

Electronically Filed
Jun 24 2021 11:08 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIO A. SALAS, an individual,

Plaintiff,

CASE NO.: A-20-826012-C
DEPT. NO.: V

vs.

CLARK COUNTY SCHOOL DISTRICT; VISION
TECHNOLOGIES, INC., a Foreign Corporation;
DOE SCHOOL DISTRICT EMPLOYEES I
through X; DOE INFORMATION
TECHNOLOGY SUPPORT EMPLOYEES I
through X; DOE OWNERS I through X; DOE
MANUFACTURER EMPLOYEE, I through X;
DOE DESIGNER EMPLOYEE, I through X; ROE
INFORMATION TECHNOLOGY SUPPORT
COMPANIES XI through XX; ROE OWNERS XI
through XX; ROE EMPLOYERS XI through XX;
ROE DESIGNER, XI through XX; ROE
MANUFACTURER, XI through XX; DOES XXI
through XXV; and ROE CORPORATIONS, XXV
through XXX, inclusive, jointly and severally,

Defendants.

PLAINTIFF'S NOTICE OF APPEAL

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DATED this 21st day June, 2021.

By: /s/ Kimball Jones
KIMBALL JONES, ESQ.
 Nevada Bar No.: 12982
ROBERT N. EATON, ESQ.
 Nevada Bar No.: 9547
 2225 E. Flamingo Rd.
 Building 2, Suite 300
 Las Vegas, Nevada 89119
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5, N.E.F.C.R. 9 and E.D.C.R. 8.05, I hereby certify that I am an employee
3 of **BIGHORN LAW**, and on the 21st day of June, 2021, I served a copy of the foregoing
4 ***PLAINTIFF'S NOTICE OF APPEAL*** as follows:
5

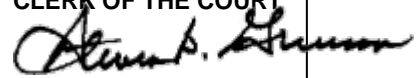
6 ☒ Electronic Service – By serving a copy thereof through the Court's electronic
7 service system; and/or

8 ☐ U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage
9 prepaid and addressed as listed below:

10 Michelle D. Alarie, Esq.
11 ARMSTRONG TEASDALE, LLP
12 3770 Howard Hughes Parkway, Suite 200
13 Las Vegas, Nevada 89169
14 *Attorneys for Defendant,*
15 *Vision Technologies, Inc.*

16 Melissa Alessi, Esq.
17 5100 W. Sahara Ave.
18 Las Vegas, Nevada 89146
19 *Attorneys for Defendant,*
20 *Clark County School District*

21 /s/ Erickson Finch
22 An employee of **BIGHORN LAW**
23
24
25
26
27
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ASTA
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Roberte@BighornLaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIO A. SALAS, an individual,

Plaintiff,

CASE NO.: A-20-826012-C
DEPT. NO.: V

vs.

CLARK COUNTY SCHOOL DISTRICT; VISION
TECHNOLOGIES, INC., a Foreign Corporation;
DOE SCHOOL DISTRICT EMPLOYEES I
through X; DOE INFORMATION
TECHNOLOGY SUPPORT EMPLOYEES I
through X; DOE OWNERS I through X; DOE
MANUFACTURER EMPLOYEE, I through X;
DOE DESIGNER EMPLOYEE, I through X; ROE
INFORMATION TECHNOLOGY SUPPORT
COMPANIES XI through XX; ROE OWNERS XI
through XX; ROE EMPLOYERS XI through XX;
ROE DESIGNER, XI through XX; ROE
MANUFACTURER, XI through XX; DOES XXI
through XXV; and ROE CORPORATIONS, XXV
through XXX, inclusive, jointly and severally,

Defendants.

PLAINTIFF'S CASE APPEAL STATEMENT

- A. Name of Appellant Filing This Case Appeal Statement: Mario A. Salas.
- B. Judge Issuing the Judgment Appealed From: The Honorable Veronica M. Barisich.

///

1 C. Parties to the Proceedings in District Court:

2 MARIO A. SALAS (Plaintiff); and

3 CLARK COUNTY SCHOOL DISTRICT and VISION TECHNOLOGIES, INC.,
4 (Defendants).

5
6 D. Parties Involved in the Appeal:

7 CLARK COUNTY SCHOOL DISTRICT and VISION TECHNOLOGIES, INC.,
8 (Respondents); and

9 MARIO A. SALAS (Appellant).

10 E. Counsel and Law Firms on Appeal:

11 a) KIMBALL JONES, ESQ.
12 Nevada Bar No.: 12982
13 **BIGHORN LAW**
2225 E. Flamingo Road
14 Bldg. 2, Suite 300
Las Vegas, Nevada 89119
15 Email: Kimball@BighornLaw.com
Attorney for Appellant

16
17 b) Michelle D. Alarie, Esq.
ARMSTRONG TEASDALE, LLP
3770 Howard Hughes Parkway, Suite 200
18 Las Vegas, Nevada 89169
19 *Attorneys for Respondent,*
Vision Technologies, Inc.

20
21 Melissa Alessi, Esq.
5100 W. Sahara Ave.
22 Las Vegas, Nevada 89146
23 *Attorney for Respondent*
Clark County School District

24 F. Appellant was represented by retained counsel in the District Court.

25 G. Appellant is represented by retained counsel on Appeal.

26 H. Appellant has not been granted leave to proceed in forma pauperis.

27 I. Date this action was commenced in District Court: December 8, 2020.
28

1 J. This is an action for damages for Respondents' gross negligence, which resulted in
2 catastrophic, permanent injury to Appellant MARIO A. SALAS. Respondents directed Mario to work
3 in an area that Respondents knew or should have known contained a toxic buildup of dust and other
4 dangerous particles. Further, Respondents directed the workers to use compressed air to clean the dust
5 out of used computers at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, which was indoor and not
6 properly ventilated, ensuring inhalation of the dangerous air.
7

8 At least one other employer working in the same area provided safety equipment for their
9 employees, including filtration masks, protective gear, and other safety equipment. Respondents took
10 no such care for their workers, despite knowing of the probable consequences.
11

12 As a result, Mario and at least one other worker suffered severe injury. After exposure, Mario
13 developed a rash and, within the next 24 hours, Mario's arm started to swell and blister. Mario then
14 developed cellulitis, which devolved into sepsis, renal failure, pneumonia and a collapsed lung. While
15 Mario was an inpatient at the hospital, Mario then caught pulmonary MRCA. Mario had to be
16 intubated for 12 days while in a medically induced coma, during which he was administered 3 separate
17 antibiotics 4 times a day for the next 6 weeks. He was under the care of 7 doctors, and lost almost 60
18 pounds. It took a month for Mario to walk and function again, such that he could be released from the
19 hospital walking with a cane. To date, Mario still suffers from what appear to be serious permanent
20 injury as a result of Respondents' gross negligence.
21

22 Mario then applied for, but was denied workers compensation benefits due to being in a coma
23 during the mandated application period. Despite denying Mario workers compensation benefits,
24 Respondents argued that Appellant had an exclusive remedy under NIIA.
25

26 K. This case has not previously been the subject of an appeal to or original writ proceeding in the
27 Supreme Court.

28 L. This appeal does not involve child custody or visitation.

1 M. This appeal involves the possibility of settlement.

2 DATED this 21st day June, 2021.

3 **BIGHORN LAW**

4 By: /s/ Kimball Jones

5 **KIMBALL JONES, ESQ.**

6 Nevada Bar No.: 12982

7 **ROBERT N. EATON, ESQ.**

8 Nevada Bar No.: 9547

9 2225 E. Flamingo Rd.

