

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW MORONEY an Individual,

Appellant,

vs.

BRUCE ARTHUR YOUNG, individually;
POINT MINING & MILLING
CONSOLIDATED, INC.;
Respondents

CASE NO.: 82948

Electronically Filed
Mar. 18, 2023 10:45 a.m.
District Court Case No. 18-2023-103-4
Elizabeth A. Brown
Clerk of Supreme Court
Appeal from the Fifth Judicial District
Court, Esmeralda County, Nevada

APPELLANT'S APPENDIX VOLUME 1

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

BIGHORN LAW

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Attorney for Appellant

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I.	APP0051 – APP0055	Court's Order Granting Motion to Dismiss

FILED

MAR 19 2019

ESMERALDA COUNTY CLERK

COMP

JACQUELINE BRETTELL, ESQ.

Nevada Bar No. 12335

MICHAEL T. NIXON, ESQ.

Nevada Bar No. 12839

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Attorney for Plaintiff

FIFTH JUDICIAL DISTRICT COURT

ESMERALDA COUNTY, NEVADA

MATTHEW MORONEY, an individual,

Plaintiff,

v.

CASE NO: *CV-19-5103*
DEPT. NO: *1*

BRUCE ARTHUR YOUNG; individually;
POINT MINING & MILLING
CONSOLIDATED, INC.; DOES I through X;
inclusive,

Defendant.

COMPLAINT

Plaintiff, MATTHEW MORONEY, by and through his counsel, JACQUELINE BRETTELL, ESQ., and MICHAEL T. NIXON, ESQ., of the law firm of BIGHORN LAW, and for his causes of action against Defendants, and each of them, alleges as follows:

1. Plaintiff MATTHEW MORONEY (hereinafter referred to as "Plaintiff") was, at all times relevant to this action, a resident of Esmeralda County, Nevada.

2. Upon information and belief, at all times relevant to this action, BRUCE ARTHUR YOUNG (hereinafter referred to as "Defendant") was, at all times relevant to this action, a resident of Esmeralda County, Nevada.

3. Upon information and belief, at all times relevant to this action, POINT MINING & MILLING, INC. is a domestic corporation that was licensed to do business in the State of Nevada.

FIRST CAUSE OF ACTION
(Negligence)

4. Based upon information and belief, at all times relevant to this action, Defendants were the owners or lessees and occupied, operated, maintained and controlled those premises located at HC 71 Box 3013, Goldpoint, Nevada 89013, located in Esmeralda County, Nevada, wherein Defendants actively reside and/or conduct business at said location.

5. Defendants owed Plaintiff, an invitee onto the premises, a duty of care to ensure that the premises were reasonably safe, including free from the risk of foreseeable harm caused by criminal, malicious, and/or violent conduct.

6. On or about the March 19, 2017, Plaintiff was an invitee on Defendants' property, when Defendant BRUCE ARTHUR YOUNG negligently and carelessly attacked Plaintiff inflicting bodily harm at Defendant's premises located at HC 71 Box 3013, Goldpoint, Nevada 89013.

7. Defendants breached their duty to keep the premises reasonably safe when they, and each of them, allowed an attack to occur, causing severe bodily injury to the Plaintiff, an invitee on the premises.

8. By reason of the premises and as a direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff was otherwise injured and caused to suffer great pain of body and mind, all or some of the same are chronic conditions which may result in permanent disability

and are disabling, all to Plaintiff, damage in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

9. By reason of the premises, and as a direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff has been caused to incur medical expenses, and will in the future be caused to expend monies for medical expenses and additional monies for miscellaneous expenses incidental thereto, in a sum presently unascertainable. Plaintiff will pray leave of Court to insert the total amount of the medical and miscellaneous expenses when the same have been fully determined at the time of the trial for this action.

10. Prior to the injuries complained of herein, Plaintiff, was an able-bodied male, capable of engaging in all activities for which she was otherwise suited. By reason of the condition of the premises described herein, and as a direct and proximate result of the negligence of the said Defendants, Plaintiff was caused to be disabled and limited and restricted in Plaintiff's occupations and activities, which caused to Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which Plaintiff prays leave of Court to insert herein when the same shall be fully determined.

11. Plaintiff has been required to retain the law firm of BIGHORN LAW to prosecute this action and is entitled to a reasonable attorneys' fee.

SECOND CAUSE OF ACTION
(Gross Negligence, Malice, Carelessness, Battery and Punitive Damages)

12. Plaintiff incorporates by this reference all of the allegations contained in paragraphs 1 through 10, above, as though completely set forth herein.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, owed Plaintiff the duties of care, as set forth hereinabove.

14. Upon information and belief, at all times relevant to this action, Defendants intentionally, maliciously, willfully, oppressively, deliberately, in gross negligence and with a conscious

disregard for the rights and/or safety of others, breached said duties and thereby caused serious injuries to Plaintiff, as described hereinabove.

15. Upon information and belief, at all times relevant to this action, Defendant BRUCE ARTHUR YOUNG intentionally, maliciously, willfully deployed the use of force or violence upon the Plaintiff, causing a harmful and/or offensive contact with Plaintiff, which caused serious bodily injury.

16. By reason of the premises and as a direct and proximate result of the aforesaid gross negligence, malice, and carelessness of Defendants, Plaintiff was injured in his health, strength and activity, and sustained shock and injury to his body, nervous system, including extensive scars to his person, all of which have caused, and will continue to cause Plaintiff physical, mental, and nervous pain, suffering, and disability.

17. By reason of the premises and as a direct and proximate result of the aforesaid gross negligence, malice, carelessness of Defendants, Plaintiff has incurred medical expenses, believed to now exceed FIFTEEN THOUSAND DOLLARS (\$15,000.00), and all to Plaintiff's general and special damages in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

18. That punitive and exemplary damages are appropriate as a means of punishing Defendants, and each of them, and as a means of deterring others, including Defendants, and each of them, from engaging in such behaviors.

19. That Plaintiff has been compelled to retain the services of an attorney at BIGHORN LAW to prosecute this action and is, therefore, entitled to reasonable attorneys' fees and costs incurred herein.

CLAIMS FOR RELIEF:

1. General damages for Plaintiff in an amount in excess of \$15,000.00;

2. Special damages for said Plaintiff's medical and miscellaneous expenses as of this date, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Special damages for lost wages in a presently unascertainable amount, and/or diminution of the earning capacity of said Plaintiff, plus possible future loss of earnings and/or diminution of said Plaintiff's earning capacity in a presently unascertainable amount;
4. Punitive damages in an amount in excess of \$15,000;
5. Costs of this suit and interest;
6. Attorneys' fees; and
7. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 19th day of March, 2019.

BIGHORN LAW

By: 

JACQUELINE BRETTELL, ESQ.

Nevada Bar No. 12335

MICHAEL T. NIXON, ESQ.

Nevada Bar No. 12839

716 S. Jones Blvd.

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Attorney for Plaintiff

MATTHEW MORONEY

MOT

JACQUELINE R. BRETTELL, ESQ.

Nevada Bar No.: 12335

MICHAEL G. TRIPPIEDI, ESQ.

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Attorneys for Plaintiff

COPY

FILED

JUL 17 2019

ESMERALDA COUNTY CLERK

FIFTH JUDICIAL DISTRICT COURT

ESMERALDA COUNTY, NEVADA

MATTHEW MORONEY, an individual,

Plaintiff,

v.

CASE NO: CV-19-5103

DEPT. NO: 1

BRUCE ARTHUR YOUNG; individually;
POINT MINING & MILLING
CONSOLIDATED, INC.; DOES I through X;
inclusive,

Defendant.

EX-PARTE MOTION TO ENLARGE TIME FOR SERVICE OF DEFENDANTS

COMES NOW, Plaintiff MATTHEW MORONEY, by and through attorneys of record,
JACQUELINE R. BRETTELL, ESQ. and MICHAEL G. TRIPPIEDI, ESQ., with the Law Offices of
BIGHORN LAW and hereby moves this Honorable Court for an Order enlarging time to serve the
Defendants.

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1 This Motion is based upon the following Memorandum of Points and Authorities and any oral
2 argument this Court may wish to entertain at the hearing of this Motion.

3 DATED this 15 day of July, 2019.

4 **BIGHORN LAW**

5
6 By: 

JACQUELINE R. BRETTELL, ESQ.

Nevada Bar No.: 12335

MICHAEL G. TRIPPIEDI, ESQ.

Nevada Bar No. 13937

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Attorneys for Plaintiff

1
2 AFFIDAVIT FOR ADDITIONAL TIME FOR SERVICE AND

3 STATE OF NEVADA)

) ss:

4 COUNTY OF CLARK)

5 MICHAEL G. TRIPPIEDI, ESQ., being duly sworn, states; that affiant is the attorney for
6 Plaintiff in the above-entitled action; wherein a verified Complaint was filed and a Summons directed
7 to Defendants.
8

9 1. Process server was given the assignment to complete service on Defendant BRUCE
10 ARTHUR YOUNG at his last known addresses: HC 71 3013, Gold Point, Nevada 89013 and 233
11 Crook Avenue, Goldfield, Nevada 89013. Process server confirmed that Defendant was unable to be
12 served at the last know addresses see "Exhibit 1," Affidavit of Non-Service.

