IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIA DEL ROSARIO CERVANTES-GUEVARA; Petitioner
vs.
CLARK COUNTY DISTRICT COURT, THE HONORABLE JUDGE ERIKA BALLOU, DISTRICT JUDGE, DEPARTMENT 23, Respondents,
And
MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability corporation; Real Parties In Interest.
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Supreme Court No Flectronically Filed Pistrict Court No. 20289996 2.m. Elizabeth A. Brown Clerk of Supreme Court

PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS

DATED this 2nd day of July 2021.

/s/ Evan Simonsen

EVAN SIMONSEN

Nevada Bar No.: 13762

BIGHORN LAW

2225 E. Flamingo Rd.

Building 2, Suite 300

Las Vegas, Nevada 89119

Phone: (702) 333-1111

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Attorney for Petitioner

PETITIONER'S APPENDIX

Number	Document	Filing Date	Page
1	Complaint	1/7/2020	0001-0007
2	Emergency Directive 009 (Revised)		0008-0010
3	Emergency Directive 026		0011-0014
4	Admin. Order 20-17		0015-0047
5	Affidavit of Due Diligence Maria		0048-0050
	Del Rosario dated 3/12/2020		
6	CERV-GUEV Affidavit of Service		0051-0053
	- Thor Development dated 7/2/2021		
7	Cervantes Guevara Motion to		0054-0073
	Enlarge Time for Service		
8	Maria Del Rosario Cervantes	6/5/2020	0074-0075
	Guevara E-Service Decision and		
	Order		
9	Affidavit of Publication	11/12/2020	0076
10	E-Filed Plaintiff's Ex Parte Motion	10/28/2020	0077-0098
	to Enlarge Time for Service and		
1.1	Service by Publication	12/16/2020	0000
11	Maria Del Rosario-Cervantes E-	12/16/2020	0099
12	Service Minute Order Cervantes-Guevara 12/15/2020		0100 0100
12			0100-0108
13	hearing transcripts Judge Gonzalez Order Tolling SOL	12/10/2020	0109-0111
14	E-Filed Cerv Guev – Motion for		0109-0111
14	Reconsideration	12/30/2020	0112-0132
15	Court Transcript		0133-0141
16	Maria Del Rosario Cervantes-	3/22/2021	0133-0141
10	Guevara E-Service Order Denying	312212021	0172-0170
	Motion for Reconsideration		
17	Justice Gibbons Decision	5/4/2021	0147-0154
- /	tublice Sideonib Decision	2 2021	011/ 0101

/s/ Evan Simonsen

JACQUELINE R. BRETELL, ESQ.

Nevada Bar No.: 12335

EVAN K. SIMONSEN, ESQ.

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CASE NO: A-20-808004-C

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COMP

SIRIA L. GUTIERREZ, ESQ.

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Phone: (702) 333-1111 Email: Siria@BighornLaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO:

DEPT. NO:

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MARIA DEL ROSARIO CERVANTES-9 GUEVARA;

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Plaintiffs,

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MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-X,

Defendants.

COMPLAINT

Plaintiff, MARIA DEL ROSARIO CERVANTES-GUEVARA, by and through her attorney,

SIRIA L. GUTEIRREZ, ESQ., of the Law Firm of **BIGHORN LAW**, and for Plaintiff's causes of action against the Defendants, and each of them, complains and alleges as follows:

GENERAL ALLEGATIONS

- 1. Plaintiff, MARIA DEL ROSARIO CERVANTES-GUEVARA (hereinafter "MARIA" and/or "PLAINTIFF"), was at all times relevant to this action a resident of Clark County, Nevada.
- 2. Defendant, MARK THOMAS ANDERSON (hereinafter "MARK" and/or "DEFENDANT" and/or "DEFENDANTS"), was at all times relevant to this action a resident of Clark County, Nevada.

Page 1 of 7

Case Number: A-20-808004-C

App0001

- 4. Defendant, THOR DEVELOPMENT, LLC (hereinafter "THOR" and/or "DEFENDANT" and/or "DEFENDANTS"), was at all times relevant to this action a limited liability corporation authorized to conduct business in Clark County, Nevada.
- 5. Upon information and belief, at all times relevant to this action, Defendant MARK and/or Defendant DOE DRIVER and/or Defendant DOE EMPLOYEE, is and was an employee of Defendant THOR and/or Defendant ROE EMPLOYER, and/or Defendant ROE COMPANY, and was driving a vehicle, namely a 2016 Ford F150 (hereinafter "Defendants' Vehicle") owned by Defendant MARK, and/or Defendant SHARI and/or Defendant THOR and/or Defendant ROE EMPLOYER, and/or Defendant ROE COMPANY, and was acting within the scope of said employment when he was involved in the subject automobile collision on February 28, 2018.
- 6. Upon information and belief, at all times relevant to this action, Defendant THOR, and/or Defendant DOE OWNER, and/or Defendant ROE OWNER, is and was a Nevada Corporation, licensed and authorized to transact business within Clark County, Nevada, and was the owner of Defendants' Vehicle.
- 7. Upon information and belief, at all times relevant to this action, the Defendant automobile owners, Defendant DOE OWNERS I-V, are and were residents of Clark County, Nevada.
- 8. Upon information and belief, at all times mentioned herein, Defendant DOE DRIVERS I-V were the drivers of the vehicles owned by Defendant DOE OWNERS I-V and/or Defendant ROE OWNERS I-V, and were acting in the course and scope of his/her/their employment with ROE EMPLOYERS I-X and/or ROE COMPANIES I-X at the time of the events described herein.
- 9. At all times relevant to this action, Defendants ROE EMPLOYERS I-X, were an entity doing business in the State of Nevada and were directing the course and scope of the actions of DEFENDANTS, and each of them, at the time of the incidents herein described.

11. The true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants, DOES I through V and ROES I through X, are unknown to PLAINTIFF, who therefore sues said Defendants by such fictitious names. PLAINTIFF is informed and believes and thereon alleges that each of the Defendants designated herein as DOE and ROE are responsible in some manner for the events and happenings referred to and caused damages proximately to PLAINTIFF as herein alleged, and that PLAINTIFF will ask leave of this Court to amend this Complaint to insert the true names and capacities of DOES I through V and ROES I through X, when the same have been ascertained, and to join such Defendants in this action.

FIRST CLAIM FOR RELIEF

(Negligence and Negligence Per Se: February 28, 2018 Automobile Collision)

- 12. PLAINTIFF incorporates by this reference all of the allegations of paragraphs 1 through 11, hereinabove, as though completely set forth herein.
- 13. On or about February 28, 2018, PLAINTIFF MARIA was operating a motor vehicle, believed to be a 2013 Ford Sedan (hereinafter referred to as "Plaintiff's Vehicle"), on the public streets of Clark County, Nevada.
- 14. At that place and time, DEFENDANT MARK and/or Defendant DOE DRIVER and/or Defendant DOE EMPLOYEE, was operating Defendants' Vehicle owned by Defendant THOR, and/or Defendant DOE OWNER and/or Defendant ROE OWNER on the public streets of Clark County, Nevada.
- 15. At all times relevant hereto, Defendant MARK, and/or Defendant DOE DRIVER and/or Defendant DOE EMPLOYEE, was acting within the scope of his employment with and for Defendant THOR, and/or Defendant ROE EMPLOYER, and/or Defendant ROE COMPANY.

- 16. At that place and time, DEFENDANT MARK, and/or Defendant DOE DRIVER and/or Defendant DOE EMPLOYEE, negligently, recklessly, and carelessly caused Defendants' Vehicle to collide with the Plaintiff's Vehicle.
- 17. At the time of the accident herein complained of, and immediately prior thereto, Defendants, and each of them, in breaching a duty owed to PLAINTIFF, were negligent and careless, inter alia, in the following particulars:
 - A. In failing to keep Defendants' Vehicle under proper control;
 - B. In operating Defendants' Vehicle without due caution for the rights of the Plaintiffs;
 - C. In failing to keep a proper lookout for Plaintiff's Vehicle;
 - D. In failing to use due care in Defendants' operation of Defendants' Vehicle;
 - E. Respondeat superior;
 - F. The Defendants, and each of them, violated certain state and local statutes, rules, regulations, codes and ordinances, and PLAINTIFF will pray leave of Court to insert the exact citations at the time of trial.
- 18. By reason of the premises, and as a direct and proximate result of the aforesaid negligence and carelessness of Defendants, and each of them, PLAINTIFF, suffered physical injury and was otherwise injured in and about Plaintiff's neck, back, legs, arms, organs, and systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or some of the same is chronic and may be permanent and disabling, all to Plaintiff's damage in an amount in excess of \$10,000.00.
- 19. By reason of the premises, and as a direct and proximate result of the aforesaid negligence and carelessness of the Defendants, and each of them, PLAINTIFF has been caused to expend monies for medical and miscellaneous expenses, and will in the future be caused to expend additional monies for medical expenses and miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of Court will be requested to include said additional damages when the same have been fully determined.

- 21. PLAINTIFF has been required to retain the law firm of **BIGHORN LAW** to prosecute this action, and are entitled to recover Plaintiff's attorney's fees, case costs and prejudgment interest.
- 22. As a further direct and proximate result of the aforesaid negligence of Defendants and each of them, PLAINTIFF has incurred property damage and other incidental damages in a sum to be determined at the time of trial.

SECOND CLAIM FOR RELIEF

(Vicarious Liability)

- 23. PLAINTIFF incorporates by this reference all of the allegations of paragraphs 1 through 22, hereinabove, as though completely set forth herein.
- 24. That at all relevant times herein, Defendant MARK and/or DOE DRIVER, was employed by, and was an agent, servant and/or employee of Defendant THOR.
- 25. That the negligent acts complained of herein were committed in the course and scope of Defendant MARK and/or Defendant DOE DRIVER's employment for Defendant THOR, in that they were committed while on duty and in furtherance of Defendant THOR's normal business services.
- 26. As the employer of Defendant MARK, Defendant THOR is responsible for all of the negligent acts committed by Defendant MARK and/or DOE DRIVER

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1	27. PLAINTIFF has been required to retain the law firm of BIGHORN LAW to prosecute this
2	action, and are entitled to recover Plaintiffs' attorney's fees, case costs and prejudgment interest.
3	THIRD CLAIM FOR RELIEF
4	(Negligent Hiring, Training and Supervision)
5	28. PLAINTIFF incorporates by this reference all of the allegations of paragraphs 1 through 27,
6	hereinabove, as though completely set forth herein.
7	29. That Defendant THOR owed Plaintiff a duty of care.
8	30. That Defendant THOR breached that duty of care by negligently hiring, training, and/or
9	supervising Defendant MARK and/or DOE DRIVER.
10	31. As a direct and proximate result of the aforementioned negligence, Plaintiff suffered damages
11	as set forth herein.
12	32. PLAINTIFF has been required to retain the law firm of BIGHORN LAW to prosecute this
13	action, and are entitled to recover Plaintiff's attorney's fees, case costs and prejudgment interest.
14	FOURTH CLAIM FOR RELIEF
15	(Negligent Entrustment)
16	33. PLAINTIFF incorporates by this reference all of the allegations of paragraphs 1 through 32,
17	hereinabove, as though completely set forth herein.
18	34. That Defendant THOR owed Plaintiffs a duty of care.
19	35. That Defendant THOR breached that duty of care by knowingly entrusting Defendants'
20	Vehicle to an incompetent or inexperienced person, namely Defendant MARK and/or DOE
21	DRIVER.
22	36. As a direct and proximate result of the aforementioned negligence, Plaintiffs suffered
23	damages as set forth herein.
24	37. PLAINTIFF has been required to retain the law firm of BIGHORN LAW to prosecute this
25	action, and are entitled to recover Plaintiffs' attorney's fees, case costs and prejudgment interest.
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27	Page 6 of 7
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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, expressly reserving the right herein to include all items of damage, demand judgment against the Defendants, and each of them, as follows:

- 1. General damages for Plaintiff MARIA DEL ROSARIO CERVANTES-GUEVARA in an amount in excess of \$10,000.00;
- 2. Special damages for Plaintiff MARIA DEL ROSARIO CERVANTES-GUEVARA's medical and miscellaneous expenses as of this date, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
- 3. Special damages for Plaintiff MARIA DEL ROSARIO CERVANTES-GUEVARA's lost wages in a presently unascertainable amount, and/or diminution of the earning capacity of said Plaintiff, plus possible future loss of earnings and/or diminution of said Plaintiff's earning capacity in a presently unascertainable amount;
- 4. Special damages for Plaintiff MARIA DEL ROSARIO CERVANTES-GUEVARA's incurred property damage and other incidental damages;
 - 5. Costs of this suit, attorney's fees, and prejudgment interest; and
 - 6. Any other relief as to the Court may seem just and proper in the premises.

DATED this 6th day of January, 2020.

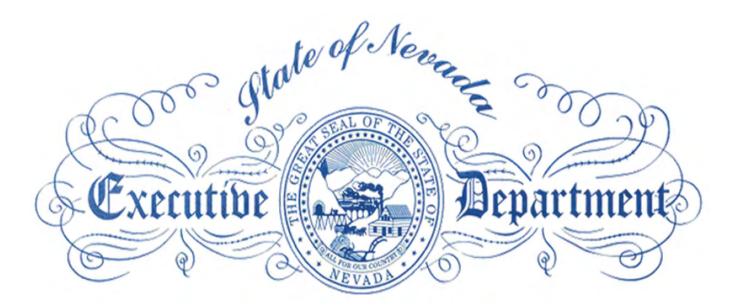
BIGHORN LAW

By: /s/ Siria L. Gutierrez
SIRIA L. GUTIERREZ, ESQ.
Nevada Bar No.: 11981
716 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiff

Skip to Main Content



Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY DIRECTIVE 009 (REVISED)

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, the World Health Organization (WHO) and United States Centers for Disease Control and Prevention (CDC) have advised that there is a correlation between density of persons gathered and the risk of transmission of COVID-19; and

WHEREAS, as of March 31, 2020, the State of Nevada Department of Health and Human Services is reporting 1,113 positive cases of COVID-19, and 17 deaths resulting from COVID-19; and

WHEREAS, close proximity to other persons is currently contraindicated by public health and medical best practices to combat COVID-19; and

WHEREAS, efforts to treat, prevent, or reduce the spread of COVID-19 may make it medically necessary and reasonable to require individuals to remain in isolation or quarantine at their homes or otherwise remain indoors; and

WHEREAS, for the reasons stated herein, courts across Nevada, in consultation with the Chief Justice of the Nevada Supreme Court, have limited their operations to essential matters during the pendency of the COVID-19 pandemic; and

WHEREAS, certain legal actions and proceedings are subject to timelines and requirements that are impracticable during a period of a public health emergency and reduced court operations; and

WHEREAS, certain governmental and quasi-governmental licenses and permits require periodic renewal and may expire during a time when governmental resources necessary for renewal are unavailable or less accessible to the public; and

WHEREAS, NRS 414.060 outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, NRS 414.070 outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

question but that the Legislature intended to give to the Governor the broadest possible powers consistent with constitutional government in a time of dire emergency"; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada":

NOW, THEREFORE by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020 Emergency Declaration,

IT IS HEREBY ORDERED THAT:

SECTION 1:	Declaration of Emergency Directive 009 dated March 31, 2020 is hereby amended by this Directive, effective April 1, 2020.
SECTION 2:	Any specific time limit set by state statute or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30 days from the date the state of emergency declared on March 12, 2020 is terminated.
SECTION 3:	All licenses and permits issued by the State of Nevada, Boards, Commissions, Agencies, or political subdivisions of the State of Nevada that expire or are set to expire during the period the Declaration of Emergency dated March 12, 2020 is in effect shall be extended for a period of 90 days from the current expiration date, or 90 days from the date the state of emergency declared on March 12, 2020 is terminated, whichever is later, if reduced government operations due to the state of emergency makes timely renewal of the license or permit impracticable or impossible.
SECTION 4:	Any person who is subject to the provisions of NRS 76.130 and whose annual business license renewal fee becomes due during the period the Declaration of Emergency dated March 12, 2020 is in effect shall be entitled to a period of 60 days from the date the state of emergency declared on March 12, 2020 is terminated to pay the fee without suffering any of the consequences or penalties resulting from the application of subsections 4 and 5 of that statute. This provision shall be construed to include the penalties described in Title 7 of NRS for failure to timely file an annual list of the persons with managerial authority or control over a business entity; except that no person who has paid the fee required by NRS 76.130 prior to the due date as extended by this Directive shall be entitled to a refund thereof by virtue of this order.
SECTION 5:	This Directive shall remain in effect until the state of emergency declared on March 12, 2020 is terminated or unless renewed by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.

2020-04-01 Declaration of Emergency Directive 009 Stay at Home (Revised)



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 1st day of April, in the year two thousand twenty..

Governor of the State of Nevada

Secretary of State

Deputy Secretary of State

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7/2/2021

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Skip to Main Content



Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY DIRECTIVE 026

WHEREAS, in late 2019, the United States Centers for Disease Control and Prevention began monitoring an outbreak of respiratory illness caused by a novel coronavirus first identified in Wuhan, Hubei Province, China; and

WHEREAS, on February 11, 2020, the International Committee on Taxonomy of Viruses named this novel coronavirus "severe acute respiratory syndrome coronavirus 2 (SARS-Co V-2);" and

WHEREAS, on February 11, 2020, the World Health Organization named the disease caused by SARS-CoV-2, "COVID-19;" and

WHEREAS, the World Health Organization advises that the novel coronavirus that causes COVID-19 virus is highly contagious, and spreads through respiratory transmission, and direct and indirect contact with infected persons and surfaces; and

WHEREAS, the World Health Organization advises that respiratory transmission occurs through both droplet and airborne transmission, where droplet transmission occurs when a person is within 6 feet of someone who has respiratory symptoms like coughing or sneezing, and airborne transmission may occur when aerosolized particles remain suspended in the air and is inhaled; and

WHEREAS, the World Health Organization advises that contact transmission occurs by direct contact with infected people or indirect contact with surfaces contaminated by the novel coronavirus; and

WHEREAS, some persons with COVID-19 may exhibit no symptoms but remain highly infectious; and

WHEREAS, on March 5, 2020, Clark County and Washoe County both reported the first known cases of COVID-19 in the State of Nevada; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic; and

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 14, 2020, I formed a medical advisory team to provide medical guidance and scientifically based recommendations on measures Nevada could implement to better contain and mitigate the spread of COVID-19; and

WHEREAS, infectious disease and public health experts advised that minimizing interpersonal contact slows the rate at which the disease spreads, and is necessary to avoid overwhelming healthcare systems, commonly referred to as "flattening the curve"; and

WHEREAS, since the March 12, 2020 Declaration of Emergency, I have issued 25 Directives pursuant to that order to provide for the safety, wellbeing, and public health of Nevadans and the administration of the State of Nevada; and

WHEREAS, these Directives were promulgated to reduce interpersonal contact and promote social distancing to flatten the curve; and

WHEREAS, on April 21, 2020, the National Governors Association issued guidance for a staged reopening that protects the public's health while laying a strong foundation for long-term economic recovery; and

WHEREAS, on April 30, 2020, I introduced the *Nevada United: Roadmap to Recovery* plan that outlined a phased approach to reopening Nevada businesses and industry; and

WHEREAS, the *Nevada United: Roadmap to Recovery* plan set forth a collaborative partnership between state and local governments that included the formation of the Local Empowerment Advisory Panel ("LEAP") to serve as a resource to local governments and local communities; and

WHEREAS, on May 9, 2020, the State of Nevada entered Phase One of the *Nevada United: Roadmap to Recovery* plan; and

WHEREAS, on May 29, 2020, the State of Nevada entered Phase Two of the *Nevada United: Roadmap to Recovery* plan; and

WHEREAS, prior to entering Phase Two, the State of Nevada experienced a consistent and sustainable downward trajectory in the percentage of positive COVID-19 cases, a decrease in the trend of COVID-19 hospitalizations, and a decline in our cumulative test positivity rate from a maximum rate of 12.2% on April 24, 2020 to 6.3% on May 27, 2020 with a 33-day downward trend; and

WHEREAS, the public safety threat posed by the SARS-CoV-2 has not yet abated; and

WHEREAS, the State of Nevada is experiencing an increase in both its cumulative test positivity rate and its seven-day moving average of daily new COVID-19 cases; and

WHEREAS, the State of Nevada is experiencing an increasing trend of hospitalizations for confirmed COVID-19 cases since May 31, 2020; and

WHEREAS, NRS 414.060 outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, NRS 414.070 outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;" and

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020, Emergency Declaration,

IT IS HEREBY ORDERED THAT:

SECTION 1:	To the extent this Directive conflicts with earlier Directives or regulations promulgated pursuant to the March 12, 2020 Declaration of Emergency, the provisions of this Directive shall prevail.
SECTION 2:	Directive 004 shall terminate on June 30, 2020 at 11:59 pm. All Department of Motor Vehicles (DMV) commercial and non-commercial licenses, commercial and non-commercial instruction permits, identifications cards, Driver Authorization Cards (DAC), vehicle or off-highway vehicle registrations, motor carrier active and temporary credentials, or any other credentials issued by the DMV as required by state law that have expired or will expire between March 12, 2020 and July 15, 2020, shall be valid until September 13, 2020 at 11:59 PM. Where possible, DMV customers are strongly encouraged to renew said licenses, permits, cards and other DMV credentials through DMV's website, portal, or kiosks to the greatest extent practicable.

2020-06-29	- COVID-19 Declaration of Emergency	Directive 026

SECTION 3:	Directive 006 is hereby extended to July 31, 2020 at 11:59 pm, unless specifically terminated prior to that date or renewed by subsequent Directive.
SECTION 4:	Public Gatherings. Directive 007 and all provisions amended by subsequent directives are hereby extended to July 31, 2020, unless specifically terminated prior to that date or renewed by subsequent Directive.
SECTION 5:	Directive 009 (Revised) shall terminate on June 30, 2020 at 11:59 pm. All time tolled by Section 2 shall recommence effective July 31, 2020 at 11:59 pm. All licenses and permits issued by the State of Nevada, Boards, Commissions, Agencies, or political subdivisions, that expired between March 12, 2020 and June 30, 2020 because reduced government operations due to the state of emergency made timely renewal of the license or permit impracticable or impossible, shall be deemed valid and expire on September 28, 2020 at 11:59 pm. This provision shall not be construed to extend to any license within the scope of Directive 011. Persons referenced in Section 4 of Directive 009 (Revised) subject to the provisions of NRS 76.130 and whose annual business license renewal fee was due between March 12, 2020 and July 31, 2020, shall be entitled to a grace period expiring on September 30, 2020 to pay the fee without suffering any of the consequences or penalties resulting from the application of subsections 4 and 5 of that statute.
SECTION 6:	Provisions of Directive 016 not amended by subsequent directives are hereby terminated. Provisions of Directive 016 amended by subsequent directives shall remain in effect as amended.
SECTION 7:	Directive 017 shall terminate on June 30, 2020 at 11:59 pm.
SECTION 8:	Directive 021, Phase Two of the <i>Nevada United: Roadmap to Recovery</i> plan, is hereby extended to July 31, 2020 at 11:59 pm, unless specifically terminated prior to that date or renewed by subsequent Directive.
SECTION 9:	This Directive shall remain in effect through July 31, 2020 at 11:59 pm, unless terminated or extended by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.

DECLARATION OF EMERGENCY DIRECTIVE 026 HEREBY ORDERS



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 29th day of June, in the year two thousand twenty.

Governor of the State of Nevada

Bullana K. (saguste

Secretary of State

Deputy Secretary of State

Executive
Governor
Lt. Governor
Secretary of State
Attorney General

https://gov.nv.gov/News/Emergency_Orders/2020/2020-06-29_-_COVID-19_Declaration_of_Emergency_Directive_026/

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EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

IN THE ADMINISTRATIVE MATTER REGARDING ALL COURT OPERATIONS IN RESPONSE TO COVID-19

Administrative Order: 20-17

On March 12, 2020, Governor Steve Sisolak issued a Declaration of Emergency in response to the COVID-19 pandemic. The next day, March 13, 2020, the President of the United States declared a nationwide emergency pursuant to §501(6) of the Robert T. Stanford Disaster Relief and Emergency Assistance Act. 42 U.S.C. §§5121-5207. To mitigate the spread of this deadly virus, the Center for Disease Control recommends social distancing and wearing face coverings. Governor Sisolak, in Directive 021, also recommends social distancing and mandates

the wearing of face masks by employees interfacing with the public.