10 Building 2, Suite 300

11 Las Vegas, Nevada 89119

12 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5, N.E.F.C.R. 9 and E.D.C.R. 8.05, I hereby certify that I am an employee
3 of **BIGHORN LAW**, and on the 18th day of June, 2021, I served a copy of the foregoing
4 ***PLAINTIFF'S CASE APPEAL STATEMENT*** as follows:
5

6 ☒ Electronic Service – By serving a copy thereof through the Court's electronic
7 service system; and/or

8 ☐ U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage
9 prepaid and addressed as listed below:

10 Michelle D. Alarie, Esq.
11 ARMSTRONG TEASDALE, LLP
12 3770 Howard Hughes Parkway, Suite 200
13 Las Vegas, Nevada 89169
14 *Attorneys for Defendant,*
15 *Vision Technologies, Inc.*

16 Melissa Alessi, Esq.
17 5100 W. Sahara Ave.
18 Las Vegas, Nevada 89146
19 *Attorneys for Defendant,*
20 *Clark County School District*

21 /s/ Erickson Finch
22 An employee of **BIGHORN LAW**
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CASE SUMMARY**CASE NO. A-20-826012-C****Mario Salas, Plaintiff(s)****vs.****Clark County School District, Defendant(s)**§
§
§
§
§Location: **Department 5**Judicial Officer: **Barisich, Veronica M.**Filed on: **12/08/2020**

Case Number History:

Cross-Reference Case
Number: **A826012****CASE INFORMATION**Case Type: **Negligence - Premises Liability**Case
Status: **12/08/2020 Open****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-20-826012-C
Court	Department 5
Date Assigned	01/04/2021
Judicial Officer	Barisich, Veronica M.

PARTY INFORMATION**Plaintiff****Salas, Mario A.***Lead Attorneys***Jones, Kimball***Retained*

702-333-1111(W)

Defendant**Clark County School District****Vision Technologies, Inc.****Alarie, Michelle D.***Retained*

702-678-5070(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

12/08/2020

Complaint
Complaint

12/08/2020

Initial Appearance Fee Disclosure
Initial Appearance Fee Disclosure

12/08/2020

Summons Electronically Issued - Service Pending
Summons - Clark County School District

12/08/2020

Summons Electronically Issued - Service Pending
Summons - Vision Technologies, Inc.

12/18/2020














Summons
Summons - Clark County School District

12/29/2020

Summons
Summons - Vision Technologies Inc.

CASE SUMMARY

CASE NO. A-20-826012-C

01/04/2021	Case Reassigned to Department 5 <i>Judicial Reassignment to Judge Veronica M. Barisich</i>
01/15/2021	 Three Day Notice of Intent to Default <i>Three Day Notice of Intent to Default</i>
01/15/2021	 Motion Filed By: Defendant Vision Technologies, Inc. <i>Defendant Vision Technologies, Inc.'s Motion for Extension of Time to File Response to Complaint (First Request)</i>
01/15/2021	 Initial Appearance Fee Disclosure Filed By: Defendant Vision Technologies, Inc. <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
01/19/2021	 Three Day Notice of Intent to Default <i>Three Day Notice of Intent to Default</i>
01/22/2021	 Motion to Dismiss Filed By: Defendant Vision Technologies, Inc. <i>Defendant Vision Technologies, Inc.'s Motion to Dismiss</i>
01/22/2021	 Order Shortening Time Filed By: Defendant Vision Technologies, Inc. <i>Defendant Vision Technologies, Inc.'s Motion for Extension of Time to File Response to Complaint on Order Shortening Time</i>
01/25/2021	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
01/28/2021	 Motion to Dismiss Filed By: Defendant Clark County School District <i>Defendant Clark County School District's Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc.'s Motion to Dismiss</i>
02/01/2021	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/01/2021	 Notice Filed By: Defendant Vision Technologies, Inc. <i>Defendant Vision Technologies, Inc.'s Notice re Motion for Extension of Time to File Response to Complaint on Order Shortening Time</i>
02/05/2021	 Opposition to Motion <i>Plaintiff's Opposition to Defendant Vision Technologies, Inc. s Motion to Dismiss and Defendant Clark County School District s Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc. s Motion to Dismiss</i>
02/23/2021	 Reply in Support Filed By: Defendant Vision Technologies, Inc. <i>Defendant Vision Technologies, Inc.'s Reply in Support of its Motion to Dismiss</i>
03/31/2021	 Order Granting Motion <i>Order Granting Defendant Vision Technologies' Motion to Dismiss and Defendant CCSD's Joinder and Motion to Dismiss</i>

CASE SUMMARY

CASE NO. A-20-826012-C

04/01/2021



Notice of Entry

Filed By: Defendant Vision Technologies, Inc.

Notice of Entry of Order Granting (1) Defendant Vision Technologies, Inc.'s Motion to Dismiss, and (2) Defendant Clark County School District's Motion to Dismiss and Joinder

04/27/2021



Motion to Reconsider

Filed By: Plaintiff Salas, Mario A.

Plaintiff's Motion to Reconsider Order Granting Defendants' Motion to Dismiss

04/27/2021



Clerk's Notice of Hearing

Notice of Hearing

05/07/2021



Opposition to Motion

Filed By: Defendant Clark County School District

CCSD's Opposition to Plaintiff's Motion to reconsider order granting defendants' motion to dismiss

05/11/2021



Opposition

Filed By: Defendant Vision Technologies, Inc.

Defendant Vision Technologies, Inc. s Opposition to Plaintiff's Motion to Reconsider Order Granting Defendant s Motion to Dismiss

05/25/2021



Reply in Support

Reply in Support of Plaintiff's Motion to Reconsider Order Granting Defendants' Motion to Dismiss

06/18/2021



Order Denying Motion

Order Denying Plaintiff's Motion to Reconsider

06/21/2021



Notice of Entry of Order

Filed By: Defendant Clark County School District

Notice of Entry of Order

06/21/2021



Notice of Appeal

Plaintiff's Notice of Appeal

06/21/2021



Case Appeal Statement

Plaintiff's Case Appeal Statement

DISPOSITIONS

03/31/2021

Order of Dismissal (Judicial Officer: Barisich, Veronica M.)

Debtors: Mario A. Salas (Plaintiff)

Creditors: Clark County School District (Defendant)

Judgment: 03/31/2021, Docketed: 04/01/2021

HEARINGS

02/02/2021



Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Minute Order - No Hearing Held;

Journal Entry Details:

The Court notes that (1) Defendant Vision Technologies, Inc.'s Motion for Extension of Time to File Response to Complaint is set on the Court's chamber calendar for February 3, 2021, (2) Defendant Vision Technologies, Inc.'s Motion to Dismiss is set for a hearing on February 23, 2021, and (3) Defendant Clark County School District's Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc.'s Motion to Dismiss is set for a hearing on March 2, 2021.

