

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VIVIA HARRISON,

Appellant,

vs.

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

Respondent.

Case No. 80167

Electronically Filed  
Jul 09 2020 02:20 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**APPELLANT'S APPENDIX, VOLUME 1**

**(Nos. 1–162)**

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## DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Vivia Harrison	Defendant(s) (name/address/phone): MGM Resorts International, dba Luxor Hotel and Casino Desert Medical Equipment
Attorney (name/address/phone): Matthew G. Pfau, Esq. 10120 South Eastern Avenue, Suite 140 Henderson, Nevada 89052 T: 702-910-4300	Attorney (name/address/phone):

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

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

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

Date

Signature of initiating party or representative

See other side for family-related case filings.

PICKARD  
PARRY  
PFAU

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10 Attorneys for Plaintiff,  
11 *Vivia Harrison*

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 \* \* \*

15 **Vivia Harrison**, an individual

16 Plaintiff,

17 vs.

18 **MGM Resorts International**, dba Luxor  
19 Hotel & Casino, a Nevada Domestic  
20 Corporation; **Desert Medical**  
21 **Equipment**, a Nevada Domestic  
22 Corporation, Does I through XXX,  
23 inclusive and Roe Business Entities I  
24 through XXX, inclusive

25 Defendants.

Case No.: A- 16 - 732342 - C

Dept. No.: I

**Complaint**

26 Plaintiff, Vivia Harrison ("Ms. Harrison"), being represented by her attorney of  
27 record, Matthew G. Pfau, Esq. of PICKARD PARRY, PFAU, hereby complains against  
28 Defendants MGM Resorts International, dba Luxor Hotel & Casino ("Luxor) and  
Desert Medical Equipment ("Desert") as follows:

**Parties, Jurisdiction, and General Allegations**

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

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CLERK OF THE COURT

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

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

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

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

20       6. At all relevant times, Defendant Luxor were agents, servants, and employees  
21 acting within the course and scope of said employment and agency.

22       7. At all relevant times, Defendants Luxor were the owners, operators, managers,  
23 controllers, inspectors, supervisors and controllers of the premises and of the  
24 common areas of the Subject Premises.

25       8. Ms. Harrison was an invited guest of Luxor and was legally on the premises  
26 when the events mentioned herein occurred.

27       9. Ms. Harrison, on or around December 10, 2014, was operating a rented  
28 scooter ("Subject Scooter"), through Desert.

1 10.As Mr. Harrison was entering the Backstage Deli, the Backstage Deli  
2 employees, in an effort to accommodate the Subject Scooter's passageway,  
3 proceeded to move the dining tables and chairs.

4 11.As Ms. Harrison was operating her Subject Scooter over the base of the table  
5 ("Subject Table"), her scooter's front wheel gave way, and the scooter tipped over, to  
6 the right.

7 12. Unaware of the present dangerous conditions, Ms. Harrison sustained  
8 serious injuries, including a stroke and hip fracture.

9

10 **First Cause of Action**  
11 **(Negligence - Luxor)**

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

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

18 15.Luxor was responsible for the safety of guests on the Subject Premises,  
19 ensuring that dangerous conditions were not present on the Subject Premises, and  
20 ensuring that guests thereof were warned of any and all dangerous conditions on  
21 the Subject Premises, including Ms. Harrison.

22 16.Luxor negligently maintained and inspected the Subject Premises, including  
23 the Subject Scooter on the Subject Premises, so that it was permitted to remain in  
24 an unreasonably dangerous conditions, presenting a danger to unsuspecting guests,  
25 including Ms. Harrison.

26 17.Luxor and/or their agents, employees and servants had actual or constructive  
27 notice of the dangerous conditions, and therefore had full knowledge of, or should  
28 have had full knowledge of, the dangerous conditions and failed to remedy the

1 dangerous conditions or otherwise take action to make it safe.

2 18. Luxor and each of them, and/or their agents, employees and servants,  
3 breached the duty of care owed to Ms. Harrison by negligently maintaining and  
4 inspecting the Subject Premises and further failing to warn Ms. Harrison of the  
5 unreasonably dangerous conditions.

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

9  
10 **Second Cause of Action**  
11 **(Negligent Hiring, Training, Maintenance and Supervision -**  
12 **Luxor)**

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

15 21. Luxor acted in a negligent matter, including, but not limited to, failure to:

- 16 a. Establish, implement, maintain, and enforce proper policies and  
17 procedures for employees, including maintenance crew, security,  
18 restaurant managers, and wait staff, under the control of Defendant  
19 Luxor;
- 20 b. Establish, implement, maintain, and enforce proper policies and  
21 procedures for maintenance, repair, inspection, and/or general upkeep of  
22 the Subject Premises, including the restaurant's furnishing;
- 23 c. Establish, implement, maintain, and enforce proper policies and  
24 procedures for warning guests, including Ms. Harrison of potentially  
25 dangerous conditions;
- 26 d. Properly hire adequate, experienced, and competent employees who are  
27 able to warn guests, including Ms. Harrison of potentially dangerous  
28 conditions;

- e. Properly pre-screen potential employees by conducting background checks and other similar investigations into potential employee's resume, prior to employment retention;
- f. Properly and adequately supervise and/or manage employees once they were hired;
- g. Properly and adequately train employees and/or instruct them as to their job duties and/or responsibilities;
- h. Properly and adequately oversee, control, issue regulations regarding the conduct of employees;
- i. Properly and adequately delineate maintenance, inspection, and repair job duties and/or responsibilities to employees, and/or agents, acting on their behalf; and
- j. Properly, adequately, and responsibly setup procedures and policies to ensure that all floor areas and restaurant furnishings, including the Subject Table, are reasonably up kept in proper and working order for guests, including Ms. Harrison.

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

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

### **Third Cause of Action (Negligence - Desert)**

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

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

1 Desert.

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

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

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

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

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

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

22

23 **Third Cause of Action**  
24 **(Negligent Hiring, Training, Maintenance and Supervision -**  
25 **Desert)**

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

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

- 1 k. Establish, implement, maintain, and enforce proper policies and
- 2 procedures for employees, including maintenance crew, and sales staff,
- 3 under the control of Defendant Desert;
- 4 l. Establish, implement, maintain, and enforce proper policies and
- 5 procedures for maintenance, repair, inspection, and/or general upkeep of
- 6 the Subject Scooter's safety features, including the anti-tip wheels;
- 7 m. Establish, implement, maintain, and enforce proper policies and
- 8 procedures for warning guests, including Ms. Harrison of potentially
- 9 dangerous conditions;
- 10 n. Properly hire adequate, experienced, and competent employees who are
- 11 able to warn guests, including Ms. Harrison of potentially dangerous
- 12 conditions;
- 13 o. Properly pre-screen potential employees by conducting background
- 14 checks and other similar investigations into potential employee's resume,
- 15 prior to employment retention;
- 16 p. Properly and adequately supervise and/or manage employees once they
- 17 were hired;
- 18 q. Properly and adequately train employees and/or instruct them as to their
- 19 job duties and/or responsibilities;
- 20 r. Properly and adequately oversee, control, issue regulations regarding the
- 21 conduct of employees;
- 22 s. Properly and adequately delineate maintenance, inspection, and repair job
- 23 duties and/or responsibilities to employees, and/or agents, acting on their
- 24 behalf; and
- 25 t. Properly, adequately, and responsibly setup procedures and policies to
- 26 ensure that all scooters are fully operational, including the Subject Scooter
- 27
- 28

1 are reasonably up kept in proper and working order for guests, including  
2 Ms. Harrison.

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

6 35.Ms. Harrison has been required to engage the services of Pickard Parry Pfau  
7 to prosecute this matter, and Ms. Harrison is entitled to reasonable attorney's fees  
8 and costs therefor.

9  
10 **Prayer for Relief**

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

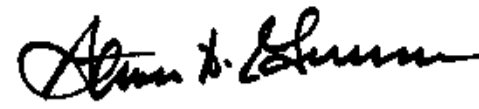
- 12 1. General damages in excess of Ten Thousand Dollars (\$10,000.00);  
13 2. Special Damages in excess of Ten Thousand Dollars (\$10,000.00);  
14 3. Cost of Suit, and attorneys' fees as provided by law;  
15 4. Prejudgment interest as provided by law; and  
16 5. Such other and further relief as the Court may deem just and proper.

17 DATED this 24th day of February 2016.

PICKARD PARRY PFAU

18   
19 \_\_\_\_\_  
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22 10120 South Eastern Avenue, Suite 140  
23 Henderson, Nevada 89052  
24 702 910 4300 TEL  
25 702 910 4303 FAX

26 Attorneys for Plaintiff,  
27 *Vivia Harrison*  
28



CLERK OF THE COURT

1 **ANS**  
2 **ALVERSON, TAYLOR, MORTENSEN & SANDERS**  
3 **DAVID J. MORTENSEN, ESQ.**  
4 Nevada Bar No. 002547  
5 **JARED F. HERLING, ESQ.**  
6 Nevada Bar No. 13350  
7 7401 West Charleston Boulevard  
8 Las Vegas, NV 89117-1401  
9 Phone: (702) 384-7000  
10 Facsimile: (702) 385-7000  
11 **E-File: efile@alversontaylor.com**  
12 **Attorneys for DEFENDANT**  
13 **Desert Medical Equipment**

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 **VIVIA HARRISON, an individual**

12 **Plaintiff,**

13 **vs.**

14 **MGM RESORTS INTERNATIONAL, dba Luxor Hotel**  
15 **& Casino, a Nevada Domestic Corporation; DESERT**  
16 **MEDICAL EQUIPMENT, a Nevada Domestic**  
17 **Corporation, DOES I through XXX, inclusive and ROE**  
18 **BUSINESS ENTITIES I through XXX, inclusive,**

19 **Defendants.**

**CASE NO.: A-16-732342-C**  
**DEPT. NO.: I**

20 **DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S COMPLAINT**

21 **COMES NOW, Defendant DESERT MEDICAL EQUIPMENT, by and through its**  
22 **attorney of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS, and hereby answers**  
23 **Plaintiff's Complaint as follows:**

24  
25 **///**

26 **///**

27 **///**

**PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

1. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 1 of Plaintiff's Complaint, and therefore denies the same.

2. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 2 of Plaintiff's Complaint, and therefore denies the same.

3. Answering Defendant admits to the allegations contained in paragraph 3 of Plaintiff's Complaint.

4. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 4 of Plaintiff's Complaint, and therefore denies the same.

5. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 5 of Plaintiff's Complaint, and therefore denies the same.

6. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 6 of Plaintiff's Complaint, and therefore denies the same.

7. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 7 of Plaintiff's Complaint, and therefore denies the same.

8. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 8 of Plaintiff's Complaint, and therefore denies the same.

1           9.     Answering Defendant is without sufficient knowledge to form a belief as to the  
2 truth of the allegations contained in paragraphs 9 of Plaintiff's Complaint, and therefore denies  
3 the same.

4           10.    Answering Defendant is without sufficient knowledge to form a belief as to the  
5 truth of the allegations contained in paragraphs 10 of Plaintiff's Complaint, and therefore denies  
6 the same.

7           11.    Answering Defendant is without sufficient knowledge to form a belief as to the  
8 truth of the allegations contained in paragraphs 11 of Plaintiff's Complaint, and therefore denies  
9 the same.

10          12.    Answering Defendant is without sufficient knowledge to form a belief as to the  
11 truth of the allegations contained in paragraphs 12 of Plaintiff's Complaint, and therefore denies  
12 the same.

13  
14  
15                                   **FIRST CAUSE OF ACTION**  
16                                   **(Negligence – Luxor)**

17          13.    Answering Defendant repeats and realleges its answers to the allegations  
18 contained within paragraphs 1 through 12 of Plaintiff's Complaint as if the same were more fully  
19 set forth herein.

20          14.    Answering Defendant is without sufficient knowledge to form a belief as to the  
21 truth of the allegations contained in paragraphs 14 of Plaintiff's Complaint, and therefore denies  
22 the same.

23          15.    Answering Defendant is without sufficient knowledge to form a belief as to the  
24 truth of the allegations contained in paragraphs 15 of Plaintiff's Complaint, and therefore denies  
25 the same.

26          16.    Answering Defendant is without sufficient knowledge to form a belief as to the  
27  
28

1 truth of the allegations contained in paragraphs 16 of Plaintiff's Complaint, and therefore denies  
2 the same.

3 17. Answering Defendant is without sufficient knowledge to form a belief as to the  
4 truth of the allegations contained in paragraphs 17 of Plaintiff's Complaint, and therefore denies  
5 the same.  
6

7 18. Answering Defendant is without sufficient knowledge to form a belief as to the  
8 truth of the allegations contained in paragraphs 18 of Plaintiff's Complaint, and therefore denies  
9 the same.

10 19. Answering Defendant is without sufficient knowledge to form a belief as to the  
11 truth of the allegations contained in paragraphs 19 of Plaintiff's Complaint, and therefore denies  
12 the same.  
13

14 **SECOND CAUSE OF ACTION**  
15 **(Negligent Hiring, Training, Maintenance and Supervision – Luxor)**

16 20. Answering Defendant repeats and realleges its answers to the allegations  
17 contained within paragraphs 1 through 19 of Plaintiff's Complaint as if the same were more fully  
18 set forth herein.

19 21. Answering Defendant is without sufficient knowledge to form a belief as to the  
20 truth of the allegations contained in paragraphs 21 of Plaintiff's Complaint, and therefore denies  
21 the same.  
22

23 22. Answering Defendant is without sufficient knowledge to form a belief as to the  
24 truth of the allegations contained in paragraphs 22 of Plaintiff's Complaint, and therefore denies  
25 the same.  
26

27 23. Answering Defendant is without sufficient knowledge to form a belief as to the  
28

1 truth of the allegations contained in paragraphs 23 of Plaintiff's Complaint, and therefore denies  
2 the same.

3  
4 **THIRD CAUSE OF ACTION**  
5 **(Negligence – Desert)**

6 24. In answering paragraph 24 of Plaintiff's Complaint, Defendant admits that Desert  
7 rents scooters. Accordingly, Defendant is without sufficient knowledge to form a belief as to the  
8 truth of the remaining allegations contained in paragraph 24 of Plaintiff's Complaint, and  
9 therefore denies the same.

10 25. Answering Defendant denies the allegations contained in paragraph 25 of  
11 Plaintiff's Complaint.

12 26. Answering Defendant denies that the subject scooter was missing anti-tip wheels.  
13 Defendant is without sufficient knowledge to form a belief as to the truth of the remaining  
14 allegations contained in paragraph 26 of Plaintiff's Complaint, and therefore denies the same.  
15

16 27. Answering Defendant is without sufficient knowledge to form a belief as to the  
17 truth of the allegations contained in paragraphs 27 of Plaintiff's Complaint, and therefore denies  
18 the same.  
19

20 28. Answering Defendant denies the allegations contained in paragraph 28 of  
21 Plaintiff's Complaint.  
22

23 29. Answering Defendant denies the allegations contained in paragraph 29 of  
24 Plaintiff's Complaint.  
25

26 30. Answering Defendant denies the allegations contained in paragraph 30 of  
27  
28

1 Plaintiff's Complaint.

2  
3 31. Answering Defendant denies the allegations contained in paragraph 31 of  
4 Plaintiff's Complaint.

5  
6 **THIRD CAUSE OF ACTION**  
**(Negligent Hiring, Training, Maintenance and Supervision – Desert)**

7 32. Answering Defendant repeats and realleges its answers to the allegations  
8 contained within paragraphs 1 through 31 of Plaintiff's Complaint as if the same were more fully  
9 set forth herein.

10  
11 33. Answering Defendant denies the allegations contained in paragraph 33 of  
12 Plaintiff's Complaint.

13 34. Answering Defendant denies the allegations contained in paragraph 34 of  
14 Plaintiff's Complaint.

15 35. Answering Defendant denies the allegations contained in paragraph 35 of  
16 Plaintiff's Complaint.

17 **FIRST AFFIRMATIVE DEFENSE**

18  
19 Defendant alleges that Plaintiff's Complaint on file herein fails to state a claim upon  
20 which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 Defendant alleges that the damages, if any, were caused in whole or in part, or where  
23 contributed to by reason of the negligence or wrongful conduct of the Plaintiff.

24 **THIRD AFFIRMATIVE DEFENSE**

25 All risks and dangers involved in the factual situation described in the Complaint were  
26 open, obvious, and known to the Plaintiff and said Plaintiff voluntarily assumed said risks and  
27 dangers.  
28

**FOURTH AFFIRMATIVE DEFENSE**

The incident alleged in the Complaint and the resulting damages, if any, to the Plaintiff were proximately caused or contributed to by Plaintiff's own negligence, and such negligence was greater than the alleged negligence of Defendants.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party over whom Defendants had no control.

**SIXTH AFFIRMATIVE DEFENSE**

Defendant has fully performed and discharged all obligations owed to Plaintiff, including meeting the requisite standard of care to which Plaintiff was entitled.

**SEVENTH AFFIRMATIVE DEFENSE**

If Plaintiff has sustained any injuries or damages, such were the result of intervening and/or superseding events, factors, occurrences, or conditions, which were in no way caused by Defendant, and for which Defendant is not liable.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovering any special damages herein as a result of the failure to comply with the provisions of N.R.C.P. 9(g).

**NINTH AFFIRMATIVE DEFENSE**

Defendant alleges that Plaintiff has a duty to mitigate her damages and has failed to do so.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable statutes of limitations and/or repose.

///

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff did not exercise ordinary care, caution or prudence in the conduct of her affairs relating to the allegations contained in Plaintiff's Complaint herein for damages in order to avoid the injuries or damages of which Plaintiff complains, and said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiff.

**TWELVTH AFFIRMATIVE DEFENSE**

Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to amend its Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

**THIRTEENTH AFFIRMATIVE DEFENSE**

That it has been necessary for Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendant for attorneys' fees, together with costs of suit incurred herein.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 and Rule 12 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserve the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint, and each claim asserted therein and the relief sought, is barred by the statute of frauds.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to allege facts in support of any award for pre-judgment interest.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to name the proper party or parties as Defendants.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to amend their Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff is comparatively at fault; Plaintiffs' recovery, if any, should be reduced in proportion to their own fault, or in the event his fault exceeds that of Defendant, they are not entitled to any recovery.

**TWENTIETH AFFIRMATIVE DEFENSE**

Defendant denies each and every allegation of Plaintiff's Complaint not specifically admitted or otherwise pled to herein.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Defendants allege that at all times mentioned in Plaintiff's Complaint, Plaintiff was suffering from a medical condition(s) which Defendant did not cause, nor was Defendant responsible for said medical condition(s).

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff is barred from any recovery in this action by their own conduct that operates as a waiver of their rights.

///

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery in this action by the doctrine of unclean hands.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

No privity of contract exists between Plaintiff and Defendant such that Defendant cannot be liable as a matter of law.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims, or parts thereof, are barred by the doctrine of waiver and estoppel.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's damages, if any, were directly and proximately caused by the misuse, abuse of, improper repair and maintenance of, alteration, and the unreasonable and improper use of the scooter. Further, the misuse, abuse, improper repair and maintenance of, alteration, or failure to use the scooter properly contributed to the loss or damages alleged in Plaintiff's Complaint. The damages, if any, recoverable by Plaintiff herein must be diminished in proportion to the amount of fault attributable to such misuse, abuse, unreasonable use, alteration, or improper use.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's damages were the result of unrelated, pre-existing, or subsequent conditions unrelated to Defendant's conduct.

**PRAYER FOR RELIEF**

Defendant denies each and every allegation to any of the requested relief as contained within Plaintiff's Complaint.

///

///

///

**GENERAL DENIAL**

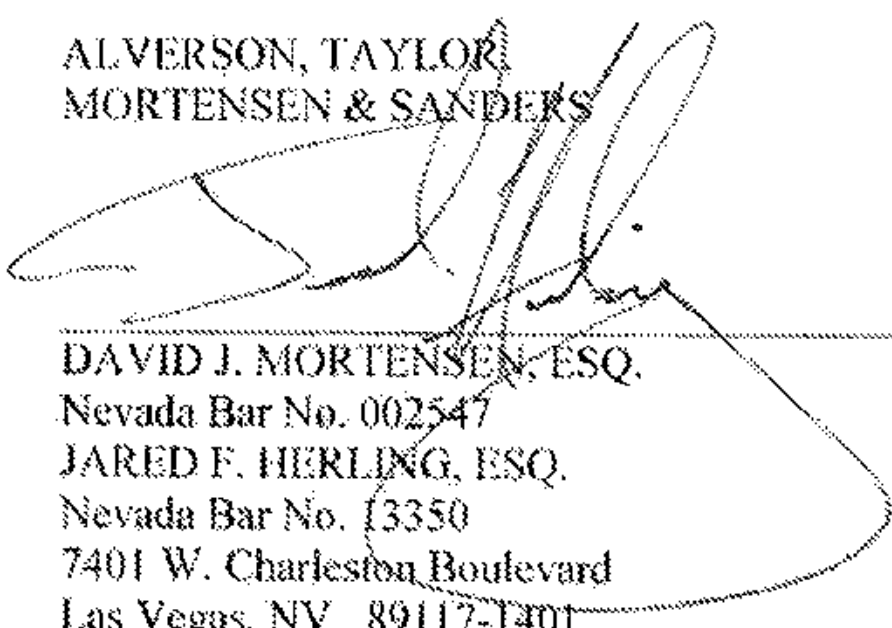
Defendant denies each and every allegation contained in Plaintiff's Complaint that is not specifically admitted to be true.