13 2. That pursuant to the process server's Affidavit wherein process server spoke to Defendant's
14 neighbor and was told by the neighbor that Defendant BRUCE ARTHUR YOUNG "would not be
15 interested in receiving a court Summons." That indicates to Plaintiff's counsel that Defendant is, or
16 is inclined to be, evading service.
17

18 3. That Affiant therefore requests the Court to sign an Order granting additional time to be
19 able to properly serve BRUCE ARTHUR YOUNG

20 4. That furthermore, the Plaintiff's Counsel's employee was out of the country visiting family
21 during the applicable time period for serving Defendants.
22

23 5. That due to the extensive additional steps brought on, Plaintiffs requests an additional 120
24 days of time from this Court to complete service upon Defendants. Plaintiff argues these special
25 circumstances warrant extensive extra time for service.
26

1 5. That the additional 120 days needed for service of the Complaint is November 14, 2019.

2 6. That all other known Defendants in this matter were timely served by Plaintiff.

3 DATED this 15 day of July, 2019

4 
5 MICHAEL G. TRIPPIEDI, ESQ.

6 SUBSCRIBED AND SWORN to before me
7 this 15th day of July, 2019.

8 
9 NOTARY PUBLIC in and for said
10 STATE and COUNTY



MEMORANDUM OF POINTS AND AUTHORITIES

I. RELIEF REQUESTED

Plaintiff MATTHEW MORONEY requests an additional time to enlarge the time for service upon all Defendants in the amount of 120 days, as Plaintiff will continue to serve Defendants.

II. FACTS

This incident occurred or about July 3, 2017. Plaintiff was an invitee on Defendants' property, when Defendant BRUCE ARTHUR YOUNG negligently and carelessly attacked Plaintiff, inflicting bodily harm, at Defendant's premises located at HC 71 Box 3013, Goldpoint, Nevada 89013. Plaintiff was caused to be injured and seeks to recovery for medical treatment.

III. LEGAL ANALYSIS

Under Nev. R. Civ. P. 4(i), this Court has the discretion to enlarge the time for service if the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period.

NRCP 4(i):

Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period. If the party on whose behalf such service was required fails to file a motion to enlarge the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time. *Upon a showing of good cause, the court shall extend the time for service and set a reasonable date by which service should be made. (emphasis added).*

The purpose of NRCP 4(i) is to encourage diligent prosecution of complaints once they are filed. *Moore v. Shreck*, 102 Nev. 163, 717 P.2d 49 (1986). To ensure diligent prosecution of complaints, NRCP 4(i) requires that Plaintiff serve his Complaint and Summons within 120 days.

1 However, this time requirement will be extended where a showing of good cause is made and the
2 motion is brought within the 120 day time period for service. *Saavedra-Sandoval v. Wal-Mart Stores*,
3 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010).

4 The factors to be considered by Nevada courts when determining whether or not a Plaintiffs
5 have made a showing of good cause are outlined in *Scrimmer v. Eighth Judicial District Court*, 998 P.2d
6 1190 (2000):

7 We conclude that a number of considerations may govern a district court's analysis of
8 good cause under NRCP 4(i), and we emphasize that no single consideration is
9 controlling. Appropriate considerations include: (1) difficulties in locating the
10 defendant, (2) the defendant's efforts at evading service or concealment of improper
11 service until after the 120-day period has lapsed, (3) the plaintiff's diligence in
12 attempting to serve the defendant, (4) difficulties encountered by counsel, (5) the
13 running of the applicable statute of limitations, (6) the parties' good faith attempts to
14 settle the litigation during the 120-day period, (7) the lapse of time between the end of
the 120-day period and the actual service of process on the defendant, (8) the prejudice
to the defendant caused by the plaintiff's delay in serving process, (9) the defendant's
knowledge of the existence of the lawsuit, and (10) any extensions of time for service
granted by the district court.

15 The *Scrimmer* Court indicated that Nevada courts should use a flexible approach when
16 determining motions to dismiss under NRCP 4(i). Moreover, they explained that even a single listed
17 factor could, in some instances, prove sufficient grounds to establish good faith:

18 We specifically disavow and overrule *Lacey* to the extent that it stands for the
19 proposition that "settlement negotiations alone will not constitute good cause for a
20 plaintiff's failure to serve process within 120 days of the filing of the complaint." *Lacey*,
21 109 Nev. at 345, 849 P.2d at 262. Negotiations with an eye to settlement, undertaken
22 in good faith in a serious effort to settle the litigation during the 120-day period, may
23 constitute good cause for untimely service under NRCP 4(i). Additionally, we renounce
our dictum in *Dougan*, which suggests that an inflexible approach should be used in
assessing motions to dismiss under Rule 4(i).

24 The *Scrimmer* Court went on to explain that the policy behind NRCP 4(i) is partially to ensure
25 diligent prosecution of complaints, but was not meant to become an automatic sanctioning mechanism.
26 Moreover, it should still allow for cases to be heard on their merits:

1 Underlying these considerations is the policy behind Rule 4(i)—to encourage the
2 diligent prosecution of complaints. *Rule 4(i) was not adopted, however, to become an*
3 *automatic sanction when a plaintiff fails to serve the complaint within 120 days of*
4 *filing. When making a determination under NRCP 4(i), the district court should*
5 *recognize that "good public policy dictates that cases be adjudicated on their merits."*
6 *Kahn v. Orme, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992) (citing Hotel Last Frontier*
7 *v. Frontier Prop., 79 Nev. 150, 155-56, 380 P.2d 293, 295 (1963)). (emphasis added).*

8 Plaintiff has met the *Scrimmer* factors, thus giving the Court good cause to extend the time for
9 service.

10 **SCRIMER FACTOR 1:** Plaintiff MATTHEW MORONEY has been forced to retain counsel
11 and file suit in this matter. Plaintiff's counsel did extensive research into the parties to be named prior
12 to the filing of the Complaint herein—yet, only on July 9, 2019, did Plaintiff learn that Defendant
13 would be evading or attempting to evade service. See Exhibit 1.

14 Plaintiff requests an additional 120 days of time from this Court to properly serve the
15 Defendant. Plaintiff argues these special circumstances warrant extensive extra time for service.

16 **SCRIMER FACTOR 2:** Defendant proved difficult to find, a fact which Plaintiff was unaware
17 of prior to attempting service.

18 **SCRIMER FACTORS 3 & 4:** Plaintiff performed his diligence in attempting to serve
19 Defendant. Prior to filing of the Complaint, Plaintiff's counsel performed extensive research to
20 determine all the proper Defendant parties. Plaintiff was able to properly serve all named parties in
21 this matter.

22 **SCRIMER FACTOR 5:** The statute of limitations in this matter has expired, and denying this
23 request for extension of service to receive the returned certified copy of letter would severely prejudice
24 Plaintiff. Plaintiff's 120 days expires on July 17, 2019, yet Plaintiff has made good faith attempts to
25 serve during the 120-day period, including successfully serving all other Defendants in this matter.

1 **SCRIMER FACTOR 7:** In *Scrimmer*, the Nevada Supreme Court concluded that the district
2 court had not exceeded its jurisdiction or abused its discretion when it refused to dismiss Plaintiff's
3 claim, even though the request for extension of time to serve was made 16 days after the 120-day
4 period had expired and there had been less than diligent efforts to serve the Defendant. Still, the court
5 found there was little or no prejudice to Defendants and any dismissal would have effectively been
6 with prejudice since the statute of limitations had run.

7 Here, there has yet to be a lapse of time as the end of the 120 period is not until July 17, 2019,
8 after the filing of the present Motion.

9 **SCRIMER FACTORS 8 and 9:** There will be no prejudice to Defendant BRUCE ARTHUR
10 YOUNG in granting an extension for service as they have had knowledge of the existence of Plaintiff's
11 claim since before filing Plaintiff's complaint, Defendant's insurance had been put on notice of
12 Plaintiff's claims against Defendants.

13 **SCRIMER FACTOR 10:** This is Plaintiff's first request for an extension of service. Plaintiff
14 has diligently worked to located and serve Defendant BRUCE ARTHUR YOUNG.

15 Plaintiff requests that the Court allow Plaintiff additional time of 120 days to serve the Defendant.

16 IV. **THIS COURT SHOULD ENLARGE SERVICE SINCE PLAINTIFF'S ACTIONS**
17 **SHOW GOOD CAUSE; MOREOVER, ENLARGING SERVICE SERVES THE**
18 **INTERESTS OF JUSTICE BY MINIMIZING PREJUDICE**

19 The standard for service under NRCP 4(i), outlined in *Scrimmer*, lists ten factors to be used when
20 determining whether a Plaintiff's actions demonstrate good cause. *See supra*. The applicability of only
21 one of these ten factors can be sufficient to show good cause in some cases. *Id.*

22 In *Scrimmer*, the Nevada Supreme Court concluded that the district court had not exceeded its
23 jurisdiction or abused its discretion when it refused to dismiss Plaintiff's claim, even though the
24 request for extension of time to serve was made 16 days after the 120-day period had expired and there
25

1 prejudice to Defendants and any dismissal would have effectively been with prejudice since the statute
2 of limitations had run.