The Nevada Constitution provides in Article 3 §1 that, "The powers of the Government of the State of Nevada shall be divided into three separate departments, - the Legislative, - the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution." The Nevada Supreme Court has also found that "In addition to the constitutionally expressed powers and functions of each Department, each (the Legislative, the Executive, and the Judicial) possess inherent and incidental powers that are properly termed ministerial. Ministerial functions are methods of implementation to accomplish or put into effect the basic function of each Department." Galloway v. Truesdell, 83 Nev. 13, 21, 422 P.2d 234, 237 (1967).

The judicial power is vested in the state Court system comprised of the Nevada Supreme Court, the Nevada Court of Appeals, District Courts, Justice Courts and Municipal Courts. Nev. Const. art. VI, §1. The Nevada Constitution expressly recognizes the Chief Justice as the administrative head of the Court system. Nev. Const. art. VI §19. By expressly identifying the Chief Justice as the Court system's administrative leader, the Chief Justice has "inherent power to take actions reasonably necessary to administer justice efficiently, fairly, and economically." Halverson v. Hardcastle, 123 Nev. 245, 260, 163 P.3d 428, 439 (2007). Consequently, the Nevada Supreme Court, "through the Chief Justice, has the ultimately authority over the judiciary's inherent administrative functions." Id. at 260, 163 P.3d at 439.

Rule 1.30(b) of the Rules of Practice for the Eighth Judicial District Court charges the Chief Judge of the Eighth Judicial District Court with various responsibilities, including supervising the administrative business of the District Court, ensuring the quality and continuity of Court services, supervising the Court calendar, reassigning cases as convenience or necessity requires, assuring the Court's duties are untimely and orderly performed, and otherwise facilitating the business of the district Court.

Following the March 12, 2020 Declaration of Emergency, the District Court, in consultation with the Nevada Supreme Court, concurred with the Governor and exercised its ministerial judicial powers. The District Court entered Administrative Orders 20-01 through 20-14 and 20-16 on an emergency basis. These Orders changed Court procedures to minimize person-to-person contact and mitigate the risk associated with the COVID-19 pandemic, while continuing to provide essential Court services.

Since March 12, 2020, the Governor has reopened essential and non-essential businesses with certain protections in place. As our State enters Phase 2 of recovery, in order to ensure access to justice and to prevent an excessive backlog of cases, the District Court will begin hearing all cases. At the same time, the safety of the public and Court staff remains a priority. This order, entered jointly with the Chief Justice of the Nevada Supreme Court provides for continued extensive use of alternative means appearances, social distancing protocols, and mask-wearing to allow the business of the Court to go forward safely.

 For purposes of clarity and to avoid confusion, this order supersedes AO 20-01 through 20-13 and 20-16. Any portions of those orders that remain in effect are included in this order. AO 20-14 (the process for electronic processing of search warrants) remains in effect. Except where otherwise noted, this order takes effect June 1, 2020.

SAFETY AND PRECAUTIONS

Governor Sisolak's May 7, 2020 Declaration of Emergency Directive 018 directs employers to take proactive measures to ensure compliance with social distancing and sanitation guidelines and to follow guidelines promulgated by the Nevada State Occupational Safety and Health Administration (NV OSHA). The Governor reiterated these principles in Directive 021§§12-16.

Under the directive, employers must require employees who interact with the public to cover their noses and mouths with face coverings to the maximum extent possible and employers must meet or exceed standards promulgated by NV OSHA. The directive also encourages employers and employees to incorporate the following protocols into their operations to the maximum extent practicable:

- (1) Encourage customers to cover their noses and mouths with face coverings;
- (2) Continue to encourage telework, whenever possible and feasible with business operations;
- (3) Return to work in phases;
- (4) Close common areas where personnel are likely to congregate and interact, or enforce strict social distancing protocols;
- (5) Strongly consider special accommodations for personnel who are members of a vulnerable population;
- (6) Encourage employees to do a self-assessment each day in order to check if they have any COVID-19 type symptoms, for example, fever, cough or shortness of breath;
- (7) Practice hand hygiene;

- (8) Perform frequent enhanced environmental cleaning of commonly touched surfaces;
- (9) Implement separate operating hours for vulnerable populations;
- (10) Provide signage advising the public of appropriate social distancing within the facility, including six feet of social distancing from other individuals; and
- (11) Provide readily available hand sanitizer or other sanitizing products for employees and customers.

NV OSHA's guidelines require that employers must provide face coverings for employees assigned to serving the public and shall require these employees to wear the face coverings so as to cover their faces and mouths. NV OSHA also recommends that employers monitor employees, including during lunches and breaks to ensure that they are maintaining proper social distancing protocols at all times.

The District Court is committed to providing a safe and healthy workplace for all our employees and the public we serve. To mitigate the spread of COVID-19, we will need to change many of our ordinary practices in a manner that reduces the risks associated with this public health emergency. Consequently, the following precautions are ordered:

Screening Protocols

During this time, it is critical to prevent the spread of illness among members of the Court, counsel, staff, the public, and our community partners. The Centers for Disease Control has advised people to take precautions to stay healthy and that the best way to prevent illness is to avoid exposure. As a result, District Court Administration shall maintain notices at the entrance of all District Court facilities advising the following people may not enter the Court facility:

- (1) Persons who have traveled out of the country in the past 14 days or who reside with someone who has traveled out of the country in the past 14 days;
- (2) Persons who have been asked to self-quarantine by any doctor, hospital, or health agency;

- (3) Persons who have been diagnosed with coronavirus and not medically cleared or persons who have had contact in the past 14 days with anyone diagnosed with coronavirus and not medically cleared; or
- (4) Persons with unexplained fever, cough, or shortness of breath.

The Marshal's Division may develop screening protocols including screening questions and temperature checks if deemed appropriate. Anyone attempting to enter in violation of these protocols or refusing to comply with the protocols will be denied entry by District Court Marshals.

District Court Administration will also maintain a customer service number in cooperation with the Las Vegas Municipal Court and Las Vegas Justice Court to assist all persons unable to enter the Court facility because of exposure or illness. If a person is unable to appear in Court because of the restrictions, that person may call 702-455-4472 to speak to a customer service representative for assistance in rescheduling their Court appearance, arranging for appearance by alternative means or to obtain other information based on the circumstances of the appearance.

Appearances by Alternative Means

During this time, due to restrictions on the entrants to the Court facilities and to reduce the potential for spread of infection, appearances by alternative means are strongly encouraged whenever possible. This includes all case types. Unless exceptional circumstances exist, District Court Judges should accommodate requests to appear by alternative means for any attorney, party or witness who is considered a vulnerable person under Governor's Directive 21§5. This includes persons who are over 65, pregnant, or suffering from an underlying health condition.

The District Court has four methods of appearance by alternative means: videoconference through BlueJeans, telephone conference through BlueJeans, regular telephone, and CourtCall. Since CourtCall involves a cost to the litigants, no party may be required to use CourtCall at this time. Use of BlueJeans is strongly favored given the number of people the system can accommodate and its compatibility with the JAVS system. Video is also favored as it aids communication and produces a better record.

Attorneys, parties, and witnesses are reminded that alternative means still constitutes a court appearance and attire should remain professional and court appropriate. Appearances should be made from a quiet place free of distractions. Also, for the safety of the community and for the quality of the audio recording, no appearances by alternative means should be made while driving.

The requirement for a formal written notice of any appearance by alternative means is suspended. Arrangements for alternative appearances may be made via e-mail to the department JEA. E-mails about scheduling appearances should not be sent to the department inboxes.

Nevada Supreme Court Rules Part IX expressly excludes juvenile proceedings from the rules governing appearances by telephonic and audiovisual transmission. This rule is suspended due to the COVID-19 pandemic. Attorneys, probation officers, social workers, parents, guardians, and any other necessary parties to a juvenile proceeding are strongly encouraged to appear by alternative means.

For civil and domestic cases, if the judge intends to hold a hearing before deciding a matter, the judicial department will contact attorneys or self-represented litigants two judicial days before the hearing to determine which method of appearance the party intends to use and gather the appropriate contact information to arrange for the appearance by alternative means.

For probate cases, attorneys appearing by alternative means or having clients appear by alternative means must notify the departments via e-mail two judicial days before the appearance. The e-mail to the department must include the case number for the proceeding and the names and e-mail addresses for each person appearing by video. This will allow the department to send a link to appear via video. If arrangements need to be made on shorter notice due to an emergency, the judicial department must be contacted by phone.

For criminal cases, juvenile dependency cases, and juvenile delinquency cases all appearances by alternative means for attorneys and out-of-custody defendant must be through BlueJeans video unless for technical reasons a phone conference is necessary. Attorneys appearing by video, or having clients/witnesses/agency representatives/probation officers appear by alternative means, must notify the department via e-mail at least one judicial day before the

appearance. In juvenile cases, parents or guardians may provide their e-mail addresses to the juvenile's attorney to arrange for the appearance. The e-mail to the department must include the case number for the proceeding and the names and e-mail addresses for each person appearing by video. This will allow the department to send a link to appear via video. If arrangements need to be made on shorter notice due to an emergency, the judicial department must be contacted by phone.

Media reporters may request to attend any public court proceeding by alternative means for the purpose of observing the proceedings. Any reporter requesting an appearance in this manner must contact the department for a BlueJeans video link. Reporters appearing by alternative means must remain on mute and are not permitted to interject or speak during any proceeding. A reporter violating this rule will lose the ability to appear by alternative means.

Mandatory Face Coverings

For the health and safety of all, members of the public must wear face coverings that cover their noses and mouths. Face coverings must be worn at all times while in any Court facility and while in any security screening line to enter a Court facility. "Court facilities" include the Regional Justice Center, the Family Court building, District Court courtrooms and office space on the tenth and eleventh floors of the Phoenix building, District Court courtrooms and office space in the Greystone building and District Court office space in the Clark Place building.

All District Court employees must cover their noses and mouths with face coverings while at work unless they are alone in unshared work space. This includes all common areas of any facility as well as parking lots, back hallways, employee-only elevators, shared restrooms and break rooms.

All attorneys, vendors, and employees of any organization or entity who work in a Court facility must cover their noses and mouths with face coverings while in any common areas of the facilities. Common areas include, but are not limited to, security screening, lobby areas, public elevators, employee elevators, shared back hallways, public restrooms and courtrooms. This includes, but is not limited to, employees of Las Vegas Municipal Court, Las Vegas Justice

 Court, Legal Aid Self-Help Centers, Clark County Clerk's Main Office, Clark County District Attorney's Office, Clark County Public Defender's Office, Clark County Department of Juvenile Justice Services, Clark County Department of Family Services, and contract counsel. Employees of other organizations or entities with space in Court facilities are subject to the policies of their individual employer while in their own organization's work space.

Children under the age of two and individuals who are unable to remove the face covering without assistance do not have to comply with the above-referenced face covering directives. Individuals who are unable to wear a face covering should make arrangements to appear by alternative means.

Face coverings must cover the nose and mouth at all times.

Meetings

Meeting by telephone, teleconference, videoconference or e-mail remains highly preferred. To protect judicial resources and prevent the spread of illness among members of the Court, counsel, staff, public and community partners, there shall be no in-person gatherings or meetings to discuss Court business of more than 50 people. This includes judges meetings; executive committee meetings; division judges meetings; bench-bar meetings; any meetings with community partners; specialty Court staffing; specialty Court graduations; administrative department meetings; continuing education meetings; meetings of judges, hearing masters and/or staff within a particular case assignment. Any in-person meeting must observe social distancing and mask requirements. No food or beverages may be served at in-person meetings.

Policies

Court Administration is directed to develop more extensive return-to-work policies to provide guidance to supervisors and employees to ensure that the District Court is complying with OSHA guidelines. This may include screening, hygiene practices, social distancing practices, sanitation, employee phasing in and remote work schedules, and disciplinary guidelines for failure of employees to follow safety protocols.

Social Distancing

All District Court Judges and Court Administration must adhere to the social distancing space plans as diagramed by Real Property Management at the request of the District Court. The plans will be provided separately.

District Court employees must ensure they maintain proper social distancing at all times while at work and during breaks. District Court Marshals should maintain proper social distancing at all times except when their work assignment makes it impossible to do.

Social distancing must be observed by all members of the public and occupants of common areas of court facilities. Public and employee elevators at Court facilities must be limited to no more than four occupants at a time to prevent crowding.

GENERAL PROVISIONS

Attorney Obligations

Attorneys, as officers of the Court, have ethical obligations for cooperative civility under normal circumstances. This Court, under the present circumstances, reminds attorneys that they have an obligation to cooperate with the Courts and one another as we all navigate these challenging circumstances. This is not the time to press for unwarranted tactical advantages, unreasonably deny continuances or other accommodations, or otherwise take advantage of the challenges presented due to the current pandemic. Lawyers are expected to be civil, professional, and understanding of their colleagues, parties and witnesses who are ill or otherwise unable to meet obligations because of the current restrictions.

Clerk's Office Remains Closed to In-Person Filing

For the safety of the clerks and to minimize building traffic, the Clerk's Offices at both the Regional Justice Center and the Family Court will remain closed to in-person filing until further notice. Filings must be completed electronically. For litigants who do not have the ability to electronically file documents, documents may be mailed as follows:

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District Court Civil/Criminal Division Attn: Clerk's Office Regional Justice Center 200 Lewis Ave. Las Vegas, NV 89155

District Court Family Division Attn: Clerk's Office Family Court 601 N. Pecos Rd. Las Vegas, NV 89155

The Clerk's Office shall maintain a safety protocol for clerks tasked with opening mail and handling paper documents.

OTHER THAN MAIL, NO PAPER DOCUMENTS WILL BE ACCEPTED BY THE COURT AT THIS TIME. Call (702) 455-4472 with questions regarding filing.

Continuances

The continuance of any trial or evidentiary hearing will be considered on a case-by-case basis. Attorneys may have difficulty obtaining witnesses or being prepared for evidentiary proceedings in the period immediately following the duration of the administrative orders relating to COVID-19. Continuances should be granted to allow time for preparation or to obtain witnesses. Judges will need to examine the merits of any application for a continuance, balancing the consequences of a delay in the proceedings and the constraints placed on attorneys and litigants to prepare for a trial or evidentiary hearing.

Courtesy Copies

No paper courtesy copies of any documents filed in Odyssey may be sent to the Court for any case type. Judges are strongly discouraged from requesting electronic courtesy copies from parties due to the burden it places on the system as a result of additional storage required. This does not preclude a judge from asking for a word version of a submitted order that requires significant editing. To reduce the potential spread of infection through paper and to reduce Court operating costs, judges are strongly discouraged from having documents printed from Odyssey to read.

Counsel should contact the Court Clerk for handling of documents that cannot be converted to electronic format.

Depositions

In-person depositions may go forward effective July 1, 2020 as long as social distancing protocols are observed. Until that date, no in-person depositions shall proceed except on stipulation or order obtained after filing a motion demonstrating good cause for the need for an in-person deposition. Deposition by alternative means is the preferred method of handling depositions. During the period this order is in effect the Court interprets NRCP 28(a)(1) and NRCP 30 to allow the deposition officer to be in a separate location from the despondent. See SCR Part IX-B(A) and (B) Rule 9.

Attorneys must cooperate in the scheduling of witnesses, in the handling depositions by alternative means when any participant is part of a vulnerable population, and in continuing depositions when needed because of COVID-19 issues.

Discovery (Civil and Domestic)

All discovery hearings in both the civil and domestic case types shall continue to be conducted by alternative means.

The tolling of discovery deadlines will end on July 1, 2020. This includes deposition by written questions, interrogatories, production of documents, entering onto land for inspection purposes and requests for admissions. The Court acknowledges that discovery may still be impeded by COVID-19 related issues and it may be difficult to obtain certain items such as medical records. Judges are encouraged to grant requests to continue discovery under these circumstances.

Beginning July 1, 2020, Rule 35 examinations may be scheduled as medical providers are available. Parties may agree to schedule the Rule 35 exam sooner. Parties may also file a motion with the Discovery Commissioner demonstrating good cause to proceed forward with a Rule 35 examination. Good cause includes an emergency such as imminent destruction or loss of evidence. The motion shall also include protocols for ensuring the safety of the examiner and an affidavit from the medical provider indicating that the provider is able to conduct the

examination following those protocols. Any issues with scheduling or health concerns of the party to be examined should be addressed with the Discovery Commissioner.

Discovery motions may be resolved on the papers by way of a written recommendation issued by the Discovery Commissioner. If the Commissioner determines oral argument is needed, the hearing will be held by alternative means unless the Commissioner determines a personal appearance is necessary.

Electronic Service

All lawyers and self-represented litigants are required to register for electronic service and update any change of e-mail address with the Court. In the limited circumstance where a self-represented litigant does not have an e-mail address, the Court Clerk's Office is directed to assist the self-represented litigant in creating an e-mail address.

Hearings

At this time, hearings of all sorts in all case types should go forward. Except as provided in this order, all District Court non-evidentiary hearings must be conducted by video or telephonic means or decided on the papers unless otherwise directed by a District Court Judge. Cases should be rescheduled at the request of parties or counsel due to issues caused by the COVID-19 pandemic including witness unavailability, inability to obtain documents or other good cause.

Evidentiary hearings should go forward when possible. Appearances by witnesses, parties, and lawyers should be by alternative means unless the District Court Judge finds that a personal appearance by an individual is necessary to the proceeding. To the extent possible, exhibits should be produced, displayed, and admitted in an electronic format.

Original Signature Requirements

With the exception of documents requiring the signature of a notary, an electronic signature will be considered an original signature. All documents filed with the Court may be electronically signed as provided in the Nevada Electronic Filing and Conversion Rules, Rule 11(a). All documents requiring a signature of another person may be electronically signed; however, the party submitting the document must obtain e-mail verification of the other person's

agreement to sign electronically. That verification must be embedded in the document or attached as the last page of the document.

Filers are reminded that NRCP Rule 11 provides sanctions for filing with improper purpose, which would include a misrepresentation of a signature. Additionally, other civil or criminal penalties could apply for misrepresenting or fraudulently signing a document.

Proposed Orders

All proposed orders, requests for orders shortening time, stipulation and orders, or any other document submitted to a judge for signature shall be submitted to the appropriate department electronically. A department inbox list is attached to this order. DEPARTMENT INBOXES ARE TO BE USED ONLY FOR SUBMITTING DOCUMENTS FOR THE JUDGE'S SIGNATURE. NO OTHER E-MAILS MAY BE SENT TO DEPARTMENT INBOXES.

Documents must be submitted as a PDF document. If a judge has significant revisions, the department will request a Microsoft Word version of the order from the submitting party for editing purposes. The Court notes that both WordPerfect and Apple Pages allow documents to be saved in a Word format.

The e-mail subject line must identify the full case number, the filing event code, and the name of the case. The information must be in that order for the Court's automated filing system to work properly. This naming convention looks like: A-20-1234560-C - ORDR - Smith v. Doe

Documents not properly submitted may be returned.

NO ADDITIONAL ARGUMENT OR DISCUSSION SHOULD BE INCLUDED IN THE E-MAIL.

After reviewing submitted documents, the judge will electronically sign and file the order into the Odyssey system. The Court will not print or retain paper copies of the orders.

All documents submitted will be filed by the department and served to all parties registered for electronic service. Parties are responsible for filing the Notice of Entry of Order as well as serving orders by mail to any party who is not registered for electronic service.

For any self-represented litigant who is unable to submit an order by e-mail, the Court shall prepare and file the order.

To ensure the integrity of electronically signed and filed orders, the Clerk's Office will reject orders submitted for filing from outside of the Court.

Rule 16.1 (Civil), 16.2 (Domestic), and 16.205 (Custody) Early Case Conferences

Rule 16.1, 16.2, and 16.205 conferences should proceed. Early case conferences should be conducted by telephone or videoconference. To the extent possible, all initial disclosures, supplements and other written discovery should be exchanged through electronic means. If a conference cannot proceed because of issues related to COVID-19, an appropriate motion should be filed with the assigned District Court Judge.

Deadlines for initial disclosures, disclosure of expert witnesses and testimony, supplementation of discovery, pre-trial disclosures, and filing of case conference reports will no longer be stayed as of July 1, 2020. Requests to continue deadlines should be filed with the assigned District Court Judge.

Settlement Conferences (Civil, Criminal and Family Divisions)

In order to assist with the backlog of trials, judicial settlement conferences are encouraged. Settlement conferences may be held by alternative means. If the settlement conference is not held by alternative means, the judge and attorneys must develop a social distancing plan prior to the settlement conference. All participants must wear masks that cover their noses and mouths.

Civil and Family Division settlement conference programs will resume on July 1, 2020. Settlement briefs and supporting exhibits must be submitted electronically. Counsel may also contact individual judges to request settlement conferences or reach out to the assigned departments to submit a request for a senior judge to conduct a settlement conference.

Criminal Division settlement conferences will resume on June 1, 2020. Requests for settlement conferences should be submitted via e-mail on the settlement conference form to the Chief Judge. The form must be completely filled out or the conference will not be set. Incustody criminal settlement conferences will be scheduled to take place in the Lower Level

Arraignment courtroom. Priority will be given to trials where the defendant is in-custody and has invoked speedy trial rights and to older homicide cases.

Specialty Courts (All Divisions)

All status hearings should go forward by alternative means unless a judge or hearing master determines that extraordinary circumstances warrant a personal appearance. For Criminal Division Specialty Court matters in-custody participants will continue to be heard together on Fridays at noon. No jail or community service sanctions will be imposed by any specialty court program for non-compliance. This does not prevent arrest of a participant who is on probation for a probation violation. This also does not preclude a participant from being placed on electronic monitoring; however, with the exception of felony DUI participants in the first six months of the program who lack the current ability to self-pay, no Specialty Court participant may be placed on CCDC house arrest. The Court will work with the treatment providers to continue to provide treatment while balancing the safety of the participants and treatment provider staff.

Sealed Documents

If a party is requesting a document be sealed, the party must file a motion to file the document under seal. The party should separately file the document to be sealed, using the code TSPCA (Temporarily Sealed Pending Court Approval). The judge will review the motion and determine whether the document should be filed under seal. Failure to properly submit a motion to seal the documents, failure to submit the document separately, or failure to use the proper document code may result in the public electronic filing of the temporarily sealed document.

Service of Process

The Court recognizes that accomplishing personal service may continue to pose significant challenges at this time given that many businesses are closed or operating on a limited capacity. Properly documented service issues related to the COVID-19 pandemic will be considered good cause for a timely motion to extend service of process. For service issues between March 13, 2020 and June 30, 2020, good cause exists regardless of whether the motion

is made before or after the 120-day service period. Effective July 1, 2020, motions to extend service of process must be filed prior to the expiration of the time to serve.

Summonses and Certified Copies

Summonses and certified copies shall be issued by the Court Clerk's Office. A lawyer or party seeking to have the Clerk of Court issue a summons under NRCP 4(b) shall e-file the summons. The filing code "SEI" must be used for the proper processing of the summons. The Clerk will issue the summons electronically. All certified copies will be issued electronically.

Trials

Bench trials in all case types should go forward when possible. Appearances by witnesses, parties, and lawyers should be by alternative means unless the District Court Judge finds that a personal appearance by an individual is necessary to conduct the proceeding.

If possible, trial exhibits should be produced, displayed, and admitted in an electronic format. If the use of electronic exhibits is not possible, exhibits should be submitted to the assigned judicial department at the direction of the Judge.

Beginning the week of June 1, the Jury Commissioner will begin summonsing jurors for jury trials. To maintain social distancing and juror safety, one panel of jurors will be summonsed per day for District Court. The Jury Commissioner is to include health and safety information in the jury summons, including social distancing and mask requirements. District Court Jury selection will take place in the Jury Services Room. The District Court will prioritize trials, beginning with criminal cases involving interstate compact issues and criminal cases in which the defendant has invoked speedy trial rights. After those cases, the priority will be civil cases with preferential trial settings; older in-custody criminal cases; and older civil cases, particularly those with NRCP 41(e) timeline concerns.

Panels for other courts in Clark County may also be summonsed provided that Court requesting the panel creates a social distancing/safety plan for the juries. Key points of the plan will be included with the jury summons.

Jury questionnaires will be sent, completed, returned and distributed to the Court and counsel electronically. If a juror cannot complete a questionnaire by electronic means, the

questionnaire will be mailed to the juror with a self-addressed and stamped return envelope. Once Jury Services receives the questionnaire back, it will be scanned and distributed with the other questionnaires.

This order shall continue to stay trial in civil cases for purposes of tolling NRCP 41(e) except where a District Court Judge makes findings to lift the stay in a specific case to allow the case to be tried.

The time period of any continuance entered as a result of this order shall be excluded for the purposes of calculating speedy trial under NRS 178.556(1) and NRS 174.511 as the Court finds that the ends of justice served by taking this action outweigh the interests of the parties and public in a speedy trial.

