

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

VIVIA HARRISON, an individual,

Appellant,

vs.

RAMPARTS INC. dba LUXOR HOTEL  
& CASINO, a Nevada Domestic  
Corporation,

Respondent.

Case No. 80167

Electronically Filed  
Jun 12 2020 04:09 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**APPELLANT'S OPPOSITION TO RESPONDENT'S  
MOTION TO DISMISS**

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*Attorneys for Appellant, Vivia Harrison*

## **I. INTRODUCTION**

On February 14, 2020, this Court already resolved the jurisdictional issues in this appeal: “The appeal in Docket No. 80167 shall proceed. *See* NRAP 4(a)(6). Appellant may challenge any interlocutory orders, including the order denying the offset, in the appeal from the final judgment.” *See* Order Dismissing Appeal and Regarding Motions (filed Feb. 14, 2020), attached as **Exhibit 1**, at 2. Not satisfied with this Court’s confirmation of its appellate jurisdiction, Defendant/Respondent, Ramparts, Inc., Luxor Hotel & Casino (“Defendant”) unnecessarily files its motion to dismiss to rehash what the Court has already resolved. Therefore, the Court should deny Defendant’s motion.

## **II. LEGAL ARGUMENT**

### **A. HARRISON IS NOT CHALLENGING THE STIPULATED DISMISSAL WITH DESERT MEDICAL, NOR DOES SHE NEED TO.**

As previously outlined, Appellant, Vivia Harrison (“Harrison”), filed an appeal from the stipulation and order to dismiss Defendant Desert Medical Equipment (“Desert Medical”). *See Exhibit 2*. The Court previously identified this stipulated dismissal as the final order. *See Exhibit 1*, at 1. Harrison appealed from this stipulated dismissal because it is the final, appealable order according to NRAP 3A(b)(1): “A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” If Harrison had not prepared this stipulated dismissal, the case would not be appealable due to the lack of finality, which requires all claims to be resolved by a written order. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). But, as Defendant acknowledges, when an appeal is taken from the final judgment, this

Court will review any interlocutory orders. *Consol. Generator-Nevada v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

With respect to the separate requirement of being an aggrieved party, Harrison is not aggrieved by the stipulated dismissal order with Desert Medical. *See* NRAP 3A(a); *Vinci v. Las Vegas Sands, Inc.*, 115 Nev. 243, 246, 984 P.2d 750, 752 (1999). But, she is aggrieved by interlocutory orders, which are reviewable. *See, e.g.*, Order Granting Defendant's Motion for Attorney's Fees and Costs (filed Mar. 18, 2019), attached as **Exhibit 3**; Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset (filed May 21, 2019), attached as **Exhibit 4**.

Defendant claims that Harrison must be aggrieved by the stipulated dismissal order. Otherwise, the Court somehow loses jurisdiction over the entire case. This argument is belied by *Consol. Generator-Nevada*, 114 Nev. at 1312, 971 P.2d at 1256 because this Court has long held that it has the ability to review interlocutory orders from which the appellant is aggrieved, under the umbrella of an appeal from a final judgment.

Defendant's cited cases discuss an appeal from only the order for which a party is not aggrieved. But, none of Defendant's cases take the additional step, present in this case, to discuss the reviewability of interlocutory orders by which the appellant is aggrieved. Thus, Defendant's entire discussion is misplaced and should be rejected.

**B. UNDER DEFENDANT’S PROPOSAL, JURISDICTIONAL DEFECTS COULD BE CURED ONLY VERY RARELY.**

Notably, Defendant’s motion completely ignores *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008), which Harrison raised in the previous round of jurisdictional challenges. In *Thitchener*, this Court explained in a footnote, “Since the Thitcheners’ NIED and negligence per se claims were formally resolved by a written stipulation and order of dismissal entered after the district court amended its judgment upon the jury verdicts, that order constitutes the final appealable judgment in this case.” 124 Nev. at 732, 192 P.3d at 248 (citing NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000)). Yet, Countrywide, as the defendant, was not aggrieved by the dismissal of two claims made by the Thitcheners, as plaintiffs, even though this stipulation and order was the final, appealable order. Should this Court have dismissed Countrywide’s entire appeal for lack of jurisdiction? Of course not, which is why the entire premise of Defendant’s motion is meaningless.