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff take nothing by way of his Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper.

DATED this 1<sup>st</sup> day of April, 2016.

ALVERSON, TAYLOR  
MORTENSEN & SANDERS

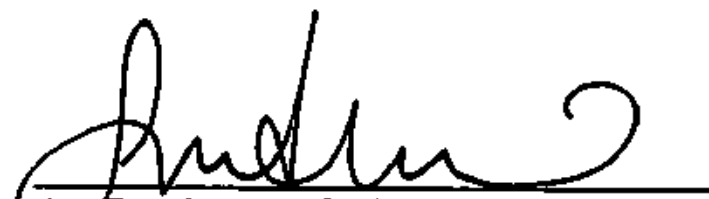


DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 002547  
JARED F. HERLING, ESQ.  
Nevada Bar No. 13350  
7401 W. Charleston Boulevard  
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Phone: (702) 384-7000  
Facsimile: (702) 385-7000  
E-File: [cfile@alversontaylor.com](mailto:cfile@alversontaylor.com)  
Attorneys for DEFENDANT  
Desert Medical Equipment

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 20<sup>th</sup> day of April, 2016, the forgoing  
**DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S COMPLAINT** was  
served on the following by Electronic Service to All parties on the Wiznet Service List,  
addressed as follows:

Matthew G. Pfau, Esq.  
PICKARD PARRY PFAU  
10120 S. Eastern Avenue, Suite 140  
Henderson, NV 89052  
*Attorney for Plaintiff*

  
An Employee of Alverson, Taylor,  
Mortensen & Sanders

ALVERSON, TAYLOR, MORTENSEN & SANDERS  
LAWYERS  
7401 WEST CHARLESTON BOULEVARD  
LAS VEGAS, NEVADA 89117-1401  
(702) 384-7000

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

The undersigned does hereby affirm that the preceding **DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S COMPLAINT** filed in District Court Case No. A-16-732342-C.

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

**-OR-**

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

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

**[Insert specific law]**

**-or-**

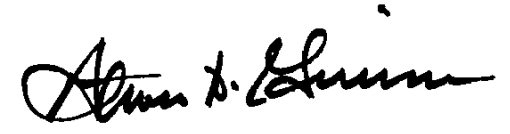
B. For the administration of a public program or for an application for a federal or state grant.

DATED this 19 day of April, 2016.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.  
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JARED F. HERLING, ESQ.  
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Attorneys for DEFENDANT  
Desert Medical Equipment

n:\david.gp\clients\23646\pleadings\answer.docx



CLERK OF THE COURT

**ACOMP**

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

Attorneys for Plaintiff,  
*Vivia Harrison*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

**Vivia Harrison**, an individual

Plaintiff,

vs.

**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.: I

**First Amended Complaint**

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

**Parties, Jurisdiction, and General Allegations**

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

PICKARD  
PARRY  
PFAU

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

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

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

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

20       6. At all relevant times, Defendant Luxor were agents, servants, and employees  
21 acting within the course and scope of said employment and agency.

22       7. At all relevant times, Defendants Luxor were the owners, operators, managers,  
23 controllers, inspectors, supervisors and controllers of the premises and of the  
24 common areas of the Subject Premises.

25       8. Ms. Harrison was an invited guest of Luxor and was legally on the premises  
26 when the events mentioned herein occurred.

27       9. Ms. Harrison, on or around December 10, 2014, was operating a rented  
28 scooter ("Subject Scooter"), through Desert.

1 10.As Mr. Harrison was entering the Backstage Deli, the Backstage Deli  
2 employees, in an effort to accommodate the Subject Scooter's passageway,  
3 proceeded to move the dining tables and chairs.

4 11.As Ms. Harrison was operating her Subject Scooter over the base of the table  
5 ("Subject Table"), her scooter's front wheel gave way, and the scooter tipped over, to  
6 the right.

7 12. Unaware of the present dangerous conditions, Ms. Harrison sustained  
8 serious injuries, including a stroke and hip fracture.

9  
10 **First Cause of Action**

11 **(Negligence - Luxor)**

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

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

18 15.Luxor was responsible for the safety of guests on the Subject Premises,  
19 ensuring that dangerous conditions were not present on the Subject Premises, and  
20 ensuring that guests thereof were warned of any and all dangerous conditions on  
21 the Subject Premises, including Ms. Harrison.

22 16.Luxor negligently maintained and inspected the Subject Premises, including  
23 the Subject Scooter on the Subject Premises, so that it was permitted to remain in  
24 an unreasonably dangerous conditions, presenting a danger to unsuspecting guests,  
25 including Ms. Harrison.

26 17.Luxor and/or their agents, employees and servants had actual or constructive  
27 notice of the dangerous conditions, and therefore had full knowledge of, or should  
28 have had full knowledge of, the dangerous conditions and failed to remedy the

1 dangerous conditions or otherwise take action to make it safe.

2 18.Luxor and each of them, and/or their agents, employees and servants,  
3 breached the duty of care owed to Ms. Harrison by negligently maintaining and  
4 inspecting the Subject Premises and further failing to warn Ms. Harrison of the  
5 unreasonably dangerous conditions.

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

9  
10 **Second Cause of Action**  
11 **(Negligent Hiring, Training, Maintenance and Supervision -**  
12 **Luxor)**

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

15 21.Luxor acted in a negligent matter, including, but not limited to, failure to:

- 16 a. Establish, implement, maintain, and enforce proper policies and  
17 procedures for employees, including maintenance crew, security,  
18 restaurant managers, and wait staff, under the control of Defendant  
19 Luxor;
- 20 b. Establish, implement, maintain, and enforce proper policies and  
21 procedures for maintenance, repair, inspection, and/or general upkeep of  
22 the Subject Premises, including the restaurant's furnishing;
- 23 c. Establish, implement, maintain, and enforce proper policies and  
24 procedures for warning guests, including Ms. Harrison of potentially  
25 dangerous conditions;
- 26 d. Properly hire adequate, experienced, and competent employees who are  
27 able to warn guests, including Ms. Harrison of potentially dangerous  
28 conditions;

- e. Properly pre-screen potential employees by conducting background checks and other similar investigations into potential employee's resume, prior to employment retention;
- f. Properly and adequately supervise and/or manage employees once they were hired;
- g. Properly and adequately train employees and/or instruct them as to their job duties and/or responsibilities;
- h. Properly and adequately oversee, control, issue regulations regarding the conduct of employees;
- i. Properly and adequately delineate maintenance, inspection, and repair job duties and/or responsibilities to employees, and/or agents, acting on their behalf; and
- j. Properly, adequately, and responsibly setup procedures and policies to ensure that all floor areas and restaurant furnishings, including the Subject Table, are reasonably up kept in proper and working order for guests, including Ms. Harrison.

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

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

### **Third Cause of Action (Negligence - Desert)**

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

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

1 Desert.

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

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

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

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

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

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

22

23

### **Third Cause of Action**

24

#### **(Negligent Hiring, Training, Maintenance and Supervision -**

25

#### **Desert)**

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

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

- k. Establish, implement, maintain, and enforce proper policies and procedures for employees, including maintenance crew, and sales staff, under the control of Defendant Desert;
- l. Establish, implement, maintain, and enforce proper policies and procedures for maintenance, repair, inspection, and/or general upkeep of the Subject Scooter's safety features, including the anti-tip wheels;
- m. Establish, implement, maintain, and enforce proper policies and procedures for warning guests, including Ms. Harrison of potentially dangerous conditions;
- n. Properly hire adequate, experienced, and competent employees who are able to warn guests, including Ms. Harrison of potentially dangerous conditions;
- o. Properly pre-screen potential employees by conducting background checks and other similar investigations into potential employee's resume, prior to employment retention;
- p. Properly and adequately supervise and/or manage employees once they were hired;
- q. Properly and adequately train employees and/or instruct them as to their job duties and/or responsibilities;
- r. Properly and adequately oversee, control, issue regulations regarding the conduct of employees;
- s. Properly and adequately delineate maintenance, inspection, and repair job duties and/or responsibilities to employees, and/or agents, acting on their behalf; and
- t. Properly, adequately, and responsibly setup procedures and policies to ensure that all scooters are fully operational, including the Subject Scooter

1 are reasonably up kept in proper and working order for guests, including  
2 Ms. Harrison.

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

6 35.Ms. Harrison has been required to engage the services of Pickard Parry Pfau  
7 to prosecute this matter, and Ms. Harrison is entitled to reasonable attorney's fees  
8 and costs therefor.

9  
10 **Prayer for Relief**

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

- 12 1. General damages in excess of Ten Thousand Dollars (\$10,000.00);  
13 2. Special Damages in excess of Ten Thousand Dollars (\$10,000.00);  
14 3. Cost of Suit, and attorneys' fees as provided by law;  
15 4. Prejudgment interest as provided by law; and  
16 5. Such other and further relief as the Court may deem just and proper.

17 DATED this 29th day of April 2016.

PICKARD PARRY PFAU

18   
19 \_\_\_\_\_  
20 Matthew G. Pfau, Esq.  
21 Nevada Bar No.: 11439  
22 10120 South Eastern Avenue, Suite 140  
23 Henderson, Nevada 89052  
24 702 910 4300 TEL  
25 702 910 4303 FAX

26 Attorneys for Plaintiff,  
27 *Vivia Harrison*  
28

**Certificate of Service**

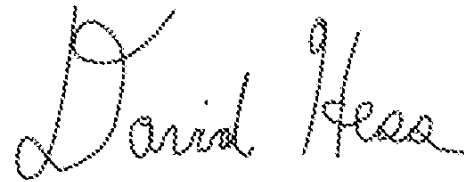
I hereby certify that on the 29th day of April 2016, service of the foregoing **First Amended Complaint** was made by required electronic service, to the following individuals:

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

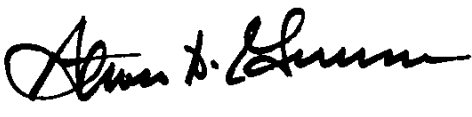
Attorneys for Defendant,  
*Desert Medical Equipment*

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

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



An Employee of PICKARD PARRY PFAU

  
CLERK OF THE COURT

ANAC  
ALVERSON, TAYLOR, MORTENSEN & SANDERS  
DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 002547  
JARED F. HERLING, ESQ.  
Nevada Bar No. 13350  
7401 West Charleston Boulevard  
Las Vegas, NV 89117-1401  
Phone: (702) 384-7000  
Facsimile: (702) 385-7000  
E-File: [efile@alversontaylor.com](mailto:efile@alversontaylor.com)  
Attorneys for DEFENDANT  
Desert Medical Equipment

DISTRICT COURT  
CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual

Plaintiff,

vs.

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

Defendants.

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

**DESERT MEDICAL EQUIPMENT'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED COMPLAINT**

COMES NOW, Defendant DESERT MEDICAL EQUIPMENT, by and through its  
attorney of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS, and hereby answers  
Plaintiff's First Amended Complaint as follows:

///

///

///

**PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

1. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's First Amended Complaint, and therefore denies the same.

2. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiff's First Amended Complaint, and therefore denies the same.

3. Answering Defendant admits to the allegations contained in paragraph 3 of Plaintiff's First Amended Complaint.

4. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 4 of Plaintiff's First Amended Complaint, and therefore denies the same.

5. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 5 of Plaintiff's First Amended Complaint, and therefore denies the same.

6. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 6 of Plaintiff's First Amended Complaint, and therefore denies the same.

7. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 7 of Plaintiff's First Amended Complaint, and therefore denies the same.

8. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 8 of Plaintiff's First Amended Complaint, and therefore denies the same.

1           9.     Answering Defendant is without sufficient knowledge to form a belief as to the  
2 truth of the allegations contained in paragraph 9 of Plaintiff's First Amended Complaint, and  
3 therefore denies the same.

4           10.    Answering Defendant is without sufficient knowledge to form a belief as to the  
5 truth of the allegations contained in paragraph 10 of Plaintiff's First Amended Complaint, and  
6 therefore denies the same.

7           11.    Answering Defendant is without sufficient knowledge to form a belief as to the  
8 truth of the allegations contained in paragraph 11 of Plaintiff's First Amended Complaint, and  
9 therefore denies the same.

10          12.    Answering Defendant is without sufficient knowledge to form a belief as to the  
11 truth of the allegations contained in paragraph 12 of Plaintiff's First Amended Complaint, and  
12 therefore denies the same.

13  
14  
15                           **FIRST CAUSE OF ACTION**  
16                           **(Negligence – Luxor)**

17          13.    Answering Defendant repeats and realleges its answers to the allegations  
18 contained within paragraphs 1 through 12 of Plaintiff's First Amended Complaint as if the same  
19 were more fully set forth herein.

20          14.    Answering Defendant is without sufficient knowledge to form a belief as to the  
21 truth of the allegations contained in paragraph 14 of Plaintiff's First Amended Complaint, and  
22 therefore denies the same.

23          15.    Answering Defendant is without sufficient knowledge to form a belief as to the  
24 truth of the allegations contained in paragraph 15 of Plaintiff's First Amended Complaint, and  
25 therefore denies the same.

26          16.    Answering Defendant is without sufficient knowledge to form a belief as to the  
27  
28

1 truth of the allegations contained in paragraph 16 of Plaintiff's First Amended Complaint, and  
2 therefore denies the same.

3 17. Answering Defendant is without sufficient knowledge to form a belief as to the  
4 truth of the allegations contained in paragraph 17 of Plaintiff's First Amended Complaint, and  
5 therefore denies the same.  
6

7 18. Answering Defendant is without sufficient knowledge to form a belief as to the  
8 truth of the allegations contained in paragraph 18 of Plaintiff's First Amended Complaint, and  
9 therefore denies the same.

10 19. Answering Defendant is without sufficient knowledge to form a belief as to the  
11 truth of the allegations contained in paragraph 19 of Plaintiff's First Amended Complaint, and  
12 therefore denies the same.  
13

14 **SECOND CAUSE OF ACTION**  
15 **(Negligent Hiring, Training, Maintenance and Supervision – Luxor)**

16 20. Answering Defendant repeats and realleges its answers to the allegations  
17 contained within paragraphs 1 through 19 of Plaintiff's First Amended Complaint as if the same  
18 were more fully set forth herein.

19 21. Answering Defendant is without sufficient knowledge to form a belief as to the  
20 truth of the allegations contained in paragraph 21 of Plaintiff's First Amended Complaint, and  
21 therefore denies the same.  
22

23 22. Answering Defendant is without sufficient knowledge to form a belief as to the  
24 truth of the allegations contained in paragraph 22 of Plaintiff's First Amended Complaint, and  
25 therefore denies the same.  
26

27 23. Answering Defendant is without sufficient knowledge to form a belief as to the  
28

1 truth of the allegations contained in paragraph 23 of Plaintiff's First Amended Complaint, and  
2 therefore denies the same.

3  
4 **THIRD CAUSE OF ACTION**  
5 **(Negligence – Desert)**

6 24. In answering paragraph 24 of Plaintiff's First Amended Complaint, Defendant  
7 admits that Desert rents scooters. Accordingly, Defendant is without sufficient knowledge to  
8 form a belief as to the truth of the remaining allegations contained in paragraph 24 of Plaintiff's  
9 First Amended Complaint, and therefore denies the same.

10 25. Answering Defendant denies the allegations contained in paragraph 25 of  
11 Plaintiff's First Amended Complaint.

12 26. Answering Defendant denies that the subject scooter was missing anti-tip wheels.  
13 Defendant is without sufficient knowledge to form a belief as to the truth of the remaining  
14 allegations contained in paragraph 26 of Plaintiff's First Amended Complaint, and therefore  
15 denies the same.

16 27. Answering Defendant is without sufficient knowledge to form a belief as to the  
17 truth of the allegations contained in paragraph 27 of Plaintiff's First Amended Complaint, and  
18 therefore denies the same.

19 28. Answering Defendant denies the allegations contained in paragraph 28 of  
20 Plaintiff's First Amended Complaint.

21 29. Answering Defendant denies the allegations contained in paragraph 29 of  
22 Plaintiff's First Amended Complaint.

1           30. Answering Defendant denies the allegations contained in paragraph 30 of  
2 Plaintiff's First Amended Complaint.

3  
4           31. Answering Defendant denies the allegations contained in paragraph 31 of  
5 Plaintiff's First Amended Complaint.

6  
7                           **THIRD CAUSE OF ACTION**  
8                   **(Negligent Hiring, Training, Maintenance and Supervision – Desert)**

9           32. Answering Defendant repeats and realleges its answers to the allegations  
10 contained within paragraphs 1 through 31 of Plaintiff's First Amended Complaint as if the same  
11 were more fully set forth herein.

12           33. Answering Defendant denies the allegations contained in paragraph 33 of  
13 Plaintiff's First Amended Complaint.

14           34. Answering Defendant denies the allegations contained in paragraph 34 of  
15 Plaintiff's First Amended Complaint.

16           35. Answering Defendant denies the allegations contained in paragraph 35 of  
17 Plaintiff's First Amended Complaint.

18  
19                           **FIRST AFFIRMATIVE DEFENSE**

20           Defendant alleges that Plaintiff's First Amended Complaint on file herein fails to state a  
21 claim upon which relief can be granted.

22                           **SECOND AFFIRMATIVE DEFENSE**

23           Defendant alleges that the damages, if any, were caused in whole or in part, or where  
24 contributed to by reason of the negligence or wrongful conduct of the Plaintiff.

25                           **THIRD AFFIRMATIVE DEFENSE**

26           All risks and dangers involved in the factual situation described in the Complaint were  
27 open, obvious, and known to the Plaintiff and said Plaintiff voluntarily assumed said risks and  
28

1 dangers.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 The incident alleged in the Complaint and the resulting damages, if any, to the Plaintiff  
4 were proximately caused or contributed to by Plaintiff's own negligence, and such negligence  
5 was greater than the alleged negligence of Defendants.  
6

7 **FIFTH AFFIRMATIVE DEFENSE**

8 Defendant alleges that the occurrence referred to in the Complaint, and all injuries and  
9 damages, if any, resulting therefrom were caused by the acts or omissions of a third party over  
10 whom Defendants had no control.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 Defendant has fully performed and discharged all obligations owed to Plaintiff, including  
13 meeting the requisite standard of care to which Plaintiff was entitled.  
14

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 If Plaintiff has sustained any injuries or damages, such were the result of intervening  
17 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by  
18 Defendant, and for which Defendant is not liable.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 Plaintiff is barred from recovering any special damages herein as a result of the failure to  
21 comply with the provisions of N.R.C.P. 9(g).  
22

23 **NINTH AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiff has a duty to mitigate her damages and has failed to do  
25 so.

26 **TENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are barred by the applicable statutes of limitations and/or repose.  
28

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff did not exercise ordinary care, caution or prudence in the conduct of her affairs relating to the allegations contained in Plaintiff's First Amended Complaint herein for damages in order to avoid the injuries or damages of which Plaintiff complains, and said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiff.

**TWELVTH AFFIRMATIVE DEFENSE**

Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to amend its Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

**THIRTEENTH AFFIRMATIVE DEFENSE**

That it has been necessary for Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendant for attorneys' fees, together with costs of suit incurred herein.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 and Rule 12 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserve the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's First Amended Complaint, and each claim asserted therein and the relief sought, is barred by the statute of frauds.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to allege facts in support of any award for pre-judgment interest.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to name the proper party or parties as Defendants.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to amend their Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff is comparatively at fault; Plaintiffs' recovery, if any, should be reduced in proportion to their own fault, or in the event his fault exceeds that of Defendant, they are not entitled to any recovery.

**TWENTIETH AFFIRMATIVE DEFENSE**

Defendant denies each and every allegation of Plaintiff's First Amended Complaint not specifically admitted or otherwise pled to herein.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Defendants allege that at all times mentioned in Plaintiff's First Amended Complaint, Plaintiff was suffering from a medical condition(s) which Defendant did not cause, nor was Defendant responsible for said medical condition(s).