Writs of Execution and Writs of Garnishment

Writs of execution and garnishment have been stayed by the Governor's Directive 017 §1-2. No new writs of execution or garnishment may be issued while the stay is in place. The stay does not apply to child support, spousal support, or criminal restitution. Any change or termination of that directive will be determined by the Governor.

CIVIL MATTERS

Alternative Dispute Resolution

All matters in the Court Annexed Arbitration Program, Court Annexed Mediation Program, and Nevada Foreclosure Mediation Program should proceed. These matters shall be conducted by video or telephonic means when possible. If a personal meeting is necessary, social distancing must be observed and all participants must wear face coverings covering their noses and mouths.

For any cases assigned to the Court Annexed Arbitration program, none of the time between March 17, 2020 and June 1, 2020 shall count toward the one year deadline to hold any arbitration hearing pursuant to NAR 12(B). Additional requests to toll time should be addressed to the assigned District Court Judge on a case-by-case basis.

Extension of Time Deadlines

Pursuant to NRCP 6(b), the Court recognizes the COVID-19 emergency as constituting "good cause" and "excusable neglect" warranting the extension of time in non-essential civil case types. This provision will expire July 1, 2020. This does not apply to time deadlines that must not be extended under NRCP 6(b)(2) (motions under NRCP 50(b), 52(b), 59, and 60 and motions made after NRCP 54(d)(2) time has expired).

Evictions and Foreclosures

Residential and small business evictions and judicial foreclosures have been stayed by the Governor's Directive 008 (Revised) §1, with certain exceptions. Any change or termination of that directive will be determined by the Governor.

Response Time for Offers of Judgment

The tolling of time to respond to offers of judgment submitted pursuant to NRCP 68 will end July 1, 2020. Parties will have until July 10, 2020 to respond to any pending offer of judgment.

Rule 16 Conferences

Rule 16 conferences must be conducted by alternative means. The District Court Judges should continue to comply with the deadlines set in NRCP 16(b)(2) but should be mindful that attorneys and parties may face difficulties conducting discovery, obtaining discovery responses and communicating with their clients. These potential difficulties should be addressed and taken into consideration when issuing NRCP 16 scheduling orders.

Statutes of Limitation; Medical Malpractice Cases

Statutes of limitation have been tolled by the Governor's Directive 009 (Revised) §2. Any change or termination of that directive will be determined by the Governor. Attorneys and litigants should be aware the District Court is unable to waive jurisdictional requirements for expert affidavit requirements in medical malpractice cases should counsel choose to file a complaint during this time or for requests for trial de novo.

Stay of Cases

A complete stay of civil cases will be considered on a case-by-case basis. A stay of any case, or a continued stay of any case, should be liberally considered at this time based on COVID-19 issues.

Subpoenas

Attorneys must obtain advance approval of the discovery commissioner to issue subpoenas under NRCP 45

Short Trial Program

Due to the lack of available juror resources, short jury trials set in the next 90 days must be rescheduled. Short bench trials may proceed, preferably using alternative means to the extent possible.

CRIMINAL MATTERS

All criminal matters should proceed. Criminal law and motion hearing times will be as designated in the attachment to this order. Each judge will have a time to hear in-custody matters and a separate time for out-of-custody matters. Judges are encouraged to limit status checks or request status updates in writing and to consider ruling on the papers for motions that do not require oral argument.

Certified Copies

Certified copies of prior felony convictions for the purpose of a habitual criminal determination shall be electronically filed in Odyssey prior to sentencing. The filing should be captioned "Certified Copies of Prior Felony Convictions." If the certification seal is on the back of a page, the page should be copied and attached to the last page of the Judgment of Conviction.

Grand Jury

All three grand juries will begin hearing cases the week of June 1. The current A Grand Jury will remain in place through July 15. The incoming prospective A Grand Jurors will be summonsed to Jury Services on Tuesday, June 30th for selection at 2:00 p.m. Also, based on the

 request of the District Attorney's Office, the 2018C Grand Jury will be recalled beginning Friday, July 10 and will meet every Friday thereafter until excused by the Court to allow the District Attorney's Office the opportunity to continue presentation of matters previous heard by that Grand Jury. No new matters may be presented to the recalled Grand Jury.

Any Grand Jurors who are unable to continue service to the Grand Jury due to COVID-19 related health or employment issues will be excused on a case-by-case basis and replaced with alternates.

All Grand Juries will meet in the 17A Courtroom, which will be marked to provide for social distancing of grand jurors, witnesses, court reporter, and attorneys. All Grand Jurors, witnesses present in the Courtroom, attorneys, and the court reporter will be required to wear face coverings covering their nose and mouth while in the RJC and throughout the grand jury proceedings. No food or beverages will be permitted in the Courtroom.

Nevada Revised Statute 172.138 provided for the use of audiovisual technology to present live testimony at grand jury proceedings "if good cause otherwise exists." The statute requires that the technology ensures that the witness may be "clearly heard and seen" and "examined." The Nevada Supreme Court has also provided for use of audiovisual equipment in criminal proceedings in Supreme Court Rules Part IX-A(B).

During the current COVID-19 pandemic, good cause exists to allow witnesses to appear before the grand jury via audiovisual technology. In order for a witness to appear by alternative means, the State must notify the Chief Judge's department two judicial days prior to the proceeding. The State will provide the time of the witness's testimony and the name, telephone number and e-mail address of the witness to allow a BlueJeans link to be sent to the witness. District Court IT will assist with any issues with the audiovisual equipment on the Court side, but is not responsible for issues on the witness's side.

Grand jury returns will take place at the end of each day to prevent the Grand Jury Forepersons from having to re-enter the Regional Justice Center.

Guilty Pleas

When the defendant is unable to provide a signed copy of the guilty plea due to appearance by alternative means, the guilty plea shall be signed by by counsel in the following manner: "Signature affixed by (insert name of defense counsel) at the direction of (insert name of defendant)" The judge shall make a record that because of COVID-19 precautions that the defendant was unable to physically sign the guilty plea agreement. The defendant shall be canvassed by the judge taking the plea as follows:

On page ___ of the plea agreement your attorney has signed your name with a notation that they signed it at your direction. Is that correct?

Did you agree for your attorney to sign in place of your actual signature?

Did you knowingly, willingly and voluntarily direct your attorney to sign the agreement on your behalf?

Before directing your attorney to sign for you, did you read the guilty plea agreement and talk to your attorney about the terms of the guilty plea agreement?

Did you discuss that your attorney signing your name at your direction will be treated the same as if you actually signed the plea agreement?

Do you agree to have the signature placed on the agreement by your attorney to be treated the same as if you signed the plea agreement?

In-Custody Appearances

All in-custody defendants will appear by video to the assigned judicial departments for law and motion calendars. Arraignments, competency, and in-custody specialty court matters will continue to be heard in the lower-level arraignment Courtroom. Except for jury trials, no defendant will be transported to a District Court courtroom absent extraordinary circumstances. Due to limited access to alternative appearances, evidentiary hearings or lengthy sentencings for in-custody defendants should be coordinated through the Chief Judge's office. Also, no

defendant who is in isolation pursuant to Detention Services protocol will be brought for any court appearance.

Defense attorneys will have limited ability to discuss matters with their clients during Court appearances. Attorney-client conversations will be facilitated if needed; however, attorneys are cautioned that it will be absolutely necessary for clients to be prepared in advance of court.

Out-of-Custody Appearances

Due to the limited capacity of the Regional Justice Center at this time, out-of-custody defendants must appear by alternative means whenever possible, including for entry of plea, status checks, motions, and sentencing where the negotiation contemplates probation. Out-of-custody defendants shall appear in person for probation revocation hearings where jail time or revocation is being sought, sentencings where the negotiation contemplates a prison or jail sentence, trials, and for any matter where the judge makes an individual determination that the defendant's presence is necessary for the determination of the matter.

Lawyers representing indigent defendants are urged to provide assistance to defendants who do not have the independent ability to appear by alternative means.

All attorneys are encouraged to appear by alternative means. Video appearance is required in criminal matters unless prevented by technological issues. In order to appear by alternative means in a criminal matter, attorneys must e-mail the department at least one judicial day in advance of the Court appearance and provide the e-mail the attorney intends to use to appear. In case of an emergency that does not allow for one day's notice, attorneys should contact the department.

DOMESTIC MATTERS

Confidential Reports

Notwithstanding the provisions of EDCR 5.203, confidential reports (including custody evaluations, child interviews, brief focus assessments, drug test results, and paternity test results)

shall be transmitted electronically to retained counsel, subject to the limitations imposed on counsel pursuant to EDCR 5.301 and EDCR 5.304. For self-represented litigants, civil-domestic departments may convey the information contained in the foregoing confidential reports by telephone. The transmittal of this information by telephone shall include, where reasonably practical, the reading of the information to the self-represented litigant. If unusual circumstances exist, the Judge may have the self-represented litigant make a personal appearance to review the report.

Motions

The Court may deny a motion at any time. The Court may grant all or any part of a motion after an opposition has been filed or 21 days after service of the motion if no opposition was filed. The Court may issue other written orders relating to the motion.

Motions related to emergency legal and physical custody issues should receive priority with respect to the scheduling of a hearing on an appropriate order shortening time.

GUARDIANSHIP

All guardianship matters will proceed, including compliance hearings. Given the vulnerability of the guardianship populations, all protected persons must appear by alternative means. Assistance with emergency guardianships may be obtained by calling (702) 455-4472.

JUVENILE DEPENDENCY CASES

All juvenile dependency matters should proceed. Appearances by alternative means for lawyers, DFS workers and others is strongly encouraged when possible.

Adjudicatory Hearings

Beginning June 1, 2020, time frames under NRS Chapter 432B may be tolled by the assigned District Court Judge for good cause on a case-by-case basis.

 When possible, pleas should be handled by alternative means. Pleas may be negotiated by the parties and electronically filed with the Court. If the Court accepts the electronically filed plea, a disposition hearing will be set within 15 business days.

Disposition hearings held pursuant to NRS 432B.540 and NRS 432B.550 must be heard by alternative means when possible. Reports must be filed with the Court in advance to help narrow the focus of any hearing. Attorneys for the parents, the children and any CASA may file a report to supplement the DFS recommendations for disposition, placement, and services to further assist in narrowing the scope of the hearing.

All semi-annual reviews held pursuant to NRS 432B.580 may be decided on reports submitted to the Court by DFS. Annual reviews held pursuant to NRS 432B.580 and NRS 432B.590 should be heard by alternative means to the extent possible.

Termination of Parental Rights Proceedings

Parents may appear in court for initial hearings on termination of parental rights; however, a video appearance by the parents will be considered an in-person appearance for purposes of the statute.

Appearances by alternative means are encouraged for any party, witness or lawyer participating in a termination of parental rights trial unless the Judge determines a personal appearance is necessary.

Other motions may be decided on the papers or heard through alternative means. Status checks should be handled by written reports or, if necessary, heard by alternative means.

Mediations conducted pursuant to NRS 432B.5904 shall proceed by alternative means when possible. Otherwise, the mediation should proceed with appropriate social distancing. For in-person mediations, all participants must cover their noses and mouths with face coverings.

Adoptions

Adoptions will proceed by alternative means or in person at the discretion of the Judge.

Court-Ordered Admissions to Mental Health Facilities

Court-ordered admissions to mental health facilities pursuant to NRS 432B.607 et. seq. may be held by alternative means.

Child Haven and Parent Visitation

Placements at Child Haven should be strongly discouraged. Out-of-state visitation will be allowed unless the Court determines that visitation poses a health risk to the child. Visitation at Child Haven and parental visitation of children in foster care may proceed if precautions are taken to ensure the safety of the child and the well-being of others in the home in which the child resides. The Division of Family Services is directed to create policies for visitation given the current circumstances.

Timely Filing of Orders

Judicial departments will be responsible for timely filing orders from hearings. The Division of Family Services will electronically upload orders for the Court for review and the judicial departments will be responsible for reviewing and filing orders in a timely manner to prevent disruption of federal funding.

JUVENILE DELINQUENCY CASES

All juvenile delinquency matters will proceed. Audiovisual appearances should be used whenever possible. No in-custody juvenile who is hospitalized, isolated, or quarantined will be transported to court or appear for a court proceeding. Those matters are to be continued until the juvenile is no longer under any hospitalization, isolation, or quarantine. No juvenile matter may proceed without the juvenile present either in person or by alternative means. If the juvenile is unavailable, the matter will be continued.

Signatures on Juvenile Written Admissions

In order to ensure the rights of juveniles are being protected while the court allows appearances by alternative means, all admissions must be in writing and include an acknowledgment of rights and an acknowledgment of the standard terms and conditions of

probation or parole. Written admissions must be signed by the juvenile or signed by the juvenile's attorney and be e-filed and accepted by the court.

If the juvenile is unable to personally sign the written admission due to coronavirus precautions, the written admission shall be signed by counsel in the following manner:

Signature affixed by (insert name of defense counsel) at the direction of (insert name of defendant). The judge shall make a record that because of COVID-19 precautions that the defendant was unable to physically sign the [admission].

The defendant shall be canvassed by the judge taking the plea as follows:

On page [say page number] of the [admission] your attorney has signed your name with a notation that they signed it at your direction. Is that correct?

Did you agree for your attorney to sign in place of your actual signature?

Before directing your attorney to sign for you, did you read the [admission] and talk to you[r] attorney about the terms of [probation or parole]?

Did you discuss that your attorney signing your name at your direction will be treated the same as if you actually signed the [admission]?

Did you knowingly, willingly, and voluntarily direct your attorney to sign this [admission] on your behalf?

Do you agree to have the signature placed on the [admission] by your attorney to be treated the same as if you signed the [admission]?

PROBATE

Probate hearings on the Probate Commissioner's calendar that are opposed or require a hearing shall go forward and be heard by alternative means unless the Probate Commissioner determines a personal appearance is necessary. Matters that can be approved without a hearing will be on the approved list if no objection has been electronically filed and served by 9:30 am on the day before the hearing. The approved list may be accessed on the probate section of the District Court's website at:

I

http://www.clarkcountyCourts.us/departments/probate

Once on the website, select the weekly probate calendar list.

Probate matters on the Probate Judges' calendars will be decided on the papers or heard by video or telephonic means, unless the Judge determines a personal appearance is necessary.

If a party electronically files an election to proceed before the District Judge pursuant to EDCR 4.08, any petitions on file will be set by the assigned judge.

Scheduling orders in contested matters may be requested by stipulation of the parties submitted to chambers electronically with an order approving the proposed schedule. The assigned Probate Judge or Probate Commissioner will set the evidentiary hearing or trial. Contested matters will be decided on the papers or heard by alternative means unless the Judge or Commissioner makes a determination that a personal appearance is necessary.

Sale confirmations currently set will be confirmed based upon the papers filed with the Court and without the necessity of placing the sale for public bid, unless a notice of intent to overbid is electronically filed and served 72 hours before the date of the sale confirmation hearing. Any petition to confirm a sale filed after issuance of this Administrative Order shall contain, in addition to the statutory requirements, language advising that the notice of intent to overbid must be electronically filed and served 72 hours before the scheduled hearing. After receiving an electronically filed notice of intent to overbid, the Court will set a remote hearing through video or telephonic means. Otherwise the sale will be approved in accordance with the notice. All orders on approved matters will be electronically filed by the Court and electronically served.

///

COURT FACILITIES

Family Court and Services Complex

Family Law Self-Help Center

The Family Law Self-Help Center may begin providing in-person services. The Self-Help Center is encouraged to provide as many services as possible via telephone, e-mail, and other alternative means. Self-represented litigants may obtain help with family law forms and information at:

www.FamilyLawSelfHelpCenter.org

e-mail: fishcinfo@lascn.org

Telephone: (702) 455-1500 or (702)386-1070

Before re-opening to provide services to the public, the Family Self-Help Center has agreed to develop protocols to ensure the health and safety of staff and patrons. The protocols should include methods of limiting waiting times for services, mask-wearing, observing social distancing, and sanitation measures.

Family Mediation Center

The Family Mediation Center may begin providing in-person mediation services. The Family Mediation Center shall continue conducting mediations via telephone or other alternative means to the extent possible. Child interviews and parent-child observations may be scheduled. Before re-opening, the Family Mediation Center shall develop protocols to ensure the health and safety of staff and patrons. The protocols must include methods of limiting waiting times for services, mask-wearing, social distancing plans, and sanitation measures.

Donna's House Central

Donna's House Central may begin providing supervised visitation, supervised custody exchanges and other in-person services by appointment only. Before re-opening, Donna's House shall develop protocols to ensure the health and safety of staff and patrons. The protocols must include methods of limiting waiting times for services, mask-wearing, social distancing plans, and sanitation measures.

Court Appointed Special Advocate Program

The Court Appointed Special Advocate Program may resume in-person trainings, orientations and other meetings with member of the public in groups of 50 or less. During any training, orientation or meeting, social distancing must be observed and all participants must cover their noses and mouths with face coverings. The CASA program is encouraged to continue conducting as must business as possible by telephone or other alternative means.

Regional Justice Center

Civil Self-Help Center

The Civil Self-Help Center may begin providing in-person services. The Self Help Center is encouraged to continue to serve as many individuals as possible by phone, e-mail, and other alternative means. Self-represented litigants may obtain help with civil forms, information, evictions and other matters from the Civil Law Self-Help Center:

www.CivilLawSelfHelpCenter.org

e-mail: clshcinfo@lascn.org Telephone: (702) 671-3976

Before re-opening to provide services to the public, the Civil Self-Help Center has agreed to develop protocols to include methods of limiting waiting times for services, observing social distancing, and sanitation measures.

Traffic

Due to the limited capacity at the Regional Justice Center as a result of social distancing, the Las Vegas Justice Court and Las Vegas Municipal Court traffic customer service counter located on the first floor of the Regional Justice Center should remain closed until social distancing restrictions are lifted. Traffic-related matters should be conducted by telephone, video or other remote electronic means.

1 2 3 4 5 6 7 8 9 10 11

12 13 14

FINAL PROVISIONS

This order shall be reviewed no later than every 30 days and shall remain in effect until modified or rescinded by a subsequent order.

Entered this 1st day of June 2020.

LINIDA MARIE BELL

Chief Judge

Eighth Judicial District Court

Muitte Pickering
KRISTINA PICKERING
Chief Justice

Chief Justice

Nevada Supreme Court

Page 30 of 30

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
VIDEO FROM CCDC 3B TO COURTROOMS					
8:30 – 10:00	T. JONES In custody via video to 14B	WIESE In custody via video to 14A	T. JONES In custody via video to14B	WIESE In custody via video to 14A	BELL Sell/Comp Hearings
8:30 – 10:00	KEPHART Out of custody by video/phone 16B	VILLANI Out of custody by video/phone 11A	KEPHART Out of custody by video/phone 16B	VILLANI Out of custody by video/phone 11A	
10:15 - 11:45	KEPHART In custody via video to16B	VILLANI In custody via video to 11A	KEPHART In custody via video to 16B	VILLANI In custody via video to 11A	VILLANI (Homicide) In custody via video to 11A
10:15 – 11:45	T. JONES Out of custody by video/phone 14B	WIESE Out of custody by video/phone 14A	T. JONES Out of custody by video/phone 14B	WIESE Out of custody by video/phone14A	
10:15 – 11:45	ELLSWORTH Out of custody by video/phone 16D	LEAVITT Out of custody by video/phone 14D	ELLSWORTH Out of custody by video/phone 16D	LEAVITT Out of custody by video/phone 14D	
12:00-1:30	ELLSWORTH In custody via video to 16D	LEAVITT In custody via video to 14D	ELLSWORTH In custody via video to16D	LEAVITT In custody via video to 14D	LEAVITT (Homicide) In custody via video to 14D
12:00 – 1:30	ISRAEL Out of custody by video/phone 15C	E. JOHNSON Out of custody by video/phone 12A	ISRAEL Out of custody by video/phone 15C	E. JOHNSON Out of custody by video/phone 12A	
1:45-3:15	ISRAEL In custody via video to 15C	E. JOHNSON In custody via video to 12A	ISRAEL In custody via video to 15C	E. JOHNSON In custody via video to 12A	HERNDON (Homicide) In custody via video to 16D
1:45 – 3:15	DELANEY Out of custody by video/phone 15B	ADAIR Out of custody by video/phone 11C	DELANEY Out of custody by video/phone 15B	ADAIR Out of custody by video/phone 11C	
3:30 – 5:00	DELANEY In custody via video to 15B	ADAIR In custody via video to 11C	DELANEY In custody via video to15B	ADAIR In custody via video to 11C	ADAIR (Homicide) In custody via video to 11C

App0045

	MONDAY	TUESDAY	WEDENSDAY	THURSDAY	FRIDAY
8:00 - 10:00	WIESE	BELL	SILVA	T. JONES	BLUTH
ARRAIGNMENT	IN CUSTODY	IN CUSTODY	IN CUSTODY	IN CUSTODY	IN CUSTODY
10:00 - 10:45	WIESE	BELL	SILVA	T. JONES	BLUTH
ARRAIGNMENT	OUT OF CUSTODY	OUT OF CUSTODY	OUT OF CUSTODY	OUT OF CUSTODY	OUT OF CUSTODY
11:00		CRIMINAL	CRIMINAL	OUT OF CUSTODY	BELL
11.00		SETTLEMENT	SETTLEMENT	SETTLEMENT	COMPETENCY
12:00					SPECIALTY
12.00					COURTS
2:00		CRIMINAL	CRIMINAL	OUT OF CUSTODY	
		SETTLEMENT	SETTLEMENT	SETTLEMENT	
	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
VIDEO FROM CCD	C 5A TO COURTROC	OMS	•		
		HOLTHUS		HOLTHUS	
10:15 - 11:45		Out of custody by		Out of custody by	
		video/phone 3F		video/phone 3F	DO NOT
	BLUTH	D. JONES	BLUTH	D. JONES	SET
10:15 - 11:45	In custody via video	In custody via	In custody via video	In custody via	ANYTHING
	to 10C	video to 15A	to 10C	video to 15A	
	BLUTH	D. JONES	BLUTH	D. JONES	
12 -1:30	Out of custody by	Out of custody by	Out of custody by	Out of custody by	
12 1.00	video/phone 10C	video/phone 15A	video/phone 10C	video/phone 15A	
		HOLTHUS		HOLTHUS	
12 -1:30		In custody via		In custody via	
		video to 3F		video to 3F	
	SILVA	HARDY	SILVA	HARDY	
1:45 - 3:15	In custody via	In custody via	In custody via	In custody via	
	video to 11B	video to 11D	video to 11B	video to 11D	
	MILEY	HERNDON	MILEY	HERNDON	
1:45 - 3:15	Out of custody by	Out of custody by	Out of custody by	Out of custody by	
	video/phone 12C	video/phone 16C	video/phone 12C	video/phone 16C	
	MILEY	HERNDON	MILEY	HERNDON	
3:30 - 5:00	In custody via	In custody via	In custody via	In custody via	
	video to 12C	video to 16C	video to 12C	video to 16C	
	SILVA	HARDY	SILVA	HARDY	
3:30 - 5:00	Out of custody by	Out of custody by	Out of custody by	Out of custody by	
	video/phone 11B	video/phone 11D	video/phone 11B	video/phone 11D	