3 As described above, the *Scrimmer* factors have been demonstrated in the instant case. Here,
4 Plaintiff has made diligent efforts as aforementioned, to locate and serve the proper parties prior to
5 service of process and to dismiss out any unnecessary parties if warranted before the expiration of the
6 120-day deadline to serve the Complaint in this matter.

7 **V. CONCLUSION**
8

9 Based on the above, Plaintiff MATTHEW MORONEY respectfully requests this Court grant
10 her Motion to Enlarge Time for Service on Order Shortening Time upon all Defendants to confirm
11 certain representations made by opposing counsel. Plaintiff respectfully requests an additional 120
12 days of time to allot for the determining whether all of the named parties should remain in this action,
13 or be dismissed out prior to effectuating service of process.

14 DATED this 15 day of July, 2019.

15 **BIGHORN LAW**


16
17 By: 
18 **JACQUELINE R. BRETELL, ESQ.**
Nevada Bar No.: 12335
19 **MICHAEL G. TRIPPIEDI, ESQ.**
Nevada Bar No. 13937
20 716 S. Jones Blvd.
21 Las Vegas, Nevada 89107
22 *Attorneys for Plaintiff*
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EXHIBIT 1

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FIFTH JUDICIAL DISTRICT COURT

ESMERALDA COUNTY, NEVADA

MATTHEW MORONEY, an individual,

Plaintiff,

v.

BRUCE ARTHUR YOUNG; individually;
POINT MINING & MILLING
CONSOLIDATED, INC.; DOES I through X;
inclusive,

Defendant.

CASE NO: cv-19-5103

DEPT. NO: 1

AFFIDAVIT OF NON-SERVICE

Estela Sandoval, being first duly sworn and deposes and says:

1. That Affiant is lawfully entitled to work in the United States, over eighteen years of age, employed by Elite Investigations, Nevada Private Investigator's License Number 873-C, and not a party to, nor interested in the within action.
2. I have personal knowledge of the facts referenced herein, and if called as a witness could testify competently thereto.
3. On July 2, 2019, I was given the assignment of completing service upon Bruce Arthur Young with last known address listed as HC 71 3013, Gold Point, Nevada 89013.
4. On July 8, 2019, the Affiant attempted to locate the aforementioned address and was unable to find it on Google Maps. The Affiant contacted Esmeralda County Assessor's office via telephone number (775) 485-3450, and spoke with "Shawna", who indicated that the aforementioned address was an invalid address. Shawna indicated that in Gold Point, homeowners choose any address they want; however, they were not recorded on a map. Shawna suggested that the Affiant contacted the Sheriff's Office and he would show the Affiant where Bruce Arthur Young's property was located. She also stated that the Sheriff might even drive the Affiant to the location. Shawna suggested that the Affiant ask for "Lieutenant Matthew". The Affiant contacted Esmeralda County Sheriff's

1 office via telephone number (775) 485-3450, and was told that Lieutenant Matthew and the Sheriff
2 were not in the office; however, they would be in July 9, 2019, at 10:00 a.m.

3 5. That on July 9, 2019, the Affiant traveled to Esmeralda County Sheriff's Office located at 233
4 Crook Avenue, Goldfield, Nevada 89013. Lieutenant Matthew stated that he would only show the
5 Affiant where Bruce Arthur Young's property was located; however, Lieutenant Matthew did not
6 drive the Affiant to the location. The Affiant traveled to Gold Point, Nevada and knocked on Bruce
7 Arthur Young's door; however, no one answered the door. A burgundy Ford SUV with Nevada
8 license plate number 087G18, and a red Dodge pickup with Nevada license plate number 126G42
9 were parked on the property. An unidentified neighbor stated that Bruce Arthur Young was not
10 home and would not be interested in receiving a court Summons. According to the neighbor Bruce
11 Arthur Young was "out shopping" and did not know when Bruce Arthur Young would be home.
12

13
14 6. I have read the foregoing Affidavit and know the contents thereof, as the same is true of my own
15 knowledge, except for those matters therein contained upon information in belief. In so those
16 matters, I believe them to be true.

17 FURTHER YOUR AFFIANT SAYETH NAUGHT.
18

19
20 
Estela Sandoval

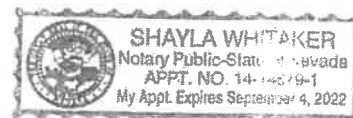
21 State of Nevada

22 County of Clark

23 Subscribed and sworn to before

24 On this 10 day of July, 2019, by Estela Sandoval

25
26 
27 NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE



1 **ACOM**
2 **JACQUELINE R. BRETELL, ESQ.**
3 Nevada Bar No.: 12335
4 **MATTHEW B. BECKSTEAD, ESQ.**
5 Nevada Bar No.: 14168
6 **BIGHORN LAW**
7 716 South Jones Boulevard
8 Las Vegas, Nevada 89107
9 Phone: (702) 333-1111
10 jacqueline@bighornlaw.com
11 matthew@bighornlaw.com
12 *Attorneys for Plaintiff*

FILED
APR 27 2020
M Garcia
ESMERALDA COUNTY CLERK

9 **FIFTH JUDICIAL DISTRICT COURT**
10 **ESMERALDA COUNTY, NEVADA**

11 MATTHEW MORONEY,
12
13 Plaintiff,
14
15 v.

CASE NO: CV-19-5103
DEPT. NO: 1

14 BRUCE ARTHUR YOUNG,
15
16 Defendant.

17 **AMENDED COMPLAINT**

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COMES NOW Plaintiff Matthew Moroney ("Plaintiff"), by and through his attorneys, Jacqueline R. Bretell, Esq. and Matthew B. Beckstead, Esq., of the law firm Bighorn Law, and hereby brings the claims below, based upon the following allegations:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is, and at all times relevant herein was, a resident of Esmeralda County, Nevada;
2. Defendant Bruce Arthur Young ("Defendant") is, and at all times relevant herein was, a resident of Esmeralda County, Nevada;

II. FACTUAL ALLEGATIONS

3. On March 19, 2017, Defendant threatened to initiate a physical altercation with Plaintiff, eventually punching Plaintiff twice and taking Plaintiff to the ground ("Subject Incident");
4. Defendant never obtained Plaintiff's consent to initiate or engage in physical contact with Plaintiff;
5. At the time of the Subject Incident, Plaintiff was recovering from neck surgery;
6. At the time of the Subject Incident, Defendant knew that Plaintiff was recovering from neck surgery;
7. Prior to the physical altercation, Defendant verbally threatened to hit or punch Plaintiff;
8. As a result of the Subject Incident, Plaintiff sustained physical injuries;

III. FIRST CLAIM FOR RELIEF

(BATTERY)

9. Plaintiff incorporates by reference each and every foregoing paragraph as if fully set forth herein;
10. Defendant intentionally punched Plaintiff in the face, twice, and wrestled Plaintiff to the ground;
11. Defendant knew that Plaintiff had neck surgery prior to the Subject Incident;
12. Plaintiff has suffered physical injury, incurred medical expenses, experienced pain and suffering, and may incur future medical expenses and experience future pain and suffering as a result of the Subject Incident;
13. Plaintiff is entitled to damages in excess of \$15,000.00;

1 14. Plaintiff is entitled to punitive damages under NRS 42.005.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment from this Honorable Court, as follows:

- 4 1. General damages for Plaintiff, in excess of \$15,000.00;
- 5 2. Special damages for Plaintiff's medical and other expenses, plus future medical and other
- 6 expenses incidental thereto, in an amount to be determined by the trier of fact, in excess of
- 7 \$15,000.00;
- 8 3. Punitive damages for Plaintiff under NRS 42.005, in excess of \$15,000.00;
- 9 4. Any and all additional relief in Plaintiff's favor as the Court deems just and proper on the
- 10 premises.

11

12 DATED this 21st day of April, 2020.

13 Respectfully submitted,

14 **BIGHORN LAW**

15

16 
JACQUELINE R. BRETELL, ESQ.

17 Nevada Bar No. 12335

18 **MATTHEW B. BECKSTEAD, ESQ.**

19 Nevada Bar No.: 14168

20 716 S. Jones Blvd.

21 Las Vegas, Nevada 89107

22 (702) 333-1111

23 *Attorneys for Plaintiff*

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CEMENTED MAIL



UNITED STATES POSTAGE
PITNEY BOWES
\$007.100
02 1P
0004739511 JUL 07 2020
MAILED FROM ZIP CODE 80013

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BC: 89119512875 * 0914-01105-07-47

2000-2001

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

FILED

JUL 07 2020

ESMERALDA COUNTY CLERK

1 ANS
2 BRUCE YOUNG
3 HC 71 3013
4 Goldfield, Nevada 89013
5 Phone: (775) 340-4313
6 Defendant in Proper Person

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FIFTH JUDICIAL DISTRICT COURT
ESMERALDA COUNTY, NEVADA

MATTHEW MORONEY,

Plaintiff,

vs.

BRUCE ARTHUR YOUNG,

Defendants.

CASE NO. : CV-19-5103
DEPT. NO.: 1

DEFENDANT'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT

COMES NOW, Defendant, BRUCE ARTHUR YOUNG, in-Proper Person, as an individual, and in answer to the allegations contained in Plaintiff's Amended Complaint Defendant **generally denies** each and every allegation contained in Plaintiff's Complaint.