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff is barred from any recovery in this action by their own conduct that operates as a waiver of their rights.

/ / /

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery in this action by the doctrine of unclean hands.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

No privity of contract exists between Plaintiff and Defendant such that Defendant cannot be liable as a matter of law.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims, or parts thereof, are barred by the doctrine of waiver and estoppel.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's damages, if any, were directly and proximately caused by the misuse, abuse of, improper repair and maintenance of, alteration, and the unreasonable and improper use of the scooter. Further, the misuse, abuse, improper repair and maintenance of, alteration, or failure to use the scooter properly contributed to the loss or damages alleged in Plaintiff's First Amended Complaint. The damages, if any, recoverable by Plaintiff herein must be diminished in proportion to the amount of fault attributable to such misuse, abuse, unreasonable use, alteration, or improper use.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's damages were the result of unrelated, pre-existing, or subsequent conditions unrelated to Defendant's conduct.

**PRAYER FOR RELIEF**

Defendant denies each and every allegation to any of the requested relief as contained within Plaintiff's First Amended Complaint.

///

///

///

GENERAL DENIAL

Defendant denies each and every allegation contained in Plaintiff's First Amended Complaint that is not specifically admitted to be true.

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff take nothing by way of her Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper.

DATED this 5 day of May, 2016.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

JARED F. HERLING, ESQ.

Nevada Bar No. 13350

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

Phone: (702) 384-7000

Facsimile: (702) 385-7000

E-File: [efile@alversontaylor.com](mailto:efile@alversontaylor.com)

Attorneys for DEFENDANT

Desert Medical Equipment

ALVERSON, TAYLOR, MORTENSEN & SANDERS  
LAWYERS  
7401 WEST CHARLESTON BOULEVARD  
LAS VEGAS, NEVADA 89117-1401  
(702) 384-7000

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

The undersigned does hereby affirm that the preceding **DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** filed in District Court Case No. A-16-732342-C.

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

**-OR-**

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

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

[Insert specific law]

**-or-**

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

DATED this 5 day of May, 2016.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

JARED F. HERLING, ESQ.

Nevada Bar No. 43350

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

Phone: (702) 384-7000

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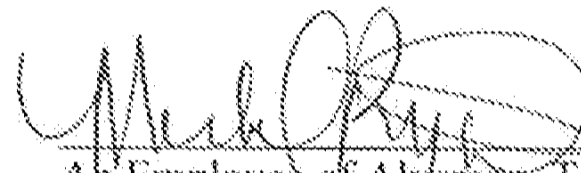
Attorneys for DEFENDANT

Desert Medical Equipment

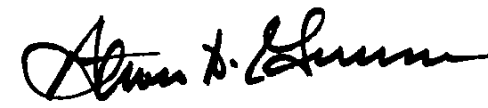
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5 day of May, 2016, the forgoing  
**DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT** was served on the following by Electronic Service to All parties on the Wiznet  
Service List, addressed as follows:

Matthew G. Pfau, Esq.  
PICKARD PARRY PFAU  
10120 S. Eastern Avenue, Suite 140  
Henderson, NV 89052  
*Attorney for Plaintiff*

  
An Employee of Alverson, Taylor,  
Mortensen & Sanders

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CLERK OF THE COURT

1 **TPC**  
2 **ALVERSON, TAYLOR, MORTENSEN & SANDERS**  
3 **DAVID J. MORTENSEN, ESQ.**  
4 Nevada Bar No. 002547  
5 **JARED F. HERLING, ESQ.**  
6 Nevada Bar No. 13350  
7 7401 West Charleston Boulevard  
8 Las Vegas, NV 89117-1401  
9 Phone: (702) 384-7000  
10 Facsimile: (702) 385-7000  
11 **E-File: efile@alversontaylor.com**  
12 **Attorneys for Defendant and**  
13 **Third-Party Plaintiff Desert Medical Equipment**

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 **VIVIA HARRISON, an individual**

12 **Plaintiff,**

13 **vs.**

14 **RAMPARTS, INC, dba Luxor Hotel & Casino, a**  
15 **Nevada Domestic Corporation; DESERT MEDICAL**  
16 **EQUIPMENT, a Nevada Domestic Corporation, DOES**  
17 **I through XXX, inclusive and ROE BUSINESS**  
18 **ENTITIES I through XXX, inclusive,**

19 **Defendants.**

20 **DESERT MEDICAL EQUIPMENT, a Nevada**  
21 **Domestic Corporation**

22 **Third-Party Plaintiff,**

23 **vs.**

24 **STAN SAWAMOTO, an individual**

25 **Third-Party Defendant.**

**CASE NO.: A-16-732342-C**  
**DEPT. NO.: I**

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

26 **COMES NOW Defendant/Third-Party Plaintiff, DESERT MEDICAL EQUIPMENT, by**  
27 **and through its attorneys of record, the law firm of ALVERSON, TAYLOR, MORTENSEN &**  
28

1 SANDERS, and for its Third-Party Complaint against STAN SAWAMOTO alleges as follows:

2 **PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

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

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

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

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

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

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

24 7. Plaintiff did not rent the Subject Scooter nor receive possession of the Subject  
25  
26  
27  
28

1 Scooter directly from Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT.

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

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

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

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

23 11. Upon information and belief, Third-Party Defendant STAN SAWAMOTO  
24 breached the Terms and Conditions of Rental by giving/transferring possession of the Subject  
25 Scooter to Plaintiff VIVIA HARRISON for her use, ultimately causing her alleged injuries.  
26

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

///

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

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

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

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

16. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT fully performed all conditions, covenants, and promises required be performed in accordance with the Terms and Conditions of Rental contract.

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

18. As a further result of Third-Party Defendant STAN SAWAMOTO's conduct, Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced to retain the services of an attorney, for which Defendant/Third-Party Plaintiff DESERT MEDICAL

1 EQUIPMENT has incurred and will continue to incur attorneys' fees and costs.

2 **SECOND CLAIM FOR RELIEF**  
3 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

4 19. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and  
5 realleges the allegations contained in Paragraphs 1 through 18, of its Third-Party Complaint as  
6 though fully set forth herein.

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

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

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

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

23 **THIRD CLAIM FOR RELIEF**  
24 **(Contractual Indemnity)**

25 24. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and  
26

1 realleges the allegations contained in Paragraphs 1 through 23, of its Third-Party Complaint as  
2 though fully set forth herein.

3 25. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO, as  
4 a "customer", entered into a Terms and Conditions of Rental contract with Defendant/Third-  
5 Party Plaintiff DESERT MEDICAL EQUIPMENT which provided as follows:  
6

7 The customer shall indemnify and hold harmless DESERT  
8 MEDICAL/Luxor from and against any and all liability . . .  
9 resulting from the actual or alleged presence, use, or operation of  
10 the equipment, provided such injury, death or property damage is  
not attributable to the negligence of DESERT MEDICAL/Luxor  
...

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

15 27. Plaintiff VIVIA HARRISON's injuries are not attributable to the negligence of  
16 Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT and Defendant/Third-Party  
17 Plaintiff DESERT MEDICAL EQUIPMENT is entitled to contractual indemnity from Third-  
18 Party Defendant STAN SAWAMOTO pursuant to the Terms and Conditions of Rental contract  
19 for damages stemming from Plaintiff VIVIA HARRISON's alleged injuries, should liability  
20 ultimately accrue to Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT.  
21

22 28. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT was forced  
23 to retain the services of an attorney to pursue its claims against Third-Party Defendant STAN  
24 SAWAMOTO, and therefore, Defendant/Third-Party Plaintiff DESERT MEDICAL  
25 EQUIPMENT is entitled to recover reasonable attorney's fees and costs.  
26

27 / / /  
28

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

29. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and realleges the allegations contained in Paragraphs 1 through 28, of its Third-Party Complaint as though fully set forth herein.

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

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

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

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

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

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**FIFTH CLAIM FOR RELIEF**  
**(Contribution)**

35. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT repeats and realleges the allegations contained in Paragraphs 1 through 34, of its Third-Party Complaint as though fully set forth herein.

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

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

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

**PRAYER FOR RELIEF**

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

1. For general and special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
2. For indemnity in favor of Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT in excess of \$10,000.00;

3. For contribution in favor of Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT in excess of \$10,000.00;
4. For prejudgment interest;
5. For reasonable legal expenses, attorney's fees, and costs in favor of Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT incurred in the prosecution of this matter; and
6. For such other and further relief as this Court deems just and proper.

DATED this 20 day of July, 2016.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 002547  
JARED F. HERLING, ESQ.  
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7401 W. Charleston Boulevard  
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Attorneys for Defendant and  
Third-Party Plaintiff Desert Medical Equipment

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**ANS**  
Troy E. Peyton, Esq.  
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William T. Martin, Esq.  
Nevada Bar No. 2534  
71 East Harmon Ave  
Las Vegas, Nevada 89109  
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[wmartin@mgmresorts.com](mailto:wmartin@mgmresorts.com)  
Attorney for Defendant,  
Ramparts, Inc. d/b/a Luxor Hotel & Casino

VIVIA HARRISON, an individual

Plaintiff,

Case No.: A-16-732342-C

Dept. No.: I

VS.

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.

Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino by and through its attorneys of record, William T. Martin, Esq. and Troy E. Peyton, Esq. hereby submits its Answer to Plaintiffs' First Amended Complaint as follows:

## General Allegations

1. Answering paragraph 1 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

1           2.        Answering paragraph 2 of the Complaint, this answering Defendant admits the  
2 allegations contained therein.

3           3.        Answering paragraph 3 of the Complaint, this answering Defendant is without  
4 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
5 therein, and therefore denies each and every allegation contained in said paragraph.

6           4.        Answering paragraph 4 of the Complaint, this answering Defendant is without  
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
8 therein, and therefore denies each and every allegation contained in said paragraph.

9           5.        Answering paragraph 5 of the Complaint, this answering Defendant is without  
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
11 therein, and therefore denies each and every allegation contained in said paragraph.

12          6.        Answering paragraph 6 of the Complaint, this answering Defendant is without  
13 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
14 therein, and therefore denies each and every allegation contained in said paragraph.

15          7.        Answering paragraph 7 of the Complaint, this answering Defendant is without  
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
17 therein, and therefore denies each and every allegation contained in said paragraph.

18          8.        Answering paragraph 8 of the Complaint, this answering Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
20 therein, and therefore denies each and every allegation contained in said paragraph.

21          9.        Answering paragraph 9 of the Complaint, this answering Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
23 therein, and therefore denies each and every allegation contained in said paragraph.

24          10.       Answering paragraph 10 of the Complaint, this answering Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
26 therein, and therefore denies each and every allegation contained in said paragraph.

11. Answering paragraph 11 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

12. Answering paragraph 12 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

### First Cause of Action

**(Negligence – Luxor)**

13. Answering paragraph 13 of the Complaint, this answering Defendant repeats and realleges paragraphs 1 through 12 of its Answer as though each were fully set forth in this paragraph.

14. Answering paragraph 14 of the Complaint, this answering Defendant admits that it owed certain duties of care, but denies that it breached any duty of care owed to Plaintiff and denies any other allegation contained in said paragraph.

15. Answering paragraph 15 of the Complaint, this answering Defendant admits that it owed certain duties of care, but denies that it breached any duty of care owed to Plaintiff and denies any other allegation contained in said paragraph.

16. Answering paragraph 16 of the Complaint, this answering Defendant denies the allegations contained therein.

17. Answering paragraph 17 of the Complaint, this answering Defendant denies the allegations contained therein.

18. Answering paragraph 18 of the Complaint, this answering Defendant denies the allegations contained therein.

19. Answering paragraph 19 of the Complaint, this answering Defendant denies the allegations contained therein.

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**Second Cause of Action**

**(Negligent Hiring, Training, Maintenance and Supervision – Luxor)**

20. Answering paragraph 20 of the Complaint, this answering Defendant repeats and realleges paragraphs 1 through 19 of its Answer as though each were fully set forth in this paragraph.

21. Answering paragraph 21 of the Complaint, this answering Defendant denies the allegations contained therein.

22. Answering paragraph 22 of the Complaint, this answering Defendant denies the allegations contained therein.

23. Answering paragraph 23 of the Complaint, this answering Defendant denies the allegations contained therein.

**Third Cause of Action**

**(Negligence – Desert)**

24. Answering paragraph 24 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

25. Answering paragraph 25 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

26. Answering paragraph 26 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

27. Answering paragraph 27 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

28. Answering paragraph 28 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

1           29.       Answering paragraph 29 of the Complaint, this answering Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
3 therein, and therefore denies each and every allegation contained in said paragraph.

4           30.       Answering paragraph 30 of the Complaint, this answering Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
6 therein, and therefore denies each and every allegation contained in said paragraph.

7           31.       Answering paragraph 31 of the Complaint, this answering Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
9 therein, and therefore denies each and every allegation contained in said paragraph.

10                               **Third Cause of Action**

11                               **(Negligent Hiring, Training, Maintenance and Supervision – Desert)**

12           32.       Answering paragraph 32 of the Complaint, this answering Defendant repeats and  
13 realleges paragraphs 1 through 31 of its Answer as though each were fully set forth in this  
14 paragraph.

15           33.       Answering paragraph 33 of the Complaint, this answering Defendant is without  
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
17 therein, and therefore denies each and every allegation contained in said paragraph.

18           34.       Answering paragraph 34 of the Complaint, this answering Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
20 therein, and therefore denies each and every allegation contained in said paragraph.

21           35.       Answering paragraph 35 of the Complaint, this answering Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
23 therein, and therefore denies each and every allegation contained in said paragraph.

24           36.       Ramparts, Inc. d/b/a Luxor Hotel & Casino denies any allegation herein not  
25 specifically admitted.

26                               **FIRST AFFIRMATIVE DEFENSE**

27           Plaintiff's Complaint fails to state a claim against this Answering Defendant upon which  
28 relief can be granted.

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**SECOND AFFIRMATIVE DEFENSE**

The damages and injuries, if any, incurred by Plaintiff are not attributable to any act, conduct, or omission on the part of Defendant.

**THIRD AFFIRMATIVE DEFENSE**

The Plaintiff has failed to mitigate her damages, if any, which Defendant denies, and Plaintiff's claims are therefore barred in whole or in part.

**FOURTH AFFIRMATIVE DEFENSE**

The occurrence referred to in the complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party, or third parties over whom Defendant had no control.

**FIFTH AFFIRMATIVE DEFENSE**

The occurrence referred to in the complaint, and all injuries and damages, if any, resulting therefrom were the result of a subsequent intervening cause and not the alleged negligence of Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

The incident alleged in the Complaint and the resulting damages, if any, to Plaintiff was proximately caused or contributed to by Plaintiff's own negligence and such negligence was greater than the negligence, if any, of Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

The incident and/or Plaintiff's injuries were caused by Plaintiff's pre-existing and/or physical condition and not by the negligence of Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant reserves the right to assert any additional affirmative defenses and matters in avoidance as may be disclosed during the course of additional investigation and discovery. Pursuant to NRCp 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not plead and are not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore Defendant reserves the right to amend this answer to allege additional affirmative defenses if so warranted.

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**NINTH AFFIRMATIVE DEFENSE**

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of such defenses, Defendant reserves the right to seek leave of Court to amend this Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**WHEREFORE**, Defendant respectfully requests that this Court enter judgment as follows:

- 1. That Plaintiff take nothing by virtue of her Complaint;
- 2. That the Complaint on file herein be dismissed with prejudice;
- 3. For an award of reasonable attorneys’ fees and costs of suit; and
- 4. For such other and further relief as the Court deems appropriate.

DATED this 22<sup>nd</sup> day of July, 2016

/s/ Troy E. Peyton  
Troy E. Peyton, Esq.  
Nevada Bar No. 1188  
William T. Martin, Esq.  
Nevada Bar No. 2534  
71 East Harmon Ave  
Las Vegas, Nevada 89109  
P: 702-692-9594  
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[wmartin@mgmresorts.com](mailto:wmartin@mgmresorts.com)  
Attorney for Defendant,  
Ramparts, Inc. d/b/a Luxor Hotel & Casino

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**CERTIFICATE OF SERVICE**

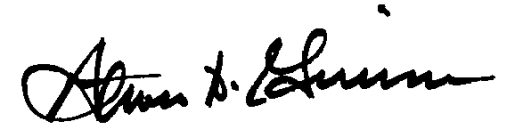
I hereby certify that on the 22<sup>nd</sup> day of July, 2016, I caused to be served the foregoing  
**RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO’S ANSWER TO PLAINTIFF’S**  
**FIRST AMENDED COMPLAINT** on the following parties at the following addresses:

by: ☐ U.S. Postal Service, ordinary first class mail  
☐ U.S. Postal Service, certified or registered mail,  
☐ return receipt requested  
☐ hand delivery  
☒ other (specify) Pursuant to NEFCR 9 to be electronically served through  
the Eighth Judicial District Court’s electronic filing system, with the date and time of the  
electronic service substituted for the date and place of deposit in the mail

<u>Firm Name</u>	<u>E-Mail Address(es)</u>
PICKARD PARRY PFAU	zach@pickardparry.com dave@pickardparry.com

<u>Firm Name</u>	<u>E-Mail Address(es)</u>
ALVERSON, TAYLOR MORTERSEN & SANDERS	bnielson@alversontaylor.com efile@alversontaylor.com dmortensen@alversontaylor.com jherling@alversontaylor.com

/s/ Kimberly Bynum  
Kimberly Bynum



CLERK OF THE COURT

**ACOMP**

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

Attorneys for Plaintiff,  
*Vivia Harrison*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

**Vivia Harrison**, an individual

Case No.: A-16-732342-C

Dept. No.: I

Plaintiff,

vs.

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

**Second Amended Complaint**

Defendants.

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

**Parties, Jurisdiction, and General Allegations**

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

PICKARD  
PARRY  
PFAU

1 incident occurred.

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

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

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

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

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

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

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

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

1 when the events mentioned herein occurred.

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

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

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

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

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

16

17 **First Cause of Action**  
18 **(Negligence - Luxor)**

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

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

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

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

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

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

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

15

## 16 **Second Cause of Action**

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

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

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

21 a. Establish, implement, maintain, and enforce proper policies and  
22 procedures for employees, including maintenance crew, security,  
23 restaurant managers, and wait staff, under the control of Defendant  
24 Luxor;

25 b. Establish, implement, maintain, and enforce proper policies and  
26 procedures for maintenance, repair, inspection, and/or general upkeep of  
27 the Subject Premises, including the restaurant's furnishing;

28 c. Establish, implement, maintain, and enforce proper policies and

1 procedures for warning guests, including Ms. Harrison of potentially  
2 dangerous conditions;

3 d. Properly hire adequate, experienced, and competent employees who are  
4 able to warn guests, including Ms. Harrison of potentially dangerous  
5 conditions;

6 e. Properly pre-screen potential employees by conducting background  
7 checks and other similar investigations into potential employee's resume,  
8 prior to employment retention;

9 f. Properly and adequately supervise and/or manage employees once they  
10 were hired;

11 g. Properly and adequately train employees and/or instruct them as to their  
12 job duties and/or responsibilities;

13 h. Properly and adequately oversee, control, issue regulations regarding the  
14 conduct of employees;

15 i. Properly and adequately delineate maintenance, inspection, and repair job  
16 duties and/or responsibilities to employees, and/or agents, acting on their  
17 behalf; and

18 j. Properly, adequately, and responsibly setup procedures and policies to  
19 ensure that all floor areas and restaurant furnishings, including the Subject  
20 Table, are reasonably up kept in proper and working order for guests,  
21 including Ms. Harrison.

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

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

**Third Cause of Action**  
**(Negligence - Desert)**

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

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

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

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

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

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

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

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

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

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

35. Desert acted in a negligent matter, including, but not limited to, failure to:
- k. Establish, implement, maintain, and enforce proper policies and procedures for employees, including maintenance crew, and sales staff, under the control of Defendant Desert;
  - l. Establish, implement, maintain, and enforce proper policies and procedures for maintenance, repair, inspection, and/or general upkeep of the Subject Scooter’s safety features, including the anti-tip wheels;
  - m. Establish, implement, maintain, and enforce proper policies and procedures for warning guests, including Ms. Harrison of potentially dangerous conditions;
  - n. Properly hire adequate, experienced, and competent employees who are able to warn guests, including Ms. Harrison of potentially dangerous conditions;
  - o. Properly pre-screen potential employees by conducting background checks and other similar investigations into potential employee’s resume, prior to employment retention;
  - p. Properly and adequately supervise and/or manage employees once they were hired;
  - q. Properly and adequately train employees and/or instruct them as to their job duties and/or responsibilities;
  - r. Properly and adequately oversee, control, issue regulations regarding the conduct of employees;
  - s. Properly and adequately delineate maintenance, inspection, and repair job

1 duties and/or responsibilities to employees, and/or agents, acting on their  
2 behalf; and  
3 t. Properly, adequately, and responsibly setup procedures and policies to  
4 ensure that all scooters are fully operational, including the Subject Scooter  
5 are reasonably up kept in proper and working order for guests, including  
6 Ms. Harrison.