DISTRICT COURT EMAILS FOR DOCUMENT SUBMISSIONS

***SUBMIT ALL DOCUMENTS AS EMAIL ATTACHMENTS IN BOTH WORD AND .PDF ***
CIVIL/CRIMINAL DIVISION FAMILY DIVISION

	CIVIL/CRIMINAL DIVISION		FAIVILY DIVISION
Dept. 1	DC1Inbox@ClarkCountyCourts.us	Dept. A	DEPTAInbox@ClarkCountyCourts.us
Dept. 2	DC2Inbox@ClarkCountyCourts.us	Dept. B	DEPTBInbox@ClarkCountyCourts.us
Dept. 3	DC3Inbox@ClarkCountyCourts.us	Dept. C	DEPTCInbox@ClarkCountyCourts.us
Dept. 4	DC4Inbox@ClarkCountyCourts.us	Dept. D	DEPTDInbox@ClarkCountyCourts.us
Dept. 5	DC5Inbox@ClarkCountyCourts.us	Dept. E	DEPTEInbox@ClarkCountyCourts.us
Dept. 6	DC6Inbox@ClarkCountyCourts.us	Dept. F	DEPTFInbox@ClarkCountyCourts.us
Dept. 7	DC7Inbox@ClarkCountyCourts.us	Dept. G	DEPTGInbox@ClarkCountyCourts.us
Dept. 8	DC8Inbox@ClarkCountyCourts.us	Dept. H	DEPTHInbox@ClarkCountyCourts.us
Dept. 9	DC9Inbox@ClarkCountyCourts.us	Dept. I	DEPTIInbox@ClarkCountyCourts.us
Dept. 10	DC10Inbox@ClarkCountyCourts.us	Dept. J	DEPTJInbox@ClarkCountyCourts.us
Dept. 11	DC11Inbox@ClarkCountyCourts.us	Dept. K	DEPTKInbox@ClarkCountyCourts.us
Dept. 12	DC12Inbox@ClarkCountyCourts.us	Dept. L	DEPTLInbox@ClarkCountyCourts.us
Dept. 13	DC13Inbox@ClarkCountyCourts.us	Dept. M	DEPTMInbox@ClarkCountyCourts.us
Dept. 14	DC14Inbox@ClarkCountyCourts.us	Dept. N	DEPTNInbox@ClarkCountyCourts.us
Dept. 15	DC15Inbox@ClarkCountyCourts.us	Dept. O	DEPTOInbox@ClarkCountyCourts.us
Dept. 16	DC16Inbox@ClarkCountyCourts.us	Dept. P	DEPTPInbox@ClarkCountyCourts.us
Dept. 17	DC17Inbox@ClarkCountyCourts.us	Dept. Q	DEPTQInbox@ClarkCountyCourts.us
Dept. 18	DC18Inbox@ClarkCountyCourts.us	Dept. R	DEPTRInbox@ClarkCountyCourts.us
Dept. 19	DC19Inbox@ClarkCountyCourts.us	Dept. S	DEPTSInbox@ClarkCountyCourts.us
Dept. 20	DC20Inbox@ClarkCountyCourts.us	Dept. T	DEPTTInbox@ClarkCountyCourts.us
Dept. 21	DC21Inbox@ClarkCountyCourts.us		
Dept. 22	DC22Inbox@ClarkCountyCourts.us		
Dept. 23	DC23Inbox@ClarkCountyCourts.us	TPO	
Dept. 24	DC24Inbox@ClarkCountyCourts.us	<u>TPOInbox(</u>	@ClarkCountyCourts.us
Dept. 25	DC25Inbox@ClarkCountyCourts.us	Child Cupp	a ort
Dept. 26	DC26Inbox@ClarkCountyCourts.us	Child Supp	ortInbox@ClarkCountyCourts.us
Dept. 27	DC27Inbox@ClarkCountyCourts.us	стпазарр	or timbox & clarked unity courts. us
Dept. 28	DC28Inbox@ClarkCountyCourts.us	Civil Comn	nitment
Dept. 29	DC29Inbox@ClarkCountyCourts.us	<u>CivilComm</u>	nitmentInbox@ClarkCountyCourts.us
Dept. 30	DC30Inbox@ClarkCountyCourts.us		
Dept. 31	DC31Inbox@ClarkCountyCourts.us	Dependency Hearing Masters	
Dept. 32	DC32Inbox@ClarkCountyCourts.us	∐N/N/hi+a!	nbox@ClarkCountyCourts.us
			dinbox@ClarkCountyCourts.us
Discovery	,		box@ClarkCountyCourts.us
D	dala an Octobro Constructor de Const		

<u>DiscoveryInbox@ClarkCountyCourts.us</u>

ADR

ADRInbox@ClarkCountyCourts.us

Probate

<u>ProbateInbox@ClarkCountyCourts.us</u>

AOS SIRIA L. GUTIERREZ, ESQ. Nevada Bar No.: 11981 **BIGHORN LAW** 3 716 S. Jones Blvd. Las Vegas, Nevada 89107 Phone: (702) 333-1111 Email: Siria a Bighorn Law.com Attorneys for Plaintiff 6 DISTRICT COURT 7 CLARK COUNTY, NEVADA MARIA DEL ROSARIO CERVANTES-8 GUEVARA; 9 Plaintiffs, CASE NO: A-20-808004-C 10 MARK THOMAS ANDERSON; THOR DEPT. NO: 23 11 DEVELOPMENT, LLC, a limited liability corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; 13 ROE EMPLOYERS I-X; and ROE COMPANIES I-Χ, AFFIDAVIT OF DUE DILIGENCE 14 Defendants. 15 Estela Sandoval, being first duly sworn and deposes and says: 16 That Affiant is lawfully entitled to work in the United States, over eighteen years of age. 1. 17 employed by Elite Investigations, Nevada Private Investigator's License Number 873-C. 18 19 and not a party to, nor interested in the within action. 20 2. I have personal knowledge of the facts referenced herein, and if called as a witness could 21 testify competently thereto. 22 On February 18, 2020, I was given the assignment of completing service upon Mark Thomas 3. 23 Anderson with last known address listed as 6325 Wichita Falls Street, North Las Vegas. 24 Nevada 89031. 25 26 On Thursday, February 13, 2020, at approximately 2:00 p.m., the Affiant traveled to the 27 aforementioned address. A Caucasian woman answered the door. She claimed not to know 28 who Mark Thomas Anderson was. She explained that she purchased the home approximately three year ago.

- That on February 26, 2020, Affiant conducted background research on Mark Thomas Anderson and discovered that his most current address was 7700 Plunging Falls Drive, Las Vegas, Nevada 89131. According to the Clark County Assessor's Office, records indicated that Mark Thomas Anderson owns this property.
- That on Sunday, March 1, 2020, at approximately 9:00 a.m., the Affiant traveled to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131. A woman answered through a Ring Camera and stated that Mark Thomas Anderson was not home. The Affiant asked the woman if she would accept service on his behalf; however, the woman said "no", refused to identify herself, and did not open the door. The woman stated that Mark Thomas Anderson would be back "next week".
- 7. That on Sunday, March 8, 2020, at approximately 10:00 a.m., the Affiant traveled to 7700.

 Plunging Falls Drive, Las Vegas, Nevada 89131; however, no one answered the door. The Affiant looked through the window and saw a man inside the home. The Affiant waived and knocked on the window; however, the unidentified man did not open the door.
- 8. I have read the foregoing Affidavit and know the contents thereof, as the same is true of my own knowledge, except for those matters therein contained upon information in belief. In so those matters, I believe them to be true.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Estela Sandoval

State of Nevada County of Clark

26

27

Subscribed and sworn to before

On this 3 day of March, 2020, by Fstela Sudaval

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

SHAYLA WHITAKER Honary Fubric State of Nevada APPT NO 14-14679-1 Virence on the September 2002

AFFIDAVIT OF SERVICE

Case:	Court:	County:	Job:	
A-20-808004-C	DISTRICT COURT	CLARK COUNTY, NEVADA	4397471 (LV200210)	
Plaintiff / Petitioner:		Defendant / Respondent:		
MARIA DEL ROSARIO CERVANTES-GUEVARA		MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, ET AL.		
To be served upon: Kevin Hutchings			-	

I, Kyle Stauffer, being duly swom, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein. I declare under penalty of perjury that everything stated in this document is true and correct.

Recipient Name / Address: Jessica Hutchings, 1271 N 1050 E, American Fork, UT 84003

Manner of Service: Substitute Service - Abode, Mar 11, 2020, 12;55 pm MDT

Documents: SUMMONS; COMPLAINT

Additional Comments:

1) Successful Attempt: Mar 11, 2020, 12:55 pm MDT at 1271 N 1050 E, American Fork, UT 84003 received by Jessica Hutchings, Age: 40+; Ethnicity: Caucasian; Gender: Female; Weight: 170; Height: S'6"; Hair: Blond; Eyes; Green; Relationship: Wife;

03-12-20

Kyle Stauffer Date

Elite Investigations 7435 S. Eastern Avenue #5-284 Las Vegas, NV:89123

R104175

Subscribed and sworn to before me by the affiant who is personally known to me.

Notary Public

Date

3-12-2020

Commission Expires

AFFIDAVIT OF SERVICE

Case: A-20-808004-C	Court: DISTRICT COURT	County: CLARK COUNTY, NEVADA	Job: 4397471 (LV200210)	
Plaintiff / Petitioner: MARIA DEL ROSARIO CERVANTES-GUEVARA		Defendant / Respondent: MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, ET AL.		
To be served upon: Kevin Hutchings				

I, Kyle Stauffer, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein. I declare under penalty of perjury that everything stated in this document is true and correct.

Recipient Name / Address: Jessica Hutchings, 1271 N 1050 E, American Fork, UT 84003

Manner of Service:

Substitute Service - Abode, Mar 11, 2020, 12:55 pm MDT

Documents:

SUMMONS; COMPLAINT

Additional Comments:

1) Successful Attempt: Mar 11, 2020, 12:55 pm MDT at 1271 N 1050 E, American Fork, UT 84003 received by Jessica Hutchings. Age: 40+; Ethnicity: Caucasian; Gender: Female; Weight: 170; Height: 5'6"; Hair: Blond; Eyes: Green; Relationship: Wife;

03-12-20

Date

Elite Investigations 7435 S. Eastern Avenue #5-284

Las Vegas, NV 89123

Notary Public -12-2020

Subscribed and sworn to before me by the affiant who is

personally known to me.

Date

Commission Expires

Electronically Issued 1/14/2020 9:53 AM

SUMMONS	
SIRIA L. GUTIERREZ, ESQ. Nevada Bar No.: 11981	
BIGHORN LAW	
716 S. Jones Blvd.	
Las Vegas, Nevada 89107	
Phone: (702) 333-1111	
Email: Siria@BighornLaw.com	
Attorneys for Plaintiff	
DISTRICT (COURT
CLARK COUNTY	Y, NEVADA
MARIA DEL ROSARIO CERVANTES- GUEVARA;	
Plaintiffs,	CASE NO: A-20-808004-C
v.	DERT NO. 22
	DEPT. NO: 23
MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability corporation; DOE OWNERS I-V; DOE	<u>SUMMONS</u>
DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-X,	
Defendants.	
NOTICE! YOU HAVE BEEN SUED. THE CONTINUES WITHOUT YOU BEING HEARD UNLESS READ THE INFORMATION BELOW. TO THE DEFENDANT. A Civil Complaint has the relief set forth in the Complaint.	S YOU RESPOND WITHIN 20 DAYS.
THOR DEVELOP	MENT, LLC
If you intend to defend this lawsuit, on you exclusive of the date of service, you must defend the service of the date of service.	within 20 days after this Summons is served to the following:
formal written response to	s Court, whose address is shown below, a the Complaint in accordance with the rules
formal written response to of the Court.	the Complaint in accordance with the rules

- b. Serve a copy of your response upon the attorney whose name and address is shown below.
- 2. Unless you respond, your default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint
- 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

 Issued at the direction of:

BIGHORN LAW

CLERK OF COURT STEVEN D. GRIERSON

By: /s/ Siria L. Gutierrez

SIRIA L. GUTIERREZ, ESQ.

Nevada Bar No.: 11981 716 S. Jones Blvd Las Vegas, Nevada 89107 Attorneys for Plaintiff Deputy Clerk Demond Palmer

1/14/2020

County Courthouse 200 Lewis Avenue Las Vegas, Nevada 89101

	мот	
1	SIRIA L. GUTIERREZ, ESQ.	
2	Nevada Bar No.: 11981	
3	BIGHORN LAW 716 S. Jones Blvd.	
3	Las Vegas, Nevada 89107	
4	Phone: (702) 333-1111	
5	Email: Siria@BighornLaw.com	
6	Attorneys for Plaintiff	COUDT
O	DISTRICT C	COURT
7	CLARK COUNT	Y, NEVADA
8		
9	MARIA DEL ROSARIO CERVANTES-	
	GUEVARA;	
10	Plaintiffs,	CASE NO: A-20-808004-C
11	v.	
12		DEPT. NO: 23
	MARK THOMAS ANDERSON; THOR	
13	DEVELOPMENT, LLC, a limited liability	HEARING REQUESTED
14	corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE	
15	OWNERS I-V; ROE EMPLOYERS I-X; and	
	ROE COMPANIES I-X,	
16	Defendants.	
17		
18	DI AINTHEESC EN DADTE ADDI ICATIONI	
10	PLAINTIFF'S EX PARTE APPLICATION 'SERVE BY PU	
19	SERVEBIT	BEICHTON
20	Plaintiff MARIA DEL ROSARIO CEI	RVANTES-GUEVARA, by and through her
21	4	O
22	attorney of record, SIRIA L. GUTIERREZ, ESC	2., with the Law Offices of BIGHORN LAW
22	hereby moves this Honorable Court for an C	Order enlarging time to complete service on
23		
24	Defendants through publication.	
25	///	
23		
26	///	
27		
28	<i>///</i>	

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

DATED this 6th day of May, 2020.

BIGHORN LAW

By: /s/Siria L. Gutierrez
SIRIA L. GUTIERREZ, ESQ.
Nevada Bar No. 11981
716 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiff

DECLARATION FOR ADDITIONAL TIME FOR SERVICE

- I, SIRIA L. GUTIERREZ, ESQ., being duly sworn, states as follows;
- 1. I am the attorney for Plaintiff in the above-entitled action.
- 2. Plaintiff filed a verified Complaint and a Summons directed to Defendants.
- 3. Before filing of the Complaint, Plaintiff's counsel performed extensive research to determine all of the proper Defendant parties.
- 4. On February 12, 2020, Process server was given the assignment to complete service on Defendants.
- On March 11, 2020, Defendant THOR DEVELOPMENT, LLC was served. See
 Exhibit 1 Affidavit of Service.
- 6. On February 18, 2020, Process server traveled to the address believed to be the residence of Defendant MARK THOMAS ANDERSON at 6325 Wichita Falls Street, North Las Vegas, Nevada 89031 where a white female answered the door and claimed to not know the defendant and that she had purchased the home three years before.
- 7. On February 26, 2020, Process sever was instructed to conduct a background search on Defendant MARK THOMAS in which it was discovered his most recent residency was at 7700 Plunging Falls Drive, Las Vegas, Nevada 89131.
- On February 26, 2020, Process server confirmed with Clark County Assessor's
 Office records that Defendant MARK THOMAS owned the property located at 7700
 Plunging Falls Drive, Las Vegas, Nevada 89131.
- On March 1, 2020, Process server traveled to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 where a woman answered through a Ring Camera and stated that Defendant MARK THOMAS was not home.

10.	That on March 1, 2020, Process server asked the answering woman at 7700 Plunging
	Falls Drive, Las Vegas, Nevada 89131 if she would accept service on his behalf to
	which she declined and refused to identify herself but stated that Defendant MARK
	THOMAS would be back home the following week.

- 11. That on March 8, 2020, Process server returned to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 where no one answered the door even as it was visible from the front house window that there was a male resident inside. See Exhibit 2 Affidavit of Due Diligence.
- 12. On March 12, 2020, Governor Sisolak declared a state of emergency due to COVID-19. Since Governor Sisolak's stay at home orders have been in place, Plaintiff has not attempted personal service again in an abundance of caution. At the time of filing, Governor Sisolak's orders to stay at home are still in effect.
- 13. That the 120-days for service of the Complaint is May 6, 2020.
- 14. Plaintiff therefore requests the Court to sign an Order enlarging the time in which to serve the Complaint on all the Defendants by an additional 90-days to allow service by publication.
- 15. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 6th day of May, 2020.

By: /s/ Siria L. Gutierrez
SIRIA L. GUTIERREZ, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. <u>Introduction</u>

This case arises from a motor vehicle incident on or about February 28, 2018 on the public streets of Clark County, Nevada. Plaintiff MARIA CERVANTES GUEVARA was the restrained driver of a 2013 Ford Sedan on or approximately at the intersection of Fremont Street and S. Eastern Avenue when Defendant MARK THOMAS ANDERSON negligently and carelessly rear ended Plaintiff's Vehicle.

Plaintiff, MARIA CERVANTES GUEVARA, requests an additional time to enlarge the time for service upon remaining Defendant, MARK THOMAS ANDERSON, by Publication in the amount of 90-days

II. Plaintiff has good cause to seek an extension of time and for service by publication.

A. An Enlargement of Time Should be Granted

Plaintiff requests an additional 90 days to ensure Defendant MARK THOMAS ANDERSON is properly served in this matter, as their participation is necessary in this case

Under Nev. R. Civ. P. 4(e)(3), the Court "must extend the service period and set a reasonable date by which service should be made" upon a showing of good cause. In this matter, there exists good cause to grant an extension of the service period, as Plaintiff has been engaged in diligent efforts to serve Defendant MARK THOMAS ANDERSON but has been unable to perfect service. Plaintiff has been unable to serve Defendant in this case, because the residents of the address which Plaintiff has been able to confirm as Defendant's residence refuses to accept service, without any means of perfecting service. Therefore, Plaintiff now requests leave to serve

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the Summons and Complaint through publication. As such, there exists good cause to enlarge the time for service by an additional 60 days.

The purpose of NRCP 4(e) is to encourage diligent prosecution of complaints once they are filed. *Moore v. Shreck*, 102 Nev. 163, 717 P.2d 49 (1986). To ensure diligent prosecution of complaints, NRCP 4(e) requires that plaintiffs serve their complaint and summons within 120 days. However, this time requirement will be extended where a showing of good cause is made. *Id*.

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

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

The *Scrimer* Court indicated that Nevada courts should use a flexible approach when determining motions to dismiss under NRCP 4(e); moreover, they explained that even a single listed factor could, in some instances, prove sufficient grounds to establish good faith:

¹ The referenced case law deals with the prior NRCP 4(i), which has been replaced by NRCP 4(e), but the purposes and caselaw regarding the 120-day service period are the same for both rules.

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

The *Scrimer* Court went on to explain that the policy behind the 120-day service period is partially to ensure diligent prosecution of complaints, but was not meant to become an automatic sanctioning mechanism. Moreover, it should still allow for cases to be heard on their merits:

Underlying these considerations is the policy behind Rule 4(i)—to encourage the diligent prosecution of complaints. Rule 4(i) was not adopted, however, to become an automatic sanction when a plaintiff fails to serve the complaint within 120 days of filing. When making a determination under NRCP 4(i), the district court should recognize that "good public policy dictates that cases be adjudicated on their merits."

Kahn v. Orme, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992) (quoting Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155-56, 380 P.2d 293, 295 (1963) (emphasis added).

Moreover, the District Court has presumptively stated that during the COVID-19 pandemic there is good cause to extend time for service.

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

In *Scrimer*, the Nevada Supreme Court concluded that the district court had not exceeded its jurisdiction or abused its discretion when it refused to dismiss Plaintiff's claim, even though the request for extension of time to serve was made 16 days *after* the 120-day period had expired and Plaintiff entirely failed to demonstrate any diligent efforts to serve the Defendant. The court found there was little or no prejudice to Defendants and that any dismissal would have effectively been with prejudice since the statute of limitations had run.

Here, like *Scrimer*, the statute of limitations has run. Thus, should Plaintiff's motion be denied and his case dismissed as a result, Plaintiff would be perfectly prejudiced, losing his opportunity to have his case heard on the merits. Similarly, Defendants here can point to no prejudice they may suffer should this extension be granted.

However, Plaintiff here has been far more diligent and circumspect than the plaintiff in *Scrimer*. Specifically, Plaintiff is moving the Court for leave to serve Defendant MARK THOMAS ANDERSON by publication, and requests an additional 90 days to perfect such service. Thus, Plaintiff requests that this Court GRANT Plaintiff's Motion to Enlarge Time for Service, extending Plaintiff's time to serve by an additional 90 days, as well as Plaintiff's request to serve by publication.

Due to the difficulty locating Defendant MARK THOMAS ANDERSON, after which, Plaintiff finally was able to locate an address for said Defendant, only to have the residents at said location decline to accept service, followed by a national emergency, Plaintiff has sufficient good cause for the request extension. Plaintiff requests an additional 90-days, from this Court to complete service on Defendants via publication.

III. CONCLUSION

Based on the above, Plaintiff MARIA CERVANTES GUEVARA respectfully requests this Court grant Application to Enlarge Time for Service. Plaintiff respectfully requests an

additional 90-days of time to allow for such service to be perfected via publication, due to the unforeseen difficulties in effecting service on the Defendants. **DATED** this 6th day of May, 2020. **BIGHORN LAW** By: /s/ Siria L. Gutierrez SIRIA L. GUTIERREZ, ESQ. Nevada Bar No. 11981 716 S. Jones Blvd. Las Vegas, Nevada 89107 Attorneys for Plaintiff

CERTIFICATE OF SERVICE Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of BIGHORN LAW and on May 6, 2020 I served the foregoing PLAINTIFF'S EX PARTE APPLICATION TO ENLARGE TIME FOR SERVICE AND SERVICE BY **PUBLICATION** as follows: ☑ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service. /s/ Eva G. Dhimi An employee of **BIGHORN LAW**

EXHIBIT 1

Electronically Filed 4/30/2020 12:22 PM Steven D. Grierson CLERK OF THE COURT

AFFIDAVIT OF SERVICE

Case: Court: County: A-20-808004-C DISTRICT COURT CLARK COUNTY, NEVADA 4397471 (LV200210) Plaintiff / Petitioner: Defendant / Respondent: MARIA DEL ROSARIO CERVANTES-GUEVARA MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, ET AL. To be served upon: Kevin Hutchings

I, Kyle Stauffer, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein. I declare under penalty of perjury that everything stated in this document is true and correct.

Recipient Name / Address: Jessica Hutchings, 1271 N 1050 E, American Fork, UT 84003

Manner of Service:

Substitute Service - Abode, Mar 11, 2020, 12:55 pm MDT

Documents:

SUMMONS; COMPLAINT

Additional Comments:

1) Successful Attempt: Mar 11, 2020, 12:55 pm MDT at 1271 N 1050 E, American Fork, UT 84003 received by Jessica Hutchings. Age: 40+; Ethnicity: Caucasian; Gender: Female; Weight: 170; Height: 5'6"; Hair: Blond; Eyes: Green; Relationship: Wife;

03-12-20

Date

Elite Investigations 7435 S. Eastern Avenue #5-284 Las Vegas, NV 89123

Subscribed and sworn to before me by the affiant who is personally known to me.

Notary Public

Commission Expires

Electronically Issued 1/14/2020 9:53 AM

1	SUMMONS	
	SIRIA L. GUTIERREZ, ESQ.	
2	Nevada Bar No.: 11981	
3	BIGHORN LAW 716 S. Jones Blvd.	
4	Las Vegas, Nevada 89107	
	Phone: (702) 333-1111	
5	Email: Siria@BighornLaw.com	
6	Attorneys for Plaintiff	COURT
7	DISTRICT C	
	CLARK COUNTY	Y, NEVADA
8	MARIA DEL ROSARIO CERVANTES-	
9	GUEVARA;	
10		
	Plaintiffs,	CASE NO: A-20-808004-C
11	v.	DEPT. NO: 23
12	MARK THOMAS ANDERSON, THOR	DEP1. NO: 23
13	MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability	CHMMONG
	corporation; DOE OWNERS I-V; DOE	<u>SUMMONS</u>
14	DRIVERS I-V; DOE EMPLOYEES I-V; ROE	
15	OWNERS I-V; ROE EMPLOYERS I-X; and	
16	ROE COMPANIES I-X,	
	Defendants.	
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19	NOTICE! YOU HAVE BEEN SUED. THE C	
	WITHOUT YOU BEING HEARD UNLESS READ THE INFORMATION BELOW.	YOU RESPOND WITHIN 20 DAYS.
20	MEAD THE INTORMITTION BEEOW.	
21	TO THE DEFENDANT. A Civil Complaint has	been filed by the plaintiff(s) against you for
22	the relief set forth in the Complaint.	
	THOR DEVELOP	MENT. LLC
23	THORDE VEED	WENT, BEC
24		within 20 days after this Summons is served
25	on you exclusive of the date of service, you must o	lo the following:
26		s Court, whose address is shown below, a the Complaint in accordance with the rules
27	of the Court.	the Complaint in accordance with the fules
28		

- b. Serve a copy of your response upon the attorney whose name and address is shown below.
- 2. Unless you respond, your default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint
- 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

 Issued at the direction of:

BIGHORN LAW

CLERK OF COURT STEVEN D. GRIERSON

By: /s/ Siria L. Gutierrez

SIRIA L. GUTIERREZ, ESQ.