It is expressly noted by this answering Defendant that the only "*subject incident*" known by this Defendant, pertains to Plaintiff, MATTHEW MORONEY, physically attacking this named Defendant on the date referenced. Plaintiff, MATTHEW MORONEY, was the aggressor and Defendant, BRUCE ARTHUR YOUNG, was attempting to avoid Plaintiff's "*out of control behavior*".

BRUCE ARTHUR YOUNG is the only named Defendant referenced in the Amended Complaint and therefor, responds as to himself only.

1. Defendant admits the allegations contained in Paragraphs 2, 5, 6, and 11 (to the extent that the subject incident refers to Plaintiff's attack on Defendant), of Plaintiff's Amended Complaint;

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2. Defendant denies the allegations in Paragraphs 3, 4 (to the extent that Plaintiff never initiated any physical contact with Plaintiff), 7, 10, 13, and 14 of Plaintiff's Amended Complaint and denies Plaintiff's Prayer, in total, for Judgment;
 3. Defendant does not have sufficient knowledge to either admit or deny those allegations contained in Paragraphs 1, 8, 12 (to the extent that the subject incident refers to Plaintiff's attack on Defendant), of Plaintiff's Amended Complaint and accordingly denies said allegations.

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AFFIRMATIVE DEFENSES

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As and for this answering Defendant's Affirmative Defenses, Defendant alleges as follows:

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FIRST AFFIRMATIVE DEFENSE

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4. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

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5. As a second affirmative defense, Defendant denies that he ever initiated any contact with Plaintiff as alleged in Plaintiff's Amended Complaint;

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THIRD AFFIRMATIVE DEFENSE

6. Plaintiff's Complaint is based on false and misleading information pertaining to this answering Defendant.

FOURTH AFFIRMATIVE DEFENSE

7. Damages if any, that were allegedly sustained by Plaintiff as a result of the acts contained in Plaintiff's Amended Complaint, were caused in whole or part, or were contributed to by reason of the acts, omissions, negligence and/or intentional misconduct of Plaintiff.

1 **FIFTH AFFIRMATIVE DEFENSE**

- 2 8. Plaintiff has failed within a reasonable time of the alleged incident, the existence
3 of which is denied, to provide notification of the alleged Amended Complaint.

4 **SIXTH AFFIRMATIVE DEFENSE**

- 5 9. Plaintiff has, through its own acts and /or omissions, failed to mitigate his
6 damages, the existence of which is denied, and Defendant has therefore been
7 released any discharged from any liability.

8 **SEVENTH AFFIRMATIVE DEFENSE**

- 9 10. All losses, if any, suffered by the Plaintiff at the times and places referred to in
10 the Amended Complaint on file herein, were caused in whole or in part, or were
11 contributed to by the negligence or fault or want of due care of the Plaintiff, and
12 such negligence, fault and want of due care of said Plaintiff was greater than that,
13 if any of Defendant.

14 **EIGHTH AFFIRMATIVE DEFENSE**

- 15 11. By his own conduct, Plaintiff is estopped from making those claims herein as
16 asserted by the Doctrine of Unclean Hands.

17 **NINTH AFFIRMATIVE DEFENSE**

- 18 12. Plaintiff's claims, which Defendant denies, are barred by the Statute of
19 Limitations.

20 **TENTH AFFIRMATIVE DEFENSES**

- 21 13. Pursuant to Rule 11 of Nevada Rules of Civil Procedure as amended, all possible
22 affirmative defenses may not have been alleged herein insofar as sufficient facts
23 are not available after reasonable inquiry and the filing of Plaintiff's Amended
24 Complaint and therefore, these Answering Defendant reserves the right to amend
25 his Answer to allege additional affirmative defenses or to delete affirmative
26 defenses, as subsequent investigation warrants.

1.
2. WHEREFORE, Defendant prays as follows:

3. 1. That the Plaintiff take nothing by way of his Amended Complaint.
4. 2. That Defendant be awarded with costs and professional Assistance fees.
5. 3. For such other relief as the Court deems appropriate in the premises
6.

7. DATED this 7 day of July, 2020.
8.

9. *Bruce Young*
10. BRUCE YOUNG
11. HC 71 3013
12. Goldfield, Nevada 89013
13. Phone: (775) 340-4313
14. Defendant in Proper Person
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1 VERIFICATION

2 STATE OF NEVADA)
3 COUNTY OF NYG)ss.

4 BRUCE ARTHUR YOUNG, under penalties of perjury, being first duly sworn, deposes and
5 says:

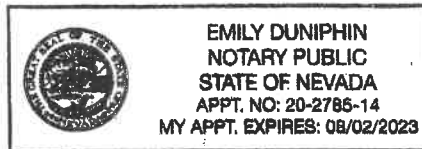
6 That he is the Defendant, in the above entitled matter; that he has read the foregoing
7 Defendant's Answer to Plaintiff's Amended Complaint and knows the contents thereof; that the
8 same is true of his own knowledge, except for those matters therein contained stated upon
9 information and belief, and as to those matters, he believes them to be true.

10 DATED this 07 day of July, 2020.

11 *Bruce Arthur Young*
12 BRUCE ARTHUR YOUNG

13 WITNESS my hand and official seal

14 *Ch. Duniphin*
15 NOTARY PUBLIC



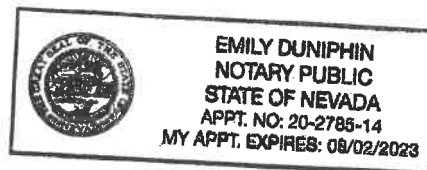
16 ACKNOWLEDGMENT

17 STATE OF NEVADA)
18 COUNTY OF NYG)ss.

19 On this 07 day of July, 2020, before me, the undersigned Notary Public in and for the said
20 County and State, personally appeared BRUCE ARTHUR YOUNG known to me to be the person
21 described in and who executed the foregoing Defendant's Answer to Plaintiff's Amended
22 Complaint, and who acknowledged to me that he did so freely and voluntarily and for the uses and
23 purposes therein mentioned.

24 WITNESS my hand and official seal.

25 *Ch. Duniphin*
26 NOTARY PUBLIC




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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on the 7 day of July, 2020, I deposited and sent a true and correct copy of
5 the foregoing DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT by U.S. first
6 class Mail, postage pre-paid, to the following address of Attorney for Plaintiff as follows:

7
8 JACQUELINE R. BRETELL, ESQ.
9 MATTHEW B. BECKSTEAD, ESQ.
10 BIGHORN LAW
11 716 South Jones Blvd.
12 Las Vegas, Nevada 89107

13 DATED this 7 day of July, 2020.

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COPY

MTD

MICHAEL M. DeLEE, ESQ.
Nevada Bar No. 011948
DELEE LAW OFFICES, LLC
P.O. Box 96, 18 South Powerline Road
Amargosa Valley, Nevada 89020
Telephone: (775) 372-1999
Facsimile: (775) 372-1234
E-Mail: michael@deleelaw.com
Attorney for Bruce Arthur Young

FILED

SEP 01 2020

M. Garcia
ESMERALDA COUNTY CLERK

The undersigned does hereby affirm that this document does not contain the social security number of any person.

FIFTH JUDICIAL DISTRICT COURT

ESMERALDA COUNTY, STATE OF NEVADA

MATTHEW MORONEY,

Plaintiff,

v.

BRUCE ARTHUR YOUNG,

Defendant.

Case No. : CV-19-5103

Dept. No.: I

NOTICE OF MOTION AND MOTION TO DISMISS

Defendant BRUCE ARTHUR YOUNG ("Young"), by and through his counsel of record, DeLee Law Offices, LLC, hereby files his Motion to Dismiss the action filed by Plaintiff MATTHEW MORONEY ("Moroney") because the compliant fails to state a claim upon which relief can be granted and was improperly filed.

This Motion is made and based upon all papers and pleadings on file herein, the following Memorandum of Points and Authorities, the Declaration of Michael DeLee filed in support of this Motion, and any oral argument required by this Court at the time set for hearing in this

///

1 matter.

2 DATED this 1st day of September, 2020.

3 DELEE LAW OFFICES, LLC

4 By 
5 MICHAEL M. DELEE
6 Attorney for Bruce Arthur Young

7 **NOTICE OF MOTION**

8 TO: PLAINTIFF MATTHEW MORONEY

9 AND: HIS RESPECTIVE COUNSEL:

10 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, that the undersigned will
11 bring the above and foregoing Motion to Dismiss Pursuant to NRCP 12(b)(5) and NRCP 4(e)(2),
12 on for hearing before the above-entitled Court on the 6th day of October, 2020 at 10
13 A.m. of said day, in Department I, or as soon thereafter as counsel can be heard.

14 DATED this 1st day of September, 2020.

15 DELEE LAW OFFICES, LLC

16 By 
17 MICHAEL M. DELEE
18 Attorney for Bruce Arthur Young

19 **POINTS AND AUTHORITIES**
20 I.