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

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

13

14

15

**Fifth Cause of Action**  
**(Negligence- Pride Mobility)**

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

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

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

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

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

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

3  
4 **Sixth Cause of Action**

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

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

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

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

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

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

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

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

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

24  
25 **Prayer for Relief**

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

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

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

DATED this 19th day of August 2016.

PICKARD PARRY PFAU

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

Attorneys for Plaintiff,  
*Vivia Harrison*

#### Certificate of Service

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

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

Attorneys for Defendant,  
*Desert Medical Equipment*

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

Attorneys for Defendant,  
*Pride Mobility Corporation*

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

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

  
An Employee of PICKARD PARRY PFAU

1 ANS  
2 Troy E. Peyton, Esq.  
3 Nevada Bar No. 1188  
4 William T. Martin, Esq.  
5 Nevada Bar No. 2534  
6 71 East Harmon Ave  
7 Las Vegas, Nevada 89109  
8 P: 702-692-9594  
9 F: 702-692-9597  
10 tpeyton@mgmresorts.com  
11 wmartin@mgmresorts.com  
12 Attorney for Defendant,  
13 Ramparts, Inc. d/b/a Luxor Hotel & Casino

VIVIA HARRISON, an individual

13 vs.

14 RAMPARTS, INC. D/B/A LUXOR HOTEL &  
15 CASINO, a Nevada Domestic Corporation;  
16 DESERT MEDICAL EQUIPMENT, a Nevada  
17 Domestic Corporation, PRIDE MOBILITY  
18 PRODUCTS CORP., a Nevada Domestic  
Corporation; Does I through XXX, inclusive and  
Roe Business Entities I through XXX inclusive  
Defendants.

Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino by and through its attorneys of record, William T. Martin, Esq. and Troy E. Peyton, Esq. hereby submits its Answer to Plaintiffs' Second Amended Complaint as follows:

1. Answering paragraph 1 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

1           2.       Answering paragraph 2 of the Complaint, this answering Defendant admits the  
2 allegations contained therein.

3           3.       Answering paragraph 3 of the Complaint, this answering Defendant is without  
4 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
5 therein, and therefore denies each and every allegation contained in said paragraph.

6           4.       Answering paragraph 4 of the Complaint, this answering Defendant is without  
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
8 therein, and therefore denies each and every allegation contained in said paragraph.

9           5.       Answering paragraph 5 of the Complaint, this answering Defendant is without  
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
11 therein, and therefore denies each and every allegation contained in said paragraph.

12          6.       Answering paragraph 6 of the Complaint, this answering Defendant admits the  
13 allegations contained therein.

14          7.       Answering paragraph 7 of the Complaint, this answering Defendant is without  
15 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
16 therein, and therefore denies each and every allegation contained in said paragraph.

17          8.       Answering paragraph 8 of the Complaint, this answering Defendant admits the  
18 allegations contained therein.

19          9.       Answering paragraph 9 of the Complaint, this answering Defendant is without  
20 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
21 therein, and therefore denies each and every allegation contained in said paragraph.

22          10.       Answering paragraph 10 of the Complaint, this answering Defendant admits that  
23 on or about December 10, 2014, Plaintiff was operating a motorized scooter in the restaurant area  
24 of Luxor and, with regard to the remainder of the paragraph, this answering Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
26 therein, and therefore denies each and every allegation contained in said paragraph.

1           11.       Answering paragraph 11 of the Complaint, this answering Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
3 therein, and therefore denies each and every allegation contained in said paragraph.

4           12.       Answering paragraph 12 of the Complaint, this answering Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
6 therein, and therefore denies each and every allegation contained in said paragraph.

7           13.       Answering paragraph 13 of the Complaint, this answering Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
9 therein, and therefore denies each and every allegation contained in said paragraph.

10          14.       Answering paragraph 14 of the Complaint, this answering Defendant is without  
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
12 therein, and therefore denies each and every allegation contained in said paragraph.

13                               **First Cause of Action**

14                               **(Negligence – Luxor)**

15          15.       Answering paragraph 15 of the Complaint, this answering Defendant repeats and  
16 realleges paragraphs 1 through 14 of its Answer as though each were fully set forth in this  
17 paragraph.

18          16.       Answering paragraph 16 of the Complaint, this answering Defendant admits that  
19 it owed certain duties of care, but denies that it breached any duty of care owed to Plaintiff and  
20 denies any other allegation contained in said paragraph.

21          17.       Answering paragraph 17 of the Complaint, this answering Defendant admits that  
22 it owed certain duties of care, but denies that it breached any duty of care owed to Plaintiff and  
23 denies any other allegation contained in said paragraph.

24          18.       Answering paragraph 18 of the Complaint, this answering Defendant denies the  
25 allegations contained therein.

26          19.       Answering paragraph 19 of the Complaint, this answering Defendant denies the  
27 allegations contained therein.  
28

20. Answering paragraph 20 of the Complaint, this answering Defendant denies the allegations contained therein.

21. Answering paragraph 21 of the Complaint, this answering Defendant denies the allegations contained therein.

## Second Cause of Action

**(Negligent Hiring, Training, Maintenance and Supervision – Luxor)**

22. Answering paragraph 22 of the Complaint, this answering Defendant repeats and realleges paragraphs 1 through 21 of its Answer as though each were fully set forth in this paragraph.

23. Answering paragraph 23 of the Complaint, this answering Defendant denies the allegations contained therein.

24. Answering paragraph 24 of the Complaint, this answering Defendant denies the allegations contained therein.

25. Answering paragraph 25 of the Complaint, this answering Defendant denies the allegations contained therein.

### Third Cause of Action

(Negligence – Desert)

26. Answering paragraph 26 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

27. Answering paragraph 27 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

28. Answering paragraph 28 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

1           29.       Answering paragraph 29 of the Complaint, this answering Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
3 therein, and therefore denies each and every allegation contained in said paragraph.

4           30.       Answering paragraph 30 of the Complaint, this answering Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
6 therein, and therefore denies each and every allegation contained in said paragraph.

7           31.       Answering paragraph 31 of the Complaint, this answering Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
9 therein, and therefore denies each and every allegation contained in said paragraph.

10          32.       Answering paragraph 32 of the Complaint, this answering Defendant is without  
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
12 therein, and therefore denies each and every allegation contained in said paragraph.

13          33.       Answering paragraph 33 of the Complaint, this answering Defendant is without  
14 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
15 therein, and therefore denies each and every allegation contained in said paragraph.

16                               **Third Cause of Action**

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

18          34.       Answering paragraph 34 of the Complaint, this answering Defendant repeats and  
19 realleges paragraphs 1 through 33 of its Answer as though each were fully set forth in this  
20 paragraph.

21          35.       Answering paragraph 35 of the Complaint, this answering Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
23 therein, and therefore denies each and every allegation contained in said paragraph.

24          36.       Answering paragraph 36 of the Complaint, this answering Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
26 therein, and therefore denies each and every allegation contained in said paragraph.

1           37.       Answering paragraph 37 of the Complaint, this answering Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
3 therein, and therefore denies each and every allegation contained in said paragraph.

4                               **Fifth Cause of Action**

5                               **(Negligence – Pride Mobility)**

6           38.       Answering paragraph 38 of the Complaint, this answering Defendant is without  
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
8 therein, and therefore denies each and every allegation contained in said paragraph.

9           39.       Answering paragraph 39 of the Complaint, this answering Defendant is without  
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
11 therein, and therefore denies each and every allegation contained in said paragraph.

12          40.       Answering paragraph 40 of the Complaint, this answering Defendant is without  
13 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
14 therein, and therefore denies each and every allegation contained in said paragraph.

15          41.       Answering paragraph 41 of the Complaint, this answering Defendant is without  
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
17 therein, and therefore denies each and every allegation contained in said paragraph.

18          42.       Answering paragraph 42 of the Complaint, this answering Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
20 therein, and therefore denies each and every allegation contained in said paragraph.

21                               **Sixth Cause of Action**

22                               **(Strict Products Liability – Pride Mobility)**

23          43.       Answering paragraph 43 of the Complaint, this answering Defendant repeats and  
24 realleges paragraphs 1 through 42 of its Answer as though each were fully set forth in this  
25 paragraph.

26          44.       Answering paragraph 44 of the Complaint, this answering Defendant is without  
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
28 therein, and therefore denies each and every allegation contained in said paragraph.

45. Answering paragraph 45 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

46. Answering paragraph 46 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

47. Answering paragraph 47 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

48. Answering paragraph 48 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

49. Answering paragraph 49 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

50. Answering paragraph 50 of the Complaint, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies each and every allegation contained in said paragraph.

51. Ramparts, Inc. d/b/a Luxor Hotel & Casino denies any allegation herein not specifically admitted.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim against this answering Defendant upon which relief can be granted.

## SECOND AFFIRMATIVE DEFENSE

The damages and injuries, if any, incurred by Plaintiff are not attributable to any act, conduct, or omission on the part of Defendant.

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**THIRD AFFIRMATIVE DEFENSE**

The Plaintiff has failed to mitigate her damages, if any, which Defendant denies, and Plaintiffs' claims are therefore barred in whole or in part.

**FOURTH AFFIRMATIVE DEFENSE**

The occurrence referred to in the complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party, or third parties over whom Defendant had no control.

**FIFTH AFFIRMATIVE DEFENSE**

The occurrence referred to in the complaint, and all injuries and damages, if any, resulting therefrom were the result of a subsequent intervening cause and not the alleged negligence of Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

The incident alleged in the Complaint and the resulting damages, if any, to Plaintiff was proximately caused or contributed to by Plaintiff's own negligence and such negligence was greater than the negligence, if any, of Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

The incident and/or Plaintiff's injuries were caused by Plaintiff's pre-existing and/or physical condition and not by the negligence of Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are limited by Nevada Revised Statutes §§ 42.001 -- 42.007 and other statutes, and Plaintiff's claims for punitive damages are limited by principles of due process as articulated by the United States Supreme Court in *State Farm v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003).

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are barred because there is no evidence of any intent by this answering Defendant to deliberately harm Plaintiff.

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**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are barred because there is no evidence that any officer, director, or managing agent of this Defendant authorized or ratified any alleged intentional torts.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are further barred because there is no evidence of intent on the part of Defendant to cause hardship to Plaintiff or of a conscious disregard for her rights.

**TWELFTH AFFIRMATIVE DEFENSE**

Defendant reserves the right to assert any additional affirmative defenses and matters in avoidance as may be disclosed during the course of additional investigation and discovery. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not plead and are not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore Defendant reserves the right to amend its answer to allege additional affirmative defenses if so warranted.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of such defenses, Defendant reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**WHEREFORE,** Defendant respectfully requests that this Court enter judgment as follows:

- 1. That Plaintiff take nothing by virtue of her Complaint;
- 2. That the Complaint on file herein be dismissed with prejudice;
- 3. For an award of reasonable attorneys' fees and costs of suit; and

///  
///

1                   4.       For such other and further relief as the Court deems appropriate.

2       DATED this 23<sup>rd</sup> day of August, 2016

3  
4   
5       Troy E. Peyton, Esq.  
6       Nevada Bar No. 1188  
7       William T. Martin, Esq.  
8       Nevada Bar No. 2534  
9       71 East Harmon Ave  
10      Las Vegas, Nevada 89109  
11      P: 702-692-9594  
12      F: 702-692-9597  
13      tpeyton@mgmresorts.com  
14      wmartin@mgmresorts.com  
15      Attorney for Defendant,  
16      Ramparts, Inc. d/b/a Luxor Hotel & Casino  
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CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of August, 2016, I caused to be served the foregoing  
RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO'S ANSWER TO PLAINTIFF'S  
SECOND AMENDED COMPLAINT on the following parties at the following addresses:

by: ☐ U.S. Postal Service, ordinary first class mail  
☐ U.S. Postal Service, certified or registered mail,  
☐ return receipt requested  
☐ hand delivery  
☒ other (specify) Pursuant to NEFCR 9 to be electronically served through  
the Eighth Judicial District Court's electronic filing system, with the date and time of the  
electronic service substituted for the date and place of deposit in the mail

Firm Name

PICKARD PARRY PFAU

E-Mail Address(es)


zach@pickardparry.com  
dave@pickardparry.com

Firm Name

ALVERSON, TAYLOR MORTERSEN  
& SANDERS

E-Mail Address(es)

bnielson@alversontaylor.com  
efile@alversontaylor.com  
dmortensen@alversontaylor.com  
jherling@alversontaylor.com

  
Kimberly Bynum

  
CLERK OF THE COURT

1 **ANAC**  
2 **ALVERSON, TAYLOR, MORTENSEN & SANDERS**  
3 **DAVID J. MORTENSEN, ESQ.**  
4 Nevada Bar No. 002547  
5 **JARED F. HERLING, ESQ.**  
6 Nevada Bar No. 13350  
7 7401 West Charleston Boulevard  
8 Las Vegas, NV 89117-1401  
9 Phone: (702) 384-7000  
10 Facsimile: (702) 385-7000  
11 **E-File: [efile@alversontaylor.com](mailto:efile@alversontaylor.com)**  
12 Attorneys for Defendant and  
13 Third-Party Plaintiff Desert Medical Equipment

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **VIVIA HARRISON, an individual**

17 **Plaintiff,**

18 **vs.**

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

26 **Defendants.**

27 **DESERT MEDICAL EQUIPMENT, a Nevada**  
28 **Domestic Corporation**

**Third-Party Plaintiff,**

**vs.**

**STAN SAWAMOTO, an individual**

**Third-Party Defendant.**

CASE NO.: A-16-732342-C

DEPT. NO.: I

**DESERT MEDICAL**  
**EQUIPMENT'S ANSWER TO**  
**PLAINTIFF'S SECOND**  
**AMENDED COMPLAINT**

**ALVERSON, TAYLOR, MORTENSEN & SANDERS**  
**LAWYERS**  
7401 WEST CHARLESTON BOULEVARD  
LAS VEGAS, NEVADA 89117-1401  
(702) 384-7000

**DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S SECOND  
AMENDED COMPLAINT**

COMES NOW, Defendant DESERT MEDICAL EQUIPMENT, by and through its attorney of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS, and hereby answers Plaintiff's Second Amended Complaint as follows:

**DESERT MEDICAL EQUIPMENT'S INCORPORATION OF ITS THIRD-PARTY  
COMPLAINT AGAINST STAN SAWAMOTO INTO THIS ANSWER TO PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

Defendant hereby incorporates by reference, into its Answer to Plaintiff's Second Amended Complaint, as if fully set forth herein, its Third-Party Complaint against Stan Sawamoto filed on July 20, 2016.

**PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

1. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Second Amended Complaint, and therefore denies the same.

2. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiff's Second Amended Complaint, and therefore denies the same.

3. Answering Defendant admits to the allegations contained in paragraph 3 of Plaintiff's Second Amended Complaint.

4. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 4 of Plaintiff's Second Amended Complaint, and therefore denies the same.

5. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 5 of Plaintiff's Second Amended Complaint, and

1 therefore denies the same.

2 6. Answering Defendant is without sufficient knowledge to form a belief as to the  
3 truth of the allegations contained in paragraph 6 of Plaintiff's Second Amended Complaint, and  
4 therefore denies the same.

5 7. Answering Defendant is without sufficient knowledge to form a belief as to the  
6 truth of the allegations contained in paragraph 7 of Plaintiff's Second Amended Complaint, and  
7 therefore denies the same.

8 8. Answering Defendant is without sufficient knowledge to form a belief as to the  
9 truth of the allegations contained in paragraph 8 of Plaintiff's Second Amended Complaint, and  
10 therefore denies the same.

11 9. Answering Defendant is without sufficient knowledge to form a belief as to the  
12 truth of the allegations contained in paragraph 9 of Plaintiff's Second Amended Complaint, and  
13 therefore denies the same.

14 10. Answering Defendant is without sufficient knowledge to form a belief as to the  
15 truth of the allegations contained in paragraph 10 of Plaintiff's Second Amended Complaint, and  
16 therefore denies the same.

17 11. Answering Defendant is without sufficient knowledge to form a belief as to the  
18 truth of the allegations contained in paragraph 11 of Plaintiff's Second Amended Complaint, and  
19 therefore denies the same.

20 12. Answering Defendant is without sufficient knowledge to form a belief as to the  
21 truth of the allegations contained in paragraph 12 of Plaintiff's Second Amended Complaint, and  
22 therefore denies the same.

23 13. Answering Defendant is without sufficient knowledge to form a belief as to the  
24 truth of the allegations contained in paragraph 13 of Plaintiff's Second Amended Complaint, and  
25  
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1 therefore denies the same.

2 14. Answering Defendant is without sufficient knowledge to form a belief as to the  
3 truth of the allegations contained in paragraph 14 of Plaintiff's Second Amended Complaint, and  
4 therefore denies the same.

5  
6 **FIRST CAUSE OF ACTION**  
7 **(Negligence – Luxor)**

8 15. Answering Defendant repeats and realleges its answers to the allegations  
9 contained within paragraphs 1 through 14 of Plaintiff's Second Amended Complaint as if the  
10 same were fully set forth herein.

11 16. Answering Defendant is without sufficient knowledge to form a belief as to the  
12 truth of the allegations contained in paragraph 16 of Plaintiff's Second Amended Complaint, and  
13 therefore denies the same.

14 17. Answering Defendant is without sufficient knowledge to form a belief as to the  
15 truth of the allegations contained in paragraph 17 of Plaintiff's Second Amended Complaint, and  
16 therefore denies the same.

17 18. Answering Defendant is without sufficient knowledge to form a belief as to the  
18 truth of the allegations contained in paragraph 18 of Plaintiff's Second Amended Complaint, and  
19 therefore denies the same.

20 19. Answering Defendant is without sufficient knowledge to form a belief as to the  
21 truth of the allegations contained in paragraph 19 of Plaintiff's Second Amended Complaint, and  
22 therefore denies the same.

23 20. Answering Defendant is without sufficient knowledge to form a belief as to the  
24 truth of the allegations contained in paragraph 20 of Plaintiff's Second Amended Complaint, and  
25 therefore denies the same.

1           21. Answering Defendant is without sufficient knowledge to form a belief as to the  
2 truth of the allegations contained in paragraph 21 of Plaintiff's Second Amended Complaint, and  
3 therefore denies the same.

4  
5                           **SECOND CAUSE OF ACTION**  
6                           **(Negligent Hiring, Training, Maintenance and Supervision – Luxor)**

7           22. Answering Defendant repeats and realleges its answers to the allegations  
8 contained within paragraphs 1 through 21 of Plaintiff's Second Amended Complaint as if the  
9 same were fully set forth herein.

10          23. Answering Defendant is without sufficient knowledge to form a belief as to the  
11 truth of the allegations contained in paragraph 22 of Plaintiff's Second Amended Complaint, and  
12 therefore denies the same.

13          24. Answering Defendant is without sufficient knowledge to form a belief as to the  
14 truth of the allegations contained in paragraph 24 of Plaintiff's Second Amended Complaint, and  
15 therefore denies the same.

16          25. Answering Defendant is without sufficient knowledge to form a belief as to the  
17 truth of the allegations contained in paragraph 25 of Plaintiff's Second Amended Complaint, and  
18 therefore denies the same.

19  
20  
21                           **THIRD CAUSE OF ACTION**  
22                           **(Negligence – Desert)**

23          26. Answering Defendant repeats and realleges its answers to the allegations  
24 contained within paragraphs 1 through 25 of Plaintiff's Second Amended Complaint as if the  
25 same were fully set forth herein.

26  
27          27. In answering paragraph 26 of Plaintiff's Second Amended Complaint, Defendant  
28

1 admits that Desert was in the business of rentals of various scooters, including the Subject  
2 Scooter. Defendant is without sufficient knowledge to form a belief as to the truth of the  
3 remaining allegations contained in paragraph 26 of Plaintiff's Second Amended Complaint, and  
4 therefore denies the same.

5  
6 28. Answering Defendant denies the allegations contained in paragraph 27 of  
7 Plaintiff's Second Amended Complaint.