If this Court were to adopt Defendant’s strained proposal, jurisdictional defects could be cured only very rarely. In other words, asserted claims in a lawsuit that do not find their way into a written order could not be filed after a judgment, unless the appealing party was aggrieved by the omitted claims. So, under Defendant’s interpretation, a party can file the order resolving the omitted claims to create finality, but cannot appeal from the order, even though it is a final, appealable order because the party is allegedly not aggrieved from this specific order. Certainly, this would be a convenient way for prevailing parties

in the District Court to cut off appeal rights of their opponents. But, this is not the law in Nevada, and the Court should reject Defendant's motion. *Cf. Sereika v. State*, 114 Nev. 142, 150, 955 P.2d 175, 180 (1998) ("This court has declared that statutory interpretation should avoid absurd or unreasonable results.") (citing *General Motors v. Jackson*, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995); *Las Vegas Sun v. District Court*, 104 Nev. 508, 511, 761 P.2d 849, 851 (1988); *Sheriff v. Smith*, 91 Nev. 729, 733, 542 P.2d 440, 443 (1975)); *Webb v. Clark County Sch. Dist.*, 125 Nev. 611, 618, 218 P.3d 1239, 1244 (2009) (rules of statutory construction equally apply to court rules).

### **III. CONCLUSION**

In summary, Harrison urges this Court to deny Defendant's motion to dismiss because she is not challenging the stipulated dismissal with Desert Medical, nor does she need to under the jurisdictional rules of this Court and the commenting case law. Additionally, Defendant's strained interpretation of this Court's jurisdictional rules and case law would create absurd results, such that jurisdictional defects could be cured only very rarely. For these reasons, Harrison urges the Court to deny Defendant's motion to dismiss.

DATED this 12th day of June, 2020.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols  
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Las Vegas, Nevada 89107  
*Attorneys for Appellant,*  
*Vivia Harrison*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing: **APPELLANT’S OPPOSITION TO RESPONDENT’S MOTION TO DISMISS**, was filed electronically with the Nevada Supreme Court on the 12th day of June, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Boyd B. Moss, Esq.  
Matthew G. Pfau, Esq.  
Loren S. Young, Esq.  
Mark B. Bailus, Esq.

I further certify that I served a copy of this document by first class mail with sufficient postage prepaid to the following address:

N/A

/s/ Anna Gresl

Anna Gresl, an employee of  
Claggett & Sykes Law Firm

## **INDEX OF EXHIBITS**

<b>Exhibit</b>	<b>Document Description</b>
1	Order Dismissing Appeal and Regarding Motions (filed 02/14/2020)
2	Stipulation and Order to Dismiss Defendant, Desert Medical Equipment (“Desert Medical”). (filed 11/26/2019)
3	Order Granting Defendant’s Motion for Attorney’s Fees and Costs (filed Mar. 18, 2019)
4	Order Denying Plaintiff’s Motion to Reconsider the Court’s Order Granting Luxor an Attorney Lien Offset (filed May 21, 2019)

# **Exhibit 1**



IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON, AN INDIVIDUAL,  
Appellant,

vs.

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

Respondents.

VIVIA HARRISON, AN INDIVIDUAL,  
Appellant,

vs.

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

Respondents.

No. 78964 ✓

No. 80167

**FILED**

FEB 14 2020

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

*ORDER DISMISSING APPEAL AND REGARDING MOTIONS*

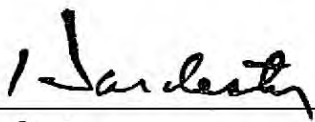
Docket No. 78964 is an appeal from an order denying a motion for reconsideration of an order granting an attorney lien offset. Docket No. 80167 is an appeal from the final order dismissing the remaining defendant below, thereby constituting the final judgment in the action below. On November 14, 2019,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

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

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

It is so ORDERED.

  
Parraguirre, J.

  
Hardesty, J.

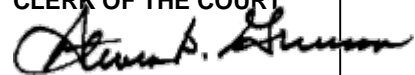
  
Cadish, J.

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

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

# **Exhibit 2**



SAO  
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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

VIVIA HARRISON, an individual;  
  
Plaintiff,

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

v.

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

Defendants.

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

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

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

**IT IS SO STIPULATED.**

**CASE NO. A-16-732342-C**

**ORDER**

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

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

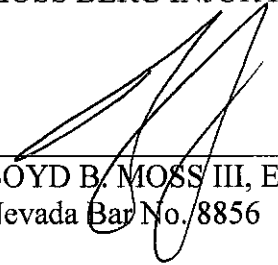
**IT IS SO ORDERED.**

DATED this 21 day of November, 2019

  
DISTRICT COURT JUDGE

SUBMITTED BY:

MOSS BERG INJURY LAWYERS

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

1 APPROVED AS TO FORM AND CONTENT

2

3 PARRY & PFAU

MOSS BERG INJURY LAWYERS

4

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

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

7 ALVERSON, TAYLOR & SANDERS

8

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

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1 APPROVED AS TO FORM AND CONTENT

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MOSS BERG INJURY LAWYERS

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MATTHEW G. PFAU, ESQ.