21 **INTRODUCTION**

22 Moroney filed his first Complaint on March 19, 2019, against Bruce Arthur Young,
23 individually, and Point Mining & Milling, Consolidated, Inc; Does I through X, inclusive (the
24 "Original Complaint"). See Complaint on file in this case. There is no record of service of the
25 Original Complaint. The Original Complaint alleged a battery against Young that purportedly
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1 took place exactly two years earlier, on March 19, 2017.¹ See Original Complaint Paragraph 6.
2 The Original Complaint was filed on the very last day to file under NRS 11.190(4)(c). Exactly
3 120 days later, Plaintiff filed an Ex-Parte Motion to Enlarge Time For Service of Defendants, on
4 July 17, 2019, (the “Ex Parte Motion”). On August 21, 2019, this Court set the Ex-Parte Motion
5 for a hearing on September 3, 2019. At the hearing Moroney had no explanation as to why the
6 local Esmeralda County Sherriff was not promptly hired to affect service after the Original
7 Complaint was filed. This Court denied the Ex Parte Motion. On November 26, 2019, Moroney
8 filed his first draft order reflecting the denial of the Ex Parte Motion.² The first draft order
9 denying the motion was not signed by this Court. Moroney filed a second, identical draft order
10 on December 30, 2019, which also does not appear to have been signed.³ Moroney did not
11 appeal the denial of his Ex Parte Motion.
12

13 On April 27, 2020, Moroney amended the Original Complaint by dropping the
14 defendants Point Mining & Milling Consolidated, Inc., and DOES I through X⁴. See Amended
15 Complaint. Moroney did not just recycle the same vague allegations against Young but he
16 provided more “details” of what had purportedly happened more than three years prior, including
17 a brand-new theory of his purported medical “prior condition” that was nowhere mentioned in
18 this Original Complaint (but presumably known) to Moroney. The Amended Complaint (but not
19 the Original Complaint) was served upon Young who then answered, pro se, on July 13, 2020.
20 Young raised affirmative defenses that Moroney “failed to state a cause of action upon which
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23 ¹ Young notes for the Court’s attention the discrepancy between the date averred the Original Complaint and
24 Amended Complaint is March 19, 2017, yet the “incident” described in the Ex-Parte Motion to Extend Time for
25 Service is July 3, 2017. See Ex Parte Motion page 5, lines 6-7.

26 ² Young notes the irony that Moroney also included the remark that “no timely Opposition having been filed by any
27 of the Defendants” when, naturally, none of the Defendants had any knowledge of the pending case much less the
28 Ex-Parte Motion to Enlarge Time for Service.

³ Both the first draft order and the second draft order refer to the filing date of the Ex-Parte Motion to Enlarge Time
for Service as July 15, 2019, when the file stamp was July 17, 2019.

⁴ By this time, more than thirteen (13) months had passed since the Original Complaint was filed, and an equally
long time has elapsed beyond the statute of limitations, as well as more than half a year past this Court’s denial of
Moroney’s Ex Parte Motion.

1 relief can be granted,” that Moroney failed “within a reasonable time of the alleged incident to
2 provide notification,” and that Mornoe’s claims “are barred by the Statue of Limitations.” See
3 Answer, pages 2-3. This hearing is brings Young’s pro se objections from his Answer into focus
4 for the Court to dismiss the matter.

5 ARGUMENT

6 **A. STANDARDS OF REVIEW**

7 NRCP 12(b)(5)

8 The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this court
9 “must construe the pleading liberally and draw every fair intendment in favor of the [non-
10 moving party].” *Squires v. Sierra Nev. Educational Found.*, 107 Nev. 902, 905, 823 P.2d
11 256, 257 (1991) (citations omitted). All factual allegations of the complaint must be
12 accepted as true. *Capital Mort. Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126
13 (1985). A complaint will not be dismissed for failure to state a claim “unless it appears
14 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier
15 of fact, would entitle him [or her] to relief.” *Edgar v. Wagner*, 101 Nev. 226, 228, 699
16 P.2d 110, 112 (1985) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2
17 L.Ed.2d 80 (1957)). In evaluating a motion to dismiss, courts primarily focus on the
18 allegations in the complaint. *Baxter v. Dignity Health*, 131 Nev. Adv. Op. 76 (September
19 24, 2015). See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670,
20 672 (2008). But “the court is not limited to the four corners of the complaint.” *Id.*,
21 quoting 5B Charles Alan Wright & Arthur Miller, *Federal Practice & Procedure: Civil* §
22 1357, at 376 (3d ed. 2004). Under NRCP 10(c), “a copy of any written instrument which
23 is an exhibit to a pleading is a part thereof for all purposes.” *Id.* If documents are
24 physically attached to the complaint, then a court may consider them if their “authenticity
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1 is not contested” and “the plaintiff’s complaint necessarily relies on them.” *Lee v. City of*
2 *L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). Facts admitted in the pleadings do not require
3 independent proof. *Richards v. Steele*, 60 Nev. 66, 71, 99 P.2d 641, 644 (1940). In the
4 context of a NRCP 12(b)(5) motion, “[a]ll factual allegations of the complaint must be
5 accepted as true. *Capital Mort. Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126
6 (1985). A dismissal with prejudice without leave to amend is appropriate, where, as is
7 the case here, amendment of the complaint or claim in question would be futile. *See*
8 *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998) (dismissal with
9 prejudice is appropriate where “any amendment would be an exercise in futility, or where
10 the amended complaint would also be subject to dismissal” (citations omitted)); *Saul v.*
11 *United States*, 928 F.2d 829, 842 (9th Cir. 1991) (leave to amend need not be granted
12 when amendment would be futile).

14 Statute of Limitations

15 The applicable Statute of Limitations provides as follows:

17 Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions
18 other than those for the recovery of real property, unless further limited by specific
statute, may only be commenced as follows:

19 Within 2 years:

20 . . .

21 (c) An action for libel, slander, assault, battery, false imprisonment or seduction.

22 NRS 11.190(4)(c) (emphasis added). When the defense of the statute of limitations appears on
23 the face of the complaint, a motion to dismiss for failure to state a claim is appropriate. *Shupe &*
24 *Yost, Inc. v. Fallon Nat’l Bank*, 109 Nev. 99, 100, 847 P.2d 720, 720 (Nev. 1993); *Kellar v.*
25 *Snowden*, 87 Nev. 488, 489 P.2d 90) (Nev. 1971); *Paso Builders, Inc. v. Hebard*, 83 Nev. 165,
26
27
28

1 426 P.2d 731 (Nev. 1967). The issue of when the statute of limitations commenced may be
2 determined as a matter of law. *Day v. Zubel*, 922 P.2d 536, 539 (Nev. 1996).

3 NRCP 4(e)(2)

4 The rules are explicit that the action must be dismissed unless there is an extension of the
5 time to serve.

6 If service of the summons and complaint is not made upon a defendant before the 120-
7 day service period — or any extension thereof — expires, the court must dismiss the
8 action, without prejudice, as to that defendant upon motion or upon the court's own order
to show cause.

9 NRCP (4)(e)(2) (emphasis added). The rule is jurisdictional as the mandatory “must” language
10 is used.

11
12 NRCP 15(c)

13 The rules for amending a complaint provide an illustration that a complaint may not be
14 amended after a motion to enlarge the time is denied, or if no motion is actually made. For
15 example, if a party is to be added, that party must have had notice within the 120-day time
16 period:
17

18 (c) An amendment to a pleading relates back to the date of the original pleading when:

19 ...

20 (2) the amendment changes a party or the naming of a party against whom a claim is
21 asserted, if Rule 15(c)(1) is satisfied and if, within the period provided by Rule 4(e) for serving
the summons and complaint, the party to be brought in by amendment:

22 (A) received such notice of the action that it will not be prejudiced in defending on
the merits; and

23 (B) knew or should have known that the action would have been brought against it,
24 but for a mistake concerning the proper party's identity.

25 NRCP 15(c)(2). The federal courts, in interpreting the provisions of Federal Rule of Civil
26 Procedure 4(j), have stated:
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1 The courts have made clear that plaintiff's amendment of the complaint does not
2 justify delay in service of the original complaint unless the amended complaint
3 names a new party defendant. If the amended complaint adds a defendant, then a
4 new 120-day timetable begins to run as to the added defendant. However, the
amendment does not toll the 120-day period as to defendants already named. The
appropriate course is for plaintiff to amend the original complaint after serving it
upon the original defendants.

5 *Lacey v. Wen-Neva, Inc.*, 849 P. 2d 260, 264 (Nev. 1993), citing *Baden v. Craig-Hallum, Inc.*,
6 115 F.R.D. 582, 586 n. 3 (D.Minn.1987).

7 ANALYSIS

8 As discussed in NRCP 4(e) and the language above from *Lacey*, because Moroney's Ex
9 Parte Motion was denied, and the denial was never appealed, Moroney did not have a 2019
10 case left in which to "amend" his complaint. Moreover, the Amended Complaint was different
11 in character and alleges elaborate causes of action than the Original Complaint. Finally, the
12 caption of the Amended Complaint differs from the Original Complaint.
13

14 Moroney is seeking an end-run around this Court's denial of his Ex-Parte Motion.
15 Moroney waited until the last possible second to file his Original Complaint. He then waited an
16 unexplainably long time to begin to service of process (and inexplicably avoided using the
17 services of the Esmeralda County Sheriff). Finally, he waited until the last possible moment to
18 file the Ex Parte Motion. Moroney rightfully received little sympathy from this Court at the
19 September 3, 2019, hearing. Now, almost exactly one year later, Moroney effectively contends
20 that he didn't have to appeal this Court's order and instead can just ignore it by amending the
21 complaint and starting over, which would render NRCP 4(e) a nullity and mock the Court's
22 explicit instructions and Moroney's own two draft orders filed in 2019 that acknowledge the
23 denial of the Ex Parte Motion. There is no issue of waiver of any defense because there was no
24 viable case left and the improper nature of the Amended Complaint was noted in Young's pro se
25 Answer.
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CONCLUSION

The Court should for the purposes of this Motion accept the Complaint's allegations regarding the timing of the alleged incident as true, that it occurred on March 19, 2017, and that Moroney knew, or should have known, that he needed to act with diligence to present his allegations promptly rather than repeatedly tempt the running of the statute of limitations and make such a lackluster effort to serve Young. The Court should further find that the case ended when this Court denied his Ex Parte Motion and therefore there was no viable complaint to be amended. With this finding, the Court should dismiss the Complaint, with prejudice, as barred by the statute of limitations and award reasonable fees and costs to the moving party herein.