8  
9 29. In answering paragraph 28 of Plaintiff's Second Amended Complaint, Defendant  
10 denies that the subject scooter was missing anti-tip wheels and denies that the subject scooter  
11 was otherwise unsafe for usage. Defendant is without sufficient knowledge to form a belief as to  
12 the truth of the remaining allegations contained in paragraph 28 of Plaintiff's Second Amended  
13 Complaint, and therefore denies the same.

14  
15 30. Answering Defendant is without sufficient knowledge to form a belief as to the  
16 truth of the allegations contained in paragraph 29 of Plaintiff's Second Amended Complaint, and  
17 therefore denies the same.

18  
19 31. Answering Defendant denies the allegations contained in paragraph 30 of  
20 Plaintiff's Second Amended Complaint.

21  
22 32. Answering Defendant denies the allegations contained in paragraph 31 of  
23 Plaintiff's Second Amended Complaint.

24  
25 33. Answering Defendant denies the allegations contained in paragraph 32 of  
26 Plaintiff's Second Amended Complaint.

27  
28 34. Answering Defendant denies the allegations contained in paragraph 33 of

1 Plaintiff's Second Amended Complaint.

2  
3 **FOURTH CAUSE OF ACTION**  
4 **(Negligent Hiring, Training, Maintenance and Supervision – Desert)**

5 35. Answering Defendant repeats and realleges its answers to the allegations  
6 contained within paragraphs 1 through 33 of Plaintiff's Second Amended Complaint as if the  
7 same were fully set forth herein.

8 36. Answering Defendant denies the allegations contained in paragraph 35 of  
9 Plaintiff's Second Amended Complaint.

10 37. Answering Defendant denies the allegations contained in paragraph 36 of  
11 Plaintiff's Second Amended Complaint.

12 38. Answering Defendant denies the allegations contained in paragraph 37 of  
13 Plaintiff's Second Amended Complaint.

14 **FIFTH CAUSE OF ACTION**  
15 **(Negligence – Pride Mobility)**

16 39. Answering Defendant repeats and realleges its answers to the allegations  
17 contained within paragraphs 1 through 37 of Plaintiff's Second Amended Complaint as if the  
18 same were fully set forth herein.

19 40. Answering Defendant is without sufficient knowledge to form a belief as to the  
20 truth of the allegations contained in paragraph 38 of Plaintiff's Second Amended Complaint, and  
21 therefore denies the same.

22  
23 41. In answering paragraph 39 of Plaintiff's Second Amended Complaint, Defendant  
24 denies that the subject scooter was missing anti-tip wheels and denies that the subject scooter  
25 was otherwise unsafe for usage. Defendant is without sufficient knowledge to form a belief as to  
26 the truth of the remaining allegations contained in paragraph 39 of Plaintiff's Second Amended  
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1 Complaint, and therefore denies the same.

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3 42. Answering Defendant is without sufficient knowledge to form a belief as to the  
4 truth of the allegations contained in paragraph 40 of Plaintiff's Second Amended Complaint, and  
5 therefore denies the same.

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7 43. Answering Defendant is without sufficient knowledge to form a belief as to the  
8 truth of the allegations contained in paragraph 41 of Plaintiff's Second Amended Complaint, and  
9 therefore denies the same.

10  
11 44. Answering Defendant is without sufficient knowledge to form a belief as to the  
12 truth of the allegations contained in paragraph 42 of Plaintiff's Second Amended Complaint, and  
13 therefore denies the same.

14  
15 **SIXTH CAUSE OF ACTION**  
16 **(Strict Products Liability – Pride Mobility)**

17 45. Answering Defendant repeats and realleges its answers to the allegations  
18 contained within paragraphs 1 through 42 of Plaintiff's Second Amended Complaint as if the  
19 same were fully set forth herein.

20 46. Answering Defendant is without sufficient knowledge to form a belief as to the  
21 truth of the allegations contained in paragraph 44 of Plaintiff's Second Amended Complaint, and  
22 therefore denies the same.

23 47. Answering Defendant is without sufficient knowledge to form a belief as to the  
24 truth of the allegations contained in paragraph 47 of Plaintiff's Second Amended Complaint, and  
25 therefore denies the same.

26  
27 48. Answering Defendant is without sufficient knowledge to form a belief as to the  
28 truth of the allegations contained in paragraph 46 of Plaintiff's Second Amended Complaint, and

1 therefore denies the same.

2 49. Answering Defendant is without sufficient knowledge to form a belief as to the  
3 truth of the allegations contained in paragraph 47 of Plaintiff's Second Amended Complaint, and  
4 therefore denies the same.

5 50. Answering Defendant is without sufficient knowledge to form a belief as to the  
6 truth of the allegations contained in paragraph 48 of Plaintiff's Second Amended Complaint, and  
7 therefore denies the same.

8 51. Answering Defendant is without sufficient knowledge to form a belief as to the  
9 truth of the allegations contained in paragraph 49 of Plaintiff's Second Amended Complaint, and  
10 therefore denies the same.

11 52. Answering Defendant is without sufficient knowledge to form a belief as to the  
12 truth of the allegations contained in paragraph 50 of Plaintiff's Second Amended Complaint, and  
13 therefore denies the same.

14 **FIRST AFFIRMATIVE DEFENSE**

15 Defendant alleges that Plaintiff's Second Amended Complaint on file herein fails to state  
16 a claim upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Defendant alleges that the damages, if any, were caused in whole or in part, or where  
19 contributed to by reason of the negligence or wrongful conduct of the Plaintiff.

20 **THIRD AFFIRMATIVE DEFENSE**

21 All risks and dangers involved in the factual situation described in the Complaint were  
22 open, obvious, and known to the Plaintiff and said Plaintiff voluntarily assumed said risks and  
23 dangers.

24 / / /

**FOURTH AFFIRMATIVE DEFENSE**

The incident alleged in the Complaint and the resulting damages, if any, to the Plaintiff were proximately caused or contributed to by Plaintiff's own negligence, and such negligence was greater than the alleged negligence of Defendants.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party over whom Defendants had no control.

**SIXTH AFFIRMATIVE DEFENSE**

Defendant has fully performed and discharged all obligations owed to Plaintiff, including meeting the requisite standard of care to which Plaintiff was entitled.

**SEVENTH AFFIRMATIVE DEFENSE**

If Plaintiff has sustained any injuries or damages, such were the result of intervening and/or superseding events, factors, occurrences, or conditions, which were in no way caused by Defendant, and for which Defendant is not liable.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovering any special damages herein as a result of the failure to comply with the provisions of N.R.C.P. 9(g).

**NINTH AFFIRMATIVE DEFENSE**

Defendant alleges that Plaintiff has a duty to mitigate her damages and has failed to do so.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable statutes of limitations and/or repose.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff did not exercise ordinary care, caution or prudence in the conduct of her affairs relating to the allegations contained in Plaintiff's Second Amended Complaint herein for damages in order to avoid the injuries or damages of which Plaintiff complains, and said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiff.

**TWELVTH AFFIRMATIVE DEFENSE**

Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to amend its Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

**THIRTEENTH AFFIRMATIVE DEFENSE**

That it has been necessary for Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendant for attorneys' fees, together with costs of suit incurred herein.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 and Rule 12 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserve the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Second Amended Complaint, and each claim asserted therein and the relief sought, is barred by the statute of frauds.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to allege facts in support of any award for pre-judgment interest.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to name the proper party or parties as Defendants.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to amend their Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff is comparatively at fault; Plaintiffs' recovery, if any, should be reduced in proportion to their own fault, or in the event his fault exceeds that of Defendant, they are not entitled to any recovery.

**TWENTIETH AFFIRMATIVE DEFENSE**

Defendant denies each and every allegation of Plaintiff's Second Amended Complaint not specifically admitted or otherwise pled to herein.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Defendants allege that at all times mentioned in Plaintiff's Second Amended Complaint, Plaintiff was suffering from a medical condition(s) which Defendant did not cause, nor was Defendant responsible for said medical condition(s).

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff is barred from any recovery in this action by their own conduct that operates as a waiver of their rights.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 Plaintiff is barred from recovery in this action by the doctrine of unclean hands.

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 No privity of contract exists between Plaintiff and Defendant such that Defendant cannot  
5 be liable as a matter of law.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 Plaintiff's claims, or parts thereof, are barred by the doctrine of waiver and estoppel.

8 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

9  
10 Plaintiff's damages, if any, were directly and proximately caused by the misuse, abuse of,  
11 improper repair and maintenance of, alteration, and the unreasonable and improper use of the  
12 scooter. Further, the misuse, abuse, improper repair and maintenance of, alteration, or failure to  
13 use the scooter properly contributed to the loss or damages alleged in Plaintiff's Second  
14 Amended Complaint. The damages, if any, recoverable by Plaintiff herein must be diminished  
15 in proportion to the amount of fault attributable to such misuse, abuse, unreasonable use,  
16 alteration, or improper use.

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18  
19 Plaintiff's damages were the result of unrelated, pre-existing, or subsequent conditions  
20 unrelated to Defendant's conduct.

21 **GENERAL DENIAL**

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23 Defendant denies each and every allegation to any of the requested relief as contained  
24 within Plaintiff's Second Amended Complaint. Defendant denies each and every allegation  
25 contained in Plaintiff's Second Amended Complaint that is not specifically admitted to be true.

26 / / /

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff take nothing by way of her Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper.

DATED this 23 day of September, 2016.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

JARED F. HERLING, ESQ.

Nevada Bar No. 13350

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

Phone: (702) 384-7000

Facsimile: (702) 385-7000

E-File: [cfile@alversontaylor.com](mailto:cfile@alversontaylor.com)

Attorneys for Defendant and

Third-Party Plaintiff Desert Medical Equipment

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

The undersigned does hereby affirm that the preceding **DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** filed in District Court Case No. A-16-732342-C.

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

**-OR-**

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

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

[Insert specific law]

**-or-**

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

DATED this 23 day of September, 2016.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

JARED F. HERLING, ESQ.

Nevada Bar No. 103350

7401 W. Charleston Boulevard

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Attorneys for Defendant and

Third-Party Plaintiff Desert Medical Equipment

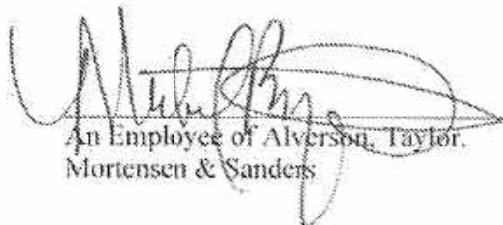
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23<sup>rd</sup> day of September, 2016, the forgoing  
**DESERT MEDICAL EQUIPMENT'S ANSWER TO PLAINTIFF'S SECOND  
AMENDED COMPLAINT** was served on the following by Electronic Service to All parties on  
the Wiznet Service List, addressed as follows:

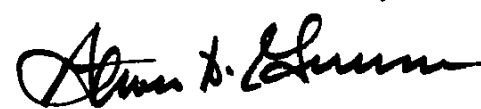
Matthew G. Pfau, Esq.  
PICKARD PARRY PFAU  
10120 S. Eastern Avenue, Suite 140  
Henderson, Nevada 89052  
*Attorney for Plaintiff*

Loren S. Young, Esq.  
LINCOLN, GUSTAFSON & CEROS  
3960 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
*Attorneys for Defendant  
Ramparts, Inc., d/b/a Luxor Hotel & Casino*

Joseph Burke, Esq.  
LAW OFFICES OF BURKE VULLO  
REILLY ROBERTS  
1460 Wyoming Avenue  
Forty Fort, Pennsylvania 18704  
*Attorneys for Defendant  
Pride Mobility Products Corporation*

  
An Employee of Alverson, Taylor,  
Mortensen & Sanders

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CLERK OF THE COURT

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

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 VIVIA HARRISON, an individual,

13 Plaintiff,

14 vs.

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

23 Defendants.

24 DESERT MEDICAL EQUIPMENT, a Nevada  
25 Domestic Corporation

26 Third-Party Plaintiff,

27 vs.

28 STAN SAWAMOTO, an individual

Third-Party Defendant.

CASE NO.: A-16-732342-C

DEPT. NO.: I

**DEFENDANT, PRIDE MOBILITY  
PRODUCTS CORP.'S ANSWER TO  
PLAINTIFF, VIVIA HARRISON'S  
SECOND AMENDED COMPLAINT**

COMES NOW, defendant, Pride Mobility Products Corp., by and through its counsel of record, Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and hereby answers plaintiff, Vivia Harrison's, second amended complaint on file herein and admits, denies, and alleges as follows:

**I.**

**Parties, Jurisdiction, and General Allegations**

This answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 6, 7, 8, 9, 10, 11, 12 and 13 of plaintiff's second amended complaint, and therefore denies the same.

**II.**

This answering defendant admits that Pride Mobility Products Corporation is authorized to conduct business in the State of Nevada. However, as to all other allegations contained in paragraph 4, same are denied.

**III.**

Answering paragraphs 5 and 14 of the second amended complaint, defendant herein denies the allegations therein.

**IV.**

**First Cause of Action**

**(Negligence – Luxor)**

Answering paragraph 15 of the second amended complaint, this answering defendant repeats and realleges each and every response to paragraphs 1 through 14 of the second amended complaint as if set forth therein.

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V.

This answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 16, 17, 18, 19, 20 and 21 of plaintiff's second amended complaint, and therefore denies the same.

VI.

**Second Cause of Action**

**(Negligent Hiring, Training, Maintenance and Supervision – Luxor)**

Answering paragraph 22 of the second amended complaint, this answering defendant repeats and realleges each and every response to paragraphs 1 through 21 of the second amended complaint as if set forth therein.

VII.

This answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 23 and 24 of plaintiff's second amended complaint, and therefore denies the same.

VIII.

This answering defendant admits that Ms. Harrison has retained counsel. However, as to all other allegations contained in paragraph 25, same are denied.

IX.

**Third Cause of Action**

**(Negligence – Desert)**

This answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 26, 27, 28, 29, 30, 31 and 32 of plaintiff's second amended complaint, and therefore denies the same.

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**X.**

Answering paragraph 33 of the second amended complaint, defendant herein denies the allegations therein.

**XI.**

**Fourth Cause of Action**

**(Negligent Hiring, Training, Maintenance and Supervision – Desert)**

Answering paragraph 34 of the second amended complaint, this answering defendant repeats and realleges each and every response to paragraphs 1 through 33 of the second amended complaint as if set forth therein.

**XII.**

This answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 35 and 36 of plaintiff’s second amended complaint, and therefore denies the same.

**XIII.**

This answering defendant admits that plaintiff has retained counsel. However, as to all other allegations contained in paragraph 37, same are denied on information and belief.

**XIV.**

**Fifth Cause of Action**

**(Negligence – Pride Mobility)**

This answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of plaintiff’s second amended complaint, and therefore denies the same.

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**XV.**

Answering paragraphs 39, 40, 41 and 42 of the second amended complaint, defendant herein denies the allegations therein.

**XVI.**

**Sixth Cause of Action  
(Strict Products Liability – Pride Mobility)**

Answering paragraph 43 of the second amended complaint, this answering defendant repeats and realleges each and every response to paragraphs 1 through 42 of the second amended complaint as if set forth therein.

**XVII.**

This answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of plaintiff’s second amended complaint, and therefore denies the same.

**XVIII.**

Answering paragraphs 45, 46, 47, 48 and 49 of the second amended complaint, defendant herein denies the allegations therein.

**XIX.**

This answering defendant admits that plaintiff has retained counsel. However, as to all other allegations contained in paragraph 50, same are denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff’s second amended complaint fails to state a claim upon which relief can be granted against this answering defendant.

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**SECOND AFFIRMATIVE DEFENSE**

There has been an accord and satisfaction in reference to the claim which is the subject matter of the second amended complaint herein.

**THIRD AFFIRMATIVE DEFENSE**

The occurrence referred to in plaintiff's second amended complaint, and all damages, if any, arising therefrom, were caused by the acts or omissions of a third person or persons over whom this answering defendant had no control.

**FOURTH AFFIRMATIVE DEFENSE**

All risks and dangers involved in the factual situation described in the second amended complaint were open, obvious and known to plaintiff, and plaintiff voluntarily assumed said risks and dangers.

**FIFTH AFFIRMATIVE DEFENSE**

At all times and places alleged in plaintiff's second amended complaint, the negligence, misconduct and fault of the plaintiff exceeds that of this answering defendant, if any, and plaintiff is thereby barred from any recovery against this answering defendant.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her damages.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's second amended complaint is barred by the applicable Doctrine of Laches.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's second amended complaint is barred by the applicable statute of limitations.

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**NINTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovering any special damages herein for failure to specifically allege the types of special damages claimed, pursuant to Rule 9(g), NRCP.

**TENTH AFFIRMATIVE DEFENSE**

Under the laws of this jurisdiction and/or any applicable laws of any other jurisdiction, if any, punitive damages are not recoverable.

**ELEVENTH AFFIRMATIVE DEFENSE**

Punitive damages are not recoverable against this answering defendant as no facts exist to support the allegation that this answering defendant was guilty of malice, oppression or fraud.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff is constrained from asserting any claims against this answering defendant because plaintiff has not come before this court with clean hands.

**THIRTEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that plaintiff fails to name a party necessary for full and adequate relief essential in this action.

**FOURTEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that the damages, if any, to plaintiff were, as alleged in the second amended complaint, proximately caused by a new, independent and efficient intervening cause and not by any alleged negligence on the part of this answering defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

This answering defendant was under no duty to discover the defect, if any, and therefore this answering defendant is not liable for any damages resulting therefrom.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that the damages to plaintiff, if any, were caused by conditions over which this answering defendant had no control.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that it had no notice or prior knowledge that the alleged hazard which allegedly caused plaintiff's injury, as alleged in the second amended complaint.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The product of this answering defendant was misused by plaintiff, thereby causing the damages, if any, complained of.

**NINETEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that the time the product described in the second amended complaint left the hands of this answering defendant, said product was fit and proper for the use for which it was intended, and was in complete conformity to the state of the art at all relevant times stated in the second amended complaint.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff is estopped from asserting any cause of action whatsoever against this answering defendant.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff, by her acts and conduct has waived and abandoned any and all claims as alleged herein against this answering defendant.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Any and all conduct, if negligent by defendants herein, is several.  
///

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 Pursuant to NRCP § 11, all possible affirmative defenses may not have been alleged  
3 herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of  
4 defendant, Pride Mobility Products Corp.'s answer to second amended complaint, and therefore,  
5 this answering defendant reserves the right to amend its answer to the second amended complaint  
6 to allege additional affirmative defenses if subsequent investigation so warrants.  
7

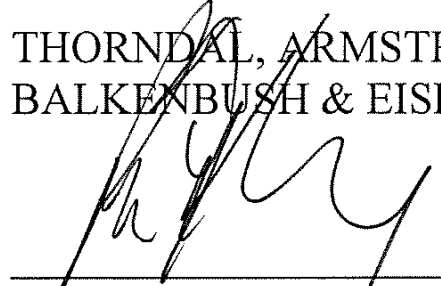
8 **PRAYER FOR RELIEF**

9 WHEREFORE, defendant, Pride Mobility Products Corp., prays for judgment as follows:

- 10 1. That plaintiff takes nothing by reason of the second amended complaint on file  
11 herein;  
12  
13 2. That the same be dismissed with prejudice; and  
14  
15 3. This answering defendant be awarded costs and reasonable attorney's fees  
16 incurred herein.

17 DATED this 19<sup>th</sup> day of October, 2016.

18 THORNDAL, ARMSTRONG, DELK,  
19 BALKENBUSH & EISINGER

20   
21 Brian K. Terry, Esq.  
22 Nevada Bar No. 003171  
23 1100 East Bridger Avenue  
24 Las Vegas, NV 89101-5315  
25 Mail To: P.O. Drawer 2070  
26 Las Vegas, Nevada 89125-2070  
27 Tel.: (702) 366-0622  
28 Fax: (702) 366-0327  
E-Mail: [bterry@thorndal.com](mailto:bterry@thorndal.com)  
Attorney for Defendant, Pride Mobility  
Products Corp.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP Rule 5(b), on the 19<sup>th</sup> day of October, 2016, service of

**DEFENDANT, PRIDE MOBILITY PRODUCTS CORP.'S ANSWER TO PLAINTIFF,**  
**VIVA HARRISON'S SECOND AMENDED COMPLAINT** was made upon each of the  
parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and  
Serve system.