Nevada Bar No.: 11981 716 S. Jones Blvd Las Vegas, Nevada 89107 Attorneys for Plaintiff Deputy Clerk Demond Palmer County Courthouse 200 Lewis Avenue

1/14/2020

Las Vegas, Nevada 89101

10/7/2019 Nevada eSOS

TITY INFORMATION	
ENTITY INFORMATION	
Entity Name:	
THOR DEVELOPMENT LLC	
Entity Number:	
E0646142011-3	
Entity Type:	
Domestic Limited-Liability Company (86)	
Entity Status:	
Active	
Formation Date:	
12/02/2011	
NV Business ID:	
NV20111742929	
Termination Date:	
Perpetual	
Annual Report Due Date:	
12/31/2019	

10/7/2019 Nevada eSOS

2019	ivevada e505
	Series LLC:
	Restricted LLC:
RI	EGISTERED AGENT INFORMATION
	Name of Individual or Legal Entity:
	KEVIN HUTCHINGS
	Status:
	Active
	CRA Agent Entity Type:
	Registered Agent Type:
	Non-Commercial Registered Agent
	NV Business ID:
	Office or Position:
	Jurisdiction:
	Street Address:
	6325 WICHITA FALLS STREET, NORTH LAS VEGAS, NV, 89031, USA
	Email Address:
	Mailing Address:
1	

10/7/2019 Nevada eSOS **Individual with Authority to Act: Contact Phone Number: Fictitious Website or Domain Name: PRINCIPAL OFFICE ADDRESS** Address: **Mailing Address: OFFICER INFORMATION VIEW HISTORICAL DATA** Title Name Address Last Updated Status Manager KEVIN L HUTCHINGS 7700 PLUNGING FALLS DR, LAS VEGAS, NV, 89131, USA 10/16/2018 Active Page 1 of 1, records 1 to 1 of 1 Filing History Name History Mergers/Conversions

Return to Search Return to Results

EXHIBIT 2

Electronically Filed 5/6/2020 3:45 PM Steven D. Grierson CLERK OF THE COURT

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SIRIA L. GUTIERREZ, ESQ.

Nevada Bar No.: 11981 BIGHORN LAW

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: Siria@BighornLaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIA DEL ROSARIO CERVANTES-

GUEVARA;

Plaintiffs,

CASE NO: A-20-808004-C

MARK THOMAS ANDERSON; THOR

DEVELOPMENT, LLC, a limited liability

corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-

X,

DEPT. NO: 23

AFFIDAVIT OF DUE DILIGENCE

Defendants.

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

1. That Affiant is lawfully entitled to work in the United States, over eighteen years of age, employed by Elite Investigations, Nevada Private Investigator's License Number 873-C, and not a party to, nor interested in the within action.

2. I have personal knowledge of the facts referenced herein, and if called as a witness could testify competently thereto.

On February 18, 2020, I was given the assignment of completing service upon Mark Thomas
 Anderson with last known address listed as 6325 Wichita Falls Street, North Las Vegas,
 Nevada 89031.

On Thursday, February 13, 2020, at approximately 2:00 p.m., the Affiant traveled to the aforementioned address. A Caucasian woman answered the door. She claimed not to know who Mark Thomas Anderson was. She explained that she purchased the home approximately three year ago.

Case Number: A-20-808004-C

- 5. That on February 26, 2020, Affiant conducted background research on Mark Thomas Anderson and discovered that his most current address was 7700 Plunging Falls Drive, Las Vegas, Nevada 89131. According to the Clark County Assessor's Office, records indicated that Mark Thomas Anderson owns this property.
- 6. That on Sunday, March 1, 2020, at approximately 9:00 a.m., the Affiant traveled to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131. A woman answered through a Ring Camera and stated that Mark Thomas Anderson was not home. The Affiant asked the woman if she would accept service on his behalf; however, the woman said "no", refused to identify herself, and did not open the door. The woman stated that Mark Thomas Anderson would be back "next week".
- 7. That on Sunday, March 8, 2020, at approximately 10:00 a.m., the Affiant traveled to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131; however, no one answered the door. The Affiant looked through the window and saw a man inside the home. The Affiant waived and knocked on the window; however, the unidentified man did not open the door.
- 8. I have read the foregoing Affidavit and know the contents thereof, as the same is true of my own knowledge, except for those matters therein contained upon information in belief. In so those matters, I believe them to be true.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Estela Sandoval

State of Nevada County of Clark

Subscribed and sworn to before

On this 3 day of March

2020, by Estela Sundava

NOTARY PUBLIC IN AND FOR SAID

COUNTY AND STATE



Electronically Filed 6/5/2020 3:11 PM Steven D. Grierson CLERK OF THE COURT

DISTRICT COURT CLARK COUNTY, NEVADA

MARIA DEL ROSARIO CERVANTES- GUEVARA;)	
Plaintiff, vs.))	CASE NO.: A-20-808004-C
)	DEPARTMENT XXIII
MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-X,)))))))	
Defendants.))	DECISION & ORDER

On May 6, 2020, Plaintiff filed this Motion to Enlarge Time for Service and Serve by Publication. Upon review of the pleadings on file, the Certificate of Service was filed via electronic service on May 6, 2020. Defendants did not file an opposition. The Court did not hear oral arguments, and issues this Decision and Order based solely on the papers and pleadings on file and the relevant law.

COURT FINDS, Plaintiff has shown good cause as to why he needs an extension of time to serve Defendants. Therefore, COURT ORDERS, Plaintiff's Motion to Enlarge Time for Service and Serve by Publication is GRANTED.

Case Number: A-20-808004-C

IT IS SO ORDERED.

Dated this 5th day of June, 2020.

HONORABLE STEFANY **DEPARTMENT XXIII**

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MILEY

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, this notice was electronically served, pursuant to

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N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program. **_**

By:

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Carmen Alper Judicial Executive Assistant Department XXIII

Electronically Filed 11/12/2020 3:09 PM Steven D. Grierson CLERK OF THE COURT

Affidavit of Publication

STATE OF NEVADA } COUNTY OF CLARK }

SS

I, Scott Sibley state:

That I am Publisher of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

Oct 15, 2020

Oct 22, 2020

Oct 29, 2020

Nov 05, 2020

Nov 12, 2020

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Nov 12, 2020

Scott Sibley

04110464 00484660

BIGHORN LAW 2225 E. FLAMINGO ROAD BUILDING 2, SUITE 300 LAS VEGAS, NV 89119 DISTRICT COURT
CLARK COUNTY, NEVADA
CASE NO: A-20-808004-C DEPT. NO: 23
MARIA DEL ROSARIO CERVANTES-GUEVARA; Plaintiffs,
v. MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability
corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE
OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-X, Defendants.
SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOU BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW. TO THE DEFENDANT. MARK THOMAS ANDERSON A Civil Complaint has been filed by the Plaintiff against you for the relief set forth in the Complaint. Object of Action: This is a Complaint for: Negligence and Negligence Per Se, Vicarious Liability, Negligent Hiring, Training and Supervision and Negligent Entrustment. 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the date of service, you must do the following: a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court. b. Serve a copy of your response upon the attorney whose name and address is shown below. 2. Unless you respond, your default will be entered upon application of the Plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint. 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time. STEVEN D. GRIERSON, CLERK OF COURT, By: Demond Palmer, Deputy Clerk, 1/14/2020, County Courthouse, 200 Lewis Avenue, Las Vegas, Nevada 89101, Issued at the direction of: BIGHORN LAW, By: SIRIA L. GUTIERREZ, ESQ., Nevada Bar No. 11981, BIGHORN LAW, 716 S. Jones Blvd., Las Vegas, Nevada 89107, Phone: (702) 333-1111, Email: Siria@BighornLaw.com, Attorneys for Plaintiff Published in Nevada Legal News

October 15, 22, 29, November 5, 12, 2020

Electronically Filed 10/28/2020 10:25 AM Steven D. Grierson **CLERK OF THE COURT**

EME 1 **JACQUELINE R. BRETELL, ESQ.** Nevada Bar No.: 12335 EVAN K. SIMONSEN, ESQ. Nevada Bar No. 13762 **BIGHORN LAW** 2225 E. Flamingo Rd. Building 2, Suite 300 Las Vegas, Nevada 89119 Phone: (702) 333-1111 Email: Evans@BighornLaw.com Attorneys for Plaintiff **DISTRICT COURT** 8 9 **CLARK COUNTY, NEVADA** 10 MARIA DEL ROSARIO CERVANTES-**GUEVARA**; 11 12 Plaintiffs, v. 13 14 MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability 15 corporation; DOE OWNERS I-V; DOE

CASE NO: A-20-808004-C

DEPT. NO: XXIII

HEARING REQUESTED

Defendants.

ROE COMPANIES I-X,

DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; ROE EMPLOYERS I-X; and

PLAINTIFF'S EX PARTE MOTION TO ENLARGE TIME FOR SERVICE AND SERVE BY PUBLICATION

COMES NOW Plaintiff MARIA DEL ROSARIO CERVANTES-GUEVARA, by and through her attorneys of record, JACQUELINE R. BRETELL, ESQ. and EVAN K. SIMONSEN, ESQ., with the Law Offices of BIGHORN LAW, and hereby moves this Honorable Court for an Order enlarging time to complete service on Defendants through publication.

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This Motion is made and is based upon all of the pleadings and papers on file herein and the attached Memorandum of Points and Authorities and any oral argument this Court may wish to entertain at the hearing of this Motion. **DATED** this 28th day of October, 2020. **BIGHORN LAW** By: <u>/s/ Evan K. Simonsen</u> JACQUELINE R. BRETELL, ESQ. Nevada Bar No.: 12335 EVAN K. SIMONSEN, ESQ. Nevada Bar No. 13762 2225 E. Flamingo Rd. Building 2, Suite 300 Las Vegas, Nevada 89119 Attorneys for Plaintiff

DECLARATION FOR ADDITIONAL TIME FOR SERVICE

- I, EVAN K. SIMONSEN, ESQ., being duly sworn, states as follows;
- 1. I am the attorney for Plaintiff in the above-entitled action.
- 2. Plaintiff filed a verified Complaint and a Summons directed to Defendants.
- 3. Before filing of the Complaint, Plaintiff's counsel performed extensive research to determine all of the proper Defendant parties.
- 4. On February 12, 2020, Process server was given the assignment to complete service on Defendants.
- On March 11, 2020, Defendant THOR DEVELOPMENT, LLC was served. See
 Exhibit 1 Affidavit of Service.
- Defendant MARK THOMAS ANDERSON is the General Manager of Thor
 Development, LLC. See, Exhibit 2 Defendant MARK THOMAS ANDERSON's
 business card.
- 7. On February 18, 2020, Process server traveled to the address believed to be the residence of Defendant MARK THOMAS ANDERSON at 6325 Wichita Falls Street, North Las Vegas, Nevada 89031 where a white female answered the door and claimed to not know the Defendant and that she had purchased the home three years before.
- 8. On February 26, 2020, Process sever was instructed to conduct a background search on Defendant MARK THOMAS ANDERSON in which it was discovered his most recent residency was at 7700 Plunging Falls Drive, Las Vegas, Nevada 89131.
- On February 26, 2020, Process server confirmed with Clark County Assessor's
 Office records that Defendant MARK THOMAS ANDERSON owned the property

located at 7700	Plunging	Falls Driv	e, Las Vega	s, Nevada 89131

- 10. On March 1, 2020, Process server traveled to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 where a woman answered through a Ring Camera and stated that Defendant MARK THOMAS ANDERSON was not home.
- 11. That on March 1, 2020, Process server asked the answering woman at 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 if she would accept service on his behalf to which she declined and refused to identify herself but stated that Defendant MARK THOMAS ANDERSON would be back home the following week.
- 12. That on March 8, 2020, Process server returned to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 where no one answered the door even as it was visible from the front house window that there was a male resident inside. *See Exhibit 3 Affidavit of Due Diligence.*
- 13. On March 12, 2020, Governor Sisolak declared a state of emergency due to COVID-19. Since Governor Sisolak's stay at home orders were in place, Plaintiff was not able to attempt personal service until the stay was lifted on July 1, 2020.
- 14. That, but-for the state of emergency, the 120-days for service of the Complaint would have run on May 6, 2020.
- 15. Plaintiff had 55-days left to serve Defendant MARK THOMAS ANDERSON when Governor Sisolak declared a state emergency due to COVID-19.
- 16. Plaintiff therefore had until August 25, 2020 to serve Defendant MARK THOMAS ANDERSON after the stay was lifted on July 1, 2020.
- 17. The Honorable Court Granted Plaintiff's original Motion to Enlarge Time for Service and Serve by Publication on June 5, 2020.
- 18. Plaintiff therefore had an additional 90-days from August 25, 2020 to serve

Defendant MARK THOMAS ANDERSON.

- The last date to serve Defendant MARK THOMAS ANDERSON is, therefore Monday November 23, 2020.
- 20. Nevada Legal News published the Summons and Complaint to Defendant MARK THOMAS ANDERSON on October 15, 2020. *See Exhibit 4 Publication*.
- Plaintiff believes that Service of Defendant MARK THOMAS ANDERSON will be completed before November 23, 2020.
- 22. However, out of an abundance of caution, Plaintiff requests the Court to sign an Order enlarging the time in which to complete service of the Complaint on all the Defendants to December 23, 2020, to allow time for service by publication to be completed.
- 23. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 28th day of October, 2020.

By: /s/ Evan K. Simonsen EVAN K. SIMONSEN, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This case arises from a motor vehicle incident on or about February 28, 2018 on the public streets of Clark County, Nevada. Plaintiff MARIA CERVANTES GUEVARA was the restrained driver of a 2013 Ford Sedan on or approximately at the intersection of Fremont Street and S. Eastern Avenue when Defendant MARK THOMAS ANDERSON negligently and carelessly rear-ended Plaintiff's Vehicle.

Plaintiff, MARIA CERVANTES GUEVARA, requests an additional time to enlarge the time for service upon remaining Defendant, MARK THOMAS ANDERSON, by Publication, to allow time for publication to be completed. Plaintiff requests that the deadline for service be extended to December 23, 2020.

II. Plaintiff has good cause to seek an extension of time and for service by publication.

A. An Enlargement of Time Should be Granted

Plaintiff requests the Court to sign an Order enlarging the time in which to serve the Complaint on all the Defendants through November 23, 2020 to ensure Defendant MARK THOMAS ANDERSON is properly served in this matter, as his participation is necessary in this case

Under Nev. R. Civ. P. 4(e)(3), the Court "must extend the service period and set a reasonable date by which service should be made" upon a showing of good cause. In this matter, there exists good cause to grant an extension of the service period, as Plaintiff has been engaged in diligent efforts to serve Defendant MARK THOMAS ANDERSON but has been unable to perfect service. Plaintiff has been unable to serve Defendant in this case for two significant reasons: the emergency order signed by Governor Sisolak on March 13 halted the ability for Plaintiff to serve Defendant MARK THOMAS ANDERSON in person; once the stay was lifted on July 1, 2020, Plaintiff has been able to confirm Defendant's address and residence, but Defendant MARK THOMAS ANDERSON has refused to answer the door on numerous occasions, and the other residents at that address refuse to accept service. As a result, Plaintiff sought leave, and was granted the ability to serve Defendant MARK THOMAS ANDERSON

by publication. That publication has been initiated. Therefore, Plaintiff now requests leave to complete her service of Defendant MARK THOMAS ANDERSON through publication. As such, there exists good cause to enlarge the time for service through December 23, 2020.

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The purpose of NRCP 4(e) is to encourage diligent prosecution of complaints once they are filed. *Moore v. Shreck*, 102 Nev. 163, 717 P.2d 49 (1986). To ensure diligent prosecution of complaints, NRCP 4(e) requires that plaintiffs serve their complaint and summons within 120 days. However, this time requirement will be extended where a showing of good cause is made. *Id*.

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

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

The *Scrimer* Court indicated that Nevada courts should use a flexible approach when determining motions to dismiss under NRCP 4(e); moreover, they explained that even a single listed factor could, in some instances, prove sufficient grounds to establish good faith:

We specifically disavow and overrule Lacey to the extent that it stands for the proposition that "settlement negotiations alone will not constitute good cause for a plaintiff's failure to serve process within 120 days of the filing of the complaint." Lacey,

¹ The referenced case law deals with the prior NRCP 4(i), which has been replaced by NRCP 4(e), but the purposes and caselaw regarding the 120-day service period are the same for both rules.

109 Nev. at 345, 849 P.2d at 262. Negotiations with an eye to settlement, undertaken in good faith in a serious effort to settle the litigation during the 120-day period, may constitute good cause for untimely service under NRCP 4(i). Additionally, we renounce our dictum in Dougan, which suggests that an inflexible approach should be used in assessing motions to dismiss under Rule 4(i).

The *Scrimer* Court went on to explain that the policy behind the 120-day service period is partially to ensure diligent prosecution of complaints, but was not meant to become an automatic sanctioning mechanism. Moreover, it should still allow for cases to be heard on their merits:

Underlying these considerations is the policy behind Rule 4(i)—to encourage the diligent prosecution of complaints. Rule 4(i) was not adopted, however, to become an automatic sanction when a plaintiff fails to serve the complaint within 120 days of filing. When making a determination under NRCP 4(i), the district court should recognize that "good public policy dictates that cases be adjudicated on their merits."

Kahn v. Orme, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992) (*quoting Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 155-56, 380 P.2d 293, 295 (1963) (emphasis added).

Moreover, the District Court has presumptively stated that during the COVID-19 pandemic there is good cause to extend time for service.

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

In *Scrimer*, the Nevada Supreme Court concluded that the district court had not exceeded its jurisdiction or abused its discretion when it refused to dismiss Plaintiff's claim, even though the request for extension of time to serve was made 16 days *after* the 120-day period had expired and Plaintiff entirely failed to demonstrate any diligent efforts to serve the Defendant. The court found there was little or no prejudice to Defendants and that any dismissal would have effectively been with prejudice since the statute of limitations had run.

Here, like *Scrimer*, the statute of limitations has run. Thus, should Plaintiff's motion be denied and his case dismissed as a result, Plaintiff would be perfectly prejudiced, losing his opportunity to have his case heard on the merits. Similarly, Defendants here can point to no prejudice they may suffer should this extension be granted.

It should be noted that on the day of the crash, Defendant MARK THOMAS ANDERSON provided Plaintiff with his business card, which lists him as the General Manager of Thor Development. As General Manager of the company, Defendant MARK THOMAS ANDERSON is an agent of the company and would be aware of litigation initiated against the company. Consequently, when Defendant THOR DEVELOPMENT was served on March 11, 2020, Defendant MARK THOMAS ANDERSON was almost certainly made aware of the litigation. In fact, it is likely because of this knowledge that he has refused to answer the door or accept service of Process at his home address—he is attempting to avoid service. Given that Defendant MARK THOMAS ANDERSON likely already has knowledge of the lawsuit and has been actively avoiding service as a result, there is clearly no prejudice to him in granting Plaintiff's Motion to Enlarge to allow time to perfect service.

Moreover, Plaintiff here has been far more diligent and circumspect than the plaintiff in *Scrimer*. As is evident from the Affidavit of Due Diligence attached hereto, Plaintiff attempted numerous times to serve Defendant personally, and was thwarted through the intentional actions of the Defendant to avoid service. As a result, Plaintiff moved the Court to allow for Service by Publication and has already initiated said publication. Consequently, Plaintiff is now moving the Court—out of an abundance of caution, as Plaintiff expects service to be completed before the current deadline—for leave for the sole purpose of ensuring sufficient time to *complete* that service by publication. Thus, Plaintiff requests that this Court GRANT Plaintiff's Motion to Enlarge Time for Service, extending Plaintiff's time to serve through December 23, 2020.

Due to the difficulty locating Defendant MARK THOMAS ANDERSON, the actions of Defendant MARK THOMAS ANDERSON and the other persons living at his address in avoid service, not to mention the difficulties created by the national emergency and subsequent stays, Plaintiff has sufficient good cause for the request extension. Plaintiff requests an extension to serve Defendant MARK THOMAS ANDERSON through December 23, 2020, from this Court

to complete service on Defendants via publication.

III. <u>CONCLUSION</u>

Based on the above, Plaintiff MARIA CERVANTES GUEVARA respectfully requests this Court grant Motion to Enlarge Time for Service. Plaintiff respectfully requests an extension through December 23, 2020 to allow for such service to be perfected via publication, due to the unforeseen difficulties in effecting service on the Defendants.

DATED this <u>28th</u> day of October, 2020.

BIGHORN LAW

By: /s/Evan K. Simonsen

JACQUELINE R. BRETELL, ESQ.
Nevada Bar No.: 12335

EVAN K. SIMONSEN, ESQ.
Nevada Bar No. 13762
2225 E. Flamingo Rd.
Building 2, Suite 300
Las Vegas, Nevada 89119

Attorneys for Plaintiff

Exhibit 1 – Affidavit of Service

Electronically Filed 4/30/2020 12:22 PM Steven D. Grierson.
CLERK OF THE COURT

AFFIDAVIT OF SERVICE

Case: A-20-808004-C	Court: DISTRICT COURT	County: CLARK COUNTY, NEVADA	4397471 (LV200210)	
Plaintiff / Petitioner: MARIA DEL ROSARIO CERVANTES-GUEVARA		Defendant / Respondent: MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, ET AL.		
To be served upon: Kevin Hutchings				

I, Kyle Stauffer, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein. I declare under penalty of perjury that everything stated in this document is true and correct.

Recipient Name / Address: Jessica Hutchings, 1271 N 1050 E, American Fork, UT 84003

Manner of Service:

Substitute Service - Abode, Mar 11, 2020, 12:55 pm MDT

Documents:

SUMMONS; COMPLAINT

Additional Comments:

1) Successful Attempt: Mar 11, 2020, 12:55 pm MDT at 1271 N 1050 E, American Fork, UT 84003 received by Jessica Hutchings. Age: 40+; Ethnicity: Caucasian; Gender: Female; Weight: 170; Height: 5'6"; Hair: Blond; Eyes: Green; Relationship: Wife;

03-12-20

Date

Elite Investigations 7435 S. Eastern Avenue #5-284 Las Vegas, NV 89123

Subscribed and sworn to before me by the affiant who is personally known to me.

Notary Public

Commission Expires

Electronically Issued 1/14/2020 9:53 AM

SUMMONS	
SUMMONS SIRIA L. GUTIERREZ, ESQ.	
Nevada Bar No.: 11981	
BIGHORN LAW	
716 S. Jones Blvd.	
Las Vegas, Nevada 89107	
Phone: (702) 333-1111	
Email: Siria@BighornLaw.com Attorneys for Plaintiff	
DISTRICT (COURT
CLARK COUNT	
CEARK COUNT	1, NEVADA
MARIA DEL ROSARIO CERVANTES- GUEVARA;	
Plaintiffs,	CASE NO: A-20-808004-C
v.	DEPT NO. 22
NAME OF TAXABLE AND TAXABLE AN	DEPT. NO: 23
MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a limited liability corporation; DOE OWNERS I-V; DOE	<u>SUMMONS</u>
DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-X,	
Defendants.	
NOTICE! YOU HAVE BEEN SUED. THE C	
READ THE INFORMATION BELOW.	100 RESPOND WITHIN 20 DAYS.
TO THE DEFENDANT. A Civil Complaint has the relief set forth in the Complaint.	been filed by the plaintiff(s) against you for
THOR DEVELOP	MENT, LLC
1. If you intend to defend this lawsuit, on you exclusive of the date of service, you must o	within 20 days after this Summons is served to the following:
	s Court, whose address is shown below, a
of the Court.	the Complaint in accordance with the rules

- b. Serve a copy of your response upon the attorney whose name and address is shown below.
- 2. Unless you respond, your default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint
- 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

 Issued at the direction of:

BIGHORN LAW

CLERK OF COURT STEVEN D. GRIERSON

By: /s/ Siria L. Gutierrez

SIRIA L. GUTIERREZ, ESQ.

Nevada Bar No.: 11981 716 S. Jones Blvd Las Vegas, Nevada 89107 Attorneys for Plaintiff Deputy Clerk Demond Palmer County Courthouse

1/14/2020

200 Lewis Avenue Las Vegas, Nevada 89101

Exhibit 2 – Defendant MARK THOMAS ANDERSON's business card



Residential & Commercial Construction

Mark Anderson General Manager

Phone: 702-481-2660

Email: mark@thordllc.com

UT License: 10498201-5501

NV Mobile Home #: R1039

NV Contractor's License #: 76719

Scanned by CamScanner

Exhibit 3 – Affidavit of Due Diligence

Electronically Filed 5/6/2020 3:45 PM Steven D. Grierson CLERK OF THE COURT

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SIRIA L. GUTIERREZ, ESQ.

Nevada Bar No.: 11981

BIGHORN LAW

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: Siria@BighornLaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIA DEL ROSARIO CERVANTES-

GUEVARA;

Plaintiffs,

CASE NO: A-20-808004-C

MARK THOMAS ANDERSON; THOR

DEVELOPMENT, LLC, a limited liability

corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-

X,

DEPT. NO: 23

AFFIDAVIT OF DUE DILIGENCE

Defendants.

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

1. That Affiant is lawfully entitled to work in the United States, over eighteen years of age, employed by Elite Investigations, Nevada Private Investigator's License Number 873-C, and not a party to, nor interested in the within action.