CASE SUMMARY

CASE NO. A-20-826012-C

The Court notes that per Defendant Vision Technologies, Inc.'s Notice filed on February 1, 2021, Defendant Vision Technologies, Inc.'s Motion for Extension of Time to File Response to Complaint is now moot. Thus, the Court ORDERS that hearing set for February 3, 2021 shall be VACATED as moot. Furthermore, at the request of the Court, for judicial economy, the hearings set for February 23, 2021 and March 2, 2021 shall be CONSOLIDATED and RESCHEDULED to March 2, 2021 at 9:30 a.m. ;

02/03/2021 **CANCELED Motion** (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Vacated

Defendant Vision Technologies, Inc.'s Motion for Extension of Time to File Response to Complaint on Order Shortening Time

02/25/2021  **Minute Order** (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Minute Order - No Hearing Held;

Journal Entry Details:

Department 5 Formal Request to Appear REMOTELY for the March 2, 2021, hearing calendar. Please double check the docket for your start time. Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Meeting ID: 979 802 354 Meeting URL:

<https://bluejeans.com/979802354> To connect by phone dial 1-408-419-1715 and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. ;


02/26/2021 **Motion to Dismiss** (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Defendant Vision Technologies, Inc.'s Motion to Dismiss

02/26/2021 **Motion to Dismiss** (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Defendant Clark County School District's Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc.'s Motion to Dismiss

Granted;

02/26/2021  **All Pending Motions** (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Granted;

Journal Entry Details:

The Court notes that (1) Defendant Vision Technologies, Inc. s Motion to Dismiss and (2) Defendant Clark County School District s Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc. s Motion to Dismiss are set for a hearing on March 2, 2021. After a review of the pleadings, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 20-17, the Court FINDS and ORDERS as follows: NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief can be granted. The court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally sufficient claim and relief requested. Breliant v. Preferred Equities Corp., 109 Nev. 842, 846, 858 P.3d 1258, 1260 (1993). Dismissal is proper if it appears beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, 124 Nev. at 228, 181 P.3d 672. Additionally, NRCP 8(a) allows notice pleading, where all that is required in a complaint is a short and plain statement of the grounds for the court s jurisdiction, claim showing that the

CASE SUMMARY**CASE NO. A-20-826012-C**

pleader is entitled to relief, a demand for the relief sought, and at least \$15,000 in monetary damages sought. As a general rule, the court may not consider matters outside the pleading being attacked. *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted. *Id.* Additionally, a document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994), overruled on other grounds by *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1125 26 (9th Cir.2002). Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994). If matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. *NRCP 12(d)*. A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CNA Ins. Companies.*, 109 Nev. 1075, 1078, 864 P.2d 288, 290 (1993). Employers who accept the Nevada Industrial Insurance Act (NIIA) and provide compensation for injuries by accident sustained by an employee arising out of and in the course of employment are relieved from other liability for recovery of damages or other compensation for such personal injury. *NRS 616A.020*; *Outboard Marine Corp. v. Schupbach*, 93 Nev. 158, 164, 561 P.2d 450, 454 (1976). Unless the employer acted with the deliberate and specific intent to injure the employee, employee cannot avoid the exclusive remedy doctrine. *Conway v. Circus Circus*, 116 Nev. 870, 875, 8 P.3d 837, 839 (2000). An injury resulting from mere exposure to hazardous workplace conditions, even if known to the employer and the employer failed to correct it, still constitutes an accident within the meaning of the NIIA. *Id.* at 874, 839. Subcontractors, independent contractors and the employees of either are considered to be the employees of the principal contractor for the purposes of NIIA. *NRS 616A.210(1)*. In his Complaint, Plaintiff alleges that on June 28, 2019, he was an employee of Defendant Vision Technologies, Inc. (Vision), which was hired to clean out the Defendant Clark County School District s (CCSD) equipment stored at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121. Plaintiff does not dispute that he was working within the course and scope of his employment with the Vision. It is further alleged that Plaintiff was instructed to use compressed air to clean out the various equipment, but he was not provided with the proper safety masks, supplies or other safety equipment. As a result, Plaintiff was injured. The gravamen of the motions is that since Plaintiff admitted that the injuries arose out of the course and scope of his employment with Vision, the remedy provided by the Nevada Industrial Insurance Act is exclusive. The Court FINDS and CONCLUDES that at this stage, the Court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. The Court cannot, and did not, consider matters outside the Complaint. Nevertheless, Plaintiff's allegations are insufficient. As Plaintiff concedes that he was working within the course and scope of his employment with Defendant Vision, the NIIA must be applied as an exclusive remedy. There is no applicable exemption to the exclusive remedy doctrine as Plaintiff does not allege that Defendant Vision deliberately and specifically intended to injure Plaintiff. Mere allegation that Defendant Vision was aware of the alleged hazardous conditions is inadequate to overcome the NIIA exclusive remedy provision. The Court FINDS and CONCLUDES that as Plaintiff admits that his employer, Defendant Vision, was hired by Defendant CCSD for the work at CCSD s premises, under *NRS 616A.210*, Plaintiff must be deemed to be an employee of the principal contractor, CCSD, for the purposes of NIIA. Thus, again, NIIA exclusive remedy provision is applicable. The Court FINDS and CONCLUDES that Plaintiff's argument that Plaintiff's worker's compensation claim being rejected is irrelevant to the issue at hand. First, Plaintiff did not include this fact in his Complaint. Second, even if the Court entertains this argument, *NRS 616C.315 et. seq.* provides for an appropriate administrative appeal procedure of the rejected claim. The Court FINDS and CONCLUDES that Plaintiff's request for leave to amend is inappropriate because such request would be futile in overcoming the exclusive remedy provision of the NIIA. Furthermore, at the motion to dismiss stage, a party cannot seek to delay the ruling on the motion citing to *NRCP 56(d)* request for additional discovery. The Court FINDS and CONCLUDES that Plaintiff's argument as to the constitutionality of the exclusive remedy provision is without merit and rejects the same. Such argument was repeatedly rejected by the Nevada Supreme Court. See *Conway*. The Court ORDERS that Defendant Vision's Motion and Defendant CCSD's Joinder and Motion shall be GRANTED. The hearing set for March 2, 2021 shall be advanced and VACATED. Counsel for Defendant Vision is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any

CASE SUMMARY

CASE NO. A-20-826012-C

submitted arguments. Other counsels are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with the AO 20-17. ;

06/02/2021

Motion to Reconsider (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Plaintiff's Motion to Reconsider Order Granting Defendants' Motion to Dismiss
Motion Denied; See 06/03/21 MO

06/03/2021

**Minute Order** (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Plaintiff's Motion to Reconsider Order Granting Defendants' Motion to Dismiss
Minute Order - No Hearing Held;
Journal Entry Details:

The Court notes that Plaintiff's Motion to Reconsider Order Granting Defendants' Motion[s] to Dismiss is set on the Court's chamber calendar. After a review of the pleadings, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 21-03, the Court FINDS and ORDERS as follows: EDCR 2.24(a) states, "No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997). "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). "Rehearings are not granted as a matter of right and are not allowed for the purpose of reargument, unless there is reasonable probability that the court may have arrived at an erroneous conclusion. *Geller v. McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947). "Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996). The Court FINDS and CONCLUDES that under NRCF 60(b)(1), the motion was timely filed and the motion can be considered on the merits. The Court FINDS and CONCLUDES that in considering the motions to dismiss, the Court accepted all factual allegations in the complaint as true, and drew all inference in Plaintiff's favor. Nonetheless, Plaintiff's argument, that NIIA is not an exclusive remedy for Plaintiff, cannot be accepted. Plaintiff cites to NRS 616B.636(1) for the proposition that Defendants, as an employer and a contractor of the employer, have the obligation to provide and secure worker's compensation. This statute cannot be interpreted to mean that Defendants have the obligation to pay out all NIIA claims. Rather, the requirement is simply that Defendants secure a worker's compensation insurance to ensure that NIIA claims can be considered. In his opposition filed on February 5, 2021, Plaintiff did not allege that Defendants lacked worker's compensation insurance coverage, but rather that they denied his claim and refused to pay the benefits. If that is the case, the proper vehicle would have been making an administrative appeal under NRS 616C. Thus, instant case bypassing the administrative appeal was incorrectly filed and thus, the dismissal was proper. The Court FINDS and CONCLUDES that although Plaintiff also argues that Defendants intentionally created the hazardous conditions and thus, the matter falls outside of the NIIA, the Court cannot agree. Under *Conway v. Circus*, 116 Nev. 870, 8 P.3d 837 (2000), the Nevada Supreme Court indeed recognized that employers did not enjoy immunity under NIIA for intentional torts. However, simply labeling an employer's conduct as intentional will not subject the employer to liability outside workers' compensation. The relevant inquiry is not the degree of negligence or even depravity on the part of the employer, but the more narrow question of whether the specific action that injured the employee was an act intended to cause injury to the employee. That is, even in a motion to dismiss stage, bare allegations are insufficient and an employee must provide facts in the complaint which shows the deliberate intent to bring about the injury. Here, the Complaint does not provide such sufficient information and thus, the Court's decision cannot be deemed to be in error. Furthermore, even if the Court is to consider the proposed Amended Complaint, it does not provide sufficient information as to Defendants' intentional conduct. Most notable change is in paragraph 17, wherein Plaintiff alleges certain actions by User Support Services, a division of Defendant CCSD. However, the changes still fail to sufficiently show that Defendants' acts were done with specific intent to cause injury to Plaintiff. Thus, the proposed Amended Complaint must be deemed futile. Thus, proposed amendment cannot be granted. The Court FINDS and CONCLUDES that although the Plaintiff's motion is denied, his motion cannot be deemed to be maintaining his case without reasonable ground or to harass the prevailing parties. Although he did not prevail, Plaintiff provided legally cognizable and sufficient argument as to why an amendment should be allowed. Thus, an award of fees to Defendant VTI cannot be granted. The Court ORDERS that