NAME	TEL., FAX & E-MAILS	PARTY REPRESENTING
Matthew G. Pfau, Esq. Pickard Parry Pfau 10120 South Eastern Avenue Suite 140 Henderson, Nevada 89052	Tel.: (702) 910-4300 Fax: (702) 910-4303  E-Mail: <a href="mailto:matt@pickardparry.com">matt@pickardparry.com</a>	Plaintiff, Vivia Harrison
David J. Mortensen, Esq. Jared F. Herling, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, Nevada 89117-1401	Tel.: (702) 384-7000 Fax: (702) 385-7000  E-Mail: <a href="mailto:efile@alversontaylor.com">efile@alversontaylor.com</a>	Defendant/Third- Party Plaintiff, Desert Medical Equipment
Loren S. Young, Esq. Lincoln, Gustafson & Ceros 3960 Howard Hughes Parkway Suite 200 Las Vegas, Nevada 89169	Tel.: (702) 257-1997 Fax: (702) 257-2203  E-Mail: <a href="mailto:lyoung@lgelawoffice.com">lyoung@lgelawoffice.com</a>	Defendant, Ramparts, Inc. dba Luxor Hotel & Casino



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

  
CLERK OF THE COURT

1 **ANS**  
2 PAUL A. ACKER, ESQ.  
3 Nevada State Bar No. 3670  
4 TROY A. CLARK, ESQ.  
5 Nevada State Bar No. 11361  
6 BREMER WHYTE BROWN & O'MEARA LLP  
7 1160 N. TOWN CENTER DRIVE  
8 SUITE 250  
9 LAS VEGAS, NV 89144  
10 TELEPHONE: (702) 258-6665  
11 FACSIMILE: (702) 258-6662  
12  
13 Attorneys for Third-Party Defendant,  
14 STAN SAWAMOTO  
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**DISTRICT COURT**  
**CLARK COUNTY; NEVADA**

VIVIA HARRISON, an individual,

Plaintiff,

vs.

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

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada  
Domestic Corporation,

Third-Party Plaintiff,

vs.

STAN SAWAMOTO, an individual,

Third-Party Defendant.

) Case No.: A-16-732342-C

) Dept. No.: I

) **THIRD-PARTY DEFENDANT STAN**  
) **SAWAMOTO'S ANSWER TO DESERT**  
) **MEDICAL EQUIPMENT'S THIRD-**  
) **PARTY COMPLAINT**

COMES NOW Third-Party Defendant STAN SAWAMOTO by and through his attorneys  
of record, Paul A. Acker, Esq. and Troy A. Clark, Esq. of Bremer Whyte Brown & O'Meara LLP,

1 and hereby files his Answer to Third-Party Plaintiff DESERT MEDICAL EQUIPMENT's Third-  
2 Party Complaint.

3 **I.**

4 **PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

5 1. Answering paragraph 1 of the Third Party Complaint, STAN SAWAMOTO is  
6 presently without sufficient information to form a belief as to the truth or falsity of the allegations  
7 contained within said paragraph and therefore, denies then same.

8 2. Answering paragraph 2 of the Third Party Complaint, STAN SAWAMOTO admits  
9 that at all relevant times, he was a resident of Haleyville, Alabama. As to all other allegations, he  
10 is presently without sufficient information to form a belief as to the truth or falsity of the  
11 allegations contained within said paragraph and therefore, denies then same.

12 3. Answering paragraphs 3 through 12 of the Third Party Complaint, STAN  
13 SAWAMOTO is presently without sufficient information to form a belief as to the truth or falsity  
14 of the allegations contained within said paragraphs and therefore, denies then same.

15 **II.**

16 **FIRST CLAIM FOR RELIEF**  
17 **(Breach of Contract)**

18 4. Answering paragraph 13 of the Third Party Complaint, STAN SAWAMOTO  
19 repeats his answers to Paragraphs 1 through 12, inclusive, and incorporates the same by reference,  
20 as though fully set forth herein.

21 5. Answering paragraphs 14 through 18 of the Third Party Complaint, STAN  
22 SAWAMOTO is presently without sufficient information to form a belief as to the truth or falsity  
23 of the allegations contained within said paragraphs and therefore, denies then same.

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1 III.

2 **SECOND CLAIM FOR RELIEF**  
3 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

4 6. Answering paragraph 19 of the Third Party Complaint, STAN SAWAMOTO  
5 repeats his answers to Paragraphs 1 through 18, inclusive, and incorporates the same by reference,  
6 as though fully set forth herein.

7 7. Answering paragraphs 20 through 23 of the Third Party Complaint, STAN  
8 SAWAMOTO responds and avers that the remaining allegations in said paragraphs constitute legal  
9 conclusions which require no response. To the extent said allegations are factual in nature, this  
10 answering Defendant denies each and every, all and singular allegations contained in said  
11 paragraphs.  
12

13 IV.

14 **THIRD CLAIM FOR RELIEF**  
15 **(Contractual Indemnity)**

16 8. Answering paragraph 24 of the Third Party Complaint, STAN SAWAMOTO  
17 repeats his answers to Paragraphs 1 through 23, inclusive, and incorporates the same by reference,  
18 as though fully set forth herein.

19 9. Answering paragraphs 25 through 28 of the Third Party Complaint, STAN  
20 SAWAMOTO responds and avers that the remaining allegations in said paragraphs constitute legal  
21 conclusions which require no response. To the extent said allegations are factual in nature, this  
22 answering Defendant denies each and every, all and singular allegations contained in said  
23 paragraphs.  
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V.

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

10. Answering paragraph 29 of the Third Party Complaint, STAN SAWAMOTO repeats his answers to Paragraphs 1 through 28, inclusive, and incorporates the same by reference, as though fully set forth herein.

11. Answering paragraphs 30 through 34 of the Third Party Complaint, STAN SAWAMOTO responds and avers that the remaining allegations in said paragraphs constitute legal conclusions which require no response. To the extent said allegations are factual in nature, this answering Defendant denies each and every, all and singular allegations contained in said paragraphs.

VI.

**FIFTH CLAIM FOR RELIEF**  
**(Contribution)**

12. Answering paragraph 35 of the Third Party Complaint, STAN SAWAMOTO repeats his answers to Paragraphs 1 through 34, inclusive, and incorporates the same by reference, as though fully set forth herein.

13. Answering paragraphs 36 through 38 of the Third Party Complaint, STAN SAWAMOTO responds and avers that the remaining allegations in said paragraphs constitute legal conclusions which require no response. To the extent said allegations are factual in nature, this answering Defendant denies each and every, all and singular allegations contained in said paragraphs.

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1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSES**

3 This answering Defendant denies the allegations of Plaintiff's Third Party Complaint, and  
4 each cause of action, and each paragraph in each cause of action, and each and every part thereof,  
5 including a denial that the Plaintiff was damaged in the sum or sums alleged, or to be alleged, or  
6 any other sum or sums whatsoever.

7 **SECOND AFFIRMATIVE DEFENSE**

8 This answering Defendant denies that by reason of any act or omission, fault, conduct or  
9 liability on the part of this answering Defendant, whether negligent, careless, unlawful or whether  
10 as alleged, or otherwise, that Third Party Plaintiff was injured or damaged in any of the amounts  
11 alleged, or in any other manner or amount whatsoever; this answering Defendant further denies that  
12 this answering Defendant was negligent, careless, reckless, wanton, acted unlawfully or is liable,  
13 whether in the manner alleged or otherwise.

14 **THIRD AFFIRMATIVE DEFENSE**

15 This answering Defendant is informed and believes, and thereon alleges, that Plaintiff's  
16 Third Party Complaint, and each and every cause of action stated therein, fails to state facts  
17 sufficient to constitute a cause of action, or any cause of action, as against this answering  
18 Defendant.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 This answering Defendant is informed and believes, and thereon alleges, that this answering  
21 Defendant is not legally responsible for the acts and/or omissions of those Defendants named by  
22 the Plaintiff as fictitious Defendants.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 This answering Defendant is informed and believes, and thereon alleges, that if the Third  
25 Party Plaintiff herein suffered or sustained any loss, injury, damage or detriment, the same is  
26 directly and proximately caused and contributed to, in whole or in part, by the breach of warranty,  
27 conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional  
28

misconduct of the Defendant, thereby completely or partially barring the Third Party Plaintiff's recovery herein

### **SIXTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that it is not legally responsible in any fashion with respect to the damages and injuries claimed by Third Party Plaintiff; however, if this answering Defendant is subjected to any liability to the Plaintiff or to any other party herein, it will be due, in whole or in part, to the breach of warranty, acts, omissions, activities, carelessness, recklessness, and negligence of others; wherefore any recovery obtained by the Third Party Plaintiff or any other party herein against this answering Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence; consequently, this answering Defendant is informed and believes, and thereon alleges, that the liability of this answering Defendant, if any, is limited in direct proportion to the percentage of fault actually attributed to this answering Defendant.

### **SEVENTH AFFIRMATIVE DEFENSE**

If this answering Defendant is found responsible in damages to Third Party Plaintiff or some other party, whether as alleged or otherwise, then this answering Defendant is informed and believes, and thereon alleges, that the liability will be predicated upon the active conduct of the Third Party Plaintiff whether by negligence, breach of warranty, strict liability in tort or otherwise, which unlawful conduct proximately caused the alleged incident and that Third Party Plaintiff's action against this answering Defendant is barred by that active and affirmative conduct.

### **EIGHTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that at the time or place of the incidents alleged in the Third Party Complaint, Plaintiff knew of and fully understood the danger and risks incident to their undertaking, but despite such knowledge, freely and voluntarily assumed and exposed themselves to all the risk of harm and the consequent injuries and damages, if any, resulting therefrom.

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**NINTH AFFIRMATIVE DEFENSE**

This Answering Defendant alleges that there exists an honest and good faith disagreement as to the evaluation of the amount of damages being alleged by Third Party Plaintiff.

**TENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that the Third Party Plaintiff expressly, voluntarily, and knowingly assumed all risks about which it complains about in the Third Party Complaint, and, therefore, is barred either totally, or to the extent of said assumption, from any damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that at all times mentioned, there was, has been, and continues to be a material failure of consideration on the part of Third Party Plaintiff herein, as a consequence of which this answering Defendant's duty of performance has been discharged.

**TWELFTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both the filing of the Third Party Complaint notification to this answering Defendant of the alleged claims, the alleged negligence and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this answering Defendant in its defense of the action, thereby barring or diminishing Third Party Plaintiff's recovery herein under the Doctrine of Estoppel.

**THIRTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that Third Party Plaintiff unreasonably delayed both the filing of the Third Party Complaint and notification to this answering Defendant of the alleged claims, the alleged negligence and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this answering Defendant in its defense of the action, thereby barring or diminishing the Third Party Plaintiff's recovery herein under the Doctrine of Waiver.

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**FOURTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that Third Party Plaintiff unreasonably delayed both the filing of the Third Party Complaint and notification to this answering Defendant of the alleged claims, the alleged negligence and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this answering Defendant in its defense of the action, thereby barring or diminishing Third Party Plaintiff's recovery herein under the Doctrine of Laches.

**FIFTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that Third Party Plaintiff has failed to join all necessary and indispensable parties to this lawsuit.

**SIXTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that the injuries and damages of which Third Party Plaintiff complains were proximately caused by, or contributed to by, the acts of other Defendants, persons, and/or other entities, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Third Party Plaintiff complains, thus barring Plaintiff from any recovery against this answering Defendant.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that the Third Party Plaintiff damages, if any, proximately resulted from the use of products in an unintended and abnormal manner and not from any defect or mechanical failure of, failure to service properly, or failure to install properly, said product or any of its components.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

It has been necessary for this answering Defendant to retain the services of an attorney to defend this action, and this answering Defendant is entitled to a reasonable sum as and for attorney's fees.

**NINETEENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that the claims of Third Party Plaintiff are reduced, modified and/or barred by the Doctrine of Unclean Hands.

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**TWENTIETH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that actions and omissions by Third Party Plaintiff constituted a breach of contract, and such breach excuses any nonperformance by this answering Defendant.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

This Answering Defendant is informed and believes, and thereon alleges, that at no time prior to the filing of this action did Third Party Plaintiff, or any agent, representative or employee thereof, notify this answering Defendant of any breach of any contract, warranty, or duty to Third Party Plaintiff; therefore, Third Party Plaintiff is barred from any right of recovery.

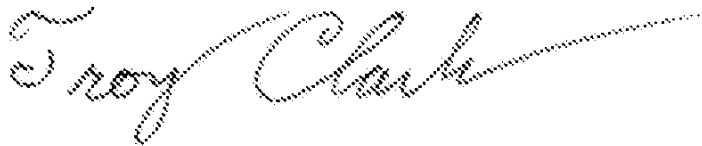
**TWENTY-SECOND AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes, and thereon alleges, that the Third Party Plaintiff failed to perform express contractual conditions precedent to this answering Defendant's performance, and such failure excuses any nonperformance by this answering Defendant.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been alleged herein so far as sufficient facts were not available for this answering Defendant after reasonable inquiry, and therefore, this answering Defendant reserves the right to amend its Answer to alleged additional affirmative defenses, if subsequent investigation so warrants.

Dated: December 16, 2016 BREMER WHYTE BROWN & O'MEARA LLP

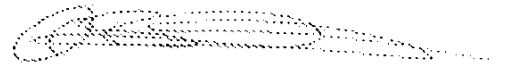


By: \_\_\_\_\_  
Paul A. Acker, Esq.  
Nevada State Bar No. 3670  
Troy A. Clark, Esq.  
Nevada State Bar No. 11361  
Attorneys for Third-Party Defendant  
STAN SAWAMOTO

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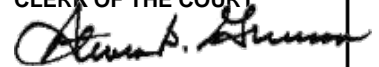
**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of December, 2016, a true and correct copy of the foregone document was electronically delivered to Wiznet for filing and service upon all electronic service list recipients.



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Amree Stellabotte, an Employee of  
BREMER, WHYTE, BROWN & O'MEARA, LLP



1 FAC  
2 ALVERSON, TAYLOR, MORTENSEN & SANDERS  
3 DAVID J. MORTENSEN, ESQ.  
4 Nevada Bar No. 002547  
5 JARED F. HERLING, ESQ.  
6 Nevada Bar No. 13350  
7 6605 Grand Montecito Parkway, Suite 200  
8 Las Vegas, Nevada 89149  
9 Phone: (702) 384-7000  
10 Facsimile: (702) 385-7000  
11 E-File: [efile@alversontaylor.com](mailto:efile@alversontaylor.com)  
12 Attorneys for Defendant and  
13 Third-Party Plaintiff  
14 *Desert Medical Equipment*

DISTRICT COURT  
CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual

Plaintiff,

vs.

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

Defendants.

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

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

DESERT MEDICAL EQUIPMENT, a Nevada  
Domestic Corporation

Third-Party Plaintiff,

vs.

STAN SAWAMOTO, an individual

Third-Party Defendant.

///

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

**PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

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

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

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

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

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

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

fracture.”

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

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

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

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

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

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

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

1 Defendant STAN SAWAMOTO.

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

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

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

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

14 16. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO  
15 entered into a valid Terms and Conditions of Rental contract with Defendant/Third-Party  
16 Plaintiff DESERT MEDICAL EQUIPMENT, which provided for the temporary rental of the  
17 Subject Scooter to Third-Party Defendant STAN SAWAMOTO. Third-Party Defendant STAN  
18 SAWAMOTO took physical possession of the Subject Scooter on or about December 10, 2014,  
19 following his execution of the Terms and Conditions of Rental agreement.  
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21 17. On or about December 10, 2014, Third-Party Defendant STAN SAWAMOTO  
22 breached the Terms and Conditions of Rental contract by giving/transferring possession of the  
23 Subject Scooter to Plaintiff, VIVIA HARRISON, ultimately causing the injuries alleged in her  
24 Amended Complaint.  
25

26 18. Defendant/Third-Party Plaintiff DESERT MEDICAL EQUIPMENT fully  
27 performed all conditions, covenants, and promises required be performed in accordance with the  
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1 Terms and Conditions of Rental contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           45. Upon information and belief, Third-Party Defendant STAN SAWAMOTO moved  
16 furniture, including but not limited to possibly tables and/or chairs in the deli where Plaintiff  
17 VIVIA HARRISON suffered her fall and immediately prior to the same.  
18

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

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

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

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

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

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

DATED this 16 day of January, 2018.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

  
\_\_\_\_\_  
DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 002547  
JARED F. HERLING, ESQ.  
Nevada Bar No. 13350  
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Phone: (702) 384-7000  
Facsimile: (702) 385-7000  
**E-File: [efile@alversontaylor.com](mailto:efile@alversontaylor.com)**  
Attorneys for Defendant and  
Third-Party Plaintiff  
*Desert Medical Equipment*

CERTIFICATE OF SERVICE

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

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


-and-

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

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

Stacey A. Upson, Esq.  
LAW OFFICES OF KARL H. SMITH  
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*Attorneys for Third-Party Defendant*  
*Stan Sawamoto*

Brian K. Terry, Esq.  
THORNDAL, AMRSTRONG, DELK,  
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*Attorneys for Defendant*  
*Pride Mobility Products Corporation*

  
An Employee of Alverson, Taylor,  
Mortensen & Sanders

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

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

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

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

**-OR-**

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

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

**[Insert specific law]**

**-or-**

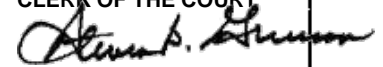
B. For the administration of a public program or for an application for a federal or state grant.

DATED this 16 day of January, 2018.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

  
DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 002547  
JARED F. HERLING, ESQ.  
Nevada Bar No. 13350  
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**E-File: efile@alversontaylor.com**  
Attorneys for Defendant and  
Third-Party Plaintiff Desert Medical Equipment

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1 ANS  
2 STACEY A. UPSON, ESQ.  
3 State Bar No. 004773  
4 **LAW OFFICES OF KARL H. SMITH**  
5 Mail to:  
6 P.O. Box 258829  
7 Oklahoma City, OK 73125-8829  
8 Physical Address:  
9 7455 Arroyo Crossing Parkway, Suite 200  
10 Las Vegas, NV 89113  
11 Phone: (702) 408-3800  
12 stacey.upson@farmersinsurance.com  
13 Attorney for Third-Party Defendant,  
14 STAN SAWAMOTO  
15

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**  
11

12 VIVIA HARRISON, an individual,

13 Plaintiff,

14 vs.

Case No.: A-16-732342-C

DEPT. NO. I

15 RAMPARTS, INC., dba Luxor Hotel & Casino, a  
16 Nevada Domestic Corporation; DESERT  
17 MEDICAL EQUIPMENT, a Nevada Domestic  
18 Corporation, DOES I through XXX, inclusive and  
19 ROE BUSINES ENTITIES I through XXX,  
20 inclusive,

Defendants.

21 AND RELATED CROSS-ACTIONS.  
22

23 **DEFENDANT, STAN SAWAMOTO'S ANSWER TO DEFENDANT DESERT MEDICAL  
24 EQUIPMENT'S FIRST AMENDED THIRD-PARTY COMPLAINT**

25 COME NOW, Defendant, STAN SAWAMOTO, by and through his attorney of record, STACEY  
26 A. UPSON, ESQ., of the **LAW OFFICES OF KARL H. SMITH**, and answers Defendant Desert  
27 Medical Equipment's First Amended Third-Party Complaint, as follows:

28 ///

///

ANSWER - 1 -

Case Number: A-16-732342-C

**PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

1. Answering Paragraph 1 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

2. Answering Paragraph 2 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant admits he is an individual residing in Haleyville, Alabama.

3. Answering Paragraph 3 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant admits he was in Las Vegas on or about December 10, 2014 and signed an Agreement that was not explained or fully shown to him. Answering Third-Party Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the remaining allegations contained therein and, therefore, denies the remaining allegations of Paragraph 3.

4. Answering Paragraph 4 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant admits an Amended Complaint was filed, which speaks for itself.

5. Answering Paragraph 5 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant admits Vivia Harrison came off the scooter at Luxor.

6. Answering Paragraph 6 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant admits Vivia Harrison came off the scooter and additionally, the Amended Complaint was filed, which speaks for itself.

7. Answering Paragraph 7 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant admits he signed rental documentation and that Plaintiff was present at the time when Desert Medical Equipment gave her possession of the scooter. Answering Third-Party Defendant admits Plaintiff was shown by a Desert Medical Equipment employee how to operate the scooter.

8. Answering Paragraph 8 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant admits he signed rental documentation and that Plaintiff was present at the time when Desert Medical Equipment gave her possession of the scooter. Answering Third-Party Defendant admits Plaintiff was shown by a Desert Medical Equipment employee how to operate the scooter.

1           9.     Answering Paragraph 9 of Third Party Plaintiff's First Amended Third-Party Complaint,  
2     Answering Third-Party Defendant admits Plaintiff is a friend.

3           10.    Answering Paragraph 10 of Third Party Plaintiff's First Amended Third-Party Complaint,  
4     Answering Third-Party Defendant admits the Agreement when shown in total to a person speaks for itself.