DATED this 1st day of September, 2020.

DELEE LAW OFFICES, LLC

By



MICHAEL M. DELEE

Attorney for Bruce Arthur Young

**DECLARATION OF MICHAEL DELEE IN SUPPORT OF
MOTION TO DISMISS**

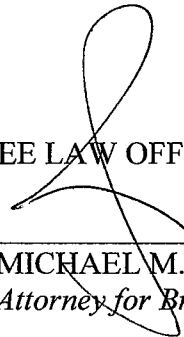
I, Michael DeLee, under penalty of perjury, declare that if called as a witness, I would and could competently testify of my own personal knowledge as follows:

1. I am a resident of the State of Nevada. I am over the age of 18 and mentally competent.
2. I am now and at all times relevant have been an attorney of record for Bruce Arthur Young. In that role I have personal knowledge of the matters stated herein and could testify competently to them if called upon to do so.
3. I am making this Declaration in support of the above Motion to Dismiss, filed in the Fifth Judicial District Court, Esmeralda County, Nevada.
4. I have reviewed the Complaint, the Amended Complaint, the Answer, and other documents and its Exhibits in this matter.
5. I have drafted the Motion to Dismiss in good faith and not as a means to harass or delay the litigation.
6. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

DATED this 14 day of September, 2020.

DELEE LAW OFFICES, LLC

By



MICHAEL M. DELEE
Attorney for Bruce Arthur Young

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 5th day of September, 2020, and pursuant to NRC
5(b), I caused to be served a true and correct copy of the foregoing NOTICE OF MOTION AND
MOTION TO DISMISS by emailing to matthew@bighornlaw.com and mailing, postage prepaid,
a copy to the following named individual at the following address:

Jacqueline Bretell
BIG HORN LAW
2225 E. Flamingo Road, Bld 2, Ste 300
Las Vegas, Nevada 89119



Michael M. DeLee, Esq.
Attorney for Bruce Arthur Young

1 **OPP**

2 **JACQUELINE R. BRETTELL, ESQ.**

3 Nevada Bar No. 12335

4 **MATTHEW B. BECKSTEAD, ESQ.**

5 Nevada Bar No.: 14168

6 **BIGHORN LAW**

7 2225 E. Flamingo Rd., Bldg. 2, Ste. 300

8 Las Vegas, Nevada 89119

9 Phone: (702) 333-1111

10 jacqueline@bighornlaw.com

11 matthew@bighornlaw.com

12 *Attorneys for Plaintiff*

13 **FIFTH JUDICIAL DISTRICT COURT**

14 **ESMERALDA COUNTY, NEVADA**

15 MATTHEW MORONEY,

16 Plaintiff,

17 v.

18 BRUCE ARTHUR YOUNG,

19 Defendant.

CASE NO: CV-19-5103

DEPT. NO: 1

20 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

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1 COMES NOW Plaintiff Matthew Moroney, by and through attorneys Jacqueline R. Bretell, Esq.
2 and Matthew B. Beckstead, Esq., of the law firm Bighorn Law, and files *Plaintiff's Opposition to*
3 *Defendant's Motion to Dismiss*, based upon the pleadings and other papers on file in this action, the
4 Memorandum of Points and Authorities below, and any oral argument the Court considers on Defendant's
5 *Motion to Dismiss*.

6 Dated this 9th Day of September, 2020.

8 Submitted by:

9
10 
11 **JACQUELINE R. BRETELL, ESQ.**
12 Nevada Bar No. 12335
13 **MATTHEW B. BECKSTEAD, ESQ.**
14 Nevada Bar No.: 14168
15 **BIGHORN LAW**
16 2225 E. Flamingo Rd., Bldg. 2, Ste. 300
17 Las Vegas, Nevada 89119
18 Phone: (702) 333-1111
19 jacqueline@bighornlaw.com
20 matthew@bighornlaw.com
21 *Attorneys for Plaintiff*
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23
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26
27
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Because Defendant Bruce Arthur Young has already filed an answer, and because
4 Defendant Young has waived the defenses of statute of limitations and insufficiency of process
5 because he failed to bring them in the answer or timely filed Rule 12(b) motion, his motion to
6 dismiss this action necessarily fails. Mr. Young obliterated any chance he had at making these
7 arguments by filing his answer. Moreover, this Court never entered a formal, written order denying
8 Plaintiff's motion to enlarge time for service, the original complaint was never effectively served
9 upon Defendant Young, and Plaintiff's filing of the *Amended Complaint* was authorized under
10 Rule 15(a). This litigation should now be allowed to proceed on the merits, rather than wasting the
11 time and resources of all involved, including this Court, enmeshed in procedural debates that are
12 easily remedied with a cursory review of the law provided and cited to hereinbelow.

13 II. LEGAL ANALYSIS

14 **A. Neither verbal orders issued from the bench nor a clerk's minute order have**
15 **any legal effect**

16 A motion is not formally decided upon unless and until the Court enters a formal, written
17 order signed by the judge. *See Rust v. Clark Cnty. School Dist.*, 103 Nev. 686, 689, 747 P.2d 1380,
18 1382 (1987). "The district court's oral pronouncement from the bench, the clerk's minute order,
19 and even an unfiled written order are ineffective for any purpose and cannot be appealed." *Id.*
20 (citing *Farnham v. Farnham*, 80 Nev. 180, 391 P.2d 26 (1964); *Musso v. Triplett*, 78 Nev. 355,
21 372 P.2d 687 (1962)). The Supreme Court of Nevada reiterated this holding in its later decision in
22 *Division of Child and Family Svcs. v. Eighth Judicial Dist. Court*:

23 While other courts have held that a mandate of the court need not be a formal
24 written order to be effective, some Nevada precedent suggests that an order is not
25 effective until the district court enters it. "Entry" involves the filing of a signed
26 *written* order with the court clerk. **Before the court reduces its decision to**
writing, signs it, and files it with the clerk, the nature of the judicial decision
is impermanent. The court remains free to reconsider the decision and issue a
different written judgment.

27
28 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004) (footnotes omitted) (first emphasis in

1 original).

2 Here, the Court had never entered a formal, written order deciding Plaintiff's motion for
3 enlargement of time to serve his original complaint with any finality. *See* Court Docket, attached
4 hereto as **Exhibit 1**. Plaintiff's amended complaint was filed on April 27, 2020. The Court's verbal
5 pronouncement from the bench and the clerk's minute order were legally insufficient to extinguish
6 this legal action, the action was never dismissed or closed in any formal sort of way, and nothing
7 from this Court prevented Plaintiff from filing his amended complaint.

8 Disappointingly, Defendant has argued that Plaintiff should have filed an appeal as to the
9 Court's informal denial. *See* Motion, at 7:10-21. Plaintiff fails to mention, however, that *Rust*
10 specifically states that a party cannot file an appeal as to a verbal pronouncement from the bench
11 or a clerk's minute order.

12 **B. A plaintiff has a right to file an amended complaint without permission from**
13 **the Court or any other party when it does so prior to service of the original complaint**

14 Rule 15(a) allows a plaintiff to file an amended complaint without leave of court or another
15 party's permission, provided the plaintiff meets the procedural requirement for doing so. *See*
16 NRCp 15(a). Rule 15(a) states, in relevant part:

17 (1) Amending as a Matter of Course. A party may amend its pleading once as a
18 matter of course within: (A) 21 days after serving it

19 NRCp 15(a)(1)(A).

20 Here, as stated above and admitted in Defendant's motion to dismiss, Defendant had not
21 yet been served with a copy of Plaintiff's original complaint. This means Plaintiff's exercise of his
22 legal right to file an amended pleading "once as a matter of course," *i.e.*, without leave of court or
23 written permission from another party, was totally legitimate.

24 **C. A defendant must file a motion to dismiss under Rule 12(b) prior to filing an**
25 **answer, otherwise that defendant waives the ability to bring a post-answer Rule 12(b)**
26 **motion to dismiss**

27 Rule 12(b) requires a party's defenses to be stated in the party's responsive pleading, but
28 allows for certain defenses to be made by motion:

1 Every defense to a claim for relief in any pleading must be asserted in the
2 responsive pleading if one is required. **But a party may assert the following
defenses by motion:**

- 3 (1) lack of subject-matter jurisdiction;
4 (2) lack of personal jurisdiction;
5 (3) insufficient process;
6 (4) insufficient service of process;
7 (5) failure to state a claim upon which relief can be granted; and
8 (6) failure to join aa party under Rule 19.