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-826012-C

Plaintiff's Motion shall be DENIED. Defendant VTI's request for fees shall be DENIED. Counsel for Defendant CCSD is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Other counsels are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with the AO 21-03 and EDCR 7.21. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 06/03/21 ;

DATE

FINANCIAL INFORMATION

Defendant Vision Technologies, Inc.

Total Charges 223.00

Total Payments and Credits 223.00

Balance Due as of 6/23/2021 0.00

Plaintiff Salas, Mario A.

Total Charges 294.00

Total Payments and Credits 294.00

Balance Due as of 6/23/2021 0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-826012-C
Department 8

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

Plaintiff(s) (name/address/phone): <p style="text-align: center;">MARIO A. SALAS</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">CLARK COUNTY SCHOOL DISTRICT and VISION TECHNOLOGIES, INC.</p>
Attorney (name/address/phone): <p style="text-align: center;">Kimball Jones, Esq.</p> 2225 E. Flamingo Rd., Building 2, Suite 300, Las Vegas, Nevada 89119 <p style="text-align: center;">702-333-1111</p>	Attorney (name/address/phone):

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

Civil Case Filing Types

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

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

12/08/2020

Date

/s/ Kimball Jones

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Smith

CLERK OF THE COURT

ODM
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
MELISSA ALESSI, ESQ.
Nevada Bar No. 9493
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Telephone: (702) 799-5373
Facsimile: (702) 799-7243
alessm1@nv.ccsd.net
Attorneys for Defendant Clark County School District

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARIO A. SALAS, an individual,

Plaintiff,

CASE NO. A-20-826012-C
DEPT. 8

5

v.

CLARK COUNTY SCHOOL
DISTRICT; VISION
TECHNOLOGIES, INC., a Foreign
Corporation; DOE SCHOOL
DISTRICT EMPLOYEES I through X;
DOE INFORMATION TECHNOLOGY
SUPPORT EMPLOYEES I through X;
DOE OWNERS I through X; DOE
MANUFACTURER EMPLOYEE I
through X; DOE DESIGNER
EMPLOYEE I through X; ROE
INFORMATION TECHNOLOGY
SUPPORT COMPANIES XI through
XX; ROE OWNERS XI through XX;
ROE EMPLOYERS XI through XX;
ROE DESIGNER XI through XX; ROE
MANUFACTURER XI through XX;
DOES XXI through XXV; and ROE
CORPORATIONS XXV through XXX,
inclusive, jointly and severally,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER ORDER
GRANTING DEFENDANTS' MOTIONS TO DISMISS**

1 On June 3, 2021, *Plaintiff's Motion to Reconsider Order Granting Defendants'*
2 *Motion to Dismiss* ("Motion to Reconsider"), came on for hearing in the Court's
3 chamber calendar pursuant to EDCR 2.23 and Administrative Order 21-03. The
4 Court, having reviewed the briefings on the motions and pleadings on file, and good
5 cause appearing, FINDS and ORDERS as follows:

6 EDCR 2.24(a) states, "No motions once heard and disposed of may be renewed
7 in the same cause, nor may the same matters therein embraced be reheard, unless
8 by leave of the court granted upon motion therefor, after notice of such motion to the
9 adverse parties." A district court may reconsider a previously decided issue if
10 substantially different evidence is subsequently introduced or the decision is clearly
11 erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth,*
12 *Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997). "Only in very rare instances in which new
13 issues of fact or law are raised supporting a ruling contrary to the ruling already
14 reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92
15 Nev. 402, 405, 551 P.2d 244, 246 (1976). "Rehearings are not granted as a matter of
16 right and are not allowed for the purpose of reargument, unless there is reasonable
17 probability that the court may have arrived at an erroneous conclusion. *Geller v.*
18 *McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947). "Points or contentions not
19 raised in the original hearing cannot be maintained or considered on rehearing."
20 *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

21 The Court FINDS and CONCLUDES that under NRCP 60(b)(1), Plaintiff's
22 Motion to Reconsider was timely filed and the Motion to Reconsider can be
23 considered on the merits.

1 The Court FINDS and CONCLUDES that in considering *Defendant Vision*
2 *Technologies, Inc.’s (“VTI”) Motion to Dismiss* and *Defendant Clark County School*
3 *District’s (“CCSD”) Motion to Dismiss and Joinder to Vision Technologies, Inc.’s*
4 *Motion to Dismiss* (collectively, “Defendants’ Motions to Dismiss”), the Court
5 accepted all factual allegations in the complaint as true, and drew all inference in
6 Plaintiff’s favor. Nonetheless, Plaintiff’s argument, that the Nevada Industrial
7 Insurance Act (“NIIA”) is not an exclusive remedy for Plaintiff, cannot be accepted.
8 Plaintiff cites to NRS 616B.636(1) for the proposition that Defendants VTI and
9 CCSD, as an employer and a contractor of the employer, respectively, have the
10 obligation to provide and secure worker’s compensation. This statute cannot be
11 interpreted to mean that Defendants have the obligation to pay out all NIIA claims.
12 Rather, the requirement is simply that Defendants secure a worker’s compensation
13 insurance to ensure that NIIA claims can be considered. In his opposition filed on
14 February 5, 2021, Plaintiff did not allege that Defendants lacked worker’s
15 compensation insurance coverage, but rather that they denied his claim and refused
16 to pay the benefits. If that is the case, the proper vehicle would have been making
17 an administrative appeal under NRS 616C. Thus, the instant case bypassing the
18 administrative appeal was incorrectly filed and thus, the dismissal was proper.