5           11.    Answering Paragraph 11 of Third Party Plaintiff's First Amended Third-Party Complaint,  
6     Answering Third-Party Defendant denies each and every allegation contained therein as the employee of  
7     Desert Medical Equipment altered the agreement when the scooter was provided to Vivian Harrison and  
8     additionally, when she was shown how to operate the scooter by a Desert Medical Equipment  
9     agent/employee.

10          12.    Answering Paragraph 12 of Third Party Plaintiff's First Amended Third-Party Complaint,  
11     Answering Third-Party Defendant is without sufficient knowledge or information necessary to form a belief  
12     as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

13          13.    Answering Paragraph 13 of Third Party Plaintiff's First Amended Third-Party Complaint,  
14     Answering Third-Party Defendant admits some furniture was moved but is without sufficient knowledge or  
15     information necessary to form a belief as to the truth or falsity of the remaining allegations contained  
16     therein and, therefore, denies the same.

17          14.    Answering Paragraph 14 of Third Party Plaintiff's First Amended Third-Party Complaint,  
18     Answering Third-Party Defendant denies each and every allegation contained therein

19                                   **FIRST CLAIM FOR RELIEF**

20                                   **(Breach of Contract)**

21          15.    Answering Paragraph 15 of Third Party Plaintiff's First Amended Third-Party Complaint,  
22     Answering Third-Party Defendant repeats, realleges and incorporates herein by reference as though fully set  
23     forth, all answers to Paragraphs 1 through 14, above.

24          16.    Answering Paragraph 16 of Third Party Plaintiff's First Amended Third-Party Complaint,  
25     Answering Third-Party Defendant Answering Third-Party Defendant admits he signed rental  
26     documentation and that Plaintiff was present at the time when Desert Medical Equipment gave her  
27     possession of the scooter. Answering Third-Party Defendant admits Plaintiff was shown by a Desert  
28

1 Medical Equipment employee how to operate the scooter. Third-Party Defendant further denies that a valid  
2 contract was entered into.

3 17. Answering Paragraph 17 of Third Party Plaintiff's First Amended Third-Party Complaint,  
4 Answering Third-Party Defendant denies each and every allegation contained therein.

5 18. Answering Paragraph 18 of Third Party Plaintiff's First Amended Third-Party Complaint,  
6 Answering Third-Party Defendant is without sufficient knowledge or information necessary to form a belief  
7 as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

8 19. Answering Paragraph 19 of Third Party Plaintiff's First Amended Third-Party Complaint,  
9 Answering Third-Party Defendant denies each and every allegation contained therein.

10 20. Answering Paragraph 20 of Third Party Plaintiff's First Amended Third-Party Complaint,  
11 Answering Third-Party Defendant denies each and every allegation contained therein.

12 **SECOND CLAIM FOR RELIEF**

13 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

14 21. Answering Paragraph 21 of Third Party Plaintiff's First Amended Third-Party Complaint,  
15 Answering Third-Party Defendant repeats, realleges and incorporates herein by reference as though fully set  
16 forth, all answers to Paragraphs 1 through 20, above.

17 22. Answering Paragraph 22 of Third Party Plaintiff's First Amended Third-Party Complaint,  
18 Answering Third-Party Defendant states the allegations stated therein constitute conclusions of law and  
19 thus require no response; however, to the extent they constitute allegations of fact, Answering Third-Party  
20 Defendant admits as to both parties.

21 23. Answering Paragraph 23 of Third Party Plaintiff's First Amended Third-Party Complaint,  
22 Answering Third-Party Defendant admits as to both parties, and in particular, Desert Medical Equipment's  
23 agent/employee should have shown the complete Agreement to Answering Third-Party Defendant, and  
24 should have instructed Plaintiff as to use the scooter, and should have added Plaintiff in the Agreement  
25 and/or should not have rented the subject scooter knowing another person was going to operate the same.

26 24. Answering Paragraph 24 of Third Party Plaintiff's First Amended Third-Party Complaint,  
27 Answering Third-Party Defendant denies each and every allegation contained therein.  
28

25. Answering Paragraph 25 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant denies each and every allegation contained therein.

### THIRD CLAIM FOR RELIEF

**(Contractual Indemnity)**

26. Answering Paragraph 26 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant repeats, realleges and incorporates herein by reference as though fully set forth, all answers to Paragraphs 1 through 25, above.

27. Answering Paragraph 27 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant states the allegations stated therein constitute conclusions of law and thus require no response; however, to the extent they constitute allegations of fact, Answering Third-Party Defendant admits he entered into Agreement that was not fully shown to him nor explained and Desert Medical Equipment altered by the terms of the Agreement by its actions at the time of the rental.

28. Answering Paragraph 28 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant denies each and every allegation contained therein.

29. Answering Paragraph 29 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant denies each and every allegation contained therein.

30. Answering Paragraph 30 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant denies each and every allegation contained therein as is relevant to this Answering Defendant but is without information as to the remaining allegations.

31. Answering Paragraph 31 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant denies each and every allegation contained therein.

#### **FOURTH CLAIM FOR RELIEF**

(Implied or Equitable Indemnity)

32. Answering Paragraph 32 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant repeats, realleges and incorporates herein by reference as though fully set forth, all answers to Paragraphs 1 through 31, above.

33. Answering Paragraph 33 of Third Party Plaintiff's First Amended Third-Party Complaint, Answering Third-Party Defendant denies each and every allegation contained therein.

1           34.     Answering Paragraph 34 of Third Party Plaintiff's First Amended Third-Party Complaint.  
2     Answering Third-Party Defendant denies each and every allegation contained therein.

3           35.     Answering Paragraph 35 of Third Party Plaintiff's First Amended Third-Party Complaint.  
4     Answering Third-Party Defendant denies each and every allegation contained therein as he does not recall  
5     moving any furniture although his doctor stated he may have moved a chair.

6           36.     Answering Paragraph 36 of Third Party Plaintiff's First Amended Third-Party Complaint.  
7     Answering Third-Party Defendant is without sufficient knowledge or information necessary to form a belief  
8     as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

9           37.     Answering Paragraph 37 of Third Party Plaintiff's First Amended Third-Party Complaint.  
10     Answering Third-Party Defendant denies each and every allegation contained therein.

11          38.     Answering Paragraph 38 of Third Party Plaintiff's First Amended Third-Party Complaint.  
12     Answering Third-Party Defendant denies each and every allegation contained therein.

13                               **FIFTH CLAIM FOR RELIEF**

14                               **(Contribution)**

15          39.     Answering Paragraph 39 of Third Party Plaintiff's First Amended Third-Party Complaint.  
16     Answering Third-Party Defendant repeats, realleges and incorporates herein by reference as though fully set  
17     forth, all answers to Paragraphs 1 through 38, above.

18          40.     Answering Paragraph 40 of Third Party Plaintiff's First Amended Third-Party Complaint.  
19     Answering Third-Party Defendant denies each and every allegation contained therein.

20          41.     Answering Paragraph 41 of Third Party Plaintiff's First Amended Third-Party Complaint.  
21     Answering Third-Party Defendant denies each and every allegation contained therein as he does not recall  
22     moving any furniture although his doctor stated he may have moved a chair.

23          42.     Answering Paragraph 42 of Third Party Plaintiff's First Amended Third-Party Complaint.  
24     Answering Third-Party Defendant denies each and every allegation contained therein.

25          43.     Answering Paragraph 43 of Third Party Plaintiff's First Amended Third-Party Complaint.  
26     Answering Third-Party Defendant denies each and every allegation contained therein.

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1 alleged, or in any other manner or amount whatsoever, this Answering Third-Party Defendant further  
2 denies that this Answering Third-Party Defendant was negligent, careless, reckless, wanton, acted  
3 unlawfully or is liable, whether in the manner alleged or otherwise..

#### 4 THIRD AFFIRMATIVE DEFENSE

5 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that Third-  
6 Party Plaintiff's Amended Third Party Complaint, and each and every cause of action stated therein, fails to  
7 state facts sufficient to constitute a cause of action, or any cause of action, as against this Answering Third-  
8 Party Defendant.

#### 9 FOURTH AFFIRMATIVE DEFENSE

10 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that this  
11 Answering Third-Party Defendant is not legally responsible for the acts and/or omissions of those  
12 Defendants named by the Plaintiff as fictitious Defendants.

#### 13 FIFTH AFFIRMATIVE DEFENSE

14 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that if the  
15 Third Party Plaintiff herein suffered or sustained any loss, injury, damage or detriment, the same is directly  
16 and proximately caused and contributed to, in whole or in part, by the breach of warranty, conduct, acts,  
17 omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of this  
18 Answering Third-Party Defendant, thereby completely or partially barring the Third Party Plaintiff's  
19 recovery herein..

#### 20 SIXTH AFFIRMATIVE DEFENSE

21 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that it is not  
22 legally responsible in any fashion with respect to the damages and injuries claimed by Third Party Plaintiff;  
23 however, if this Answering Third-Party Defendant is subjected to any liability to the Plaintiff or to any other  
24 party herein, it will be due, in whole or in part, to the breach of warranty, acts, omissions, activities,  
25 carelessness, rocklessness, and negligence of others; wherefore any recovery obtained by the Third Party  
26 Plaintiff or any other party herein against this Answering Third-Party Defendant should be reduced in  
27 proportion to the respective negligence and fault and legal responsibility of all other parties, persons and  
28 entities, their agents, servants and employees who contributed to and/or caused any such injury and/or

1 damages, in accordance with the law of comparative negligence; consequently, this Answering Third-Party  
2 Defendant is informed and believes, and thereon alleges, that the liability of this Answering Third-Party  
3 Defendant, if any, is limited in direct proportion to the percentage of fault actually attributed to this  
4 Answering Third-Party Defendant.

5 SEVENTH AFFIRMATIVE DEFENSE

6 This Answering Third-Party Defendant is found responsible in damages to Third Party Plaintiff or  
7 some other party, whether as alleged or otherwise, then this Answering Third-Party Defendant is informed  
8 and believes, and thereon alleges, that the liability will be predicated upon the active conduct of the Third  
9 Party Plaintiff whether by negligence, breach of warranty, strict liability in tort or otherwise, which  
10 unlawful conduct proximately caused the alleged incident and that Third Party Plaintiff's action against this  
11 Answering Third-Party Defendant is barred by that active and affirmative conduct.

12 EIGHTH AFFIRMATIVE DEFENSE

13 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that at the  
14 time or place of the incidents alleged in the Amended Third Party Complaint, Plaintiff knew of and fully  
15 understood the danger and risks incident to their undertaking, but despite such knowledge, freely and  
16 voluntarily assumed and exposed themselves to all the risk of harm and the consequent injuries and  
17 damages, if any, resulting therefrom.

18 NINTH AFFIRMATIVE DEFENSE

19 This Answering Third-Party Defendant alleges that there exists an honest and good faith  
20 disagreement as to the evaluation of the amount of damages being alleged by Third Party Plaintiff.

21 TENTH AFFIRMATIVE DEFENSE

22 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that the Third  
23 Party Plaintiff expressly, voluntarily, and knowingly assumed all risks about which it complains about in  
24 the Third Party Complaint, and, therefore, is barred either totally, or to the extent of said assumption, from  
25 any damages.

26 ELEVENTH AFFIRMATIVE DEFENSE

27 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that at all  
28 times mentioned, there was, has been, and continues to be a material failure of consideration on the part of

1 Third Party Plaintiff herein, as a consequence of which this Answering Third Party Defendant's duty of  
2 performance has been discharged.

3 TWELFTH AFFIRMATIVE DEFENSE

4 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that Plaintiff  
5 unreasonably delayed both the filing of the Third Party Complaint notification to this Answering Third-  
6 Party Defendant of the alleged claims, the alleged negligence and the basis for the causes of action against  
7 this Answering Third-Party Defendant, all of which has unduly and severely prejudiced this Answering  
8 Third Party Defendant in its defense of the action, thereby barring or diminishing Third Party Plaintiff's  
9 recovery herein under the Doctrine of Estoppel.

10 THIRTEENTH AFFIRMATIVE DEFENSE

11 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that Third  
12 Party Plaintiff unreasonably delayed both the filing of the Third Party Complaint and notification to this  
13 Answering Third-Party Defendant of the alleged claims, the alleged negligence and the basis for the causes  
14 of action alleged against this Answering Third-Party Defendant, all of which has unduly and severely  
15 prejudiced this Answering Third-Party Defendant in its defense of the action, thereby barring or  
16 diminishing the Third Party Plaintiff's recovery herein under the Doctrine of Waiver.

17 FOURTEENTH AFFIRMATIVE DEFENSE

18 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that Third  
19 Party Plaintiff unreasonably delayed both the filing of the Third Party Complaint and notification to this  
20 Answering Third-Party Defendant of the alleged claims, the alleged negligence and the basis for the causes  
21 of action alleged against this Answering Third-Party Defendant, all of which has unduly and severely  
22 prejudiced this Answering Third-Party Defendant in its defense of the action, thereby barring or  
23 diminishing the Third Party Plaintiff's recovery herein under the Doctrine of Laches.

24 FIFTEENTH AFFIRMATIVE DEFENSE

25 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that Third  
26 Party Plaintiff has failed to join all necessary and indispensable parties to this lawsuit.

27 ///

28 ///

1 SIXTEENTH AFFIRMATIVE DEFENSE

2 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that the  
3 injuries and damages of which Third Party Plaintiff complains were proximately caused by, or contributed  
4 to by, the acts of other Defendants, persons, and/or other entities, and that said acts were intervening and  
5 superseding cause of the injuries and damages, if any, of which Third Party Plaintiff complains, thus barring  
6 Third Party Plaintiff from any recovery against this Answering Third-Party Defendant.

7 SEVENTEENTH AFFIRMATIVE DEFENSE

8 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that the Third  
9 Party Plaintiff's damages, if any, proximately resulted from the use of products in an unintended and  
10 abnormal manner and not from any defect or mechanical failure of, failure to service properly, or failure to  
11 install properly, said product or any of its components.

12 EIGHTEENTH AFFIRMATIVE DEFENSE

13 It has been necessary for this Answering Third-Party Defendant to retain the services of an attorney  
14 to defend this action, and this Answering Third-Party Defendant is entitled to a reasonable sum as and for  
15 attorney's fees.

16 NINETEENTH AFFIRMATIVE DEFENSE

17 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that the  
18 claims of Third Party Plaintiff are reduced, modified and/or barred by the Doctrine of Unclean Hands.

19 TWENTIETH AFFIRMATIVE DEFENSE

20 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that actions  
21 and omissions by Third Party Plaintiff constituted a breach of contract, and such breach excuses any  
22 nonperformance by this Answering Third-Party Defendant.

23 TWENTY-FIRST AFFIRMATIVE DEFENSE

24 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that at no  
25 time prior to the filing of this action did Third Party Plaintiff, or any agent, representative or employee  
26 thereof, notify this Answering Third-Party Defendant of any breach of any contract, warranty, or duty to  
27 Third Party Plaintiff; therefore, Third Party Plaintiff is barred from any right of recovery.

28 ///

1 TWENTY-SECOND AFFIRMATIVE DEFENSE

2 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that the Third  
3 Party Plaintiff failed to perform express contractual conditions precedent to this Answering Third-Party  
4 Defendant's performance, and such failure excuses any nonperformance by this Answering Third-Party  
5 Defendant.

6 TWENTY-THIRD AFFIRMATIVE DEFENSE

7 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been alleged  
8 herein so far as sufficient facts were not available for this Answering Third-Party Defendant after  
9 reasonable inquiry, and therefore, this Answering Third-Party Defendant reserves the right to amend his  
10 Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

11 TWENTY-FOURTH AFFIRMATIVE DEFENSE

12 This Answering Third-Party Defendant is informed and believes, and thereon alleges, that the Third  
13 Party Plaintiff modified the terms of the Agreement.

14 TWENTY-FIFTH AFFIRMATIVE DEFENSE

15 This Answering Third-Party Defendant is informed and believes, and thereon alleges, a valid  
16 agreement did not exist based upon the actions of the Third-Party Plaintiff's agent/employee and  
17 accordingly, no meeting of the minds occurred.

18 TWENTY-SIXTH AFFIRMATIVE DEFENSE

19 This Answering Third-Party Defendant is informed and believes, and thereon alleges, no  
20 Agreement existed due to mistake.

21 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

22 This Answering Third-Party Defendant is informed and believes, and thereon alleges, Third-Party  
23 Plaintiff waived its rights under the Agreement.

24 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

25 This Answering Third-Party Defendant is informed and believes, and thereon alleges, a novation  
26 has occurred thereby precluding any claim.

27 ///

1 TWENTY-NINTH AFFIRMATIVE DEFENSE

2 This Answering Third-Party Defendant is informed and believes, and thereon alleges, any alleged  
3 failure to perform was either due to Third-Party Plaintiff's actions and/or ratification.

4 **WHEREFORE**, Answering Third-Party Defendant prays for relief as follows:

- 5 1. That Third-Party Plaintiff take nothing by way of it First Amended Third-Party  
6 Complaint on file herein;
- 7 2. That Answering Third-Party Defendant be dismissed with costs incurred and  
8 reasonable attorney fees; and,
- 9 3. For such other and further relief as the Court deems just and proper in the premises.

10 DATED: February 12, 2018

LAW OFFICES OF KARL H. SMITH

11 BY: \_\_\_\_\_

12 STACEY A. UPSON, ESQ.  
13 Attorney for Third-Party Defendant,  
14 STAN SAWAMOTO  
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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of LAW OFFICES OF KARL H. SMITH and that on the 12 day of February, 2018, I served a true and correct copy of the above and foregoing **DEFENDANT, STAN SAWAMOTO'S ANSWER TO DEFENDANT DESERT MEDICAL EQUIPMENT'S FIRST AMENDED THIRD-PARTY COMPLAINT** on the parties addressed as shown below:

       *Via U.S. Mail* by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

  /   *Via Electronic Filing* [N.E.F.R. 9(b)]

  /   *Via Electronic Service* [N.E.F.R. 9]

       *Via Facsimile* [E.D.C.R. 7.26(a)]

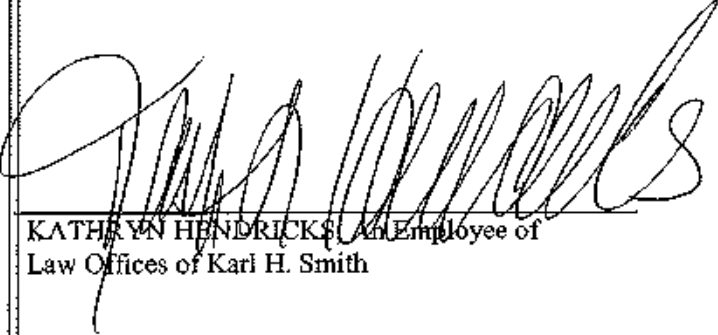
Matthew Pfau, Esq.  
Parry & Pfau  
880 Seven Hills Drive, Suite 210  
Henderson, NV 89052  
Attorney for Plaintiff, Vivia Harrison  
Phone: (702) 879-9555  
Fax: (702) 897-9556

Boyd B. Moss, III, Esq.  
Moss Berg Injury Lawyers  
4101 Meadows Lane, Suite 110  
Las Vegas, NV 89107  
Attorney for Plaintiff, Vivia Harrison  
Phone: (702) 222-4555  
Fax: (702) 222-4556

Loren S. Young, Esq.  
Lincoln, Gustafson & Cercos  
3960 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Attorney for Defendant, Ramparts, Inc., d/b/a Luxor Hotel & Casino  
Phone: (702) 257-1997  
Fax: (702) 257-2203

Brian K. Terry, Esq.  
Thorndal Armstrong Delk Balkenbush & Eisinger  
1100 E. Bridger Avenue  
Las Vegas, NV 89101  
Attorney for Defendant, Pride Mobility Products Corporation  
Phone: (702) 366-0622  
Fax: (702) 366-0327

1 Jared F. Herling, Esq.  
2 Alverson Taylor Mortensen & Sanders  
3 7401 West Charleston Boulevard  
4 Las Vegas, NV 89117  
5 Attorney for Defendant/Third Party Plaintiff, Desert Medical Equipment  
6 Phone: (702) 384-7000  
7 Fax: (702) 385-7000

8   
9 KATHRYN HENDRICKS, an Employee of  
10 Law Offices of Kari H. Smith  
11  
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Negligence - Premises Liability

COURT MINUTES

August 29, 2018

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A-16-732342-C      Vivian Harrison, Plaintiff(s)  
vs.  
MGM Resorts International, Defendant(s)

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August 29, 2018      09:00 AM      All Pending Motions

HEARD BY:      Jones, David M      COURTROOM: RJC Courtroom 15A

COURT CLERK: Darling, Christopher

RECORDER:      Murphy-Delgado, Melissa

REPORTER:

PARTIES PRESENT:

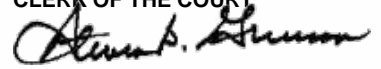
Boyd B. Moss, ESQ	Attorney for Plaintiff
Brian K. Terry	Attorney for Defendant
Matthew Pfau	Attorney for Plaintiff
Stacey A. Upson	Attorney for Third Party Defendant
Thomas Maroney	Attorney for Defendant

#### JOURNAL ENTRIES

APPEARANCES CONTINUED: Margaret Christopher, Esq. present.