9 **A motion asserting any of these defenses must be made before pleading if a
responsive pleading is allowed.** If a pleading sets out a claim for relief that does
10 not require a responsive pleading, an opposing party may assert at trial any defense
11 to that claim. No defense or objection is waived by joining it with one or more other
12 defenses or objections in a responsive pleading or motion.

13 NRCP 12(b) (emphases added). In other words, a Rule 12(b)(5) motion to dismiss is untimely
14 when it is filed *after* the moving party has already filed an answer. Moreover, the defense of
15 “insufficient service of process” is waived unless it is brought by a pre-answer motion or included
16 in the party’s answer. *See* NRCP 12(h)(1).

17 Defendant filed his answer on July 7, 2020, and filed his *Notice of Motion and Motion to
Dismiss* on September 1, 2020, well after his answer was filed with this Court. His motion to
18 dismiss for failure to state a claim and motion to dismiss for insufficiency of process both fail as a
19 matter of law.

20 **D. Where a defendant fails to assert the affirmative defense that an action is
barred by the statute of limitations in defendant’s answer, the statute-of-limitations
affirmative defense is waived and, therefore, unavailable as a matter of law**

21 A defendant’s failure to include an affirmative defense in an answer constitutes a waiver
22 of that defense. *See* NRCP 8(c) (stating that “a party must affirmatively state any avoidance or
23 affirmative defense, including . . . statute of limitations”); NRCP 12(b) (stating “Every defense to
24 a claim for relief in any pleading must be asserted in the responsive pleading if one is required.”).

25 Lest there be any doubt, the Supreme Court of Nevada stated unequivocally that “NRCP
26 8(c) requires that all affirmative defenses be specifically asserted in the pleading,” and that “[i]f
27 the affirmative defenses are not so pleaded, asserted by a Rule 12(b) motion[,], or tried by consent
28 they are waived. . . . There was no appropriate pleading in this case, thus the defense is waived.”

1 See *Second Baptist Church of Reno v. First Nat'l Bank of Nev.*, 89 Nev. 217, 220, 510 P.2d 630,
2 631-32 (1973) (citing *Radio Corp. of Am. v. Radio Station KYFM, Inc.*, 424 F.2d 14 (10th Cir.
3 1970); *Albee Homes, Inc. v. Lutman*, 406 F.2d 11, 13 (3d Cir. 1969)).

4 Here, Defendant's answer fails to include an affirmative defense of statute of limitations,
5 and it also fails to include an affirmative defense stating any defect with the original complaint or
6 other proceedings leading up to the filing of the *Amended Complaint*. This failure to include those
7 affirmative defenses constitutes a waiver thereof and renders those defenses unavailable to
8 Defendant as a matter of law.

9 Even assuming, *arguendo* and without admitting, that Defendant had not waived the
10 statute-of-limitations defense, the Amended Complaint relates back to the original complaint
11 which was timely filed within the statute-of-limitations time limit. Defendant's motion to dismiss
12 conveniently left out the portion of Rule 15(c) which obviously relates the *Amended Complaint*
13 back to the original complaint. Rule 15(c) states, in full:

14 (c) Relation Back of Amendments. An amendment to a pleading relates back to
15 the date of the original pleading when:

16 (1) **the amendment asserts a claim or defense that arose out of the
conduct, transaction, or occurrence set out — or attempted to be set out — in
the original pleading;** or

17 (2) the amendment changes a party or the naming of a party against whom
18 a claim is asserted, if Rule 15(c)(1) is satisfied and if, within the period provided
by Rule 4(e) for serving the summons and complaint, the party to be brought in by
amendment:

19 (A) received such notice of the action that it will not be prejudiced in
defending on the merits; and

20 (B) knew or should have known that the action would have been
brought against it, but for a mistake concerning the proper party's identity.

21
22 NRCP 15(c) (emphasis added).

23 Here, we are obviously dealing with a situation where “the amendment asserts a claim . . .
24 that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the
25 original pleading.” NRCP 12(c)(1). Both the original complaint filed in this action and Plaintiff's
26 *Amended Complaint* include a claim against Defendant Bruce Arthur Young for battery. The
27 specifics alleged in each pleading are the substantively the same, too. Both pleadings specifically
28 pertain to the battery Defendant Bruce Arthur Young committed against Plaintiff on or around


1 March 19, 2017. *Compare Complaint ¶ 6 with Amended Complaint ¶ 3.*

2 **III. CONCLUSION**

3 Accordingly, based upon the foregoing, Plaintiff asks that the Court DENY Defendant's
4 motion in its entirety.

5 Dated this 9th Day of September, 2020.

7 Submitted by:

8
9 
10 **JACQUELINE R. BRETELL, ESQ.**
11 Nevada Bar No. 12335
12 **MATTHEW B. BECKSTEAD, ESQ.**
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21
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26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I hereby certify that I delivered a copy of the foregoing *Plaintiff's Opposition*
3 *to Defendant's Motion to Dismiss* as follows:

4 ☒ E-mail – Via email, pursuant to the Consent to Email Service dated August 20,
5 2020 which is on file with this Court.

6 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class
7 postage prepaid and addressed as listed below; and/or

8 ☐ Facsimile

9
10 Michael M. DeLee, Esq.
11 DeLee Law Offices, LLC
12 P.O. Box 96
13 Amargosa Valley, NV 89020
14 (775) 372-1999 (phone)
(775) 372-1234 (facsimile)
Attorney for Defendant Bruce
Arthur Young

15 
16 An employee of BIGHORN LAW

COPY

FILED

SEP 15 2020

S. Ropp
ESMERALDA COUNTY CLERK

ROPP

MICHAEL M. DELEE, ESQ.
Nevada Bar No. 011948
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Attorney for Bruce Arthur Young

The undersigned does hereby affirm that this document does not contain the social security number of any person.

**FIFTH JUDICIAL DISTRICT COURT
ESMERALDA COUNTY, STATE OF NEVADA**

MATTHEW MORONEY,

Plaintiff,

v.

BRUCE ARTHUR YOUNG,

Defendant.

Case No. : CV-19-5103

Dept. No.: I

REPLY TO OPPOSITION TO MOTION TO DISMISS

Defendant BRUCE ARTHUR YOUNG ("Young"), by and through his counsel of record, DeLee Law Offices, LLC, hereby files his Reply to Opposition to Motion to Dismiss the action filed by Plaintiff MATTHEW MORONEY ("Moroney") as follows.

Moroney's Failure to Timely Serve Young was Fatal to His Case

The Opposition makes much of the absence of a signed order denying Moroney's last-minute request to enlarge time to serve Young. This is a red herring because NRCP 4(e)(2), upon which the Motion to Dismiss is explicitly based, provides that the Court "must dismiss the action." See Motion page 6, lines 6 – 8. It is not, as Moroney suggests, the absence of a written order denying Moroney's last-minute ex-parte request to enlarge time that is at issue here. The

1 Court did not sign the two defective draft orders that Moroney submitted, entitled “Order
2 Granting . . .” because the Court clearly denied the motion and didn’t grant the motion. The fact
3 that no order granting an extension of time exists is the real issue here. Rule 4(e)(2) doesn’t say
4 “unless there is a written order denying a request.” It says that unless there is “any extension
5 thereof” [the 120 day time to serve] the “court must dismiss the action.” *Id.*

6 In his Opposition, Moroney is attempting to reassert the Ex-Parte Motion to Enlarge
7 Time by creatively arguing that the Court was required to issue a written order. Moroney was
8 under a obligation pursuant to DCR 21 to provide an accurate order (which he twice failed to
9 do).¹ He cannot now be heard to complain that the Court refused to sign the faulty written order
10 when Moroney himself created the problem he now complains of. Furthermore, his efforts in the
11 Opposition to revive the Ex Parte Motion to Enlarge Time runs afoul of DCR 13:
12

13 No motion once heard and disposed of shall be renewed in the same cause, nor
14 shall the same matters therein embraced be reheard, unless by leave of the court
15 granted upon motion therefor, after notice of such motion to the adverse parties.

16 Nevada District Court Rule 13(7). The matters embraced in Moroney’s Opposition are clearly
17 covered by the Ex Parte Motion to Enlarge Time. The Court properly administratively cleared its
18 docket pursuant to its verbal order of September 3, 2019. No “notice” was required to Young as
19 he was not served with the Original Complaint. If and when Moroney got around to fulfilling his
20 duty under DCR 21 to provide an *accurate* written order for the Court to sign, there is little doubt
21 that it would have been signed; however, it was, and is, not necessary to dispose of the case under
22 Rule 4(e)(2), either sua sponte or pursuant to the instant motion.

23 Moroney’s Opposition Misstates Young’s Averments in the Answer, Violating Rule 11
24

25 _____
26 ¹ District Court Rule 21 states, “The counsel obtaining any order, judgment or decree shall
27 furnish the form of the same to the clerk or judge in charge of the court.” When a Court denies a
28 motion, Counsel cannot label the proposed order as “granting” the motion and expect the Court
to sign the order.