19 The Court FINDS and CONCLUDES that although Plaintiff also argues that
20 Defendants intentionally created the hazardous conditions and thus, the matter falls
21 outside of the NIIA, the Court cannot agree. Under *Conway v. Circus*, 116 Nev. 870,
22 8 P.3d 837 (2000), the Nevada Supreme Court indeed recognized that employers did
23 not enjoy immunity under the NIIA for intentional torts. However, simply labeling
24 an employer’s conduct as intentional will not subject the employer to liability outside

1 workers' compensation. The relevant inquiry is not the degree of negligence or even
2 depravity on the part of the employer, but the narrower question of whether the
3 specific action that injured the employee was an act intended to cause injury to the
4 employee. That is, even in a motion to dismiss stage, bare allegations are insufficient
5 and an employee must provide facts in the complaint which shows the deliberate
6 intent to bring about the injury. Here, the Complaint does not provide such sufficient
7 information and thus, the Court's decision cannot be deemed to be in error.
8 Furthermore, even if the Court is to consider the proposed Amended Complaint, it
9 does not provide sufficient information as to Defendants' intentional conduct. The
10 most notable change is in paragraph 17, wherein Plaintiff alleges certain actions by
11 User Support Services, a division of Defendant CCSD. However, the changes still
12 fail to sufficiently show that Defendants' acts were done with specific intent to cause
13 injury to Plaintiff. Thus, the proposed Amended Complaint must be deemed futile.
14 Thus, the proposed amendment cannot be granted.

15 The Court FINDS and CONCLUDES that although the Plaintiff's Motion to
16 Reconsider is denied, his Motion to Reconsider cannot be deemed to be maintaining
17 his case without reasonable ground or to harass the prevailing parties. Although he
18 did not prevail, Plaintiff provided legally cognizable and sufficient argument as to
19 why an amendment should be allowed. Thus, an award of fees to Defendant VTI
20 cannot be granted.

21 ///

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IT IS HEREBY ORDERED that *Plaintiff's Motion to Reconsider Order Granting Defendants' Motion to Dismiss* is DENIED.

IT IS FURTHER ORDERED that Defendant *Vision Technologies, Inc.'s* request for fees is DENIED.

Dated this 18th day of June, 2021



9D8 E46 642D F295
Veronica M. Barisich
District Court Judge

Prepared and submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL



Melissa L. Alessi, Esq.; NV Bar No. 9493
5100 W. Sahara Ave.
Las Vegas, NV 89146
Attorneys for Defendant CCSD

Approved as to form and content by:

BIGHORN LAW



Kimball Jones, Esq.; NV Bar No. 12982
Robert N. Eaton, Esq.; NV Bar No. 9547
2225 E. Flamingo Rd.; Bldg. 2, Ste. 300
Las Vegas, NV 89119
Attorneys for Plaintiff Mario Salas

Approved as to form and content by:

ARMSTRONG TEASDALE LLP



Michelle D. Alarie, Esq.
Nevada Bar No. 11894
3770 Howard Hughes Pkwy., Ste. 200
Las Vegas, NV 89169
Attorneys for Defendant VTI



Christina Marie Reeves [Office of the General Counsel] <reevec1@nv.ccsd.net>

**RE: Salas v. CCSD, VTI - proposed Order Denying Motion to Reconsider [IWOV-
IDOCs.FID4116054]**

1 message

Michelle D. Alarie <MAlarie@atllp.com>

Thu, Jun 10, 2021 at 2:18 PM

To: "Kimball Jones, Esq." <kimball@bighornlaw.com>, "Melissa Alessi [Office of the General Counsel]" <alessm1@nv.ccsd.net>

Cc: Robert Eaton <roberte@bighornlaw.com>, "Christina Marie Reeves [Office of the General Counsel]" <reevec1@nv.ccsd.net>, Erick Finch <erick@bighornlaw.com>, Brittany Morris <brittany@bighornlaw.com>

Good afternoon Melissa –

Thanks for drafting. You may affix my electronic signature as well.

One note, under the new order submission protocols, the Judge's signature block should just be a line, and not include the Judge's name or department.

Thank you,



Armstrong Teasdale LLP

Michelle D. Alarie | Senior Associate Attorney

DIRECT: 702.415.2946 | FAX: 702.977.7483 | MAIN OFFICE: 702.678.5070



*** Please note my new email address, malarie@atllp.com ***

***** PRIVATE AND CONFIDENTIAL *****

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Christina Marie Reeves [Office of the General Counsel] <reevec1@nv.ccsd.net>

Re: Salas v. CCSD, VTI - proposed Order Denying Motion to Reconsider

1 message

Kimball Jones, Esq. <kimball@bighornlaw.com>

Thu, Jun 10, 2021 at 1:14 PM

To: "Melissa Alessi [Office of the General Counsel]" <alessm1@nv.ccsd.net>

Cc: Robert Eaton <roberte@bighornlaw.com>, "Michelle D. Alarie" <MAlarie@atllp.com>, "Christina Marie Reeves [Office of the General Counsel]" <reevec1@nv.ccsd.net>, Erick Finch <erick@bighornlaw.com>, Brittany Morris <brittany@bighornlaw.com>, crehfeld@atllp.com, avillarreal@atllp.com

You may e-sign for me.

On Thu, Jun 10, 2021 at 11:48 AM Melissa Alessi [Office of the General Counsel] <alessm1@nv.ccsd.net> wrote:
Hi Counsel:

Please find attached the proposed Order Denying Plaintiff's Motion to Reconsider. I essentially copied the Minute Order making a few changes for clarity. If the Order is acceptable to you, please either sign and return to my office or let us know that we have your permission to affix your electronic signature. Once we have everybody's signature, we will submit to the Court. If you have any edits, please let me know so that we can evaluate the requested changes. Please respond by the close of business on Monday.

Sincerely,
Melissa

Melissa L. Alessi, Esq.
Assistant General Counsel
Office of the General Counsel
Clark County School District
[5100 W. Sahara Ave.](#)
[Las Vegas, NV 89146](#)
Phone: 702-799-5373
Fax: 702-799-5505

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Mario Salas, Plaintiff(s)

CASE NO: A-20-826012-C

7 vs.

DEPT. NO. Department 5

8 Clark County School District,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/18/2021

15 Erickson Finch

erick@bighornlaw.com

16 Kimball Jones

kimball@bighornlaw.com

17 Brittany Morris

brittany@bighornlaw.com

18 Christina Reeves

reevec1@nv.ccsd.net

19 Melissa Alessi

alessm1@nv.ccsd.net

20 Michelle Alarie

malarie@ATLLP.com

21 Robert Eaton

roberte@bighornlaw.com

22 ECF ECF

ECF@atllp.com

23 Christie Rehfeld

crehfeld@atllp.com

24 Angelica Lucero-DeLaCruz

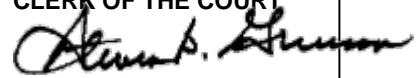
angie@bighornlaw.com

25 Alexandra Villarreal

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1 **NEOJ**
2 **CLARK COUNTY SCHOOL DISTRICT**
3 **OFFICE OF THE GENERAL COUNSEL**
4 **MELISSA ALESSI, ESQ.**
5 Nevada Bar No. 9493
6 5100 West Sahara Avenue
7 Las Vegas, Nevada 89146
8 Telephone: (702) 799-5373
9 Facsimile: (702) 799-7243
10 alessm1@nv.ccsd.net
11 Attorneys for Defendant
12 Clark County School District

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 MARIO A. SALAS, an individual,
11
12 Plaintiff,

CASE NO. A-20-826012-C
DEPT. 8

13 v.