DEFENDANT, PRIDE MOBILITY PRODUCTS CORP.'S, RENEWED MOTION FOR SUMMARY JUDGMENT... PLAINTIFF VIVIAN HARRISON'S MOTION FOR AN ADJUDICATION AS TO LIABILITY OR, IN THE ALTERNATIVE, FOR AN ADVERSE INFERENCE BASED ON DEFENDANT'S SPOILIATION OF EVIDENCE

Arguments by counsel regarding Pride Mobility Products' Renewed Motion for Summary Judgment. Court stated ITS FINDINGS and ORDERED, Motion GRANTED as to design defect. Mr. Terry to prepare the order. Arguments by counsel regarding Vivian Harrison's Motion for an Adjudication as to Liability or, in the Alternative, for an Adverse Inference Based on Defendant's Spoliation of Evidence. Court noted answer will not be stricken. Court advised will draft document on decision for what inference will be granted and is forthcoming at time testimony heard. Mr. Pfau requested after testimony to have separate hearing on the inference issue; COURT SO ORDERED. Mr. Pfau to prepare order as discussed.



1 ORDR  
2 Matthew G. Pfau, Esq.  
3 Nevada Bar No.: 11439  
4 PARRY & PFAU  
5 880 Seven Hills Drive, Suite 210  
6 Henderson, Nevada 89052  
7 702 879 9555 TEL  
8 702 879 9556 FAX  
9 matt@p2lawyers.com

10 Attorneys for Plaintiff,  
11 *Vivia Harrison*

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 \* \* \*

15 **Vivia Harrison,**

16 Plaintiff,

17 vs.

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

24 Defendant.

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

Order Granting In Part, Plaintiff's Motion  
for an Adjudication as to Liability or, in the  
Alternative, for an Adverse Inference  
Based on Defendant's Spoliation of  
Evidence

25 Plaintiff Vivia Harison filed a Motion for Adjudication as to Liability or, in the Alternative, for  
26 an Adverse Inference Based on Defendant's Spoliation of Evidence on May 22, 2018. Judge David  
27 M. Jones denied Plaintiff's request for adjudication as to liability; and granted Plaintiff's request  
28 for an adverse inference, on August 29, 2018.

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**Order**

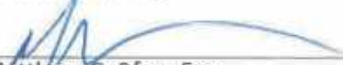
It is therefore ordered that Plaintiff Vivia Harrison's Motion for an Adjudication as to Liability in hereby denied. Plaintiff Vivia Harrison's Motion for an Adverse Inference Based on Defendant's Spoliation of Evidence is granted. The adverse inference will be drafted at the end of trial following witness testimony, before the jury receives their instructions. A hearing regarding the language to be used in the jury instructions will be held during trial.

Dated this 11 day of Sept 2018.

  
District Court Judge

Submitted by:

PARRY & PFAU

  
Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439  
880 Seven Hills Drive, Suite 210  
Henderson, Nevada 89052

Attorney for Plaintiff,  
*Vivia Harrison*

PARRY®PFAU

1 Approved as to form and content by:

2 ALVERSON, TAYLOR & SANDERS

3 

4 Courtney Christopher, Esq.  
5 Nevada Bar No.: 12717  
6 6605 Grand Montecito Pkwy., Suite 200  
7 Las Vegas, Nevada 89149

8 Attorney for Defendants,  
9 *Desert Medical Equipment*

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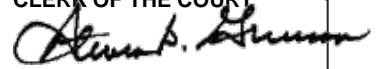
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- 3 -

ORDER



1 **PMEM**  
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@lglawoffice.com](mailto:lyoung@lglawoffice.com)  
13 [tmaroney@lglawoffice.com](mailto:tmaroney@lglawoffice.com)

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

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**  
13

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

**DEFENDANT RAMPARTS, INC. d/b/a  
LUXOR HOTEL & CASINO'S PRE-TRIAL  
MEMORANDUM**

COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, by and through its counsel of record, LINCOLN, GUSTAFSON & CERCOS, LLP, and respectfully submits the following Pre-Trial Memorandum in compliance with EDCR 2.67, in connection with this matter in which the Jury Trial is set to commence on December 10, 2018 at 9:00 a.m., before the Honorable Judge David M Jones. The pretrial meeting of counsel was held on Wednesday, November 14, 2018 at 8:50 a.m.

**I.**

**STATEMENT OF FACTS**

On December 10, 2014, Plaintiff, Vivia Harrison, was a guest at the Luxor Hotel and Casino, owned and operated by Ramparts, Inc., in Las Vegas, Nevada. To accommodate her mobility, Vivia rented a motorized scooter. The scooter was owned by Desert Medical Equipment and rented by Vivia at the Luxor bell desk.

When Plaintiff attempted to exit the Backstage Deli dining area, Plaintiff's family members moved tables and chairs creating a large pathway and while driving the scooter, Plaintiff allegedly struck the base of a table with her scooter and fell to the ground causing injury. Plaintiff was then transported to a nearby hospital and treated for her injuries. Plaintiff underwent surgery to repair a fractured femur. During the surgery, Plaintiff sustained a stroke.

**II.**

**CLAIMS FOR RELIEF**

Plaintiff alleges the following causes of action in her Second Amended Complaint, dated June 3, 2013:

1. Claims against Ramparts, Inc. dba Luxor Hotel & Casino:
  - a. Negligence;
  - b. Negligent Hiring, Training, and Maintenance.
2. Claims against Desert Medical Equipment:
  - a. Negligence;
  - b. Negligent Hiring, Training, and Maintenance.

///

1 III.

2 AFFIRMATIVE DEFENSES

3 Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, has asserted the  
4 following affirmative defenses:

5 1. Plaintiffs' Complaint fails to state a claim against this answering Defendant upon which  
6 relief can be granted.

7 2. The damages and injuries, if any, incurred by Plaintiff are not attributable to any act,  
8 conduct, or omission on the part of the Defendant.

9 3. The Plaintiffs' has failed to mitigate her damages, if any, which Defendant denies, and  
10 Plaintiffs' claims are therefor barred in whole or in part.

11 4. The occurrence referred to in the Complaint, and all injuries and damages, if any,  
12 resulting therefrom were caused by the acts or omissions of a third party, or third parties over whom  
13 Defendant had no control.

14 5. The occurrence referred to in the complaint, and all injuries and damages, if any,  
15 resulting therefrom were the result of subsequent intervening cause and not the alleged negligence of  
16 Defendant.

17 6. The incident alleged in the Complaint and the resulting damages, if any, to Plaintiff,  
18 was proximately caused or contributed to by Plaintiff's own negligence and such negligence was  
19 greater than the negligence, if any, of the Defendant.

20 7. The incident and/or Plaintiff's injuries were caused by Plaintiff's pre-existing and/or  
21 physical condition and not by the negligence of the Defendant.

22 8. Plaintiff's claims for punitive damages are limited by Nevada Revised Statutes 42.001  
23 -- 42.007 and other statutes, and Plaintiff's claims for punitive damages are limited by the principles of  
24 due process as articulated by the United States Supreme Court in *State Farm v. Campbell*, 538 U.S.  
25 408, 123 S. Ct. 1513 (2003).

26 9. Plaintiff's claims for punitive damages are bared because there is no evidence that any  
27 officer, director, or managing agent of this Defendant authorized or ratified any alleged intentional  
28 torts.

10. Plaintiff's claims for punitive damages are further barred because there is no evidence of intent on the part of Defendant to cause hardship to Plaintiff or of conscious disregard for her rights.

11. Defendant reserves the right to assert any additional affirmative defenses and matters in avoidance as may be disclosed during the course of additional investigation and discovery. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not plead and are not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore Defendant reserves the right to amend its answer to allege additional affirmative defenses if so warranted.

12. Defendant hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of such defenses, Defendant reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

IV.

### **CLAIMS OR DEFENSES TO BE ABANDONED**

Plaintiff previously abandoned her claims against Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, for negligent hiring, training, and maintenance per Stipulation and Order dated May 1, 2017.

Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, has not agreed to abandon any defenses.

**V.**

## PROPOSED EXHIBITS

Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, may call upon the following exhibits at the time of trial:

Exhibit No.	Exhibit Description
A1	Incident Report (DEF0001-DEF0005)
A2	Media Attachment (DEF0006-DEF0025)
A3	Media Attachment (DEF0026-DEF0039)

<b>Exhibit No.</b>	<b>Exhibit Description</b>
A4	Security Video (1 DVD) (DEF0040)
A5	Surveillance Footage (1 VHS) (DEF0041)
A6	Photograph of Serial Number on Scooter (DEF0042)
A7	Photograph of Scooter (DEF0043)
A8	Evidence Record (DEF0044)
A9	Incident Reports dated December 9, 2014 (DEF0045-DEF0061)
A10	Photographs regarding incident on December 9, 2014 (DEF0062-DEF0073)
A11	Video from December 9, 2014 Incident (DEF0074)
A12	Desert Medical Equipment Rental Agreement No. 1016325 (DEF0075-DEF0076)
A13	OPERA Notes and Revenue Comps (DEF0077-DEF0082)
A14	Photographs (DEF0083-DEF0102)
A15	Backstage Deli Layout (DEF0103)
A16	December 10, 2014 Security Video (DEF0104)
A17	Hamilton Anderson Associates Plans (DEF0105-DEF0107)
A18	Madsen, Kneppers & Associates, Inc.'s Expert Report, dated May 8, 2018 (DEF0108-DEF0118)
A19	Vocational Diagnostics, Inc.'s Rebuttal Report, dated June 14, 2018 (DEF0119-DEF0144)
A20	Madsen, Kneppers & Associates, Inc.'s Rebuttal Reports, dated June 14, 2018 (DEF0145-DEF0193)
A21	Clifford Segil's Rebuttal Report dated June 11, 2018 (DEF0194-DEF0204)
A22	Terms and Conditions of Rental Agreement (TC 00001)
A23	Scooter Instructions (INS 00001)
A24	Employee Policy Manual (EMP POLICY 00001-00044)
A25	Sample Service Log (SERVICE LOG 00001)
A26	New Hire Job Description for Delivery Driver/Maintenance Technician (JOB DESCRIPTION DELIVERY DRIVER 00001)
A27	Redacted Master Services Agreement with accompanying Privilege Log (MASTER SERVICES AGREEMENT 00001-00013)
A28	Letter from Pfau dated December 24, 2014
A29	Affidavit of Jessica Gandy, Esq. re: inspection of Backstage Deli on October 24, 2017
A30	Color Photographs of Backstage Deli taken on October 24, 2017 (DME INSPECTION PHOTOS 00001-00042)
A31	Medical & Billing records from Encore Rehabilitation (ENCORE REHAB 00001-00308)
A32	Pride Invoice No. 12102894, dated September 30, 2014 (PMPC000001-000007)
A33	Pride Victory 10 Specifications (PMPC000008-000009)

Exhibit No.	Exhibit Description
A34	Pride Owner Manual – Victory Series (PMPC000012-000063)
A35	Consumer Safety Guide (PMPC000158-000181)
A36	Test Report from Ammer Consulting (PRIDE 000346-000351)
A37	Bill Ammer's Initial Expert Report and Addendum to Initial Expert Report
A38	Bill Ammer's Curriculum Vitae, Fee Schedule, List of Prior Deposition and Trial Testimony
A39	Bill Ammer's Rebuttal Expert Report
A40	Clifford Segil, DO's Curriculum Vitae, Fee Schedule, List of Prior Deposition and Trial Testimony
A41	Aubrey Corwin's Curriculum Vitae, Fee Schedule, List of Prior Deposition and Trial Testimony
A42	Timeline of incident
A43	Timeline of medical care
A44	Charts, diagrams, anatomical renderings, medical illustrations and animations as needed
A45	The subject table
A46	An exemplar scooter
A47	Exhibits from Gabriella Bush's deposition taken on August 7, 2017
A48	Exhibits from Rebecca Charles' deposition taken on September 26, 2017
A49	Exhibits from Kimberly Digiacomo's deposition taken on December 20, 2017
A50	Exhibits from Michael Gibbens' deposition taken on July 20, 2018
A51	Exhibit from Vivian Harrison's deposition taken on April 13, 2017
A52	Exhibits from Timothy Hicks' deposition taken on July 19, 2018
A53	Exhibits from Diane Lucas' deposition taken on September 28, 2017
A54	Exhibits from Steven Petersen's deposition taken on December 20, 2017
A55	Exhibit from Stan Sawamoto's deposition taken on April 13, 2017
A56	Exhibits from Bryan Schultz' deposition taken on November 2, 2017
A57	Exhibits from Lyndsi Stull's deposition taken on December 20, 2017
A58	Exhibits from Michael Zablocky's deposition taken on January 18, 2017

Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, incorporates herein by reference any and all exhibits identified by Plaintiff and any other Defendants. Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, further reserves the right to supplement their list of Trial Exhibits.

///

1 Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, hereby submits its list of  
2 deposition transcripts to be used at trial. Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL &  
3 CASINO, reserves its right the supplement and/or amend this list as necessary.

4	Gabriella Bush
5	Rebecca Charles
6	Chuck Denmark
7	Kimberly Diagiaco
8	Michael Gibbens
9	Vivia Harrison (limited to the following excerpts: P. 4:1-7:24; 9:15-19; 10:8-12; 10:18-11:5; 11:12-18; 12:6-13:1; 13:14-25; 14:13-25; 15:13-23; 16:4-12; 16:17-24; 17:13-25; 18:4-15; 19:4-15; 19:20-20:8; 20:23-21:2; 22:11-13; 22:20-23:19; 24:11-16; 25:6-10; 25:25-26:12; 27:14-19; 28:21- 24; 31:8-17; 32:11-17; 33:20-34:19; 36:14-38:23; 40:12-25; 41:11-42:9; 42:13-43:20; 44:17-46:21; 46:13-21; 47:3-9; 51:4-12; 54:66-55:8; 55:13- 56:22; 57:12-22; 60:3-61:2; 62:11-63:9; 63:16-67:1; 68:16-25; 69:4-18)
12	Timothy Hicks
13	Diane Lucas
14	Steven Petersen
15	Stan Sawamoto
16	Bryan Shultz
17	Lyndsi Stull
18	Michael Zablocky

18 Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, hereby submits its list of  
19 demonstrative exhibits to be used at trial. Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL &  
20 CASINO, reserves its right the supplement and/or amend this list as necessary.

- 21 1. Timeline of incident
- 22 2. Timeline of medical care
- 23 3. Charts, diagrams, anatomical renderings, medical illustrations and animations as  
24 needed
- 25 4. Exemplar scooter
- 26 5. The subject table

27 ///

28 ///

1 **VI.**

2 **EVIDENCE**

3 Please refer to the Orders on the parties' Motions in Limine.

4 **VII.**

5 **LIST OF WITNESSES**

6 A. Witnesses Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO. expects  
7 to call at trial:

- 8 1. Vivian Harrison
- 9 2. Diane Lucas
- 10 3. Stan Sawamoto
- 11 4. Rebecca Charles
- 12 5. Charles Denmark
- 13 6. Marylou Tapat
- 14 7. Barbara Bentley
- 15 8. Lucio Parolisi
- 16 9. Tom Burris
- 17 10. Nicolas Sanchez
- 18 11. Jessica Atchley
- 19 12. Melissa Myers
- 20 13. Gabriella Bush
- 21 14. Kimberly DiGiacomo
- 22 15. Steven Petersen
- 23 16. Lyndsi Stull
- 24 17. Bryan Schultz
- 25 18. Michelle Robbins, AIA
- 26 19. Aubrey Corwin, M.S., L.P.C., C.R.C., C.L.C.P.
- 27 20. Clifford Segil, D.O.
- 28 21. Daniel Lee, MD

- 1 22. Daniel D. Lee, MD  
2 23. Rich Lucas  
3 B. Witnesses Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO,  
4 reserves the right to call at trial:  
5 1. Marcus Braithwaite  
6 2. Aaron Panem  
7 3. Tyrone Richard  
8 4. Michelle Whitaker  
9 5. Donald Henderson  
10 6. Jose Villacreses  
11 7. Lucky Jackson  
12 8. Lee Smithson  
13 9. Angela (last name unknown)  
14 10. Vanna Bounnvalithy  
15 11. Nega Ilofa  
16 12. Crystal Williams  
17 13. Darryl Watts, AMR  
18 14. Lina C. Pezzela, MD  
19 15. Manoj Nath, MD  
20 16. Stuart Engel, MD  
21 17. Kevin A. Tsui, MD  
22 18. Elan Bomsztyk, MD  
23 19. Naima Zaheer, MD  
24 20. Amandeep K. Khillion, MD  
25 21. China S. Osuoha, MD  
26 22. Vishal S. Shah, MD  
27 23. Ian G. Haycocks, MD  
28 24. Trent T. Richardson, MD

- 1 25. Erin White  
2 26. Jerry Harrison, MD  
3 27. Safdar A. Qureshi, MD  
4 28. Ronald Kong, MD  
5 29. Bevins Chue, MD  
6 30. Anoush Tacvorian, MD  
7 31. Gary Russell, MD  
8 32. Gary N. Russell, MD  
9 33. Mark Stafford, MD  
10 34. Charles Fagan, MD  
11 35. Wilkes Banks Petrey, MD  
12 36. Claude Osula, MD

13 Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, incorporates herein by  
14 reference any and all witnesses identified by Plaintiff or any other Defendant and reserve the right to  
15 call at trial any and all witnesses identified by all parties, any witness identified by any other party to  
16 this litigation, subject to applicable objections: any rebuttal witness, the necessity of whom cannot be  
17 determined at this time. Defendants further reserve the right to supplement their List of Trial  
18 Witnesses.

19 **VIII.**

20 **LEGAL ISSUES**

- 21 1. Whether The Luxor exercised ordinary and reasonable care in maintaining its premises  
22 to avoid subjecting others to an unreasonable risk of harm.  
23 2. Whether The Luxor had actual or constructive notice of an alleged condition and failed  
24 to remedy it.  
25 3. Whether The Luxor breached its duty of care to Vivia Harrison.  
26 4. Whether Desert Medical Equipment exercised ordinary and reasonable care in  
27 maintaining its equipment to avoid subjecting others to unreasonable risk of harm.

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5. Whether Desert Medical Equipment failed to properly hire, train, and manage employees to avoid subjecting others to an unreasonable risk of harm.

6. Whether Desert Medical Equipment breached its duty of care to Vivian Harrison.

7. Whether a valid contract existed between Stan Sawamoto and Desert Medical Equipment.

8. Whether Stan Sawamoto breached the contract or failed to render proper performance,.

9. Whether Stan Sawamoto exercised ordinary and standard care in upholding the contract to avoid subjecting others to unreasonable risk of harm.

10. To what extent Vivian Harrison's fall proximately caused his injuries.

11. To what extent Vivian Harrison was injured.

12. To what extent Desert Medical Equipment was damaged.

13. Admissibility of evidence as set forth in motions in limine on file.

The principal issues Defendant intends to defend are liability and damages.

## IX.

### ESTIMATED TIME FOR TRIAL

Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, anticipates this matter will require 7-10 full trial days.

**X.**

**OTHER MATTERS FOR THE COURT'S ATTENTION**

None.

DATED this 26<sup>th</sup> day of November, 2018.

**LINCOLN, GUSTAFSON & CERCOS, LLP**

LOREN L. WILSON, JR.

**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

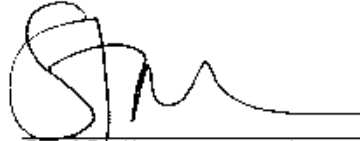
Attorneys for Defendant, RAMPARTS, INC.

d/b/a LUXOR HOTEL & CASINO

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 26<sup>th</sup> day of November, 2018, I served a copy of the  
5 attached **DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S PRE-TRIAL**  
6 **MEMORANDUM** via electronic service to all parties on the Odyssey E-Service Master List.

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8  
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11 Staci D. Ibarra, an employee  
12 of the law offices of  
13 Lincoln, Gustafson & Cereos, LLP

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