1 Morney's contention that Young waived his right to object to Moroney's improper filings
2 is as irrelevant as it is improper. As cited in the Motion, Rule 4(e)(2) provides that either the
3 "defendant upon motion or upon the court's own order to show cause" can address the fatal flaw
4 of failing to serve or enlarge the time to serve. NRCP 4(e)(2). The Opposition is therefore
5 irrelevant because Rule 4(e)(2) is a jurisdictional, docket-management issue, not an issue that
6 arises later in the case that might necessitate a written order to be effective.

7
8 Furthermore, Moroney improperly summarizes Young's Answer in an effort to divert the
9 attention from this gatekeeping issue. Moroney's Opposition contention that the Answer did not
10 include a reference to the statute of limitations is just plain false and violates Rule 11:

11 By presenting to the court a pleading, written motion, or other paper — whether
12 by signing, filing, submitting, or later advocating it — an attorney or
13 unrepresented party certifies that to the best of the person's knowledge,
information, and belief, formed after an inquiry reasonable under the
circumstances:

14 (1) it is not being presented for any improper purpose, such as to
15 harass, cause unnecessary delay, or needlessly increase the cost of
16 litigation;

17 (2) the claims, defenses, and other legal contentions are warranted
18 by existing law or by a nonfrivolous argument for extending,
modifying, or reversing existing law or for establishing new law;

19 NRCP 11(b) (emphasis added). Aside from having filed the Amended Complaint for the
20 improper purpose of continuing the case and with the intent and knowledge that he was violating
21 the Court's order denying his motion to enlarge time, Moroney now mischaracterizes Young's
22 Answer in Moroney's Opposition.

23
24 The Answer, filed while Young was pro se, was combined with the essentials of a motion
25 to dismiss clear enough to preserve it (even though the Court has sua sponta powers under NRCP
26 4(e)(2)): "4. Plaintiff's Complaint fails to state a cause of action upon which relief can be
27
28

1 granted.” See Answer page 2, paragraph 4. Likewise, the defense of statute of limitations was
2 also explicitly preserved:

3 8. Plaintiff has failed within a reasonable time of the alleged incident, the
4 existence of which is denied, to provide notification of the alleged Amended
5 Complaint.

6 ...

7 12. Plaintiff’s claims, which Defendant denies, are barred by the Statue of
8 Limitations.

9 See Answer, page 3. Thus, Moroney’s Opposition’s contention that the statue of limitations was
10 somehow waived is just plain false as a plain reading of the Answer shows the Affirmative
11 Defense of the Statute of Limitations. This Court should grant sanctions to address the ongoing
12 and flagrant disrespect for the Court’s instructions and, to the extent necessary to clarify any of
13 the wording in Young’s Answer, Young may be granted leave to amend his pro se Answer in the
14 event the case continues.

15 The Amended Complaint Does Not Relate Back

16 As discussed in the Motion to Dismiss, Rule 15(c) does not let Moroney escape the
17 Statute of Limitations when he failed to serve within the time allowed under Rule 4. Moroney’s
18 “Amended Complaint” was not made pursuant to NRCP 15(a), which provides that:

19 [a] party may amend its pleading once as a matter of course within: (A) 21 days
20 after serving it; or (B) if the pleading is one to which a responsive pleading is
21 required, 21 days after service of a responsive pleading or 21 days after service of
22 a motion under Rule 12(b), (e), or (f), whichever is earlier.

23 NRCP 15(a) (emphasis added). Moroney never served the Original Complaint on Young.
24 Accordingly, Rule 15 is not at issue here. We do not reach the relation-back portion of Rule
25 15(c) because the “Amendment” was not made pursuant to Rule 15(a).

26 ///

27 ///

CONCLUSION

Moroney should not be rewarded for failing to serve his complaint then avoiding the consequences of his failure by filing and serving an "Amended Complaint." Young's pro se Answer did not waive the Court's requirement to dismiss the Complaint under Rule 4(e)(2), nor did the lack of a written order operate to somehow grant the Ex-Parte Motion and revive the Original Complaint. Nevertheless, the lack of proper service was identified under Young's Affirmative Defenses and the Statute of Limitations was expressly discussed and preserved. Moroney cannot rely upon an unserved complaint to satisfy the statute of limitations. When the District Court denied Moroney's motion to enlarge the time to serve, Moroney had no basis to argue that the causes of action relate back to the filing date of the original complaint because the Young, as an unserved party, did not have notice of Moroney's claims until he was served much later by the Amended Complaint. The Court should dismiss the case and award sanctions in this matter.

DATED this 15th day of September, 2020.

DELEE LAW OFFICES, LLC

By


MICHAEL M. DELEE

Attorney for Bruce Arthur Young

1 OGM

2 MICHAEL M. DELEE, ESQ.

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10 Attorney for Bruce Arthur Young

11 The undersigned does hereby affirm that this
12 document does not contain the social security
13 number of any person.

14 FIFTH JUDICIAL DISTRICT COURT
15 ESMERALDA COUNTY, STATE OF NEVADA

16 MATTHEW MORONEY,

17 Plaintiff,

18 v.

19 BRUCE ARTHUR YOUNG,

20 Defendant.

Case No. : CV-19-5103

Dept. No.: I

21 ORDER GRANTING MOTION TO DISMISS

22 Defendant Bruce Arthur Young's Motion to Dismiss having been filed on September 1,
23 2020, having been properly noticed, having come before the Court on October 6, 2020 and upon
24 supplemental hearing on November 10, 2020, the Court, having reviewed the pertinent pleadings
25 and relevant papers, having heard the argument of counsel, and good cause appearing orders as
26 follows:
27
28

FILED IN ERROR

Brittani Smith

FILED

FILED IN ERROR

FILED IN ERROR

FILED

APR 15 2021

ESMERALDA COUNTY CLERK

BACKGROUND

Plaintiff Matthew Moroney ("Moroney") filed his Complaint on March 19, 2019, against Defendants Bruce Arthur Young, individually, and Point Mining & Milling, Consolidated, Inc; Does I through X, inclusive (the "Complaint"). The Complaint was never served, but the Amended Complaint was, with Defendant Bruce Arthur Young filing an answer, in proper person, on July 7, 2020. On July 17, exactly 120 days after the filing of the Complaint, Moroney timely filed an Ex-Parte Motion to Enlarge Time For Service of Defendants (the "Ex Parte Motion"). On August 21, 2019, this Court set the Ex-Parte Motion for a hearing on September 3, 2019.

At the hearing on the Ex Parte Motion on September 3, 2019, the Court found that Moroney did not use reasonable efforts to affect service of process by unreasonably delaying and failing to utilize the local Esmeralda County Sherriff to affect service. This Court denied Plaintiff's Ex Parte Motion because of a lack of diligent effort to serve the Defendants and entered a minute order to this effect, which this Court found was sufficient to terminate this case. This Court further finds that a formal, written order was not necessary as to the Ex Parte Motion and that the Court was justified in not entering such an order because the minute order was an administrative, docket management order and there was, at the time of the hearing on the Ex Parte Motion, no other party before the Court.

As mentioned above, Defendant Bruce Arthur Young filed his answer, in proper person, to Moroney's amended complaint on July 7, 2020. Afterwards, on September 1, 2020, exactly 56 days after filing his amended complaint, he filed a motion to dismiss Moroney's amended complaint by and through his attorney of record, Michael M. DeLee, Esq. This Court conducted two hearings, on Defendant Bruce Arthur Young's motion to dismiss on October 6, 2020, and November 10, 2020.

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 THE COURT HEREBY CONCLUDES that under NRCP 4(e)(2) the rules are
3 jurisdictional, explicit and mandatory that an action must be dismissed unless there is an
4 extension of the time to serve:

5 If service of the summons and complaint is not made upon a defendant before the
6 120-day service period — or any extension thereof — expires, the court must
7 dismiss the action, without prejudice, as to that defendant upon motion or upon
8 the court's own order to show cause.

9 NRCP (4)(e)(2) (emphasis added). Defendant Bruce Arthur Young brought his motion to
10 dismiss on September 1, 2020. The Court, acting upon its own previously entered minute order
11 and not relying upon the motion, confirms the dismissal of the action;

12 THE COURT FURTHER CONCLUDES that Nevada law allowed the minute order as an
13 administrative, docket management tool, denying Plaintiff's Ex Parte Motion without the need
14 for a formal, written order.

15 THE COURT FINDS that Moroney did not obtain an extension of time to effectuate
16 service of the original complaint filed on March 19, 2019;

17 THE COURT FURTHER FINDS that its minute order denying Plaintiff's Ex Parte
18 Motion was procedurally adequate to bar Moroney from filing and serving his amended
19 complaint;
20

21 THE COURT FURTHER FINDS that it is required to dismiss the action; THE COURT
22 FURTHER FINDS that Defendant Bruce Arthur Young was not procedurally barred from filing
23 his motion to dismiss Moroney's amended complaint;
24

25 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the
26 Plaintiff's claims set forth in his amended complaint are hereby **DISMISSED**.
27

28 DATED this 09th day of January, 2021.

1 **IT IS SO ORDERED.**

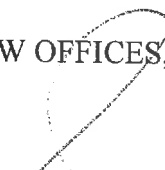
2 
3 _____
 Honorable Judge Kimberly Wanker


4 SUBMITTED BY

 Approved as to form and content:

5 DELEE LAW OFFICES, LLC

 BIG HORN LAW

6 
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