14 CLARK COUNTY SCHOOL
15 DISTRICT; VISION
16 TECHNOLOGIES, INC., a Foreign
17 Corporation; DOE SCHOOL
18 DISTRICT EMPLOYEES I through X;
19 DOE INFORMATION TECHNOLOGY
20 SUPPORT EMPLOYEES I through X;
21 DOE OWNERS I through X; DOE
22 MANUFACTURER EMPLOYEE I
through X; DOE DESIGNER
EMPLOYEE I through X; ROE
INFORMATION TECHNOLOGY
SUPPORT COMPANIES XI through
XX; ROE OWNERS XI through XX;
ROE EMPLOYERS XI through XX;
ROE DESIGNER XI through XX; ROE
MANUFACTURER XI through XX;
DOES XXI through XXV; and ROE
CORPORATIONS XXV through XXX,
inclusive, jointly and severally,

23 Defendants.
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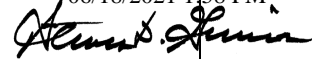
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Kimball Jones, Esq.
Bighorn Law
2225 E. Flamingo Road
Building 2 Suite 300
Las Vegas, NV 89119
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Phone: 702-333-1111
Attorney for Plaintiff Mario A. Salas

Michelle D. Alarie, Esq.
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3770 Howard Hughes Pkwy., Suite 200
Las Vegas, NV 89169
Phone: 702-678-5070
malarie@atllp.com
Attorneys for Defendant Vision Technologies, Inc.

Christina Reeves
A Clark County School District employee

EXHIBIT A



CLERK OF THE COURT

ODM
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
MELISSA ALESSI, ESQ.
Nevada Bar No. 9493
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Telephone: (702) 799-5373
Facsimile: (702) 799-7243
alessm1@nv.ccsd.net
Attorneys for Defendant Clark County School District

**DISTRICT COURT
CLARK COUNTY, NEVADA

MARIO A. SALAS, an individual,

Plaintiff,

CASE NO. A-20-826012-C
DEPT. 8

5

v.

CLARK COUNTY SCHOOL
DISTRICT; VISION
TECHNOLOGIES, INC., a Foreign
Corporation; DOE SCHOOL
DISTRICT EMPLOYEES I through X;
DOE INFORMATION TECHNOLOGY
SUPPORT EMPLOYEES I through X;
DOE OWNERS I through X; DOE
MANUFACTURER EMPLOYEE I
through X; DOE DESIGNER
EMPLOYEE I through X; ROE
INFORMATION TECHNOLOGY
SUPPORT COMPANIES XI through
XX; ROE OWNERS XI through XX;
ROE EMPLOYERS XI through XX;
ROE DESIGNER XI through XX; ROE
MANUFACTURER XI through XX;
DOES XXI through XXV; and ROE
CORPORATIONS XXV through XXX,
inclusive, jointly and severally,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER ORDER
GRANTING DEFENDANTS' MOTIONS TO DISMISS**

1 On June 3, 2021, *Plaintiff's Motion to Reconsider Order Granting Defendants'*
2 *Motion to Dismiss* ("Motion to Reconsider"), came on for hearing in the Court's
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19 raised in the original hearing cannot be maintained or considered on rehearing."
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22 Motion to Reconsider was timely filed and the Motion to Reconsider can be
23 considered on the merits.

1 The Court FINDS and CONCLUDES that in considering *Defendant Vision*
2 *Technologies, Inc.’s (“VTI”) Motion to Dismiss* and *Defendant Clark County School*
3 *District’s (“CCSD”) Motion to Dismiss and Joinder to Vision Technologies, Inc.’s*
4 *Motion to Dismiss* (collectively, “Defendants’ Motions to Dismiss”), the Court
5 accepted all factual allegations in the complaint as true, and drew all inference in
6 Plaintiff’s favor. Nonetheless, Plaintiff’s argument, that the Nevada Industrial
7 Insurance Act (“NIIA”) is not an exclusive remedy for Plaintiff, cannot be accepted.
8 Plaintiff cites to NRS 616B.636(1) for the proposition that Defendants VTI and
9 CCSD, as an employer and a contractor of the employer, respectively, have the
10 obligation to provide and secure worker’s compensation. This statute cannot be
11 interpreted to mean that Defendants have the obligation to pay out all NIIA claims.
12 Rather, the requirement is simply that Defendants secure a worker’s compensation
13 insurance to ensure that NIIA claims can be considered. In his opposition filed on
14 February 5, 2021, Plaintiff did not allege that Defendants lacked worker’s
15 compensation insurance coverage, but rather that they denied his claim and refused
16 to pay the benefits. If that is the case, the proper vehicle would have been making
17 an administrative appeal under NRS 616C. Thus, the instant case bypassing the
18 administrative appeal was incorrectly filed and thus, the dismissal was proper.

19 The Court FINDS and CONCLUDES that although Plaintiff also argues that
20 Defendants intentionally created the hazardous conditions and thus, the matter falls
21 outside of the NIIA, the Court cannot agree. Under *Conway v. Circus*, 116 Nev. 870,
22 8 P.3d 837 (2000), the Nevada Supreme Court indeed recognized that employers did
23 not enjoy immunity under the NIIA for intentional torts. However, simply labeling
24 an employer’s conduct as intentional will not subject the employer to liability outside

1 workers' compensation. The relevant inquiry is not the degree of negligence or even
2 depravity on the part of the employer, but the narrower question of whether the
3 specific action that injured the employee was an act intended to cause injury to the
4 employee. That is, even in a motion to dismiss stage, bare allegations are insufficient
5 and an employee must provide facts in the complaint which shows the deliberate
6 intent to bring about the injury. Here, the Complaint does not provide such sufficient
7 information and thus, the Court's decision cannot be deemed to be in error.
8 Furthermore, even if the Court is to consider the proposed Amended Complaint, it
9 does not provide sufficient information as to Defendants' intentional conduct. The
10 most notable change is in paragraph 17, wherein Plaintiff alleges certain actions by
11 User Support Services, a division of Defendant CCSD. However, the changes still
12 fail to sufficiently show that Defendants' acts were done with specific intent to cause
13 injury to Plaintiff. Thus, the proposed Amended Complaint must be deemed futile.
14 Thus, the proposed amendment cannot be granted.

15 The Court FINDS and CONCLUDES that although the Plaintiff's Motion to
16 Reconsider is denied, his Motion to Reconsider cannot be deemed to be maintaining
17 his case without reasonable ground or to harass the prevailing parties. Although he
18 did not prevail, Plaintiff provided legally cognizable and sufficient argument as to
19 why an amendment should be allowed. Thus, an award of fees to Defendant VTI
20 cannot be granted.

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IT IS HEREBY ORDERED that *Plaintiff's Motion to Reconsider Order Granting Defendants' Motion to Dismiss* is DENIED.

IT IS FURTHER ORDERED that Defendant *Vision Technologies, Inc.'s* request for fees is DENIED.

Dated this 18th day of June, 2021



9D8 E46 642D F295
Veronica M. Barisich
District Court Judge

Prepared and submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL



Melissa L. Alessi, Esq.; NV Bar No. 9493
5100 W. Sahara Ave.
Las Vegas, NV 89146
Attorneys for Defendant CCSD

Approved as to form and content by:

BIGHORN LAW



Kimball Jones, Esq.; NV Bar No. 12982
Robert N. Eaton, Esq.; NV Bar No. 9547
2225 E. Flamingo Rd.; Bldg. 2, Ste. 300
Las Vegas, NV 89119
Attorneys for Plaintiff Mario Salas

Approved as to form and content by:

ARMSTRONG TEASDALE LLP



Michelle D. Alarie, Esq.
Nevada Bar No. 11894
3770 Howard Hughes Pkwy., Ste. 200
Las Vegas, NV 89169
Attorneys for Defendant VTI



Christina Marie Reeves [Office of the General Counsel] <reevec1@nv.ccsd.net>

**RE: Salas v. CCSD, VTI - proposed Order Denying Motion to Reconsider [IWOV-
IDOCs.FID4116054]**

1 message

Michelle D. Alarie <MAlarie@atllp.com>

Thu, Jun 10, 2021 at 2:18 PM

To: "Kimball Jones, Esq." <kimball@bighornlaw.com>, "Melissa Alessi [Office of the General Counsel]" <alessm1@nv.ccsd.net>

Cc: Robert Eaton <roberte@bighornlaw.com>, "Christina Marie Reeves [Office of the General Counsel]" <reevec1@nv.ccsd.net>, Erick Finch <erick@bighornlaw.com>, Brittany Morris <brittany@bighornlaw.com>

Good afternoon Melissa –

Thanks for drafting. You may affix my electronic signature as well.