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Attorney for Plaintiff, Vivia Harrison

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BOYD B. MOSS, III, ESQ.

Attorney for Plaintiff Vivia Harrison

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ALVERSON, TAYLOR & SANDERS

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COURTNEY CHRISTOPHER, ESQ.

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Attorney for Defendant

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Desert Medical Equipment

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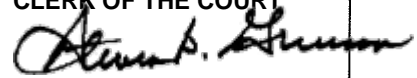
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# **Exhibit 3**





1 **NEOJ**  
2 **LOREN S. YOUNG, ESQ.**  
3 Nevada Bar No. 7567  
4 **THOMAS W. MARONEY, ESQ.**  
5 Nevada Bar No. 13913  
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14 Attorneys for Defendant, RAMPARTS, INC.  
15 d/b/a LUXOR HOTEL & CASINO

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

14 VIVIA HARRISON, an individual,  
15 Plaintiff,

16 v.

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

23 Defendants.

24 DESERT MEDICAL EQUIPMENT, a Nevada  
25 Domestic Corporation,

26 Third-Party Plaintiff,

27 v.

28 STAN SAWAMOTO, an individual,

Third Party Defendant.

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

**NOTICE OF ENTRY OF ORDER**

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

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

4 DATED this 18<sup>th</sup> day of March, 2019.

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

6 

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

8 Nevada Bar No. 7567

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

10 Nevada Bar No. 13913

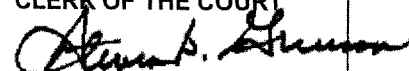
11 3960 Howard Hughes Parkway, Suite 200

12 Las Vegas, NV 89169

13 Attorneys for Defendant, RAMPARTS, INC.

14 d/b/a LUXOR HOTEL & CASINO

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

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

VIVIA HARRISON, an individual,  
Plaintiff,

v.

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

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

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

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

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

### 5 FINDINGS OF FACT

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

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

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

### 16 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **ORDER AND JUDGMENT**

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

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

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

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

10 DATED this 15 day of March, 2019.

11  
12  
13   
14 DISTRICT COURT JUDGE 73

15 Respectfully Submitted by:

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

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

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

25 Approved as to form and content by:

26 **PARRY & PFAU**

27 **MOSS BERG INJURY LAWYERS**

28 Refused to Sign  
**MATTHEW G. PFAU, ESQ.**

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

Refused to Sign  
**BOYD B. MOSS, ESQ.**

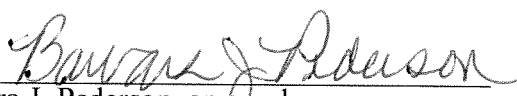
Nevada Bar No. 8856  
4101 Meadows Lane, Suite 110  
Las Vegas, NV 89107  
Attorneys for Plaintiff, VIVIA HARRISON



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

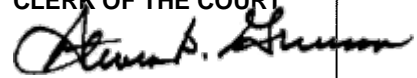
3 **CERTIFICATE OF SERVICE**

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

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

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# **Exhibit 4**



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

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

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

14 VIVIA HARRISON, an individual,  
15 Plaintiff,

16 v.

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

22 DESERT MEDICAL EQUIPMENT, a Nevada  
23 Domestic Corporation,

24 Third-Party Plaintiff,

25 v.

26 STAN SAWAMOTO, an individual,

27 Third Party Defendant.

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


**NOTICE OF ENTRY OF ORDER**

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

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

4 DATED this 21<sup>st</sup> day of May, 2019.

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

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

Nevada Bar No. 7567

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

Nevada Bar No. 13913

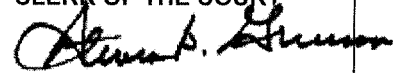
9 3960 Howard Hughes Parkway, Suite 200

10 Las Vegas, NV 89169

11 Attorneys for Defendant, RAMPARTS, INC.

12 d/b/a LUXOR HOTEL & CASINO

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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**  
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14 [tmaroney@lgclawoffice.com](mailto:tmaroney@lgclawoffice.com)

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

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

15 VIVIA HARRISON, an individual,  
16  
17 Plaintiff,

18 v.

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

26 Defendants.

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

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

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

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

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

5 DATED this 16 day of May, 2019.

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

10 Respectfully Submitted by:

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

12  
13   
**LOREN S. YOUNG, ESQ.**

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

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

7  
8  
9 

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

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