2. I have personal knowledge of the facts referenced herein, and if called as a witness could testify competently thereto.

On February 18, 2020, I was given the assignment of completing service upon Mark Thomas
 Anderson with last known address listed as 6325 Wichita Falls Street, North Las Vegas,
 Nevada 89031.

On Thursday, February 13, 2020, at approximately 2:00 p.m., the Affiant traveled to the aforementioned address. A Caucasian woman answered the door. She claimed not to know who Mark Thomas Anderson was. She explained that she purchased the home approximately three year ago.

Case Number: A-20-808004-C

- That on February 26, 2020, Affiant conducted background research on Mark Thomas 5. Anderson and discovered that his most current address was 7700 Plunging Falls Drive, Las Vegas, Nevada 89131. According to the Clark County Assessor's Office, records indicated that Mark Thomas Anderson owns this property.
- That on Sunday, March 1, 2020, at approximately 9:00 a.m., the Affiant traveled to 7700 6. Plunging Falls Drive, Las Vegas, Nevada 89131. A woman answered through a Ring Camera and stated that Mark Thomas Anderson was not home. The Affiant asked the woman if she would accept service on his behalf; however, the woman said "no", refused to identify herself, and did not open the door. The woman stated that Mark Thomas Anderson would be back "next week".
- That on Sunday, March 8, 2020, at approximately 10:00 a.m., the Affiant traveled to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131; however, no one answered the door. The Affiant looked through the window and saw a man inside the home. The Affiant waived and knocked on the window; however, the unidentified man did not open the door.
- I have read the foregoing Affidavit and know the contents thereof, as the same is true of my own knowledge, except for those matters therein contained upon information in belief. In so those matters, I believe them to be true.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Estela Sandoval

State of Nevada County of Clark

26

Subscribed and sworn to before

On this 23

2020, by Estela Sindowa

27 NOTARY PUBL 28

COUNTY AND STATE



Exhibit 4 – Publication

DISTRICT COURT CLARK COUNTY, NEVADA

CASE NO: A-20-808004-C DEPT, NO: 23 MARIA DEL ROSARIO CERVANTES-GUEVARA. Pigintills.

v. MARK THOMAS ANDERSON: THOR DEVELOP-MENT, LLC, a limited liability corporation, DOE OWN-ERS I-V, DOE DRIVERS I-V, DOE EMPLOYEES I-V ROE OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-X, Defendants

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOU BE-ING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS, READ THE INFORMATION BELOW, TO THE DEFENDANT MARK THOMAS ANDERSON A Civil Complaint has been filed by the Plaintiff against you for the relief set forth in the Complaint. Object of Action. This is a Complaint for: Negligence and Negligence Per Se. Vicarious Liability. Negligent Hiring: Training and Supervision and Negligent Entrustment 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the date of service, you must do the following: a File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, b. Serve a copy of your response upon the attorney whose name and address is shown below: 2. Unless you respond, your default will be entered upon application of the Plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint, 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time, STEVEN D. GRIERSON, CLERK OF COURT, By: Demond Palmer, Deputy Clerk, 1/14/2020, County Courthouse, 200 Lewis Avenue, Las Vegas, Nevada 89101, Issued at the direction of BIGHORN LAW BY SIRIA L GUTIERREZ, ESQ., Nevada Bar No. 11981, BIGHORN LAW, 716 S. Jones Blvd., Las Vegas, Nevada 89107, Phone: (702) 333-1111, Email: Sma@BighomLaw.com, Attorneys for Plaintiff

Published in Nevada Legal News October 15, 22, 29, November 5, 12, 2020 App0097

CERTIFICATE OF SERVICE Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of BIGHORN LAW and on October 28th, 2020 I served the foregoing PLAINTIFF'S EX PARTE MOTION TO ENLARGE TIME FOR SERVICE AND SERVICE BY PUBLICATION as follows: ☑ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or By: /s/ Sahar Nemati An employee of **BIGHORN LAW**

ELECTRONICALLY SERVED 12/16/2020 3:11 PM

A-20-808004-C

DISTRICT COURT CLARK COUNTY, NEVADA

A-20-808004-C Maria Del Rosario Cervantes-Guevara, Plaintiff(s) vs.
Mark Anderson, Defendant(s)

December 16, 2020 3:00 AM Minute Order

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Natalie Ortega

RECORDER: Maria Garibay

JOURNAL ENTRIES

- This matter came before the Court on December 15, 2020 for Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication. Defendant's Opposition included a Countermotion to Dismiss Plaintiff's Complaint. During oral argument, Plaintiff's counsel advised that Judge Gonzalez had recently ruled on a similar motion under similar circumstances. After hearing oral argument the Court took this matter under advisement and issues this minute order. Regarding the Order by Judge Gonzalez, COURT FINDS, the Order by Judge Gonzalez concerns the statute of limitations for the commencement of a legal action. In the Order Judge Gonzalez cites an Order by Governor Sisolak concerning the commencement of a legal action. Accordingly, COURT FINDS, the findings in Judge Gonzalez's Order are not applicable to the instant Motion. Finally, COURT FINDS, the time allowed for service was not "tolled" by the Governor's Order. Therefore, COURT FINDS, the Motion is untimely, pursuant to Administrative Order 20-17. Therefore, COURT ORDERS, Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication is DENIED. Further, COURT ORDERS, Defendant's Countermotion to Dismiss Plaintiff's Complaint is GRANTED only as it pertains to Mark and Shari Anderson.

IT IS SO ORDERED

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Natalie Ortega, to all registered parties for Odyssey File & Serve and/or served via facsimile. ndo/12/16/20

PRINT DATE: 12/16/2020 Page 1 of 1 Minutes Date: December 16, 2020

Case Number: A-20-808004-C

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5	DISTRICT COURT		
6	CLARK COUNTY, NEVADA		
7			
8	MARIA DEL ROSARIO CERVANTES-) CASE#: A-20-808004-C		
9	GUEVARA,) DEPT. XXIII		
10	Plaintiff,)		
11	VS.)		
12	MARK ANDERSON,		
13	Defendant.		
14	BEFORE THE HONORABLE JOSEPH T. BONAVENTURE,		
15	SENIOR DISTRICT COURT JUDGE		
16	TUESDAY, DECEMBER 15, 2020		
17	RECORDER'S TRANSCRIPT OF HEARING:		
18	PLAINTIFF'S EX PARTE MOTION TO ENLARGE TIME FOR SERVICE AND SERVE BY PUBLICATION		
19			
20			
21	APPEARANCES:		
22	For the Plaintiff: EVAN K. SIMONSEN, ESQ.		
23	For Deft. Mark Anderson: SCOTT ROGERS, ESQ.		
24	For Deft. Thor Development: EMELY NAVASCA-BORDERLOVE, ESQ.		
25	RECORDED BY: MARIA L. GARIBAY, COURT RECORDER		

1	Las Vegas, Nevada, Tuesday, December 15, 2020
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3	[Hearing began at 9:37 a.m.]
4	THE COURT: Who's here on this?
5	MR. SIMONSEN: Good morning, Your Honor, this is Evan
6	Simonson on behalf of the Plaintiff Maria del Rosario Cervantes-
7	Guevara.
8	THE COURT: Okay.
9	MR. ROGERS: Good morning, Your Honor, this is Scott
10	Rogers on behalf of Mark Thomas Anderson.
11	THE COURT: All right.
12	MS. NAVASCA-BORDERLOVE: Good morning, Your Honor,
13	this is Emely Navasca-Borderlove on behalf of Defendant's Thor.
14	THE COURT: Defendant Thor?
15	MS. NAVASCA-BORDERLOVE: Yes, Your Honor.
16	THE COURT: They're not involved in this that much, are
17	they? I mean you're served and you're officially in the case, is that
18	MS. NAVASCA-BORDERLOVE: No yes, but for just here
19	to observe. We take no position.
20	THE COURT: Was this a respondeat superior case, that's
21	why they're suing the company?
22	MR. SIMONSEN: Your Honor, the
23	MR. ROGERS: I
24	MR. SIMONSEN: Scott, I don't know if you want to
25	MR. ROGERS: Sorry, I [indiscernible].

it sitting in front of me, but I believe the company actually owned the vehicle at the time, so I don't know if there was respondeat superior necessarily, but certainly a potential for that.

THE COURT: All right. The Court reviewed the -- Liust came

MR. SIMONSEN: Oh, no. I was just going to say I don't have

THE COURT: All right. The Court reviewed the -- I just came in this morning. I know you -- the reply was filed a while ago, but I didn't read until this morning. I just briefly went over it. What do you want to say, counsel?

MR. SIMONSEN: Yes, Your Honor, I'd like to add, I actually was doing some more research this morning and I came across an order that was actually issued last week from Judge Gonzalez that I think that it's very kind of on point for this case. I'm certainly happy to email it over too. I just came across it. It was showing up in my email earlier this morning. She was ruling, pulling of the statute of limitations, but I think it's relevant. And in that order she quotes Governor Sisolak's Declaration of Emergency Directive 9, the revised one. And it says, "Any specific time limit set by statute or regulation for the commencement of any action, of any legal action, is hereby tolled from the date of this directive until 30 days from the date of the state of emergency." It's [indiscernible] on March 12th, 2020 as terminated.

And, you know, I think that -- and then it goes on to say that effectively that that ended on July 31st. And -- and, you know, without going -- it goes on to talk about what toll recommence mean. I don't think I need to go into that. But, effectively, I believe that the -- that it's relevant here, Your Honor, because the service -- the statutes regarding

120 days for service are effectively statutes regarding the commencement of an action. You know, Defendant, Mr. Anderson doesn't -- the action doesn't commence for him until he's been served. And so I think that that order, while obviously not binding on, Your Honor, is -- is -- it elucidates the issues a little bit. If we take that into effect, then the math that I had in my reply is changed. And without going through everything, I certainly can if you like me to, but --

THE COURT: No, I read it a couple of times. I read it, but go ahead.

MR. SIMONSEN: Yeah, the math pursuant to Judge Gonzalez' ruling actually would make our service due next week to be perfectly candid. And, you know, we believe that even without that, based on what I had on my reply that the service was due on the 23rd, and we completed service on the 12th as evidence, you know, that's on record herein. So, you know, I think that under either understanding of the various administrative orders and the directives that, you know, obviously are hard to kind of parse through at times and change on almost a daily basis, in this kind of world that we live in now, that our motion was timely for that as far as that goes. You know, it was filed under an abundance of caution just to be sure that, you know, we -- if it didn't get done in time that we might get some extra time.

Lastly, I just want to kind of reiterate that, you know, the two main purposes of requiring service are to provide notice to the Defendant and to prevent prejudice. And there's no doubt that Defendant, Mr. Henderson, had notice of this action since at least March

of this year, since I believe that's when his counsel, you know, added themselves to the service list and sent us a letter notifying us that they were representing him in this matter.

And then as far as prejudice goes, you know, discovery has not begun yet, and so any discovery that takes place, Mr. Anderson would be a part of it every step of the way. Not to mention the fact that he is effectively an officer of Defendant Thor's company as the general manager to my understanding. So given that both of the purposes, you know, of service are met, I think that Nevada strong public policy in favor of hearing cases on the merits should prevail.

THE COURT: And you're also -- you're also conceding -- MR. SIMONSEN: Oh, and I apologize --

THE COURT: -- that Shari Anderson should be dismissed; is that correct?

MR. SIMONSEN: Yes, I was just about to say -- I apologize, I meant to throw it -- to, you know throw that in the amended. We're certainly fine with dismissing her. The complaint was actually drafted before I came to this, before the case came to me, so I'm not sure what happened as far as her being named and then her -- not being named rather, but then being included in the complaint itself. So obviously, you know, we're fine with her being dismissed without prejudice to bringing her back in should discovery show that she's a necessary party certainly. And, you know, we don't even have to [inaudible] the caption rather, because she's not --

THE COURT: Right.

MR. SIMONSEN: -- even included in the caption at the moment.

THE COURT: All right.

Mr. Rogers.

MR. ROGERS: Yes, Your Honor, so I can't really speak to Judge Gonzalez' order. Of course that wasn't briefed. But, of course, that's not binding on this Court. What's binding on this Court is the minutes.

THE COURT: No, it's not binding, but she's -- I think she's the head of the civil department and she's very knowledgeable. What I'm going to probably do with this is take it under advisement and I'm going to have the attorney email us Gonzalez' order, and then I'm going to look at the reply a little more and so I will take this under advisement. But I'll hear from you briefly, Mr. Rogers.

MR. ROGERS: Thank you, Judge. And I agree that she's very knowledgeable, but I would say what clearly binds this Court in the current climate is Administrative Order 2017, which states as cited in our brief, "Effective July 1st, 2020, motion to extend service and process must be filed to the expiration of time to serve." So here we have an order that was entered granting Plaintiff an additional 90 days to serve personally, excuse me, and by publication. If we give Plaintiff until July 1st, 2020, those 90 days expire. Then I have the dates here, on October 18th, which was 10 days before Plaintiff filed the second motion. That's the subject of this hearing today.

There's a lot of language in Plaintiff's motion and the reply

about the difficulties and effectuating service personally -- personal service in the current climate, and of course that's indisputable. It had been more difficult to serve people in person, and there was a period that expired on July 1st during which -- during which a Plaintiff did not have to do that. But that's a bit of red herring because there's no evidence that Plaintiff actually attempted personal service after March 8th. The order of this Court dated June 5th gave the 90 days to effectually service by publication, and that's the only type of service that they've attempted since that order was entered. So there was nothing that made it more difficult for them to serve by publication. It seems like Plaintiff is trying to backtrack after missing a deadline to cite, you know, difficulties in personal service that they didn't even encounter because they didn't attempt personal service, and that's set forth in detail in the opposition.

Just to briefly address some of the cases that are cited in Plaintiff's reply, none of them are applicable to the facts of this case. The most recent U.S. Supreme Court case that they cite, *Henderson v. United States*, essentially says that the Federal Rule of Civil Procedure for which is similar to the Nevada Rule of Civil Procedure for, supersedes. And it was Suits In Admiralty Act rule that stated that complaints must be served forthwith, which is very vague. And FRCP 4 states they must be served in 120 days. So essentially what the U.S. Supreme Court said in that case was the 120 days applied, not this forthwith language in the Suits In Admiralty Act. And then that's also the case here, NRCP 4 applies. They have 120 days. And as set forth in

detail in our opposition, even giving Plaintiff's every benefit of the doubt, the time started on July 1st, the time -- the clock for them to serve within 90 days, and that time passed. And, again, none of the difficulties cited apply in this case because the only attempts made after March 8th, 2020 were attempts to serve by publication, and there was nothing preventing the Plaintiff from doing that.

THE COURT: All right, counsel. Well, listen, you'll get me that order and I'm going to digest the reply a little and then I'll take this under advisement but issue a decision in a day or two, all right? You'll get that order to us today from Judge Gonzalez?

MR. SIMONSEN: Certainly, Your Honor, I can do it in just a moment. I was going to ask if I could have just a couple words of rebuttal on this.

THE COURT: Sure, sure.

MR. SIMONSEN: Sure. And I'll be very brief.

THE COURT: Okay.

MR. SIMONSEN: But I just want to say that this argument that our time would've ended on October 19th, if we're given until July 1st, ignores the fact that if we're given until July 1st, that would necessarily mean that our -- that the initial 120 days was tolled until that time, which means we would be given 55 days from then forward and then the additional 90 days, which puts us, as I mentioned in my reply, November 23rd, I believe, or even perhaps even later than that. As a result, our motion was still filed within time. Your Honor, I would just ask -- I actually have the email ready to go. What is the email address

1 2	ORD Joshua L. Benson, Esq. Nevada Bar No. 10514		
3	BENSON ALLRED 6250 N. Durango Dr.		
4	Las Vegas, Nevada 89149 Telephone: (702) 820-0000		
5	Facsimile: (702) 820-1111 E-mail: josh@bensonallred.com		
6	Attorneys for Plaintiff(s)		
7	DISTRICT (
8	CLARK COUNT	Y NEVADA	
9	ALVIN SMITH, individually;	G. G. D. J. 20. 021501 G	
10	Plaintiff,	CASE NO. A-20-821501-C DEPT. NO. XI	
11	V.	ORDER DENYING DEFENDANT'S	
12		MOTION TO DISMISS	
13	MICHAEL MINCHEY, individually; DOES I-V, individually; and ROE CORPORATIONS VI-X,		
14	inclusive.		
15	Defendants.		
16	Defendant Michael Minchey's Motion to Dist	miss was brought for hearing before Department	
17	11 of the Eighth Judicial District Court, before the Honorable Judge Gonzalez, on the Court's		
18	December 3, 2020 Chambers Calendar. Defendant	Micheal Minchey, as represented by Phillip R.	
19	Emerson, Esq., of the Emerson Law Group, filed th	ne motion and reply. Plaintiff Alvin Smith, as	
20	represented by Joshua L. Benson, Esq., of Benson Al	lred Injury Law, filed an opposition Defendant's	
21	Motion to Dismiss. The Court, having reviewed the	e pleadings and papers on file herein, and good	
22	cause appearing,		
23	<u>FINDIN</u>	<u>GS</u>	
24	Defendant Minchey filed a Motion to Dism	niss alleging that Plaintiff failed to timely file his	
25	complaint within NRS 11.190(4)(e)'s two year statut	e of limitations.	
26	2. NRS 11.190(4)(e) provides a two-year stat	tute of limitations period on Plaintiff's claims.	
27	3. The collision occurred on July 31, 2018.		
28			

///

///

27 ///

4. During the pendency of the two-year statute of limitations, on April 1, 2020, Governor Sisolak signed the Declaration of Emergency Directive 009 (Revised), Section 2, tolling the statute of limitations:

Any specific time limit set by state statue or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30 days from the date the state of emergency declared on March 12, 2020 is terminated.

5. On June 29, 2020, Governor Sisolak signed the Declaration of Emergency Directive 026, Section 2, which states:

Directive 009 (Revised) shall terminate on June 30, 2020 at 11:59 pm. All time tolled by Section 2 shall recommence effective July 31, 2020 at 11:59 pm.

- 6. To "toll" a statute of limitations period means to hold it in abeyance, *i.e.*, to stop the clock. Artis v. District of Columbia, 138 S.Ct. 594, 598 (2018). In Artis, Justice Ginsberg held that the term "tolled" means that the limitations period is suspended (stops running) and then starts running again when the tolling period ends, picking up where it left off. Id. The Supreme Court highlighted that Black's Law Dictionary captures the general rule applied to tolling: "'toll,' when paired with the grammatical object 'statute of limitations,' means 'to suspend or stop temporarily." Id. (citing Black's Law Dictionary 1488 (6th ed. 1990)).
- 7. The Directives are clear in the use of the word "toll" and "recommence"—language that must be given its plain meaning. First, Directive 009 tolled the statute of limitations and then Directive 026 recommenced the statute of limitations. As noted in *Artis* and Black's law dictionary, the term "tolled" in conjunction with the objection "statute of limitations" means to suspend or temporarily stop. Directive 009 suspended or temporarily stopped the running of the statute of limitations. Directive 026 then "recommenced" the running of the statute of limitations. The definition of "recommence" is to "begin or cause to begin again." In reviewing the Directive's language with the law there can only be one meaning: the statute of limitations stopped—or paused—and then started running again from where it left off.

7	8. The collision occurred on July 31, 2018. Directive 009 tolled the statute of limitations on
1 "	April 1, 2020, with 121-days remaining until the two-year statute of limitations. Directive 026 then
ο,	recommenced the 121-days remaining on the two year statute of limitations on August 1, 2020. Thus,
4	the new statute of limitations was November 29, 2020. Plaintiff filed his Complaint timely on
S ,	September 21, 2020.
9	IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to
-	Dismiss is DENIED.
_∞ ο	
10	DATED: December 10, 2020
11	
12	10 Je
13	Elizabeth <u>Gonzalez, Distri</u> ct Court Judge
4	
15	Respectfully submitted by:
16	BENSON ALLRED INJURY LAW
17	BY: /s/ Joshua Benson
19	Nevada Bar No. 10514 6250 N. Durango Drive
20	Las Vegas, Nevada 89149 Attorney for Plaintiff
21	Approved as to form and content:
77	EMERSON LAW GROUP
24	BY: /s/ Kristen A. Molloy Phillip R. Emerson, Esq.
25	Nevada Bar No. 5940 Kristen A. Molloy, Esq.
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82	Attorney for Defendant

Electronically Filed 12/30/2020 5:53 PM Steven D. Grierson CLERK OF THE COURT

MRCN 1 JACQUELINE R. BRETELL, ESQ. Nevada Bar No.: 12335 EVAN K. SIMONSEN, ESO. 3 Nevada Bar No. 13762 **BIGHORN LAW** 2225 E. Flamingo Rd. Building 2, Suite 300 5 Las Vegas, Nevada 89119 Phone: (702) 333-1111 Email: Jacqueline@BighornLaw.com 7 Evans@BighornLaw.com Attorneys for Plaintiff 8 **DISTRICT COURT** 9 **CLARK COUNTY, NEVADA** 10 MARIA DEL ROSARIO CERVANTES-11 GUEVARA; 12 Plaintiffs, CASE NO: A-20-808004-C 13 v. 14 DEPT. NO: XXIII MARK THOMAS ANDERSON; THOR 15 DEVELOPMENT, LLC, a limited liability HEARING REQUESTED 16 corporation; DOE OWNERS I-V; DOE DRIVERS I-V; DOE EMPLOYEES I-V; ROE 17 OWNERS I-V; ROE EMPLOYERS I-X; and ROE COMPANIES I-X, 18 Defendants. 19 20 PLAINTIFF'S MOTION FOR RECONSIDERATION ON THE COURT'S ORDER 21 DENYING PLAINTIFF'S EX PARTE MOTION TO ENLARGE TIME FOR SERVICE AND SERVE BY PUBLICATION AND GRANTING DEFENDANTS' ORDER TO 22 **DISMISS PLAINTIFF'S CASE** 23 COMES NOW Plaintiff MARIA DEL ROSARIO CERVANTES-GUEVARA, by and 24 through her attorneys of record, JACQUELINE R. BRETELL, ESQ. and EVAN K. 25 26 SIMONSEN, ESQ., with the Law Offices of BIGHORN LAW, and hereby files this Motion for 27 Reconsideration. 28

1	This Motion is made and is based upon all of the pleadings and papers on file herein and		
2	the attached Memorandum of Points and Authorities and any oral argument this Court may	wish	
3	to entertain at the hearing of this Motion.		
4	DATED this 30 th day of December, 2020.		
5			
6	BIGHORN LAW		
7	By: /s/Evan K. Simonsen		
8	JACQUELINE R. BRETELL, ESQ. Nevada Bar No.: 12335		
9	EVAN K. SIMONSEN, ESQ. Nevada Bar No. 13762		
11	2225 E. Flamingo Rd. Building 2, Suite 300		
12	Las Vegas, Nevada 89119 Attorneys for Plaintiff		
13			
14	NOTICE OF HEARING		
15	TO: ALL PARTIES		
16	PLEASE TAKE NOTICE that Plaintiff will bring the foregoing MOTION FOR		
17	RECONSIDERATION on for hearing on the day of, 2020, at		
18	a.m./p.m., before the before the above stated court.		
19	DATED this 30th day of December, 2020.		
20 21	BIGHORN LAW		
22	By:/s/ Evan K. Simonsen JACQUELINE BRETELL, ESQ.		
23	Nevada Bar No. 12335 EVAN K. SIMONSEN, ESQ.		
24	Nevada Bar No. 13762 2225 E. Flamingo Road		
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26	Las Vegas, NV 89119 Attorneys for Plaintiff		
27			
28			

TABLE OF CONTENTS

1	TABLE OF CONTENTS		
2	TABLE OF AUTHORITIES4		
3	ISSUES BEFORE THE COURT4		
4 5	1. Did Governor Sisolak's Emergency Directives toll time limits to "recommence" an action, such as performing service?		
6 7	2. Does a full briefing of the <u>Smith v. Minchey</u> Order authored by Judge Gonzalez support a finding that time to "recommence" an action was likewise tolled by the Governor's Emergency Directives?		
8910	3. If the time limit for performing service was not tolled, was it reasonable for Plaintiff to interpret the Administrative Orders and Emergency Directives in a manner that caused delay in filing the Motion to Enlarge Time?		
11 12	4. Does Good Cause Exist—If Plaintiff's Motion was Untimely, was there good cause for the delay in filing said Motion; and does good cause exist to grant Plaintiff's Motion?		
13 14	MEMORANDUM OF POINTS AND AUTHORITIES		
15	INTRODUCTION5		
16	LEGAL ARGUMENT AND ANALYSIS6		
17	CONCLUSION		
18	CERTIFICATE OF SERVICE15		
19			
20 21			
22			
23			
24			
25			
26			
27			
28			

1		TABLE OF AUTHORITIES
2		STATUTES AND RULES
3		Declaration of Emergency Directive 009 (Revised)
5		Declaration of Emergency Directive 026
6		
7		N.RC.P. 4
8		N.R.C.P. 12
9		CASE LAW
10		Smith v. Minchey, Case No. A-20-821501-C
11		Masonry and Tile Contractors Assoc. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737,
12		741 (1997).
13		Frasure v. United States of America, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003).
14		Mallard Automotive Group, Ltd. v. United States of America, 343 F. Supp. 2d 949,
15		952 (D. Nev. 2004)
16		Kahn v. Orme, 108 Nev. 510, 835 P.2d 790 (1992)
17		
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24 25	J.	interpret the Administrative Orders and Emergency Directives in a manner that caused delay in filing the Motion to Enlarge Time?
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		the delay in filing said Motion; and does good cause exist to grant Plaintiff's Motion?
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. <u>Introduction</u>

This case arises from a motor vehicle incident on or about February 28, 2018 on the public streets of Clark County, Nevada. Plaintiff MARIA CERVANTES GUEVARA was the restrained driver of a 2013 Ford Sedan on or approximately at the intersection of Fremont Street and S. Eastern Avenue when Defendant MARK THOMAS ANDERSON negligently and carelessly rear-ended Plaintiff's Vehicle.

Plaintiff, MARIA CERVANTES GUEVARA, requests an additional time to enlarge the time for service upon remaining Defendant, MARK THOMAS ANDERSON, by Publication, to allow time for publication to be completed. Plaintiff requests that the deadline for service be deemed extended through at least November 13, 2020, such that service by publication, which was completed on November 12, 2020, be effectuated.

On December 16, 2020, the Court ordered that Plaintiff's Motion for an enlargement of time to perform service was denied. Likewise, the Court ordered that Plaintiff's claims made against MARK THOMAS ANDERSON and SHARI ANDERSON personally, were dismissed. Plaintiff's claims against THOR DEVELOPMENT, LLC, remained intact. *See* Order attached hereto as "Exhibit 1."

The Court's Order noted that Plaintiff made arguments to an Order authored by Judge Gonzalez which found that the time to commence or recommence an action was tolled by Emergency Directives authored and Ordered by Governor Sisolak. The Court's Order notes that the Gonzalez Order was reviewed, and that it referred only to commencing of legal actions, and dealt solely with Statutes of Limitations.

Plaintiff did not have access to the Order, which was entered in <u>Smith v. Minchey</u>, Case No. A-20-821501-C at the time of the briefing on Plaintiff's Motion. However, Plaintiff has since obtained the Order and wishes to submit it as evidence to permit full briefing on the Order, which would merit reconsideration of the Court's Order.

The Order supports Plaintiff's contention that the directive tolled times, not just the Statute of Limitations, but extended times for performing service as well. As such, Plaintiff respectfully

argues that she timely completed service by publication in this matter, and that the Court is warranted in reconsidering the prior order granted in this case dismissing Plaintiff's claims against Mark and Shari Anderson.

II. LEGAL ARGUMENT AND ANALYSIS

A. Legal Standard for Reconsideration

The Nevada Supreme Court has held that a district court may reconsider a prior order if "substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry and Tile Contractors Assoc. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741 (1997) (emphasis added). Under Nevada law, "[r]econsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." Frasure v. United States of America, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). See also, Mallard Automotive Group, Ltd. v. United States of America, 343 F. Supp. 2d 949, 952 (D. Nev. 2004) ("A motion to reconsider an interlocutory order must set forth the following: (1) some valid reason why the court should revisit its prior order; and (2) facts or law of a 'strongly convincing nature' in support of reversing the prior decision.").

B. Governor Sisolak's Emergency Directives Tolled the Time to Recommence Actions, as well as for Initial Filings

Judge Gonzales Order in <u>Smith v. Minchey</u>, Case No. A-20-821501-C makes clear that "The Directives are clear in the use of the word "toll" and "recommence"—language that must be given its plain meaning." *See*, <u>Order</u> attached hereto as "**Exhibit 2**." Judge Gonzalez specifically referenced the Emergency Directives 009 (Revised) and 026 in determining that Statutes of Limitation periods were tolled through the pendency of the Emergency Directives.

The Dismissal of Plaintiff's claims against Defendants Mark and Shari Anderson, personally, hinged upon a calculation of time under NRCP 4. Plaintiff had argued that the 120-days for service of the Complaint would have run on May 6, 2020, if not for the global pandemic, and Nevada's lockdown orders which tolled the time to complete service. However, On March 12, 2020, Governor Sisolak declared a state of emergency due to COVID-19. See Declaration of

Emergency Directive 009 (Revised). This Emergency Directive states that "Any specific time limit set by state statute or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30 days from the date the state of emergency declared on March 12, 2020 is terminated." *See* Declaration of Emergency Directive 009 (Revised).

2.1

N.R.C.P. 4 is, unequivocally, a regulation. It is a state Rule of Civil Procedure regulating how attorneys and the Courts conduct themselves. The plain meaning of "regulation" in this context is that is a rule. See, e.g., "Regulation", Merriam-Webster online, https://www.merriam-webster.com/dictionary/regulation?src=search-dict-box ("an authoritative rule dealing with details or procedure; a rule or order issued by an executive authority or regulatory agency of a government and having the force of law."); and, "Regulation", Black's Law Dictionary Online, https://thelawdictionary.org/regulation/, ("a rule or order prescribed for management or government").

Moreover, N.R.C.P. 4 sets a "specific time limit" within the commencement of an action—once a Complaint has been filed, service of process <u>must</u> be perfected before the action proceeds. In other words, while the filing of a Complaint commences an action with regard to the Plaintiff, it is <u>Service</u> of the Summons and Complaint which commences the action for the Defendant(s). Commencement of an Action therefore requires <u>both</u> that a Complaint be filed <u>and</u> that the Complaint be served on the Defendant. There is therefore no disputing that both filing of the Complaint and Service of Process are part and parcel of the commencement of a legal action. By definition, then, N.R.C.P. 4 is a "regulation for the commencement of [a] legal action" as referenced in section 2 of Emergency Directive 009 (Revised).

Emergency Directive 009 (Revised) was issued on April 1, 2020. At that time, Plaintiff had 36 days left before the expiry of the 120-day time limit set by N.R.C.P. 4. Therefore, as of the date of the lifting of the State of Emergency on July 1, 2020, Plaintiff still had 36 days within which to serve Defendant MARK THOMAS ANDERSON with the Summons and Complaint. However, as noted in Emergency Directive 009 (Revised), the tolling ended 30 days after the state of emergency was lifted. Consequently, when the state of emergency was lifted as of July 1, 2020, the tolling did not end util 11:59 p.m. July 31, 2020. Plaintiff's remaining 36 days did

not recommence until August 1, 2020. Plaintiff had until September 5, 2020 to effect service on Defendant MARK THOMAS ANDERSON under the initial 120-days pursuant to N.R.C.P. 4.

On June 5, Plaintiff was granted an additional 90 days for service—not from June 5, 2020, but of the total amount of time left to perfect service. *See*, Decision & Order on record herein as filed on June 5, 2020. 90 days from September 5, 2020 is December 4, 2020. Consequently, pursuant to the relevant Emergency Directives, Rules of Civil Procedure and Court Orders, Plaintiff had until December 4, 2020 to complete service. Plaintiff completed service by publication on November 12, 2020.

The Court's Order is based solely upon a conclusion that the Governor's directive which was lifted on July 1, 2020, applied only to Statute of Limitations timelines. Plaintiff would argue that the language of the Emergency Directives order no such limitation. Furthermore, the order in <u>Smith v. Minchey</u>, authored by Gonzalez, notes that the extension of time is not merely to commence actions, but to recommence actions. See <u>Order</u> attached hereto as "Exhibit 2."

Plaintiff would ask that the Court reconsider its prior Order dismissing Plaintiff's claims against Mark Anderson and Shari Anderson and allow for the service of Mark Anderson which was completed on November 12, 2020.

C. Nevada Rule of Civil Procedure 4 Requires a Determination of Whether Good Cause Existed in the Motion to Enlarge Time.

N.R.C.P. 4(e)(3) states:

2.1

"If a plaintiff files a motion for an extension of time before the 120-day service period – or any extension thereof – expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made."

N.R.C.P. 4(e)(4) states:

"If a plaintiff files a motion for an extension of time after the 120-day service period – or any extension thereof – expires, the court must first determine whether good cause exists for the plaintiff's failure to timely file the motion for an extension before the court considers whether good cause exists for granting an extension of the service period. If the plaintiff shows that good cause exists for the plaintiff's failure to timely file the motion and for granting an extension of the service period, the court must extend the

time for service and set a reasonable date by which service should be made."

2.1

In other words, in ruling on Plaintiff's Motion to Enlarge Time, the Court is required to follow a three-step process:

- 1) Was the Motion to Enlarge Time for Service made before the expiration of the 120-day service period, inclusive of any extensions thereto? If so, then the Court skips to step-3;
- 2) If the Motion was made after the expiration of the 120-day service period, inclusive of any extensions thereto, then the Court must consider whether there was good cause for any delay in filing the Motion; and
- Finally, the Court must determine whether good cause exists for granting the Motion to Enlarge Time.

The Court's Order Denying Plaintiff's Motion only considers the first of these steps and does not provide any reasoning as to the other required issues.

1) Was Plaintiff's Motion to Enlarge Timely Filed?

The Court's Minute Order Denying Plaintiff's Motion to Enlarge states "COURT FINDS, the Order by Judge Gonzalez concerns the statute of limitations for the commencement of a legal action... Accordingly, COURT FINDS, the findings in Judge Gonzalez's Order are not applicable to the instant Motion... Therefore, COURT FINDS, the Motion is untimely..."

Respectfully, Plaintiff believes that this finding was inaccurate for the reasons set forth above in Section II(B). Simply put: Emergency Directive 009 (Revised) tolled all statutory or regulatory time limits for the commencement of an action; Service timelines are state regulatory time limits; Service of Process is part and parcel of the commencement of a legal action; Service of Process timelines were tolled as part of Emergency Directive 009 (Revised); Because the 120-day time for service, inclusive of any extensions thereto, was tolled, Plaintiff's Motion was timely filed.

Not to put too fine a point on it, but based on Plaintiff's interpretation of the Emergency Directives and Administrative Orders, as set forth above, the expiry of the 120-day service time, inclusive of all extensions thereto, occurred on December 4, 2020, four (4) weeks after Defendant MARK THOMAS ANDERSON was officially served in this matter. As such, if

Plaintiff's Motion was timely based on this interpretation, it was also moot as Defendant was officially served before said expiration.

Nevertheless, assuming, *arguendo*, that the Court continues to believe that Plaintiff's Motion was untimely in spite of the analysis set forth above, the Court failed to continue its analysis, despite the clear requirement by N.R.C.P. 4(e)(4) to do so.

2) Did Good Cause Exist for Any Delay?

While Plaintiff steadfastly maintains the belief that her Motion to Enlarge Time was timely given the Emergency Directives, even if the Court disagrees, the analysis is not over.

In its Minute Order Denying Plaintiff's Motion to Enlarge, the Court states: "COURT FINDS, the Motion is untimely, pursuant to Administrative Order 20-17. Therefore, COURT ORDERS, Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication is DENIED..."

Despite the clear and unambiguous language of N.R.C.P. 4(e)(4), the Court provided no findings related to whether good cause existed for any delay in the Plaintiff's filing of her Motion to Enlarge.¹

In the instant Matter, there are two (2) ways in which such Good Cause might be proven.

First, if Plaintiff were to provide evidence of the various ways in which service was attempted during the period between the granting of the prior Motion to Enlarge Time and the filing of the Instant Motion. Certainly, showing a myriad of attempts of failed service would

provide adequate evidence to warrant good cause in said delay.

Alternatively, good cause exists for any delay in filing the Motion if Plaintiff reasonably believed there was no need to file the Motion. In other words, it is clear from Plaintiff's Motion to Enlarge, and even more so in the subsequent Reply in Support of Plaintiff's Motion to Enlarge Time, that Plaintiff believed that her time for service was tolled during the state of emergency, and therefore that the time for service did not expire until at least November 23, 2020. Under

¹ This failure to complete the analysis required under N.R.C.P. 4(e)(4) provides further reasoning for allowing Plaintiff's Motion for Reconsideration as it would be manifestly unjust for the Court to Rule on Plaintiff's Motion and terminate the case (as against Defendant MARK THOMAS ANDERSON) at its outset without full consideration of the issue as required by the Rules of Civil Procedure.

Plaintiff's belief and interpretation of the Emergency Directives and Administrative Orders, there would be no need to file a Motion to Enlarge Time, so any delay would be both understandable and reasonable.

Of course, this necessarily leads to the question: was the Plaintiff's interpretation and belief *reasonable*? If yes, then good cause existed for any delay by the Plaintiff in filing her Motion to Enlarge Time because it was reasonable to believe that the Motion was unnecessary.

Given the argument set forth above in Section II(B), Plaintiff submits that it was more than reasonable to believe that she had time to complete service and that her Motion to Enlarge was therefore unnecessary, but filed out of an abundance of caution.

Moreover, it is indisputable that all the Administrative Orders and Emergency Directives (as they pertain to the courts) are generally understood to extend time as a matter of course, given the unusual state of the world and the difficulties it has imposed on everyone; including working remotely and unexpected skeleton staffs caused both by business necessity and the unfortunate reality of how families have to deal with their children being "home-schooled," not to mention the unforeseen consequence of internet brown-outs and black-outs caused by a shortage of bandwidth for people suddenly forced to conduct all of their (and their children's) daily business from home, rather than the office.

The clear and obvious <u>intent</u> of the Administrative Orders and Emergency Directives during the pandemic was to enlarge time and provide recourse for the difficulties caused by the State of Emergency. It was therefore undeniably reasonable for the Plaintiff to believe that the intent of Emergency Directive 009 (Revised) was to toll time for all issues related to the "commencement of an action" including Service of Process and therefore believe that Service was not due until at least November 23, 2020.

Consequently, since it was reasonable for Plaintiff to believe that Emergency Directive 009 (Revised) was intended to toll all time limits related to the commencement of an action, including those regarding Service, Good Cause also clearly exists for any delay in Plaintiff's filing of the Motion to Enlarge Time.

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2.1

3) Does Good Cause Exist for Granting Plaintiff's Motion?

It bears noting that the reasonableness of Plaintiff's interpretation of the Emergency Directives and Administrative Orders also provides good cause for Granting Plaintiff's Motion. Certainly, if Plaintiff was reasonable in believing that the expiration of the 120-day service deadline, inclusive of any extensions thereto, was not until at least November 23, 2020, then it reasonable to believe that Plaintiff was sufficiently diligent in pursuing service of Defendant MARK THOMAS ANDERSON to warrant a determination that good cause exists for granting Plaintiff's Motion. The issue in question is not what Plaintiff did to effectuate service, but was Plaintiff *reasonably diligent in her attempts*. The deadline in N.R.C.P. 4 "was not adopted, however, to become an automatic sanction when a plaintiff fails to serve the complaint within 120 days of filing. When making a determination under NRCP4(i), the district court should recognize that 'good public policy dictates that cases be adjudicated on their merits." Kahn v. Orme, 108 Nev. at 516 (1992).

It is axiomatic that Nevada has a strong public policy in favor of adjudication on the merits, and the Rules of Civil Procedure governing Service are intentionally flexible to promote this policy. Moreover, as outlined above, the clear intent of the state-issued Emergency Directives and court-issued Administrative Orders was to facilitate deadline extensions in order to further the strong public policy in favor of adjudication on the merits. Consequently, where a Plaintiff has timely effectuated service within a deadline based on a reasonable interpretation of all of the Public Policy, Rules of Civil Procedure, Emergency Directives, and Administrative Orders, good cause exists to GRANT her Motion to Enlarge where the Court has a differing interpretation.

To Deny Plaintiff's Motion to Enlarge Time in spite of her reasonable interpretation of the various policies, rules, directives and orders flies in the face of Nevada's Public Policy, not to mention the clear intent of the Rules of Civil Procedure, Emergency Directives and Administrative Orders.

Finally, it bears noting that the Defendant in Question, MARK THOMAS ANDERSON, is the General Manager, and thus agent, for the remaining Defendant, THOR DEVELOPMENT.

As such, he has been aware of this litigation since his employer was served in March 2020.² While service of Mr. Anderson has been in process, no discovery has taken place, meaning that there is no prejudice to Mr. Anderson in the way of missing out on depositions or other discovery. Perhaps most importantly, Mr. Anderson's potential dismissal from this matter *will not preclude him from the proceedings*. Mr. Anderson is both a percipient witness and the most knowledgeable person at THOR DEVELOPMENT regarding this incident (and thus the presumptive 30(b)(6) witness). As such, whether Mr. Anderson is individually named defendant will have no bearing on his participation in the lawsuit. His participation and testimony is part and parcel of the case as a whole. In other words, dismissing him from the case will severely prejudice the Plaintiff, while at the same time having no effect on Mr. Anderson's need to participate in the matter.

Given all of the foregoing, most notably that dismissing Mr. Anderson will severely prejudice and harm the Plaintiff and that Mr. Anderson has clearly been on notice of the proceeding since March 2020, good cause clearly exists for Granting Plaintiff's Motion to Enlarge Time for Service.

III. <u>CONCLUSION</u>

Plaintiff MARIA CERVANTES GUEVARA's interpretation, as set forth herein, was clearly reasonable, given the interplay of the numerous different policies, rules, directives and orders. Her Motion to Enlarge Time was timely filed based on her reasonable interpretation, and even if the Court disagrees with her interpretation, the reasonableness of her belief provides good cause for any delay in the filing of her Motion to Enlarge Time. Finally the reasonableness of Plaintiff's interpretation, taken in conjunction with the strong public policy in favor of adjudication on the merits and the obvious intent that the Rules of Civil Procedure, Emergency Directives and Administrative Orders *promote* that public policy all support a finding that good cause exists to Grant Plaintiff's Motion to Enlarge Time. Based on the foregoing, Plaintiff MARIA CERVANTES GUEVARA respectfully requests that this Court Reconsider its prior

² For what it's worth, Defendant MARK THOMAS ANDERSON's counsel has been on the electronic service list since approximately March 2020. Mr. Anderson has therefore been aware of any and all proceedings taking place in this matter since his employer was served and the case commenced from that perspective.

1	Order Denying Plaintiff's Motion to Enlarge Time, and subsequently GRANT Plaintiff's Motion
2	such that service, which was performed on November 12, 2020, be deemed completed.
3	DATED this <u>30th</u> day of December, 2020.
4	BIGHORN LAW
5	Dyr. /a/Engn V Simonson
6	By: <u>/s/ Evan K. Simonsen</u> JACQUELINE R. BRETELL, ESQ.
7	Nevada Bar No.: 12335 EVAN K. SIMONSEN, ESQ.
8	Nevada Bar No. 13762
9	2225 E. Flamingo Rd. Building 2, Suite 300
10	Las Vegas, Nevada 89119 Attorneys for Plaintiff
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1	CERTIFICATE OF SERVICE Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of
3	BIGHORN LAW and on December 30, 2020 I served the foregoing PLAINTIFF'S MOTION
4	FOR RECONSIDERATION ON THE COURT'S ORDER DENYING PLAINTIFF'S EX
5	PARTE MOTION TO ENLARGE TIME FOR SERVICE AND SERVE BY PUBLICATION
6	AND GRANTING DEFENDANTS' ORDER TO DISMISS PLAINTIFF'S CASE
7	as follows:
9	☑ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or
10 11	☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or
12	
13	By: /s/ Sahar Nemati
14	An employee of BIGHORN LAW
15	
16	
17	
18	
19	

EXHIBIT 1

ELECTRONICALLY SERVED 12/16/2020 3:11 PM

A-20-808004-C

DISTRICT COURT CLARK COUNTY, NEVADA

A-20-808004-C Maria Del Rosario Cervantes-Guevara, Plaintiff(s) vs.
Mark Anderson, Defendant(s)

December 16, 2020 3:00 AM Minute Order

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Natalie Ortega

RECORDER: Maria Garibay

JOURNAL ENTRIES

- This matter came before the Court on December 15, 2020 for Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication. Defendant's Opposition included a Countermotion to Dismiss Plaintiff's Complaint. During oral argument, Plaintiff's counsel advised that Judge Gonzalez had recently ruled on a similar motion under similar circumstances. After hearing oral argument the Court took this matter under advisement and issues this minute order. Regarding the Order by Judge Gonzalez, COURT FINDS, the Order by Judge Gonzalez concerns the statute of limitations for the commencement of a legal action. In the Order Judge Gonzalez cites an Order by Governor Sisolak concerning the commencement of a legal action. Accordingly, COURT FINDS, the findings in Judge Gonzalez's Order are not applicable to the instant Motion. Finally, COURT FINDS, the time allowed for service was not "tolled" by the Governor's Order. Therefore, COURT FINDS, the Motion is untimely, pursuant to Administrative Order 20-17. Therefore, COURT ORDERS, Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication is DENIED. Further, COURT ORDERS, Defendant's Countermotion to Dismiss Plaintiff's Complaint is GRANTED only as it pertains to Mark and Shari Anderson.

IT IS SO ORDERED

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Natalie Ortega, to all registered parties for Odyssey File & Serve and/or served via facsimile. ndo/12/16/20

PRINT DATE: 12/16/2020 Page 1 of 1 Minutes Date: December 16, 2020

Case Number: A-20-808004-C

EXHIBIT 2

1	ORD		
2	Joshua L. Benson, Esq. Nevada Bar No. 10514		
3	BENSON ALLRED 6250 N. Durango Dr.		
4	Las Vegas, Nevada 89149 Telephone: (702) 820-0000		
5	Facsimile: (702) 820-1111 E-mail: josh@bensonallred.com Attorneys for Plaintiff(s)		
6	•	COLDT	
7	DISTRICT C		
8	CLARK COUNT	Y NEVADA	
9	ALVIN SMITH, individually;	CASE NO. A 20 921501 C	
10	Plaintiff,	CASE NO. A-20-821501-C DEPT. NO. XI	
11	v.	ORDER DENYING DEFENDANT'S	
12		MOTION TO DISMISS	
13	MICHAEL MINCHEY, individually; DOES I-V, individually; and ROE CORPORATIONS VI-X,		
14	inclusive.		
15	Defendants.		
16	Defendant Michael Minchey's Motion to Dist	niss was brought for hearing before Department	
17	11 of the Eighth Judicial District Court, before the Honorable Judge Gonzalez, on the Court's		
18	December 3, 2020 Chambers Calendar. Defendant	Micheal Minchey, as represented by Phillip R.	
19	Emerson, Esq., of the Emerson Law Group, filed th	ne motion and reply. Plaintiff Alvin Smith, as	
20	represented by Joshua L. Benson, Esq., of Benson All	lred Injury Law, filed an opposition Defendant's	
21	Motion to Dismiss. The Court, having reviewed the pleadings and papers on file herein, and good		
22	cause appearing,		
23	<u>FINDIN</u>	<u>GS</u>	
24	1. Defendant Minchey filed a Motion to Dismiss alleging that Plaintiff failed to timely file his		
25	complaint within NRS 11.190(4)(e)'s two year statute of limitations.		
26	2. NRS 11.190(4)(e) provides a two-year stat	tute of limitations period on Plaintiff's claims.	
27	3. The collision occurred on July 31, 2018.		
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 4. During the pendency of the two-year statute of limitations, on April 1, 2020, Governor Sisolak signed the Declaration of Emergency Directive 009 (Revised), Section 2, tolling the statute of limitations:

Any specific time limit set by state statue or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30 days from the date the state of emergency declared on March 12, 2020 is terminated.

5. On June 29, 2020, Governor Sisolak signed the Declaration of Emergency Directive 026, Section 2, which states:

Directive 009 (Revised) shall terminate on June 30, 2020 at 11:59 pm. All time tolled by Section 2 shall recommence effective July 31, 2020 at 11:59 pm.

- 6. To "toll" a statute of limitations period means to hold it in abeyance, *i.e.*, to stop the clock. Artis v. District of Columbia, 138 S.Ct. 594, 598 (2018). In Artis, Justice Ginsberg held that the term "tolled" means that the limitations period is suspended (stops running) and then starts running again when the tolling period ends, picking up where it left off. Id. The Supreme Court highlighted that Black's Law Dictionary captures the general rule applied to tolling: "'toll,' when paired with the grammatical object 'statute of limitations,' means 'to suspend or stop temporarily." Id. (citing Black's Law Dictionary 1488 (6th ed. 1990)).
- 7. The Directives are clear in the use of the word "toll" and "recommence"—language that must be given its plain meaning. First, Directive 009 tolled the statute of limitations and then Directive 026 recommenced the statute of limitations. As noted in *Artis* and Black's law dictionary, the term "tolled" in conjunction with the objection "statute of limitations" means to suspend or temporarily stop. Directive 009 suspended or temporarily stopped the running of the statute of limitations. Directive 026 then "recommenced" the running of the statute of limitations. The definition of "recommence" is to "begin or cause to begin again." In reviewing the Directive's language with the law there can only be one meaning: the statute of limitations stopped—or paused—and then started running again from where it left off.

1 2 8 4 5 9 7 8	8. The collision occurred on July 31, 2018. Directive 009 tolled the statute of limitations on April 1, 2020, with 121-days remaining until the two-year statute of limitations. Directive 026 then recommenced the 121-days remaining on the two year statute of limitations on August 1, 2020. Thus, the new statute of limitations was November 29, 2020. Plaintiff filed his Complaint timely on September 21, 2020. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Dismiss is DENIED.
9	DATED: December 10, 2020
11 12 13	Elizabeth Gonzalez, District Court Judge
15	Respectfully submitted by:
16	BENSON ALLRED INJURY LAW
18 19 20	BY: /s/ Joshua Benson Joshua L. Benson, Esq. Nevada Bar No. 10514 6250 N. Durango Drive Las Vegas, Nevada 89149 Attorney for Plaintiff
21 22 23	Approved as to form and content: EMERSON LAW GROUP
24 25 27 27 28	BY: /s/ Kristen A. Molloy Phillip R. Emerson, Esq. Nevada Bar No. 5940 Kristen A. Molloy, Esq. Nevada Bar No. 14927 1055 Whitney Ranch Dr., Suite 120 Henderson, Nevada 89014 Attorney for Defendant

Electronically Filed 3/10/2021 1:13 PM Steven D. Grierson

CLERK OF THE COURT 1 RTRAN 3 4 DISTRICT COURT 5 CLARK COUNTY, NEVADA 6 7 8 MARIA DEL ROSARIO CERVANTES-CASE#: A-20-808004-C GUEVARA, 9 DEPT. XXIV Plaintiff, 10 VS. 11 MARK ANDERSON, 12 Defendant. 13 BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE 14 TUESDAY, FEBRUARY 23, 2021 15 RECORDER'S TRANSCRIPT OF HEARING: 16 **MOTION FOR RECONSIDERATION** 17 18 **APPEARANCES:** 19 For the Plaintiff: EVAN K. SIMONSEN, ESQ. 20 21 For the Defendant: SCOTT ROGERS, ESQ. 22 23 24 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER 25

Page 1

Case Number: A-20-808004-C

Las Vegas, Nevada, Tuesday, February 23, 2021

[Hearing began at 9:09 a.m.]

THE COURT: Page 7, Maria Del Rosario Cervantes-Guevara versus Mark Anderson. And will the parties please make their appearances for the record.

MR SIMONSEN: Certainly, I'll say it once again, Your Honor. I apologize. Evan Simonsen on behalf of the plaintiff, Bar No. 13762.

THE COURT: Okay.

MR. ROGERS: And Scott Rogers on behalf of Mark Thomas Anderson and Shari Anderson, Bar No. 13574.

THE COURT: Okay. And so on this one, I am inclined to deny the motion for reconsideration. I have some reasons for it, but I'm sure the parties would like to be heard.

MR. SIMONSEN: We filed this motion with no disrespect to Judge Bonaventure. You know, I felt that his order did not deal with everything that was required by the NRCP as far as the initial motion was concerned. His order effectively only dealt with whether or not the motion to enlarge was filed timely, and then it ended the analysis at that point.

NRCP 4(e)(4) clearly states that the Court must determine if the party had good cause for filing the untimely motion if it's determined that the motion was untimely in the first place. And then, if good cause exists for the timeliness, then the Court must determine whether there was good cause – there is good cause for granting the extension.

My reading of Judge Bonaventure's ruling is that he only addressed whether or not the motion was timely, decided that it was not, and then skipped the other two steps.

So I believe, you know, that there is enough – the briefing in this is adequate. It is our belief that the motion was timely, but understanding that that may not be your interpretation or, and was certainly not Judge Bonaventure's, moving onto the second question of whether good cause exists for the timeliness of it, I believe that it's not a black or white question.

It's not a question of whether it was filed on time and, if not, it's too late, the good cause in this situation is akin to a reasonable analysis. Was it reasonable for us to file the motion to enlarge at the time that we did?

I think that the question can be further explained as whether or not our understanding of the emergency directives and administrative orders was reasonable.

The question, then, is not whether the directives and the orders actually apply the way that we believe them, but, rather, whether or not our understanding of how they applied was reasonable. I don't think that there's any doubt that our understanding was reasonable.

You know, before any of this even started happening, I had spoken with, you know, a dozen attorneys or so, and through the course of those conversations, you know, it was -- everyone agreed that my understanding was either that I had at least a reasonable understanding of the kind of vague language in those directives and orders.

And so, you know, because I believe that our understanding of how those applied was reasonable, it was also reasonable for us to believe that our motion to enlarge was filed timely. I found out that near the end of the time to serve as I understood that time to be, and just to kind of make sure that our service by publication would have time to complete.

You know, we live in unprecedented times right now, and I think that the language in both the directives, the emergency directives and the administrative orders was meant to address that fact by expressly indicating that they're to be liberally understood and applied so as to comport with Nevada's strong public policy in favor of hearing cases on their merits.

Both the emergency directive and the administrative orders indicate that Covid-19 related service issues are per se good cause. It would be contradictive to the spirit and intent of those directives and this order is to say their ambiguities in the language – in their language would not also be per se good cause.

The entire purpose of the emergency directives and the administrative orders was to prevent situations like this where cases are dismissed on strict readings of the rules, and the situations existed only because of difficulties brought on by the pandemic.

I think our briefing has explained how the pandemic decimated our staff, and I'll say mine in particular. To be candid, Your Honor, I changed firms right in the beginning of the pandemic, and in the entire time that I have been here, I have not had, you know, the firm has been

unable to have dedicated and fully trained support staff for my, you know, for me.

I've been sharing two to three paralegals and I have no other support staff in that time, and so this case kind of unfortunately, along with all of my cases, has been kind of passed around as our staff was, you know, left the firm, and you would be bounced to another person.

And so, you know, we've been on a skeleton staff and that's expressly due to the pandemic, and, you know, that's what the administrative orders and the emergency directives are looking for.

So ultimately, you know, I believe there's – the NRCP requires a three-step process. As I already noted, we believe that our timing was comported with those emergency directives and the administrative orders, and, therefore, our – the timing was -- the motion was timely. I understand that that may not be everyone's interpretation, and so the second step in that would be to determine whether there was good cause for the delay in our filing. We've explained that the issues that our firm had directly related to the pandemic, and, further, the – our reasonable understanding of the emergency directives and administrative orders that provided us with the understanding of when our timing was running out.

I believe that – my understanding when I first was using all of this was that our time actually ran out in early November when I first was looking at all of this which is why we filed the motion when we did, and then, as I read through them more, my understanding became that it was actually later in November, and now even into December, and so

that I think it was reasonable for us to believe that we were filing it timely, and that reasonableness is along with our – the skeleton crew that we have that we have been dealing with here is adequate for good cause in the timing of our filing of the motion.

And, moreover, that same good cause applies to whether or not there is good cause to enlarge time. The emergency directives and administrative orders clearly state that any Covid-19 related service issue is -- will be deemed good cause. In other words, it is per se good cause.

Here we have established that the delays in service were directly related to, you know, pandemic, to Covid-19 pandemic issues. Our skeleton, namely, the fact that our staff kept leaving and it kept getting passed from one person to another who had to be either trained or caught up to speed on the case, and before anything could be done, and once there was enough time, once we had somebody who was able to get that moving, we did get it moving.

And so I believe that good cause exists also for enlarging time, particularly given that now here we are at the end of February, and the defendant has been served by publication since the middle of November. Were that to have been deemed adequate when Judge Bonaventure ruled on this issue, we'd have discovery open, and I would have already – I actually already have written discovery drafted for Mr. Anderson, and we probably would have already reached out to set his deposition. I've already got the notice set for that.

So, you know, as far as Mr. Anderson is concerned, that's, I

 guess, other than that, we'll rest on the briefings. And I will say that with regard to Shari Anderson, we absolutely have no issue with her dismissal from the case as was noted previously. So as with regards to her, she's – we have no issue with that.

THE COURT: And, Mr. Rogers – sorry, Mr. Rogers, did you have anything that you wanted to add?

MR. ROGERS: Yes, Your Honor. I'll be fairly brief. I mean, first off, this obviously is not a de novo review type of a standard. I want to refer the Court to our legal argument section in our opposition, pages 4 and 5, wherein we cite several Ninth Circuit and Nevada Supreme Court cases that say similar things, but I want to read from the Kona v. Estate of Bishop case which says motions for reconsideration do not be granted absent highly unusual circumstances.

With regard to plaintiff's argument concerning the emergency directives issued by the Governor, the directive that they cite, the briefing is directive 009 which is issued on April 1st of 2020. If you look back on their motions to extend time for service, the first one was filed on May 6th of 2020, the second one was filed on October 28th of 2020, and there are no citations to directive 009.

That appears to be an argument that's been cited after the fact. I'd also like to say that while I'm sympathetic to changes in staff, I just lost my long-time paralegal myself, I understand that can be difficult.

If a mistake or an oversight by counsel's office for whatever reason is good cause for missing a service deadline, the rules would have no practical effect because that can always be cited as a basis. If

there is a mistake or an oversight in properly effectuating service, of course, that typically is due to an oversight. The rules in practice would essentially never apply.

So I will rely on the briefing. I think that this was fairly thoroughly briefed. I would ask that the Court deny the motion, and I'll answer any questions the Court has, but that's all I have at this time as far as oral argument.

THE COURT: Mr. Simonsen, while I don't necessarily believe that I would have ruled the same way, I think that based on the rules for motions for consideration, I've got to deny it.

I, you know, I'm sympathetic for your reasoning for missing it as well, but just based on the standards for the motion for reconsideration, I don't believe I can grant this one, and so that's going to be my ruling. If you take it up, you know, that's your

MR. SIMONSEN: I do want to speak out just in brief rebuttal to Mr. Rogers' argument there. I never said that there was oversight in the first point. And it's not related to the rules. The staffing issue is related to the (inaudible).

I understand your ruling, Your Honor. Can I ask, though, for clarification as to why you are saying that you cannot grant it based on – you know, I believe that we laid out in our briefing that it's manifestly unjust which is one of the reasons for reconsideration for the prior order to indicate to only address one issue that's required by the rules.

So I'm just asking – I just ask for some clarification on that so that way we can take it up.

25 24 23 22 20 19 ∞ 17 6 15 4 3 12 10 9 ∞ 6 5 4 7 ω Ν ability. I think that Judge Bonaventure did consider all of the factors, whether or audio/video proceedings in the above-entitled case to the best of my go on the motion. best possible manner. though he didn't necessarily articulate it to the best, you know, in the not he put them all on the record, I mean, everything was out there in ATTEST: I do hereby certify that I have truly and correctly transcribed the Order and run it by Mr. Simonsen? Thank you place for him to have reviewed, so I think that he probably did even THE COURT: Thank you. MR. ROGERS: Yes, Your Honor. Of course MR. SIMONSEN: Okay. I understand, Your Honor's ruling So, you know, I'm sorry about this, and that's where I've got to THE COURT: Okay. And Mr. Rogers, will you prepare the THE COURT: So on the manifestly unjust, I don't think that --[Hearing concluded at 9:24 a.m.] * * * * * SUSAN SCHOFIELD Court Recorder/Transcriber Sugar The

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CLERK OF THE COURT

ORDR

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Attorneys for Defendants

Mark Thomas Anderson and Shari Anderson

DISTRICT COURT

CLARK COUNTY, NEVADA

MESSNER REEVES LLP

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GUEVARA;

MARIA DEL ROSARIO CERVANTES-

Plaintiff,

DEVELOPMENT, LLC, a limited liability MARK THOMAS ANDERSON; THOR

OWNERS I-V; ROE EMPLOYERS I-X; and DRIVERS I-V; DOE EMPLOYEES I-V; ROE corporation; DOE OWNERS I-V; DOE

ROE COMPANIES I-X,

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CASE NO. A-20-808004-C

MOTION FOR RECONSIDERATION ON GRANTING DEFENDANTS' ORDER TO PLAINTIFF'S EX PARTE MOTION TO ENLARGE TIME FOR SERVICE AND THE COURT'S ORDER DENYING SERVE BY PUBLICATION AND ORDER DENYING PLAINTIFF'S DISMISS PLAINTIFF'S CASE

Defendants.

This matter was heard on February 23, 2021, wherein Defendants MARK THOMAS

ANDERSON and SHARI ANDERSON ("Defendants") were represented by their counsel of record

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Rogers, Esq. of MESSNER REEVES LLP, and Plaintiff Maria Del Rosario Cervantes-

Guevara ("Plaintiff") was represented by her counsel of record Evan <u>~</u> Simonsen, Esq.

Page 1 of 3

Case Number: A-20-808004-C

BIGHORN LAW. The Court, having considered the pleadings and arguments of the parties

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HEREBY FINDS and ORDERS as follows:

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them on the record.

 ∞ 7 6 S ω 4 Bonaventure considered all of the factors for a Motion for Reconsideration, whether or not he put ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir.1993); Kona, 229 F.3d at 889-90 (listing the same three manifestly unjust, or (3) if there is an intervening change in controlling law." School Dist. No. 11 v. presented with newly discovered evidence, (2) committed clear error or the initial decision was THE THE COURT FINDS that "reconsideration is appropriate if COURT FURTHER FINDS that in spite of the arguments the district court (1) is of counsel, Judge

in the best possible manner. Bonaventure, and he probably reviewed the same, whether or not he articulated those considerations THE COURT FURTHER FINDS that all of the information was available to

of Judge Bonaventure, who originally heard and ruled on Plaintiff's Ex Parte Motion to Enlarge SHARI ANDERSON's Countermotion to Dismiss Plaintiff's Complaint. Time for Service and Serve by Publication and Defendants MARK THOMAS ANDERSON's and THE COURT FURTHER FINDS that it will not substitute its judgment for the judgment

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Page 2 of 3

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Respectfully submitted by:

MESSNER REEVES LLP

Isl Scott L. Rogers

Scott L. Rogers, Esq.

Nevada Bar No. 13574

Las Vegas, NV 89148

Shari Anderson

Attorneys for Defendants Mark Thomas Anderson and

8945 W. Russell Road, Ste. 300

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Order Denying Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication and Granting Defendants' Order to Dismiss Plaintiff's Case as to Defendants MARK THOMAS ANDERSON and SHARI ANDERSON is **DENIED.**

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration on the Court's

DATED this	day of	, 2021.
	uay oi	, 2021.

Dated this 22nd day of March, 2021

DISTRICT COURT JUDGE 808 18F 2ECE B264 Erika Ballou District Court Judge

Approved as to Form and Content:

BIGHORN LAW

Isl Evan K. Simonsen

Evan K. Simonsen, Esq. Nevada Bar No. 13762 2225 E. Flamingo Bldg. 2 Ste. 300 Las Vegas NV 89119 Attorneys for Plaintiff

Page 3 of 3

CSERV 2 DISTRICT COURT 3 CLARK COUNTY, NEVADA 4 5 Maria Del Rosario Cervantes-CASE NO: A-20-808004-C 6 Guevara, Plaintiff(s) DEPT. NO. Department 24 7 VS. 8 Mark Anderson, Defendant(s) 9 10 **AUTOMATED CERTIFICATE OF SERVICE** 11 This automated certificate of service was generated by the Eighth Judicial District 12 Court. The foregoing Order was served via the court's electronic eFile system to all 13 recipients registered for e-Service on the above entitled case as listed below: 14 Service Date: 3/22/2021 15 Katie Ader katie@bighornlaw.com 16 Renee Finch rfinch@messner.com 17 Caleb Meyer cmeyer@messner.com 18 Nuria Forsyth nforsyth@messner.com 19 20 Jessica Humphrey jhumphrey@rlattorneys.com 21 Emily Bordelove Esq. ebordelove@rlattorneys.com 22 Prescott Jones, Esq. pjones@rlattorneys.com 23 Tina Briggs cbriggs@rlattorneys.com 24 **Scott Rogers** srogers@messner.com 25 Jackie Olivo jolivo@messner.com 26 Evan Simonsen evans@bighornlaw.com 27

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Electronically Filed 5/27/2021 3:11 PM **CLERK OF THE COURT**

Steven D. Grierson 1 RTRAN 2 3 4 DISTRICT COURT 5 CLARK COUNTY, NEVADA 6 7 WANDA DESALVO, 8 CASE: A-21-831912-C Plaintiff, 9 DEPT. III VS. 10 KENNETH HUGHES. TRANSDEV SERVICES, INC. **Transcript of Proceedings** 11 12 Defendant. 13 14 BEFORE THE HONORABLE MARK GIBBONS, 15 DISTRICT COURT SENIOR JUDGE 16 TUESDAY, MAY 04, 2021 17 **DEFENDANTS' MOTION TO DISMISS** 18 ON ORDER SHORTENING TIME 19 ALL APPEARANCES VIA BLUEJEANS: 20 For the Plaintiff: JONATHON C. ROBERTS, ESQ. 21 22 For Defendant: GREGORY CARUSO, ESQ. 23 24 25 RECORDED BY: REBECA GOMEZ, COURT RECORDER

[Tuesday, May 4, 2021 at 9:04 a.m.]

THE CLERK: Wanda DeSalvo versus Kenneth Hughes.
THE COURT: Okay. Let me get that one out. Be just a

MR. CARUSO: Good morning, Your Honor, this is Gregory Caruso on behalf of the defendants.

THE COURT: Okay. [Indiscernible]. Thank you.

MR. ROBERTS: Good morning, Your Honor

THE COURT: And on behalf of the plaintiff?

MR. ROBERTS: Good morning, Your Honor, Jonathon Roberts on behalf of plaintiff.

THE COURT: Okay. Thank you very much.

Okay, this is on for the motion regarding the jurisdiction and all, and the various other issues here. Go, counsel, for the plaintiff, if you go ahead and proceed.

Well, wait a minute let's see, it's the defense's motion so counsel for defense, would you go ahead and proceed with your argument.

MR. CARUSO: Yes, Your Honor.

Our argument is essentially that the Governor's Executive
Orders during the State of Emergency allowed for 30-day grace period
after Statute of Limitations were lifted -- or excuse me, when they
recommenced a 30-day grace period for filing a -- that 30-day grace
period to lapse and plaintiff filed this action outside of the two year

Statute of Limitations, as well as outside the 30 day grace period.

Additionally, our position is that this matter should be in Justice Court.

THE COURT: Okay, great. Thank you.

Counsel for the plaintiff?

MR. ROBERTS: Absolutely, Your Honor.

I'll take the Statute of Limitations first and then the Justice Court issue second.

I did want to reference that based upon the order in the OST, defendant wasn't to submit a written supply -- I'm sorry, a written reply in this matter, so, but, out of abundance of caution, I'll reply -- I'll reply to his reply as well.

THE COURT: Okay.

MR. ROBERTS: So, I'm not sure why the defendant thinks there's only a 30 day tolling period in this particular case. With regards to the Statute of Limitations, there's a plain language reading of the Governor's directive, which shows that all the statutes were tolled on April 1, 2020, and so they were actually recommenced on August 1, 2020. So that's a total for of 122 days of tolling. When the tolling period started, via the Governor's directive on April 1, 2020, plaintiffs still had 313 days left to file the complaints. When the tolling period ended and it recommenced, which occurred on August 1, 2020, plaintiffs still had 313 days from that point, which would take the actual Statute of Limitations, deadline to June 10, 2021. As cited to in our opposition, this interpretation as done, held up in several different departments, including in front of Judge Gonzalez, and Judge Kishner, and you can

see that based upon our attached orders.

I think that the defendant is only reading the second portion to recommencing dates which says it's 30-days after the recon -- after that April 1, 2020 directive ended, that the dates were to recommence. So I think that's where the confusion could be coming from.

With regards to the Justice Court's issue, Your Honor, defendant is relying upon plaintiff's offers of compromise as their sole basis for placing this matter in Justice Court. Offers of compromise are first day inadmissible pursuant to NRS 48.105. So, I don't think they don't have any basis to request this to be in Justice Court.

Additionally, if Your Honor does agree with the defendants, the remedy isn't for a dismissal, it's to be transferred to Justice Court pursuant to NRS 3.221.

So, based upon the foregoing, Sir, we feel as if defendant's motion should be denied in its entirety.

THE COURT: Thank you.

Any rebuttal on that, Counsel?

MR. CARUSO: Yes, Your Honor, just briefly, I think it was very clear in a Governor Sisolak's Order that the time, all times tolled would recommence effective on a particular date. In the first directive did list 30-days from the date the State of Emergency was declared, on March 12, it's terminated.

So, I think the Statute of Limitations issue is a 30-day extension based on the plain language of the Executive Orders.

In terms of the Justice Court issue and jurisdiction, it's

defendant's position, and I think if you read the motion that I filed, I stated I believe -- our information belief, this matter is valued at much less than \$15,000.00 and probably less than \$10,000.00.

We did not attach plaintiff's offer of judgment, but there was one and we requested that this matter be on OST so it can be heard before the offer of judgment would expire.

So, I don't think we've improperly put any offer of compromise in front of the Court, we simply mentioned that there is one and we've explained that it does expire on a particular date.

However, you know, this case says early in section here in the Court system has not progressed to the point where I have a bunch of medical records and billing and evidence that I can simply put in front of the Court, to say here's an itemization of plaintiff's medical bills.

However, you know, based on information and belief, what I have in front of me, this does not look like a case that should be in the District Court, whatsoever. It looks like it should be in Justice Court.

I gave plaintiffs an opportunity to present some evidence to the Court to rebut that and nothing was listed in the opposition that would oppose those arguments. So, in reply, I obviously cited the Eighth Judicial District Court's local rule regarding failure to oppose and that being an assumption here that the arguments are valid.

So, it's my position that based on the briefing in front of the Court, unless plaintiff can show that this case is valid of more than \$15,000.00 in some way in some meaningful way with some evidence then we really should be in Justice Court.

And I did put in front of you the particular statutes regarding value as well, as you know, jurisdiction there and transfer the Justice Court in the cases where the District Court finds the values below to be in District Court.

THE COURT: Okay.

MR. CARUSO: So, I'd ask if we're not -- if the Court's inclined to allow the case to go forward depending on the Statute of Limitations ruling that you make -- if you're ruling for plaintiff on that for whatever reason, I would ask obviously to consider transferring this matter to Justice Court simply because it is not valued high enough to be in the District Court, whatsoever.

THE COURT: Okay. Thank you both.

Okay, my ruling on both issues are as follows: As far as the Justice Court issue and the \$15,000.00, is a genuine issue of material fact you have as far as damages, you have general damages involved in this case which are uncertain it's up to trier of fact where you have a special damages here. At this time, you know, we can make a determination of whether or not it's a Justice Court case or District Court case, so presumptively stays in District Court.

Offers of judgment are irrelevant. That's a different issue that affects costs and attorney's fees where they'd be awarded at the end of the case.

As such, you know, whatever the negotiations were for settlement or the offer of judgment, it doesn't matter. You have to look at the face of the case, the allegations and claim types of damages.

Specifically if there are any general damages in that variable that it has to be determined by the trier of facts.

So the motion to dismiss or transfer is denied without prejudice. If further evidence is developed later on in the case that would support the defense to argument that damages aren't there, and there's some sort of information about the general damages as well, then you could renew the motion at that time. But at this stage the case is too early.

As far as the Statute of Limitations mentioned, to my knowledge I was on the Supreme Court until January 4, we very much were involved in this issue on Court management, extending the time period under Rule 41(e) to do trials beyond the five years set forth in the Rule and are concerned about the Statute of Limitations of these cases based upon the emergency.

I do not believe it's limited to 30-days, it's a longer period of time, I agree with the other departments even though that's not binding precedence on myself since these other District Court Judges; but as such, I do conclude that the complaint was filed timely within the Statute of Limitations so the motion to dismiss is denied.

I'd ask Counsel for the plaintiff to prepare the Order in both issues.

1	MR. ROBERTS: Thank you, Your Honor.
2	MR. CARUSO: Thank you, Your Honor.
3	PROCEEDING CONCLUDED AT 9:14 a.m.
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21	ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.
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	Rebeca Gomez
24	Court Recorder/Transcriber