One note, under the new order submission protocols, the Judge's signature block should just be a line, and not include the Judge's name or department.

Thank you,



Armstrong Teasdale LLP

Michelle D. Alarie | Senior Associate Attorney

DIRECT: 702.415.2946 | FAX: 702.977.7483 | MAIN OFFICE: 702.678.5070



*** Please note my new email address, malarie@atllp.com ***

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This transmission and any attached files are privileged, confidential or otherwise the exclusive property of the intended recipient, Armstrong Teasdale LLP or its subsidiaries. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this



Christina Marie Reeves [Office of the General Counsel] <reevec1@nv.ccsd.net>

Re: Salas v. CCSD, VTI - proposed Order Denying Motion to Reconsider

1 message

Kimball Jones, Esq. <kimball@bighornlaw.com>

Thu, Jun 10, 2021 at 1:14 PM

To: "Melissa Alessi [Office of the General Counsel]" <alessm1@nv.ccsd.net>

Cc: Robert Eaton <roberte@bighornlaw.com>, "Michelle D. Alarie" <MAlarie@atllp.com>, "Christina Marie Reeves [Office of the General Counsel]" <reevec1@nv.ccsd.net>, Erick Finch <erick@bighornlaw.com>, Brittany Morris <brittany@bighornlaw.com>, crehfeld@atllp.com, avillarreal@atllp.com

You may e-sign for me.

On Thu, Jun 10, 2021 at 11:48 AM Melissa Alessi [Office of the General Counsel] <alessm1@nv.ccsd.net> wrote:
Hi Counsel:

Please find attached the proposed Order Denying Plaintiff's Motion to Reconsider. I essentially copied the Minute Order making a few changes for clarity. If the Order is acceptable to you, please either sign and return to my office or let us know that we have your permission to affix your electronic signature. Once we have everybody's signature, we will submit to the Court. If you have any edits, please let me know so that we can evaluate the requested changes. Please respond by the close of business on Monday.

Sincerely,
Melissa

Melissa L. Alessi, Esq.
Assistant General Counsel
Office of the General Counsel
Clark County School District
[5100 W. Sahara Ave.](#)
[Las Vegas, NV 89146](#)
Phone: 702-799-5373
Fax: 702-799-5505

This email constitutes official business of the Office of the General Counsel. The contents of this email are privileged as attorney-client communications and/or attorney work product and may also contain sensitive personal information. This email and its content is protected from release or unauthorized use by privileges provided under law and regulation, including the applicable rules of evidence. If you have received this email inadvertently or are not the intended recipient, please delete this email and notify the sender.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Mario Salas, Plaintiff(s)

CASE NO: A-20-826012-C

7 vs.

DEPT. NO. Department 5

8 Clark County School District,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/18/2021

15 Erickson Finch

erick@bighornlaw.com

16 Kimball Jones

kimball@bighornlaw.com

17 Brittany Morris

brittany@bighornlaw.com

18 Christina Reeves

reevec1@nv.ccsd.net

19 Melissa Alessi

alessm1@nv.ccsd.net

20 Michelle Alarie

malarie@ATLLP.com

21 Robert Eaton

roberte@bighornlaw.com

22 ECF ECF

ECF@atllp.com

23 Christie Rehfeld

crehfeld@atllp.com

24 Angelica Lucero-DeLaCruz

angie@bighornlaw.com

25 Alexandra Villarreal

avillarreal@atllp.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

February 02, 2021

A-20-826012-C Mario Salas, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

February 02, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Alice Jacobson

RECORDER: Christine Erickson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court notes that (1) Defendant Vision Technologies, Inc.'s Motion for Extension of Time to File Response to Complaint is set on the Court's chamber calendar for February 3, 2021, (2) Defendant Vision Technologies, Inc.'s Motion to Dismiss is set for a hearing on February 23, 2021, and (3) Defendant Clark County School District's Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc.'s Motion to Dismiss is set for a hearing on March 2, 2021. The Court notes that per Defendant Vision Technologies, Inc.'s Notice filed on February 1, 2021, Defendant Vision Technologies, Inc.'s Motion for Extension of Time to File Response to Complaint is now moot. Thus, the Court ORDERS that hearing set for February 3, 2021 shall be VACATED as moot. Furthermore, at the request of the Court, for judicial economy, the hearings set for February 23, 2021 and March 2, 2021 shall be CONSOLIDATED and RESCHEDULED to March 2, 2021 at 9:30 a.m.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

February 25, 2021

A-20-826012-C	Mario Salas, Plaintiff(s)
	vs.
	Clark County School District, Defendant(s)

February 25, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Alice Jacobson

RECORDER: Christine Erickson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Department 5 Formal Request to Appear REMOTELY for the March 2, 2021, hearing calendar.
Please double check the docket for your start time.

Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Meeting ID: 979 802 354

Meeting URL: <https://bluejeans.com/979802354>

To connect by phone dial 1-408-419-1715 and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with

Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

February 26, 2021

A-20-826012-C	Mario Salas, Plaintiff(s)
	vs.
	Clark County School District, Defendant(s)

February 26, 2021 3:00 AM All Pending Motions

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Alice Jacobson

RECORDER: Christine Erickson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court notes that (1) Defendant Vision Technologies, Inc. s Motion to Dismiss and (2) Defendant Clark County School District s Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc. s Motion to Dismiss are set for a hearing on March 2, 2021. After a review of the pleadings, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 20-17, the Court FINDS and ORDERS as follows:

NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief can be granted. The court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally sufficient claim and relief requested. Breliant v. Preferred Equities Corp., 109 Nev. 842, 846, 858 P.3d 1258, 1260 (1993). Dismissal is proper if it appears beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, 124 Nev. at 228, 181 P.3d 672. Additionally, NRCP 8(a) allows notice pleading, where all that is required in a complaint is a short

and plain statement of the grounds for the court's jurisdiction, claim showing that the pleader is entitled to relief, a demand for the relief sought, and at least \$15,000 in monetary damages sought.

As a general rule, the court may not consider matters outside the pleading being attacked. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted. *Id.* Additionally, a document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994), overruled on other grounds by *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1125 26 (9th Cir.2002). Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994). If matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. NRCp 12(d). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CNA Ins. Companies.*, 109 Nev. 1075, 1078, 864 P.2d 288, 290 (1993).

Employers who accept the Nevada Industrial Insurance Act (NIIA) and provide compensation for injuries by accident sustained by an employee arising out of and in the course of employment are relieved from other liability for recovery of damages or other compensation for such personal injury. NRS 616A.020; *Outboard Marine Corp. v. Schupbach*, 93 Nev. 158, 164, 561 P.2d 450, 454 (1976). Unless the employer acted with the deliberate and specific intent to injure the employee, employee cannot avoid the exclusive remedy doctrine. *Conway v. Circus Circus*, 116 Nev. 870, 875, 8 P.3d 837, 839 (2000). An injury resulting from mere exposure to hazardous workplace conditions, even if known to the employer and the employer failed to correct it, still constitutes an accident within the meaning of the NIIA. *Id.* at 874, 839. Subcontractors, independent contractors and the employees of either are considered to be the employees of the principal contractor for the purposes of NIIA. NRS 616A.210(1).

