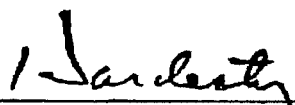
Docket No. 78964 is an appeal from an order denying a motion for reconsideration of an order granting an attorney lien offset. Docket No. 80167 is an appeal from the final order dismissing the remaining defendant below, thereby constituting the final judgment in the action below. On November 14, 2019, this court entered an order in Docket No. 78964 directing appellant to show cause why the appeal should not be dismissed for lack of a substantively appealable order. Appellant has responded to this court's order and has filed a motion to combine the two appeals and to waive the filing fee for Docket No. 80167. Respondents have responded to

the motion and to the order to show cause, and appellant has filed a reply to the motion to waive the filing fee and to combine the cases.¹

Having considered the motions, responses and replies, this court concludes as follows. The appeal in Docket No. 78964 is dismissed for lack of jurisdiction. The appeal in Docket No. 80167 shall proceed. See NRAP 4(a)(6). Appellant may challenge any interlocutory orders, including the order denying the offset, in the appeal from the final judgment. The motion to waive the filing fee in Docket No. 80167 is denied. Appellant shall have 14 days from the date of this order to pay the filing fee in Docket No. 80167. Failure to pay the filing fee may result in the dismissal of this appeal.

It is so ORDERED.


Parraguirre, J.


Hardesty, J.


Cadish, J.

cc: Hon. Nancy L. Allf, District Judge
James J. Jimmerson, Settlement Judge
Moss Berg Injury Lawyers
Lincoln, Gustafson & Cercos
Matt Pfau Law Group
Claggett & Sykes Law Firm
Marquis Aurbach Coffing
Eighth District Court Clerk

¹Respondents' motion for an extension of time to file the response to the "Motion to Waive Filing Fee and Combine Cases" is granted. The response was filed on January 27, 2020.

EXHIBIT “8”

Mbb

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON

No. 80167

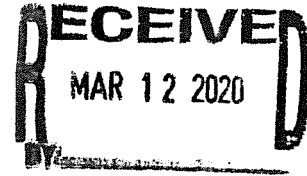
Appellant,

vs.

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

Respondent.

Electronically Filed
Mar 11 2020 08:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court



GENERAL INFORMATION

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

WARNING

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

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

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

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

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

Attorney Micah S. Echols, Esq.
Telephone 702-655-2346
Firm Claggett & Sykes Law Firm
Address 4101 Meadows Lane, Suite 100, Las Vegas, Nevada 89107

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 prior appeal is Case No. 78964, which was dismissed on jurisdictional grounds in favor of allowing this appeal to go forward on all issues in the case.

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 fees and costs, which was granted in the March 18, 2019 order granting Luxor’s motion for attorney 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, which would disallow the offset ordered by the District Court in this three-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 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 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. The Court previously confirmed its appellate jurisdiction over this appeal in the order filed on February 14, 2020.

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

(a) Parties:

Plaintiff: Vivian Harrison (“Plaintiff”)

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

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

Defendant: Pride Mobility Products Corp.

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

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

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

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

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

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

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

In her second amended complaint, filed on August 19, 2016, Plaintiff alleged causes of action for (1) negligence; and (2) negligent hiring, training, maintenance, and supervision against Luxor; (3) negligence; and (4) negligent hiring, training, maintenance and supervision against Desert Medical; and (5) negligence; and (6) strict products liability against Pride Mobility. *See Exhibit 1.* On May 1, 2017, Plaintiff stipulated with Luxor to remove the second cause of action for negligent hiring, training, maintenance, and supervision. *See Exhibit 2.* Pride Mobility had its motion for summary judgment granted in August 2018, and the order granting summary judgment was filed on January 29, 2019. *See Exhibit 5.* Prior to the verdict, Desert

Medical entered into a high-low settlement agreement, with the payment amount dependant on the jury's verdict. On December 20, 2018, the jury returned a verdict in favor of Luxor and Desert Medical, resolving all remaining claims by the Plaintiff. *See Exhibit 6.* After depositing the settlement funds with the District Court, Desert Medical was dismissed by stipulation and order, which was filed on November 26, 2019. *See Exhibit 10.*

January 16, 2018 Pride Mobility filed an amended third-party complaint against Sawamoto, alleging claims for breach of contract; breach of the implied covenant of good faith and fair dealing; contractual indemnity; implied or equitable indemnity; contribution; and negligence. *See Exhibit 3.* In a stipulation and order filed on December 11, 2018, Pride Mobility stipulated to the dismissal of its claims against Sawamoto. *See Exhibit 4.*

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

☒ Yes

☐ No

- 25. If you answered "No" to question 24, complete the following: N/A.**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

N/A.

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

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

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

Exhibit	Document Description
9	Notice of Entry with Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset (filed 05/21/19)
10	Notice of Entry with Stipulation and Order to Dismiss Defendant Desert Medical Equipment, Only (filed 12/06/19)

VERIFICATION

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

Vivia Harrison

Name of appellant

Micah S. Echols, Esq.;
Boyd B. Moss III, Esq.; and
Matthew G. Pfau, Esq.

Name of counsel of record

March 11, 2020

Date

/s/ Micah S. Echols

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 11th day of March, 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.
Mark Bailus, 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

/s/ Jocelyn Abrego

Jocelyn Abrego, an employee of
Claggett & Sykes Law Firm

CERTIFICATE OF SERVICE

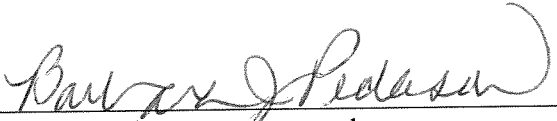
I HEREBY CERTIFY that on the 22nd day of May, 2020, I served a copy of this **MOTION TO DISMISS** upon all counsel of record:

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

Micah S. Echols, Esq.
Claggett & Sykes Law Firm
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107
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



Barbara J. Pederson, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLC