

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MARIO A. SALAS
Appellant

vs.

CLARK COUNTY SCHOOL DISTRICT;
VISION TECHNOLOGIES, INC.
Respondents

No. 83105

Electronically Filed
Jul 15 2021 04:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

Revised December 2015

1. Judicial District Eighth Department V
County Clark Judge Veronica M. Barisich.
District Ct. Case No. A-20-826012-C

2. Attorney filing this docketing statement:

Attorney Kimball Jones, Esq. Telephone 702-333-1111
Firm Bighorn Law
Address 2225 E. Flamingo Road.
Ste. 300
Las Vegas, NV 89119

Client(s) Mario A. Salas

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michelle D. Alarie, Esq. Telephone (702) 678-5070
Firm ARMSTRONG TEASDALE, LLP
Address 3770 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

Client(s) Vision Technologies, Inc

Attorney Melissa Alessi, Esq. Telephone (702) 799-5373
Firm _____
Address 5100 W. Sahara Ave.
Las Vegas, Nevada 89146

Client(s) Clark County School District

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

The underlying incident in this matter is an action for damages due to negligence. Respondents harmed Appellant MARIO A. SALAS, by requiring him to work in an area containing a toxic buildup of dust and other particles, while failing to provide any safety masks, supplies or other safety equipment, and without proper ventilation.

After being exposed, Appellant developed sepsis, and pneumonia that ultimately led to his suffering a collapsed lung and pulmonary MRCA. He was intubated for 12 days while in a medically induced coma.

Appellant applied for and was DENIED worker's compensation benefits. Yet, the Court granted Respondents' Motion to Dismiss for Failure to State a Claim, on the basis that NIIA was Appellant's exclusive benefit--although his worker's compensation benefits were denied.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Did the Court erroneously rule that NIIA is the exclusive remedy for an injured employee who is denied workers compensation benefits in light of NRS 616B.636 which states, "If any employer within the provisions of NRS 616B.633 fails to provide and secure compensation under chapters 616A to 616D, inclusive, of NRS, any injured employee or the dependents of the employee may bring an action at law against the employer for damages as if those chapters did not apply"?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should not be presumptively retained by the Supreme Court. It is properly assigned to the Court of Appeals under NRAP 17(b)(5).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from June 21, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served June 21, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed June 21, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The Court dismissed Appellant's Case on April 1, 2021 and Denied Appellant's Motion to Reconsider brought under NRCP 60 on June 21, 2021, therefore disposing of Appellant's claims. Appellant appeals from this final judgment.

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

(a) Parties:

APPELLANT: MARIO A. SALAS

Respondents: CLARK COUNTY SCHOOL DISTRICT; VISION TECHNOLOGIES, INC.

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

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

Appellant Mario Salas: Negligence, Negligent Training, Strict Product Liability.
Disposed of on June 21, 2021.

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

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☒ No

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

☐ Yes

☐ No

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

The Court's Order is independently appealable under NRAP 3A(b).

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

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

VERIFICATION

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

Mario Salas
Name of appellant

Kimball Jones, Esq.
Name of counsel of record

Jul 15, 2021
Date

/s/ Kimball Jones, Esq.
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 15th day of July, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

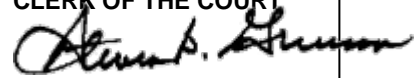
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Janet Trost
501 S. Rancho Drive, Ste. H-56
Las Vegas, NV 89106
Settlement Judge

Dated this 15th day of July, 2021

/s/ Erickson Finch
Signature



1 **NEOJ**
2 **CLARK COUNTY SCHOOL DISTRICT**
3 **OFFICE OF THE GENERAL COUNSEL**
4 **MELISSA ALESSI, ESQ.**
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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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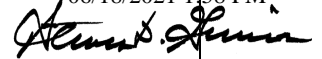
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Attorneys for Defendant Vision Technologies, Inc.

A Clark County School District employee

EXHIBIT A



CLERK OF THE COURT

ODM
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**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 ///

22 ///

23 ///

24 ///

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
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Las Vegas, NV 89119
Attorneys for Plaintiff Mario Salas

Approved as to form and content by:

ARMSTRONG TEASDALE LLP



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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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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
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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

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20 Michelle Alarie

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22 ECF ECF

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23 Christie Rehfeld

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24 Angelica Lucero-DeLaCruz

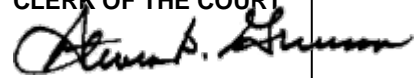
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25 Alexandra Villarreal

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malarie@atllp.com

Attorneys for Defendant Vision Technologies, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARIO A. SALAS, an individual,

Plaintiff,

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,
X:XV through XXX, inclusive, jointly and
severally,

Defendants.

Case No. A-20-826012-C

Dept. No. 5

**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**

///

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///

1 PLEASE TAKE NOTICE that the Order Granting (1) Defendant Vision Technologies,
2 Inc.'s Motion to Dismiss, and (2) Defendant Clark County School District's Motion to Dismiss and
3 Joinder was entered in the above-referenced matter on March 31, 2021, a true and correct copy of
4 which is attached hereto.

5
6 Dated this 1st day of April, 2021.

ARMSTRONG TEASDALE LLP

7
8 By: /s/ Michelle D. Alarie

MICHELLE D. ALARIE, ESQ.

Nevada Bar No. #11894

3770 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Attorneys for Defendant Vision Technologies, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 1st day of April, 2021 the foregoing was served to the parties
3 below as follows:

4 ☒ via electronic service through Odyssey pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26
5 to:

6 Kimball Jones
7 Robert N. Eaton
8 Erickson Finch
9 Brittany Moris
10 *Attorneys for Plaintiff*

KimballJ@BighornLaw.com
RobertE@BighornLaw.com
Erick@BighornLaw.com
Brittany@BighornLaw.com

9 Melissa Alessi
10 Christina Reeves
11 *Attorneys for Clark County School
District*

Alessm1@nv.ccsd.net
Reeve31@nv.ccsd.net

12 ☐ by mailing a copy thereof, first class mail, postage prepaid, to:

14 KIMBALL JONES, ESQ.
15 ROBERTN. EATON, ESQ .
16 BIGHORN LAW
2225 E. Flamingo Road
Building 2 Suite 300
Las Vegas, Nevada 89119

MELISSA ALESSI, ESQ.
CLARK COUNTY SCHOOL DISTRICT
5100 West Sahara Avenue
Las Vegas, Nevada 89146

Attorneys for Clark County School District

18 *Attorneys for Plaintiff Mario A. Salas*

20 /s/ Allie Villarreal

21 An employee of Armstrong Teasdale LLP

OGM

MICHELLE D. ALARIE, ESQ.
Nevada Bar No. 11894
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Telephone: 702.678.5070
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malarie@atllp.com

Attorneys for Defendant Vision Technologies, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARIO A. SALAS, an individual,

Plaintiff,

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,
X:XV through XXX, inclusive, jointly and
severally,

Defendants.

Case No. A-20-826012-C

Dept. No. 5

**ORDER GRANTING (1) DEFENDANT
VISION TECHNOLOGIES, INC.'S
MOTION TO DISMISS, AND (2)
DEFENDANT CLARK COUNTY
SCHOOL DISTRICT'S MOTION TO
DISMISS AND JOINDER**

Defendant Vision Technologies, Inc.'s ("VTI") Motion to Dismiss and Defendant Clark County School District's ("CCSD") Motion to Dismiss and Joinder to VTI's Motion to Dismiss came before this honorable Court in chambers on February 26, 2021, pursuant to E.D.C.R. 2.23 and the Administrative Order 20-17. This Court, having reviewed the briefing on the motions and the pleading on file herein, and good cause appearing, the Court FINDS and ORDERS as follows:

1 Nev. R. Civ. P. 12(b)(5) governs a motion to dismiss for failure to state a claim upon which
2 relief can be granted. The court must accept all factual allegations in the complaint as true, and draw
3 all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of Las Vegas*, 124 Nev. 224, 227-28, 181
4 P.3d 670, 672 (2008). The test for determining whether the allegations of a complaint are sufficient to
5 assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally
6 sufficient claim and relief requested. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858
7 P.3d 1258, 1260 (1993). Dismissal is proper if it appears beyond a doubt that [plaintiff] could prove
8 no set of facts, which, if true, would entitle it to relief. *Buzz Stew*, 124 Nev. at 228, 181 P.3d 672.
9 Additionally, Nev. R. Civ. P. 8(a) allows notice pleading, where all that is required in a complaint is
10 a short and plain statement of the grounds for the court's jurisdiction, a claim showing that the
11 pleader is entitled to relief, a demand for the relief sought, and at least \$15,000 in monetary damages
12 sought.

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

1 Employers who accept the Nevada Industrial Insurance Act (“NIIA”) and provide
2 compensation for injuries by accident sustained by an employee arising out of and in the course of
3 employment are relieved from other liability for recovery of damages or other compensation for such
4 personal injury. N.R.S. § 616A.020; *Outboard Marine Corp. v. Schupbach*, 93 Nev. 158, 164, 561
5 P.2d 450, 454 (1976). Facing a motion to dismiss, it is plaintiff’s obligation to allege that the NIIA
6 does not apply in order to maintain his action in court. *See Flint v. Franktown Meadows, Inc.*, 449
7 P.3d at *2 (Nev. Sept. 26, 2019) (citing *See McGinnis v. Consol. Casinos Corp.*, 94 Nev. 640, 642,
8 584 P.2d 702, 703 (1978)). Unless the employer acted with the deliberate and specific intent to
9 injure the employee, the employee cannot avoid the exclusive remedy doctrine. *Conway v. Circus*
10 *Circus*, 116 Nev. 870, 875, 8 P.3d 837, 839 (2000). An employee must specifically allege that the
11 employer acted with the deliberate and specific intent to injure the employee or plead facts that
12 show the deliberate intent to bring about the injury to avoid the exclusive remedy doctrine. *Id.* at
13 874, 8 P.3d at 840. An injury resulting from mere exposure to hazardous workplace conditions, even
14 if known to the employer and the employer failed to correct it, still constitutes an accident within the
15 meaning of the NIIA. *Id.* at 874, 8 P.3d at 839; *see also Snow v. United States*, 479 F. Supp. 936, 938
16 (D. Nev. 1979) (*reversed in part on other grounds, United States v. Snow*, 671 F.2d 504 (9th Cir.
17 1981) (Nevada does not recognize any exception to the exclusive remedy doctrine where the
18 employee faces hazardous work conditions). Subcontractors, independent contractors, and the
19 employees of either are considered to be the employees of the principal contractor for the purposes of
20 NIIA. N.R.S. § 616A.210(1).

21 In his Complaint, Plaintiff alleges that on June 28, 2019, he was an employee of Defendant
22 Vision Technologies, Inc. (“VTI”), which was hired by the Defendant Clark County School District
23 (“CCSD”) to perform services for CCSD at the CCSD’s building located at 2832 E. Flamingo Rd.,
24 Las Vegas, Nevada 89121. Plaintiff does not dispute, but expressly alleges that he was “acting within
25 the course of [VTI’s] employment and scope of [VTI’s] authority” when he sustained injuries
26 because individuals working near him were permitted to use compressed air to clean dust out of used
27 computers at the worksite, which Plaintiff alleges was maintained in an “unreasonably hazardous and
28 dangerous condition” due to the buildup of dust and other pollutants. Plaintiff alleges that VTI

1 directed Plaintiff to work at the worksite. It is further alleged that neither VTI nor CCSD provided
2 Plaintiff with the proper safety masks, supplies, or other safety equipment. As a result, Plaintiff was
3 injured.

4 Both VTI and CCSD moved to dismiss Plaintiff's Complaint on the grounds that because
5 Plaintiff admitted that the injuries arose out of the course and scope of his employment with VTI, the
6 remedy provided by the NIIA is exclusive.

7 This Court accepts all factual allegations in the Complaint as true and draws all inferences in
8 the Plaintiff's favor as must be done on a motion to dismiss. This Court cannot, and did not, consider
9 matters outside the Complaint. Nevertheless, Plaintiff's allegations are insufficient. As Plaintiff
10 concedes that he was working within the course and scope of his employment with VTI, the NIIA
11 must be applied as an exclusive remedy. There is no applicable exemption to the exclusive remedy
12 doctrine as Plaintiff does not allege that VTI deliberately and specifically intended to injure Plaintiff.
13 Mere allegation that VTI was aware of the alleged hazardous conditions and failed to correct them or
14 provide safety equipment is inadequate to overcome the NIIA exclusive remedy provision.

15 Furthermore, Plaintiff admits that his employer, VTI, was hired by CCSD for the work at
16 CCSD's premises; therefore, under N.R.S. § 616A.210, Plaintiff must be deemed to be an employee
17 of the principal contractor, CCSD, for the purposes of NIIA. Thus, again, NIIA exclusive remedy
18 provision is applicable to CCSD.

19 This Court further finds and concludes that Plaintiff's argument that Plaintiff's worker's
20 compensation claim was rejected is irrelevant to the issue at hand. First, Plaintiff did not include this
21 fact in his Complaint. Second, even if the Court entertains this argument that was presented only in
22 Plaintiff's Opposition, N.R.S. § 616C.315 *et seq.* provides for an appropriate administrative appeal
23 procedure of the rejected claim.

24 This Court also finds and concludes that Plaintiff's request for leave to amend is
25 inappropriate. First, Plaintiff's failed to comply with E.D.C.R. 2.30(a) requiring that Plaintiff attach
26 a copy of the proposed pleading to the request. Second, based on the Plaintiff's contentions, such
27 request would be futile in overcoming the exclusive remedy provision of the NIIA. Furthermore, at
28 the motion to dismiss stage, a party cannot seek to delay the ruling on the motion citing to Nev. R.

1 Civ. P. 56(d) request for additional discovery.

2 Finally, this Court finds and concludes that that Plaintiff's argument as to the constitutionality
3 of the exclusive remedy provision is without merit and rejects the same. Such argument was
4 repeatedly rejected by the Nevada Supreme Court. *See Conway*, 116 Nev. at 875, 8 P.3d at 839.

5 **ORDER**

6 NOW, THEREFORE,

7 **IT IS HEREBY ORDERED** that Defendant Vision Technologies, Inc.'s Motion to Dismiss
8 is GRANTED, and VTI is hereby dismissed from this action.

9 **IT IS FURTHER ORDERED** that Defendant Clark County School District's Motion to
10 Dismiss and Joinder to VTI's Motion to Dismiss is GRANTED, and CCSD is hereby dismissed from
11 this action.

12 **IT IS FURTHER ORDERED** that Plaintiff's request for leave to amend the Complaint is
13 DENIED as futile.

14 **IT IS FURTHER ORDERED** that the hearing set for March 2, 2021, at 9:30 a.m. shall be
15 ADVANCED and VACATED pursuant to E.D.C.R. 2.23 and the Administrative Order 20-17.

16 **IT IS FURTHER ORDERED** that to the extent there are remaining claims asserted against
17 DOE/ROE defendants in this action, this Order dismissing VTI and CCSD shall be considered entry
18 of final judgment of dismissal pursuant to Nev. R. Civ. P. 54(b) as there is no just reason to delay
19 entry of final judgment as to these parties.

20 **IT IS SO ORDERED.**

Dated this 31st day of March, 2021

21 
22 _____

23 Prepared and submitted by:
24 ARMSTRONG TEASDALE LLP

298 7C1 7C25 7A02
Veronica M. Barisich
District Court Judge

25 By: /s/ Michelle D. Alarie
26 MICHELLE D. ALARIE, ESQ.
27 Nevada Bar No. 11894
3770 Howard Hughes Parkway, Suite 200
28 Las Vegas, Nevada 89169
Attorneys for Defendant Vision Technologies, Inc.

1 Approved as to form and content:

2 CLARK COUNTY SCHOOL DISTRICT

3 By: /s/ Melissa Alessi

4 MELISSA ALESSI, ESQ.
Nevada Bar No. 9493
5 5100 West Sahara Avenue
Las Vegas, Nevada 89146

6 *Attorneys for Defendant Clark County School District*

7 Approved as to form and content:

8 BIGHORN LAW

9 By: /s/ Kimball Jones

10 KIMBALL JONES, ESQ.
Nevada Bar No. 12982
11 ROBERT N. EATON, ESQ.
Nevada Bar No. 9547
12 2225 East Flamingo Road
Building 2 Suite 300
13 Las Vegas, Nevada 89119

14 *Attorneys for Plaintiff Mario A. Salas*

Christie Rehfeld

From: Melissa Alessi [Office of the General Counsel] <alessm1@nv.ccsd.net>
Sent: Wednesday, March 17, 2021 10:34 AM
To: Michelle D. Alarie
Cc: reevec1@nv.ccsd.net
Subject: Re: Salas v. CCSS, Vision Technologies - draft Order Granting Motions to Dismiss [IWOV-IDOCS.FID4116054]

You may affix my electronic signature.

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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On Wed, Mar 17, 2021 at 10:28 AM Michelle D. Alarie <MAlarie@atlpl.com> wrote:

Good morning Melissa and Christine,

Based on the out of office message, I understand you are back to work today. I would appreciate your comments on the proposed Order in the *Mario Salas v. Vision Technologies/CCSD* matter, or if none, your consent for me to affix your electronic signature for filing. As previously stated, Plaintiff's counsel, Kimball Jones, has already approved this draft.

We are well past the deadline imposed by the local rules to submit this proposed order, but as the order pertains to CCSD's Motion to Dismiss as well, I wanted to get your comments/approval before submitting to the Court. I request that this be a priority and that you get back to me by the end of today. I appreciate your cooperation to get this done.

Thank you,



Armstrong Teasdale LLP

Michelle D. Alarie | Associate

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



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

From: Michelle D. Alarie
Sent: Wednesday, March 10, 2021 10:05 AM
To: reevec1@nv.ccsd.net; alessm1@nv.ccsd.net
Subject: RE: Salas v. CCSS, Vision Technologies - draft Order Granting Motions to Dismiss [IWOV-IDOCS.FID4116054]
Importance: High

Good morning Melissa and Christine,

I received an out-of-office email response to my email yesterday. I'd like to submit the proposed order for the *Mario Salas v. Vision Technologies/CCSD* matter ASAP as required by the local rules. Please get back to me today. The draft, which has been approved by Kimball Jones, is attached again for your convenience.

Thank you,



Armstrong Teasdale LLP

Michelle D. Alarie | Associate

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



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

From: Michelle D. Alarie
Sent: Tuesday, March 09, 2021 9:26 AM
To: reevec1@nv.ccsd.net; alessm1@nv.ccsd.net
Subject: FW: Salas v. CCSS, Vision Technologies - draft Order Granting Motions to Dismiss [IWOV-IDOCS.FID4116054]

Good morning Melissa,

Please advise if you are in agreement with the proposed order in the *Mario Salas v. Vision Technologies/CCSD* matter. The draft, which has been approved by Kimball Jones, is attached again for your convenience.

I intend to submit to the court by the end of today, so please get back to me at your asap.

Thank you,



Armstrong Teasdale LLP

Michelle D. Alarie | Associate

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



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

From: Michelle D. Alarie
Sent: Friday, March 05, 2021 12:12 PM
To: 'Kimball Jones'

Cc: alessm1@nv.ccsd.net; reevec1@nv.ccsd.net; roberte@bighornlaw.com; Erick Finch
Subject: RE: Salas v. CCSS, Vision Technologies - draft Order Granting Motions to Dismiss [IWOV-IDOCS.FID4116054]

Thanks, Kimball.

Melissa, please get back to me at your soonest convenience on any revisions, or with your approval to affix your electronic signature for submission to chambers.

Thank you,



Armstrong Teasdale LLP

Michelle D. Alarie | Associate

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



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

From: Kimball Jones [<mailto:kimball@bighornlaw.com>]

Sent: Friday, March 05, 2021 8:21 AM

To: Michelle D. Alarie

Cc: alessm1@nv.ccsd.net; reevec1@nv.ccsd.net; roberte@bighornlaw.com; Erick Finch

Subject: Re: Salas v. CCSS, Vision Technologies - draft Order Granting Motions to Dismiss [IWOV-IDOCS.FID4116054]

Approved as consistent with the Court's minute order. You may e-sign for me.

On Thu, Mar 4, 2021 at 8:45 AM Michelle D. Alarie <MAlarie@atllp.com> wrote:

All,

My client has approved the draft sent yesterday. Please review and provide your comments. I intend to submit on Monday, so please get back to me at your earliest convenience.

Thanks,

Michelle D. Alarie, Esq.
Associate Attorney
ARMSTRONG TEASDALE LLP
Direct: 702.415.2946
malarie@atllp.com

On Mar 3, 2021 7:30 PM, Kimball Jones <kimball@bighornlaw.com> wrote:

CAUTION:

**EXTERNAL
EMAIL**

Please let us know when you have the draft you want filed and we will review it at that time.

On Wed, Mar 3, 2021 at 5:28 PM Michelle D. Alarie <MAlarie@atllp.com> wrote:

Good afternoon counsel,

Per the Court's Minute Order dated February 26, 2021, granting Vision Technologies' Motion to Dismiss and CCSD's Motion to Dismiss and Joinder, please find attached the draft written order. Please note that I do not have final approval from my client on the draft, so it is subject to additional revisions on my end, but I wanted to circulate the draft asap as the deadline to submit is this Monday, March 8, 2021. I believe the draft order is consistent with the Minute Order as well as the submitted briefing and arguments.

Please review and advise if you have any revisions, which I request be redlined for clarity. Please keep in mind the submission deadline imposed by the Court is this coming Monday.

Thank you,



Armstrong Teasdale LLP

Michelle D. Alarie | Associate

3770 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169

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

malarie@atllp.com

www.armstrongteasdale.com



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

Always exceed expectations through teamwork and excellent client service.

Please consider the environment before printing this email.

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private limited company registered in England and Wales (Registration No. 08879988), that is authorized and regulated by the Solicitors Regulation Authority (SRA No. 657002). The registered office of Armstrong Teasdale Limited is 200 Strand, London WC2R 1DJ. Please review our [International Legal Notices](#).

--

Very Warmest Regards,

Kimball Jones, Esq.

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--

Very Warmest Regards,

Kimball Jones, Esq.

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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 Granting 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:

15 Service Date: 3/31/2021

16 Erickson Finch

erick@bighornlaw.com

17 Kimball Jones

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18 Brittany Morris

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19 Christina Reeves

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20 Melissa Alessi

alessm1@nv.ccsd.net

21 Michelle Alarie

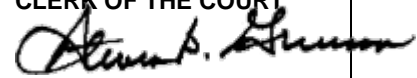
malarie@ATLLP.com

22 Robert Eaton

roberte@bighornlaw.com

23 WR ECF

WRECF@atllp.com



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

COMP

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

ROBERT N. EATON, ESQ.

Nevada Bar No.: 9547

BIGHORN LAW

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Las Vegas, Nevada 89119

Phone: (702) 333-1111

Email: Kimball@BighornLaw.com

Roberte@BighornLaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIO A. SALAS, an individual,

Plaintiff,

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.

CASE NO.:

DEPT. NO.:

COMPLAINT

COMES NOW Plaintiff MARIO A. SALAS, by and through his counsel, KIMBALL JONES, ESQ. and ROBERT N. EATON, ESQ., with the law offices of **BIGHORN LAW**, and for his causes of action against the Defendants, and each of them, alleges as follows:

1. That Plaintiff MARIO A. SALAS (hereinafter referred to as “MARIO”) was at all times relevant to this action a resident of Boulder City, Clark County, Nevada.
2. Upon information and belief, and at all times relevant to this action, the Defendant CLARK COUNTY SCHOOL DISTRICT (hereinafter referred to as “CCSD”), and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, controlled the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121.
3. Upon information and belief, and at all times relevant to this action, the Defendant VISION TECHNOLOGIES, INC. (hereinafter referred to as “VISION”), a Foreign Corporation, was conducting business in Las Vegas, Clark County, Nevada and was the employer of Plaintiff MARIO.
4. Upon information and belief, and at all times relevant to this action, Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, controlled, operated and supervised User Support Services, a division/entity/organization/group within CCSD and/or controlled by CCSD, who was responsible for providing desktop maintenance support for personal computer (PC) users throughout the district, utilizing district personnel and contracted services. This included a Call Support Center that functions as a traditional Help Desk for the entire district for personal computer related trouble calls and dispatching onsite support for both hardware and software failure issues. Additionally, User Support Services provided hardware and software installation for administrative sites, special regional support, and general support for the district.
5. Upon information and belief, and at all times relevant to this action, Defendants DOE SCHOOL DISTRICT EMPLOYEES I through X and/or DOE INFORMATION TECHNOLOGY

1 SUPPORT EMPLOYEES I through X, who were employees living and working in Clark County,
2 Nevada and who were tasked by Defendant CCSD, and/or DOE OWNERS I through X, and/or
3 ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX and/or ROE
4 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, to repurpose used
5 computers that were pulled out of classrooms, were using compressed Air to clean the dust out of
6 the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, at the
7 time the subject incident occurred.
8

9 6. Upon information and belief, and at all times relevant to this action, Defendant CCSD, and/or DOE
10 OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
11 COMPANIES XI through XX and/or ROE OWNERS XI through XX, and/or ROE
12 EMPLOYERS XI through XX, was responsible for properly hiring, training and/or supervising
13 Defendant DOE SCHOOL DISTRICT EMPLOYEES I through X and/or DOE INFORMATION
14 TECHNOLOGY SUPPORT EMPLOYEES I through X.
15

16 7. Upon information and belief, and at all times relevant to this action, Defendant CCSD, and/or DOE
17 OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
18 COMPANIES XI through XX and/or ROE OWNERS XI through XX, and/or ROE
19 EMPLOYERS XI through XX, was responsible to notify anyone working at or near the premises
20 located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, of any potential or extremely harmful
21 hazards, at the time the subject incident occurred.
22

23 8. Upon information and belief, and at all times relevant to this action, Defendant ROE DESIGNER,
24 XI through XX, and/or ROE MANUFACTURER, XI through XX, was, an entity organized and
25 existing under the laws of the State of Nevada, authorized to conduct, and actually conducting,
26 business in Clark County, Nevada, and was negligent in the creating, designing, manufacturing,
27 inspecting and/or repairing, the device(s) utilizing and/or producing compressed Air to clean the
28

1 dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada
2 89121, at the time the subject incident occurred.

3 9. Upon information and belief, and at all times relevant to this action, Defendants DOE
4 MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I
5 through X, who were employees living and working in Clark County, Nevada, who were under
6 his/her course and scope of employment with Defendants ROE DESIGNER, XI through XX,
7 and/or ROE MANUFACTURER, XI through XX, and were tasked by Defendants ROE
8 DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI through XX, in the creating,
9 designing, manufacturing, inspecting and/or repairing, the device(s) utilizing and/or producing
10 compressed Air to clean the dust out of the computers, at the premises located at 2832 E. Flamingo
11 Rd., Las Vegas, Nevada 89121, at the time the subject incident occurred.
12
13

14 10. Upon information and belief, and at all times relevant to this action, Defendant ROE DESIGNER,
15 XI through XX, and/or ROE MANUFACTURER, XI through XX, was, an entity organized and
16 existing under the laws of the State of Nevada, authorized to conduct, and actually conducting,
17 business in Clark County, Nevada, and was negligent in the creating, designing, manufacturing,
18 inspecting and/or repairing, the safety masks, supplies or other safety equipment provided to
19 MARIO, if any, at the time the subject incident occurred.
20

21 11. Upon information and belief, and at all times relevant to this action, Defendants DOE
22 MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I
23 through X, who were employees living and working in Clark County, Nevada, who were under
24 his/her course and scope of employment with Defendants ROE DESIGNER, XI through XX,
25 and/or ROE MANUFACTURER, XI through XX, and were tasked by Defendants ROE
26 DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI through XX, in the creating,
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28

designing, manufacturing, inspecting and/or repairing, of the safety masks, supplies or other safety equipment provided to MARIO, if any, at the time the subject incident occurred.

12. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of DOE SCHOOL DISTRICT EMPLOYEES I through X and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, and/or DOE OWNERS I through X, and/or DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or ROE DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI through XX, are unknown to MARIO, who therefore sue said Defendants by such fictitious names accordingly.

13. Plaintiff MARIO is informed, and believes, and thereon alleges that each of the Defendants designated herein as DOES XXI through XXV, and/or ROE CORPORATIONS, XXV through XXX, are responsible in some manner for the events and happenings referred to and caused damages proximately to MARIO as herein alleged, and that MARIO will ask leave of this Court to amend this Complaint to insert the true names and capacities of DOES XXI through XXV, and/or ROE CORPORATIONS, XXV through XXX, when the same have been ascertained, and to join such defendants in this action.

14. At all times relevant hereto the conduct and activities hereinafter complained of occurred within Clark County, Nevada.

FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

15. Plaintiff MARIO incorporates by this reference all of the allegations of paragraphs 1 through 14, hereinabove, as though completely set forth herein.

- 1 16. That upon information and belief, at all times relevant to this action, Defendant CCSD, and/or DOE
2 OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
3 COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
4 EMPLOYERS XI through XX, were the owners or lessees and occupied, operated, maintained and
5 controlled those premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121.
6
- 7 17. That on or about the June 28, 2019, and for some time prior thereto, Defendant VISION, and/or
8 ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, employed MARIO
9 as a Network Engineer III and MARIO was thereby acting within the course of Defendant VISION's
10 employment and scope of Defendant VISION's authority.
11
- 12 18. That on or about the June 28, 2019, and for some time prior thereto, Defendant CCSD, and/or DOE
13 OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
14 COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
15 EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X,
16 and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, (by and
17 through Defendant's authorized agents, servants, and employees, acting within the course and scope
18 of their employment), negligently and carelessly owned, maintained, operated, occupied, and
19 controlled the said premises, located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, so as to
20 cause and allow an unreasonably hazardous and dangerous condition.
21
- 22 19. That on or about the June 28, 2019, and for some time prior thereto, Defendant CCSD, and/or DOE
23 OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
24 COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
25 EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X,
26 and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, (by and
27 through Defendant's authorized agents, servants, and employees, acting within the course and scope
28

1 of their employment), negligently and carelessly owned, maintained, operated, occupied, and
2 controlled the said premises, located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, in that
3 they maintained the area in such a manner that it presented a dangerous and hazardous condition in
4 an area intended for the use and commonly and regularly used by invitees of the said Defendant.

5
6 20. That on or about the June 28, 2019, and for some time prior thereto, and for some time prior thereto,
7 Defendants CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION
8 TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through
9 XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT
10 EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY SUPPORT
11 EMPLOYEES I through X, (by and through Defendant's authorized agents, servants, and
12 employees, acting within the course and scope of their employment), negligently and carelessly
13 owned, maintained, operated, occupied, and controlled the said premises, located at 2832 E.
14 Flamingo Rd., Las Vegas, Nevada 89121, in that said Defendant permitted, allowed and caused said
15 unsafe condition to remain even though Defendants CCSD, and/or VISION, and/or DOE
16 OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
17 COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
18 EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X,
19 and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, and each
20 of them, knew or, through the exercise of ordinary care and diligence, should have known, that said
21 premises was in an unsafe manner so as to create a defective and dangerous condition for anyone in
22 the area.
23
24

25
26 21. At all times relevant herein, Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE
27 INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
28 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL

1 DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY
2 SUPPORT EMPLOYEES I through X, failed to maintain the aforesaid premises in a reasonably
3 safe condition; and Defendants CCSD, and/or VISION, and/or DOE OWNERS I through X, and/or
4 ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
5 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL
6 DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY
7 SUPPORT EMPLOYEES I through X, and each of them, negligently, carelessly and recklessly
8 failed to inspect, repair and correct the said condition, or warn MARIO, and others within the area,
9 of the dangers therein.

11 22. At all times herein concerned or relevant to this action, Defendant CCSD, and/or DOE OWNERS I
12 through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through
13 XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or
14 DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION
15 TECHNOLOGY SUPPORT EMPLOYEES I through X, acted by and through Defendant's duly
16 authorized agents, servants, workmen and/or employees then and there acting within the course of
17 Defendant's employment and scope of Defendant's authority for the said Defendant.

19 23. That for some time prior to June 28, 2019, Defendant CCSD, and/or DOE OWNERS I through X,
20 and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX,
21 and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, negligently
22 failed to maintain and clean the computers and areas housing computers at said premises, located at
23 2832 E. Flamingo Rd., Las Vegas, Nevada 89121.

25 24. That as a result of the negligence of Defendant CCSD, and/or DOE OWNERS I through X, and/or
26 ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
27 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, the areas housing
28

1 computers at said premises, located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, developed
2 a major buildup of dust and other dangerous and hazardous particles and pollutants, that could
3 easily become airborne and cause serious injury to any person around the area.

4 25. That Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION
5 TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through
6 XX, and/or ROE EMPLOYERS XI through XX, employed Defendant VISION, and/or ROE
7 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, to perform Information
8 Technology Services in the area of the toxic buildup of dust and other particles.

9 26. That when Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION
10 TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through
11 XX, and/or ROE EMPLOYERS XI through XX, directed Defendant VISION, and/or ROE
12 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, it did so with a knowledge
13 of the dangers associated with its directive, but acted with a conscious disregard for the safety of
14 the personnel involved even though Defendant CCSD, and/or DOE OWNERS I through X, and/or
15 ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
16 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, was aware of the possible
17 and probable consequences of its grossly negligent and malicious behavior.

18 27. That Defendant VISION, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI
19 through XX, was aware of the dangers associated with the work requested by Defendant CCSD,
20 and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
21 COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
22 EMPLOYERS XI through XX, at said premises, located at 2832 E. Flamingo Rd., Las Vegas,
23 Nevada 89121, and nevertheless directed its employees to work in the toxic area with a conscious
24 and/or malicious intent.

disregard for the safety of its employees and with a knowledge of the probable harmful consequences of its grossly negligent and malicious behavior.

28. That on or about the June 28, 2019, Defendant VISION, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, instructed MARIO to perform Information Technology services and support for Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, at said premises, located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121.

29. That on or about the June 28, 2019, Defendant VISION, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, failed to provide MARIO with proper safety masks, supplies or other safety equipment, if any at all, and any said safety masks, supplies or other safety equipment provided to MARIO, if any at all, were negligently created, designed, manufactured, inspected and/or repaired by Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI through XX, and each of them.

30. That on or about the June 28, 2019, Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, (by and through Defendant's authorized agents, servants, and employees, acting within the course and scope of their employment), permitted and instructed the use of compressed Air, to clean the dust out of used computers, indoors, without proper ventilation, and without providing any safety masks, supplies or other safety equipment to MARIO, and others within the area, at said premises, located at 2832 E. Flamingo Rd., Las Vegas, Nevada

1 89121, and said compressed Air device(s) was negligently created, designed, manufactured,
2 inspected and/or repaired by Defendants DOE MANUFACTURER EMPLOYEE, I through X,
3 and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX,
4 and/or ROE MANUFACTURER, XI through XX, and each of them.

5
6 31. That the carelessness and negligence of Defendants CCSD, and/or VISION, and/or DOE OWNERS
7 I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI
8 through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX,
9 and/or DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION
10 TECHNOLOGY SUPPORT EMPLOYEES I through X, and each of them, in breaching a duty
11 owed to MARIO, which directly and proximately caused the injuries and damages to MARIO,
12 consisting in and of, but not limited to, the following acts, to wit:

13
14 (a) Failure to provide a safe premise for MARIO;

15 (b) Failure to warn MARIO, of the dangerous and hazardous condition then and there existing in
16 said premises;

17 (c) Failure to properly and adequately inspect the said dangerous condition to ascertain its hazardous
18 and dangerous condition;

19
20 (d) Actively created hazards to MARIO, and others, by blowing dust and other dangerous particles
21 in dangerous volumes into the air within an enclosed space, without sufficient ventilation;

22 (e) Failure to properly and adequately maintain said premises;

23 (f) Failure to provide proper safety masks, supplies or other safety equipment when the conditions
24 and activities indicated the need for the same;

25
26 (g) Defendants CCSD, and/or VISION, and/or DOE OWNERS I through X, and/or ROE
27 INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
28 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL

1 DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY
2 SUPPORT EMPLOYEES I through X, and each of them, had, or should have had, knowledge or
3 notice of the existence of the said dangerous and hazardous condition which existed on said premises.

4 32. Defendants CCSD, and/or VISION, and/or DOE OWNERS I through X, and/or ROE
5 INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
6 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL
7 DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY
8 SUPPORT EMPLOYEES I through X, and each of them, have violated certain statutes, ordinances
9 and building codes, which PLAINTIFF ROBERTS prays leave of Court to insert the exact statutes
10 and ordinances or codes at the time of the trial.
11

12 33. That on or about the June 28, 2019, MARIO, while lawfully upon said premises of Defendant CCSD,
13 and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
14 COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
15 EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X,
16 and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, and as a
17 direct and proximate result of the negligence and carelessness of Defendants CCSD, and/or VISION,
18 and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT
19 COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
20 EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X,
21 and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, and each
22 of them, MARIO was caused to suffer the injuries and damages hereinafter set forth when Defendant
23 permitted and instructed the use of compressed Air, to clean the dust out of used computers,
24 indoors, without proper ventilation, and without providing any safety masks, supplies or other
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1 safety equipment, at said premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121,
2 resulting in the injuries and damages as hereinafter more particularly alleged.

3 34. By reason of the premises and as a direct and proximate result of the aforesaid negligence and
4 carelessness of Defendants CCSD, and/or VISION, and/or DOE OWNERS I through X, and/or
5 ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
6 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL
7 DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY
8 SUPPORT EMPLOYEES I through X, and each of them, MARIO was otherwise injured in and
9 about the head, neck, back, legs, knees and heart and caused to suffer great pain of body and mind,
10 all or some of the same of which are chronic conditions, which may result in permanent disability
11 and are disabling, all to which MARIO is entitled to recover damages in an amount in excess of
12 Fifteen Thousand Dollars (\$15,000.00).

15 35. By reason of the premises, and as a direct and proximate result of the aforesaid negligence and
16 carelessness of Defendants CCSD, and/or VISION, and/or DOE OWNERS I through X, and/or
17 ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
18 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL
19 DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY
20 SUPPORT EMPLOYEES I through X, and each of them, MARIO, has been caused to incur
21 medical expenses, and will in the future be caused to expend monies for medical expenses and
22 additional monies for miscellaneous expenses incidental thereto, in a sum presently unascertainable.
23 MARIO may pray leave of Court to insert the total amount of the medical and miscellaneous
24 expenses when the same have been fully determined at the time of the trial for this action.

27 36. Prior to the injuries complained of herein, MARIO, was an able-bodied male, capable of engaging
28 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 Defendants CCSD, and/or VISION, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, and each of them, MARIO was caused to be disabled and was limited and restricted in MARIO's occupations and activities, which caused MARIO loss of wages in a presently unascertainable amount, the allegations of which MARIO may pray leave of Court to insert herein when the same shall be fully determined.

37. MARIO has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his reasonable attorney's fees, his litigation costs, and prejudgment interest.

38. That this Court has subject matter jurisdiction over this matter pursuant to NRS 4.370(1), as the matter in controversy exceeds Fifteen Thousand Dollars (\$15,000.00), exclusive of attorney's fees, interest, and costs.

39. That this Court has personal jurisdiction in this matter, as the incidents and occurrences that comprise the basis of this lawsuit took place in Clark County, Nevada.

SECOND CAUSE OF ACTION
(Respondeat Superior, Negligent Entrustment, Hiring, Training, and Supervision as to Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX)

40. MARIO incorporates by this reference all of the allegations of paragraphs 1 through 39, hereinabove, as though completely set forth herein.

41. Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through

1 XX, and/or ROE EMPLOYERS XI through XX, had a duty to properly hire, train, and supervise
2 all employees to ensure that the property mentioned hereinabove remained in a reasonably safe
3 condition.

4
5 42. That at all times pertinent hereto, Defendant CCSD, and/or DOE OWNERS I through X, and/or
6 ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
7 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, breached its above-
8 referenced duties by failing to properly hire, train and/or supervise Defendant DOE SCHOOL
9 DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY
10 SUPPORT EMPLOYEES I through X, in each of his/her duties and actions as employees of
11 Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION
12 TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through
13 XX, and/or ROE EMPLOYERS XI through XX.

14
15 43. In addition, as the employer of Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE
16 INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE
17 OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, is vicariously liable for
18 all damage caused by Defendant DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or
19 DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, as said
20 Defendant, was acting within the course and scope of each of his/her employment with Defendant
21 CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY
22 SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE
23 EMPLOYERS XI through XX, at the time of the subject incident described herein.

24
25
26 44. By reason of the premises and as a direct and proximate result of the aforesaid negligence and
27 carelessness of Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE
28 INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE

OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, MARIO was otherwise injured in and about the head, neck, back, legs, knees and heart and caused to suffer great pain of body and mind, all or some of the same of which are chronic conditions, which may result in permanent disability and are disabling, all to which MARIO is entitled to recover damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

45. By reason of the premises, and as a direct and proximate result of the aforesaid negligence and carelessness of Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, MARIO, 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. MARIO may 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.

46. Prior to the injuries complained of herein, MARIO, 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 Defendant CCSD, and/or DOE OWNERS I through X, and/or ROE INFORMATION TECHNOLOGY SUPPORT COMPANIES XI through XX, and/or ROE OWNERS XI through XX, and/or ROE EMPLOYERS XI through XX, and/or DOE SCHOOL DISTRICT EMPLOYEES I through X, and/or DOE INFORMATION TECHNOLOGY SUPPORT EMPLOYEES I through X, MARIO

1 was caused to be disabled and was limited and restricted in MARIO's occupations and activities,
2 which caused MARIO loss of wages in a presently unascertainable amount, the allegations of which
3 MARIO may pray leave of Court to insert herein when the same shall be fully determined.

- 4
5 47. MARIO has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action,
6 and is entitled to recover his reasonable attorney's fees, his litigation costs, and prejudgment
7 interest.

8 **THIRD CAUSE OF ACTION**

9 **(Negligence as to Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or**
10 **DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX,**
and/or ROE MANUFACTURER, XI through XX)

- 11 48. MARIO repeats and realleges those allegations set forth in paragraph 1 through 47 of the above
12 as fully set forth herein.

- 13 49. Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
14 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
15 MANUFACTURER, XI through XX, and each of them, had a duty to exercise reasonable care in
16 the designing, researching, manufacturing, marketing, supplying, promoting, packaging, selling
17 and/or distributing the device(s) utilizing and/or producing compressed Air, to clean the dust out
18 of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and
19 the safety masks, supplies or other safety equipment provided to MARIO, if any, at the time the
20 subject incident occurred, including a duty to assure that these products would not cause users to
21 suffer unreasonable, dangerous side effects.

- 22
23
24 50. Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
25 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
26 MANUFACTURER, XI through XX, and each of them, failed to exercise ordinary care in the
27 designing, researching, manufacturing, marketing, supplying, promoting, packaging, selling,
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1 testing, quality assurance, quality control, and/or distributing the device(s) utilizing and/or
2 producing compressed Air, to clean the dust out of the computers, at the premises located at 2832
3 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety
4 equipment provided to MARIO, if any, at the time the subject incident occurred, into interstate
5 commerce in that Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE
6 DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
7 MANUFACTURER, XI through XX, and each of them, knew or should have known that using
8 the device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers,
9 at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
10 supplies or other safety equipment provided to MARIO, if any, at the time the subject incident
11 occurred, created a high risk of unreasonable and dangerous side effects.
12
13

14 51. The negligence of the Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or
15 DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or
16 ROE MANUFACTURER, XI through XX, and each of them, their agents, servants, and/or
17 employees, included, but was not limited to, the following acts and/or omissions:
18

- 19 a. Manufacturing, producing, promoting, formulating, creating, and/or designing the
20 device(s) utilizing and/or producing compressed Air, to clean the dust out of the
21 computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121,
22 and the safety masks, supplies or other safety equipment provided to MARIO, if any, at
23 the time the subject incident occurred, without thorough testing;
24
- 25 b. Manufacturing, producing, promoting, formulating, creating, and/or the device(s)
26 utilizing and/or producing compressed Air, to clean the dust out of the computers, at
27 the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety
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1 masks, supplies or other safety equipment provided to MARIO, if any, at the time the
2 subject incident occurred, without adequate testing;

3 c. Not conducting sufficient testing programs to determine whether or not the device(s)
4 utilizing and/or producing compressed Air, to clean the dust out of the computers, at
5 the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety
6 masks, supplies or other safety equipment provided to MARIO, if any, at the time the
7 subject incident occurred, were safe for use; in that Defendants DOE
8 MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
9 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
10 MANUFACTURER, XI through XX, and each of them, herein knew or should have
11 known that the device(s) utilizing and/or producing compressed Air, to clean the dust
12 out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas,
13 Nevada 89121, and the safety masks, supplies or other safety equipment provided to
14 MARIO, if any, at the time the subject incident occurred, were unsafe and unfit for use
15 by reason of the dangers to its expected users;

16 d. Selling the device(s) utilizing and/or producing compressed Air, to clean the dust out
17 of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada
18 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if
19 any, at the time the subject incident occurred, without making proper and sufficient
20 tests to determine the dangers to its expected users;

21 e. Negligently failing to adequately and correctly warn the public, the medical and
22 healthcare profession, and the FDA of the dangers with the device(s) utilizing and/or
23 producing compressed Air, to clean the dust out of the computers, at the premises
24 located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
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1 supplies or other safety equipment provided to MARIO, if any, at the time the subject
2 incident occurred;

3 f. Failing to provide adequate instructions regarding safety precautions to be observed by
4 users, handlers, and persons who would reasonably and foreseeably come into contact
5 with, and more particularly, use, the device(s) utilizing and/or producing compressed
6 Air, to clean the dust out of the computers, at the premises located at 2832 E. Flamingo
7 Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment
8 provided to MARIO, if any, at the time the subject incident occurred;

9
10 g. Failing to test the device(s) utilizing and/or producing compressed Air, to clean the dust
11 out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas,
12 Nevada 89121, and the safety masks, supplies or other safety equipment provided to
13 MARIO, if any, at the time the subject incident occurred, and/or failing to adequately,
14 sufficiently and properly test the device(s) utilizing and/or producing compressed Air,
15 to clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd.,
16 Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment
17 provided to MARIO, if any, at the time the subject incident occurred;

18
19 h. Negligently advertising and recommending the use of the device(s) utilizing and/or
20 producing compressed Air, to clean the dust out of the computers, at the premises
21 located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
22 supplies or other safety equipment provided to MARIO, if any, at the time the subject
23 incident occurred, without sufficient knowledge as to its dangerous propensities;

24 i. Negligently representing that the device(s) utilizing and/or producing compressed Air,
25 to clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd.,
26 Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment
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provided to MARIO, if any, at the time the subject incident occurred, were safe for use for its intended purpose, when, in fact, they were unsafe;

- j. Negligently designing the device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if any, at the time the subject incident occurred, in a manner which was dangerous to its users;
- k. Negligently manufacturing the device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if any, at the time the subject incident occurred, in a manner which was dangerous to its users;
- l. Negligently producing the device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if any, at the time the subject incident occurred, in a manner which was dangerous to its users;
- m. Negligently assembling the device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if any, at the time the subject incident occurred, in a manner which was dangerous to its users;
- n. Concealing information from the MARIO in knowing that the device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers, at the premises

1 located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
2 supplies or other safety equipment provided to MARIO, if any, at the time the subject
3 incident occurred, were unsafe, dangerous, and/or non-conforming with FDA
4 regulations;

5
6 o. Negligently failing to create protocols and safety systems for those purchasing, using
7 or handling the device(s) utilizing and/or producing compressed Air, to clean the dust
8 out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas,
9 Nevada 89121, and the safety masks, supplies or other safety equipment provided to
10 MARIO, if any, at the time the subject incident occurred;

11
12 p. Negligently failing to adequately warn those purchasing, using or handling the
13 device(s) utilizing and/or producing compressed Air, to clean the dust out of the
14 computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121,
15 and the safety masks, supplies or other safety equipment provided to MARIO, if any, at
16 the time the subject incident occurred; and

17
18 q. Negligently informing those purchasing, using or handling the device(s) utilizing
19 and/or producing compressed Air, to clean the dust out of the computers, at the
20 premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety
21 masks, supplies or other safety equipment provided to MARIO, if any, at the time the
22 subject incident occurred, that said products were approved by the FDA to be used as
23 directed in this matter.

24 52. Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
25 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
26 MANUFACTURER, XI through XX, and each of them, under-reported, underestimated and
27 downplayed the serious danger of the device(s) utilizing and/or producing compressed Air, to
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1 clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas,
2 Nevada 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if
3 any, at the time the subject incident occurred.

4 53. Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
5 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
6 MANUFACTURER, XI through XX, and each of them, were negligent in the designing,
7 researching, supplying, manufacturing, promoting, packaging, distributing, testing, advertising,
8 warning, marketing and selling of the device(s) utilizing and/or producing compressed Air, to
9 clean the dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas,
10 Nevada 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if
11 any, at the time the subject incident occurred, in that Defendants DOE MANUFACTURER
12 EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE
13 DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI through XX, and each of
14 them,;
15

16
17 a. Failed to accompany their product with proper and/or accurate warnings regarding all
18 possible adverse side effects associated with the use of the device(s) utilizing and/or
19 producing compressed Air, to clean the dust out of the computers, at the premises
20 located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
21 supplies or other safety equipment provided to MARIO, if any, at the time the subject
22 incident occurred;
23

24 b. Failed to accompany their product with proper warnings regarding all possible adverse
25 side effects concerning any failure and/or malfunction of the device(s) utilizing and/or
26 producing compressed Air, to clean the dust out of the computers, at the premises
27 located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
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1 supplies or other safety equipment provided to MARIO, if any, at the time the subject
2 incident occurred;

3 c. Failed to accompany their product with accurate warnings regarding the risk of all
4 possible adverse side effects concerning the device(s) utilizing and/or producing
5 compressed Air, to clean the dust out of the computers, at the premises located at 2832
6 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety
7 equipment provided to MARIO, if any, at the time the subject incident occurred;

8 d. Failed to conduct adequate testing and post-marketing surveillance to determine safety
9 of the device(s) utilizing and/or producing compressed Air, to clean the dust out of the
10 computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121,
11 and the safety masks, supplies or other safety equipment provided to MARIO, if any, at
12 the time the subject incident occurred;

13 e. Failed to accompany the product with accurate warnings regarding the risk associated
14 with the device(s) utilizing and/or producing compressed Air, to clean the dust out of
15 the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada
16 89121, and the safety masks, supplies or other safety equipment provided to MARIO, if
17 any, at the time the subject incident occurred;

18 f. Failed to conduct adequate testing, including human factors to determine all risks to
19 individuals using the device(s) utilizing and/or producing compressed Air, to clean the
20 dust out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas,
21 Nevada 89121, and the safety masks, supplies or other safety equipment provided to
22 MARIO, if any, at the time the subject incident occurred; and

23 g. Were otherwise careless and/or negligent.
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1 54. Despite the fact that Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or
2 DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or
3 ROE MANUFACTURER, XI through XX, and each of them, knew or should have known that
4 the device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers,
5 at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
6 supplies or other safety equipment provided to MARIO, if any, at the time the subject incident
7 occurred, caused unreasonably dangerous side effects and had a propensity to produce injuries or
8 other health hazards, Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or
9 DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or
10 ROE MANUFACTURER, XI through XX, and each of them, continued to market, manufacture,
11 distribute and/or sell the device(s) utilizing and/or producing compressed Air, to clean the dust
12 out of the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121,
13 and the safety masks, supplies or other safety equipment provided to MARIO, if any, at the time
14 the subject incident occurred.

15
16
17 55. Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
18 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
19 MANUFACTURER, XI through XX, and each of them, negligently sold, distributed, and/or
20 manufactured the device(s) utilizing and/or producing compressed Air, to clean the dust out of
21 the computers, at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the
22 safety masks, supplies or other safety equipment provided to MARIO, if any, at the time the subject
23 incident occurred, as to allow these products to produce injuries or other health hazards.