In his Complaint, Plaintiff alleges that on June 28, 2019, he was an employee of Defendant Vision Technologies, Inc. (Vision), which was hired to clean out the Defendant Clark County School District s (CCSD) equipment stored at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121. Plaintiff does not dispute that he was working within the course and scope of his employment with the Vision. It is further alleged that Plaintiff was instructed to use compressed air to clean out the various equipment, but he was not provided with the proper safety masks, supplies or other safety equipment. As a result, Plaintiff was injured. The gravamen of the motions is that since Plaintiff admitted that the injuries arose out of the course and scope of his employment with Vision, the remedy provided by

the Nevada Industrial Insurance Act is exclusive.

The Court FINDS and CONCLUDES that at this stage, the Court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. The Court cannot, and did not, consider matters outside the Complaint. Nevertheless, Plaintiff's allegations are insufficient. As Plaintiff concedes that he was working within the course and scope of his employment with Defendant Vision, the NIIA must be applied as an exclusive remedy. There is no applicable exemption to the exclusive remedy doctrine as Plaintiff does not allege that Defendant Vision deliberately and specifically intended to injure Plaintiff. Mere allegation that Defendant Vision was aware of the alleged hazardous conditions is inadequate to overcome the NIIA exclusive remedy provision.

The Court FINDS and CONCLUDES that as Plaintiff admits that his employer, Defendant Vision, was hired by Defendant CCSD for the work at CCSD's premises, under NRS 616A.210, Plaintiff must be deemed to be an employee of the principal contractor, CCSD, for the purposes of NIIA. Thus, again, NIIA exclusive remedy provision is applicable.

The Court FINDS and CONCLUDES that Plaintiff's argument that Plaintiff's worker's compensation claim being rejected is irrelevant to the issue at hand. First, Plaintiff did not include this fact in his Complaint. Second, even if the Court entertains this argument, NRS 616C.315 et. seq. provides for an appropriate administrative appeal procedure of the rejected claim.

The Court FINDS and CONCLUDES that Plaintiff's request for leave to amend is inappropriate because such request would be futile in overcoming the exclusive remedy provision of the NIIA. Furthermore, at the motion to dismiss stage, a party cannot seek to delay the ruling on the motion citing to NRCP 56(d) request for additional discovery.

The Court FINDS and CONCLUDES that Plaintiff's argument as to the constitutionality of the exclusive remedy provision is without merit and rejects the same. Such argument was repeatedly rejected by the Nevada Supreme Court. See Conway.

The Court ORDERS that Defendant Vision's Motion and Defendant CCSD's Joinder and Motion shall be GRANTED. The hearing set for March 2, 2021 shall be advanced and VACATED.

Counsel for Defendant Vision is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Other counsels are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with the AO 20-17.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

June 03, 2021

A-20-826012-C	Mario Salas, Plaintiff(s)
	vs.
	Clark County School District, Defendant(s)

June 03, 2021	3:00 AM	Minute Order
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HEARD BY: Barisich, Veronica M.	COURTROOM: Phoenix Building 11th Floor 110
--	--

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court notes that Plaintiff's Motion to Reconsider Order Granting Defendants' Motion[s] to Dismiss is set on the Court's chamber calendar. After a review of the pleadings, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 21-03, the Court FINDS and ORDERS as follows:

EDCR 2.24(a) states, "No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997). "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). "Rehearings are not granted as a matter of right and are not allowed for the purpose of reargument, unless there is reasonable probability that the court may have arrived at an erroneous conclusion.

Geller v. McCown, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947). "Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing." Achrem v. Expressway Plaza Ltd., 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

The Court FINDS and CONCLUDES that under NRCP 60(b)(1), the motion was timely filed and the motion can be considered on the merits.

The Court FINDS and CONCLUDES that in considering the motions to dismiss, the Court accepted all factual allegations in the complaint as true, and drew all inference in Plaintiff's favor. Nonetheless, Plaintiff's argument, that NIIA is not an exclusive remedy for Plaintiff, cannot be accepted. Plaintiff cites to NRS 616B.636(1) for the proposition that Defendants, as an employer and a contractor of the employer, have the obligation to provide and secure worker's compensation. This statute cannot be interpreted to mean that Defendants have the obligation to pay out all NIIA claims. Rather, the requirement is simply that Defendants secure a worker's compensation insurance to ensure that NIIA claims can be considered. In his opposition filed on February 5, 2021, Plaintiff did not allege that Defendants lacked worker's compensation insurance coverage, but rather that they denied his claim and refused to pay the benefits. If that is the case, the proper vehicle would have been making an administrative appeal under NRS 616C. Thus, instant case bypassing the administrative appeal was incorrectly filed and thus, the dismissal was proper.

The Court FINDS and CONCLUDES that although Plaintiff also argues that Defendants intentionally created the hazardous conditions and thus, the matter falls outside of the NIIA, the Court cannot agree. Under Conway v. Circus, 116 Nev. 870, 8 P.3d 837 (2000), the Nevada Supreme Court indeed recognized that employers did not enjoy immunity under NIIA for intentional torts. However, simply labeling an employer's conduct as intentional will not subject the employer to liability outside workers' compensation. The relevant inquiry is not the degree of negligence or even depravity on the part of the employer, but the more narrow question of whether the specific action that injured the employee was an act intended to cause injury to the employee. That is, even in a motion to dismiss stage, bare allegations are insufficient and an employee must provide facts in the complaint which shows the deliberate intent to bring about the injury. Here, the Complaint does not provide such sufficient information and thus, the Court's decision cannot be deemed to be in error. Furthermore, even if the Court is to consider the proposed Amended Complaint, it does not provide sufficient information as to Defendants' intentional conduct. Most notable change is in paragraph 17, wherein Plaintiff alleges certain actions by User Support Services, a division of Defendant CCSD. However, the changes still fail to sufficiently show that Defendants' acts were done with specific intent to cause injury to Plaintiff. Thus, the proposed Amended Complaint must be deemed futile. Thus, proposed amendment cannot be granted.

The Court FINDS and CONCLUDES that although the Plaintiff's motion is denied, his motion cannot be deemed to be maintaining his case without reasonable ground or to harass the prevailing parties. Although he did not prevail, Plaintiff provided legally cognizable and sufficient argument as to why an amendment should be allowed. Thus, an award of fees to Defendant VTI cannot be granted.

The Court ORDERS that Plaintiff's Motion shall be DENIED. Defendant VTI's request for fees shall be DENIED.

Counsel for Defendant CCSD is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Other counsels are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with the AO 21-03 and EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 06/03/21



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

KIMBALL JONES, ESQ.
2225 E. FLAMINGO RD., BLDG 2, STE 300
LAS VEGAS, NV 89119

DATE: June 23, 2021
CASE: A-20-826012-C

RE CASE: MARIO A. SALAS vs. CLARK COUNTY SCHOOL DISTRICT; VISION TECHNOLOGIES, INC.

NOTICE OF APPEAL FILED: June 21, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

PLAINTIFF'S NOTICE OF APPEAL; PLAINTIFF'S CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

MARIO A. SALAS,

Plaintiff(s),

vs.

CLARK COUNTY SCHOOL DISTRICT;
VISION TECHNOLOGIES, INC.,

Defendant(s),

Case No: A-20-826012-C

Dept No: V

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 23 day of June 2021.

Steven D. Grierson, Clerk of the Court

P

Amanda Hampton, Deputy Clerk