24
25 56. By reason of the premises and as a direct and proximate result of the aforesaid negligence and
26 carelessness of Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE
27 DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
28

1 MANUFACTURER, XI through XX, and each of them, MARIO was otherwise injured in and
2 about the head, neck, back, legs, knees and heart and caused to suffer great pain of body and mind,
3 all or some of the same of which are chronic conditions, which may result in permanent disability
4 and are disabling, all to which MARIO is entitled to recover damages in an amount in excess of
5 Fifteen Thousand Dollars (\$15,000.00).
6

7 57. By reason of the premises, and as a direct and proximate result of the aforesaid negligence and
8 carelessness of Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE
9 DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
10 MANUFACTURER, XI through XX, and each of them, MARIO, has been caused to incur medical
11 expenses, and will in the future be caused to expend monies for medical expenses and additional
12 monies for miscellaneous expenses incidental thereto, in a sum presently unascertainable. MARIO
13 may pray leave of Court to insert the total amount of the medical and miscellaneous expenses when
14 the same have been fully determined at the time of the trial for this action.
15

16 58. Prior to the injuries complained of herein, MARIO, was an able-bodied male, capable of engaging
17 in all activities for which she was otherwise suited. By reason of the condition of the premises
18 described herein, and as a direct and proximate result of the negligence of Defendants DOE
19 MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I
20 through X, and/or ROE DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI
21 through XX, and each of them, MARIO was caused to be disabled and was limited and restricted
22 in MARIO's occupations and activities, which caused MARIO loss of wages in a presently
23 unascertainable amount, the allegations of which MARIO may pray leave of Court to insert herein
24 when the same shall be fully determined.
25
26

27 59. By reason of the negligent acts and breach of the applicable standard of care by Defendants DOE
28 MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I

1 through X, and/or ROE DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI
2 through XX, and each of them, and as a direct and proximate result thereof, MARIO has found it
3 necessary to secure the services of an attorney in order to prosecute this action, has sustained
4 damages to the extent of such attorney fees, and MARIO is entitled to reasonable attorney's fees,
5 case costs and prejudgment interest.
6

7 **FOURTH CAUSE OF ACTION**

8 **(Strict Product Liability as to Defendants DOE MANUFACTURER EMPLOYEE, I**
9 **through X, and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER,**
10 **XI through XX, and/or ROE MANUFACTURER, XI through XX)**

11 60. MARIO repeats and realleges those allegations set forth in paragraph 1 through 59 of the above
12 as fully set forth herein.

13 61. MARIO is in the class of persons that Defendants DOE MANUFACTURER EMPLOYEE, I
14 through X, and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI
15 through XX, and/or ROE MANUFACTURER, XI through XX, and each of them, should
16 reasonably have foreseen as being subject to the harm caused by the defects in designing,
17 manufacturing, marketing, supplying, promoting, packaging, selling and/or distributing the
18 device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers, at the
19 premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks, supplies
20 or other safety equipment provided to MARIO, if any, at the time the subject incident occurred.

21 62. Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
22 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
23 MANUFACTURER, XI through XX, and each of them, which are engaged in the business of
24 designing, manufacturing, distributing and selling the device(s) utilizing and/or producing
25 compressed Air, to clean the dust out of the computers, at the premises located at 2832 E. Flamingo
26 Rd., Las Vegas, Nevada 89121, and the safety masks, supplies or other safety equipment provided
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1 to MARIO, if any, at the time the subject incident occurred, placed said products into the stream
2 of commerce, in a defective and unreasonably dangerous condition, even though the foreseeable
3 risks exceeded the benefits associated with the design and/or formulation of said products.

4 63. The device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers,
5 at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
6 supplies or other safety equipment provided to MARIO, if any, at the time the subject incident
7 occurred, were defective in design and formulation and unreasonably dangerous when said
8 products left the hands of Defendants DOE MANUFACTURER EMPLOYEE, I through X,
9 and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX,
10 and/or ROE MANUFACTURER, XI through XX, and each of them, and when said products
11 reached the users and consumers, without substantial alteration in the condition in which they
12 were sold.
13
14

15 64. The device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers,
16 at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
17 supplies or other safety equipment provided to MARIO, if any, at the time the subject incident
18 occurred, were designed, distributed and sold by Defendants DOE MANUFACTURER
19 EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE
20 DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI through XX, and each of
21 them, and were unreasonable and dangerously defective beyond the extent contemplated by
22 ordinary persons with ordinary knowledge regarding said products.
23

24 65. The device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers,
25 at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
26 supplies or other safety equipment provided to MARIO, if any, at the time the subject incident
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1 occurred, were defective due to inadequate warning and/or inadequate trials, in vivo and in vitro
2 testing and study, and inadequate reporting regarding the results of such studies.

3 66. The device(s) utilizing and/or producing compressed Air, to clean the dust out of the computers,
4 at the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, and the safety masks,
5 supplies or other safety equipment provided to MARIO, if any, at the time the subject incident
6 occurred, were defective due to inadequate post-marketing warning(s) or instruction(s) because,
7 after Defendants DOE MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER
8 EMPLOYEE, I through X, and/or ROE DESIGNER, XI through XX, and/or ROE
9 MANUFACTURER, XI through XX, and each of them, knew or should have known of the risk
10 of injury from these products, said Defendants failed to provide adequate warnings to each and
11 every user and recipient, and more specifically to MARIO in this case and MARIO's community,
12 and continued to promote the products as safe and effective, despite the known defects.
13
14

15 67. The product defects alleged above were a substantial contributing cause of the injuries suffered
16 by MARIO, as alleged herein.

17 68. WHEREFORE, MARIO prays for judgment against Defendants DOE MANUFACTURER
18 EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I through X, and/or ROE
19 DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI through XX, and each of
20 them, jointly and severally, for an amount in excess of Fifteen Thousand Dollars (\$15,000.00) in
21 compensatory damages, plus interest, costs and attorneys' fees.
22

23 69. That as a direct and proximate result of the negligence of the Defendants DOE
24 MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I
25 through X, and/or ROE DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI
26 through XX, and each of them, MARIO has suffered non-economic damages for an amount in
27 excess of Fifteen Thousand Dollars (\$15,000.00).
28

1 70. By reason of the negligent acts and breach of the applicable standard of care by Defendants DOE
2 MANUFACTURER EMPLOYEE, I through X, and/or DOE DESIGNER EMPLOYEE, I
3 through X, and/or ROE DESIGNER, XI through XX, and/or ROE MANUFACTURER, XI
4 through XX, and as a direct and proximate result thereof, MARIO has found it necessary to secure
5 the services of an attorney in order to prosecute this action, has sustained damages to the extent
6 of such attorney fees, and MARIO is entitled to reasonable attorneys' fees, case costs and
7 prejudgment interest.
8

9 **PRAYER FOR RELIEF:**

- 10 1. General damages for MARIO, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
11
12 2. Special damages for said Plaintiff's medical and miscellaneous expenses as of this date, plus
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable
14 amount;
15
16 3. Special damages for lost wages in a presently unascertainable amount, and/or diminution of
17 the earning capacity of MARIO, plus possible future loss of earnings and/or diminution of said MARIO's
18 earning capacity in a presently unascertainable amount;
19
20 4. Punitive and exemplary damages, for implied malice against all Defendants, in an amount in
21 excess of fifteen thousand dollars (\$15,000.00);
22
23 5. Costs of this suit;
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25 6. Prejudgment Interest;
26
27 7. Attorney's fees; and
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1 8. For such other and further relief as to the Court may seem just and proper in the premises.

2 DATED this 8th day of December, 2020.

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 Road

10 Building 2 Suite 300

11 Las Vegas, Nevada 89119

12 *Attorneys for Plaintiff*