

**In the Supreme Court of Nevada**

FELICE J. FIORE and SPEEDVEGAS, LLC,  
Petitioners,

*vs.*

THE EIGHTH JUDICIAL DISTRICT COURT of the State  
of Nevada, in and for the County of Clark; and THE  
HONORABLE NANCY L. ALLF, District Judge,

Respondents,

and

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY,  
the duly appointed representative of the Estate and  
as the widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of decedent GIL BEN-  
KELY; NATHALIE BEN-KELY-SCOTT, daughter and  
heir of the decedent GIL BEN-KELY; GWENDOLYN  
WARD, as Personal Representative of the ESTATE OF  
CRAIG SHERWOOD, deceased; GWENDOLYN WARD,  
individually, and as surviving spouse of CRAIG  
SHERWOOD, deceased; GWENDOLYN WARD, as Mother  
and Natural Guardian of ZANE SHERWOOD,  
surviving minor child of CRAIG SHERWOOD, deceased,  
Real Parties in Interest.

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Elizabeth A. Brown  
Clerk of Supreme Court

District Court Case Nos.  
A-17-757614-C &  
A-18-779648-C

**MOTION FOR STAY PENDING WRIT PETITION**

## **MOTION FOR STAY PENDING WRIT PETITION**

Petitioners Felice Fiore, Jr. and SpeedVegas, LLC request a stay of the trial and other pretrial proceedings pending this Court's resolution of the writ petition and issuance of a notice in lieu of remittitur.

The circumstances are ripe. Briefing on the petition is complete. Due to a recent settlement, the petition is now dispositive on the trial's scope and length, as well as the parties involved. And the trial date was recently continued. So not only will the stay allow this Court to provide essential guidance, but it will also serve judicial economy.

The district court did not deny that this petition presents a substantial issue that would shape the course of trial, yet it rejected a stay based on a misunderstanding of the five-year rule in NRCP 41(e).

This Court should grant the stay.

### **BACKGROUND**

This case arises from an accident in a Lamborghini Aventador at the SpeedVegas driving facility. Plaintiffs allege that a defect in the fuel crash caused a fire that killed Craig Sherwood and Gil Ben-Kely. Petitioners did not design, build, distribute, or sell the Lamborghini; rather, Fiore owned it and leased it to SpeedVegas. (1 App. 272–74.)

Plaintiffs brought products-liability claims not just against

Automobili Lamborghini, LLC, the company's American distributor, but also against Fiore and SpeedVegas. The product-defect claim is the sole remaining claim against Fiore.

The district court denied petitioners' motion for summary judgment on this claim, however, reasoning that the jury could decide as a question of fact that they were merchant sellers under strict products liability law. (7 App. 1534, 1564.) The district court also rejected Fiore's alternative argument that, as a member of the SpeedVegas board of directors, he was protected under Chapter 86 and the exclusive remedy provision of the Nevada Industrial Insurance Act ("NIIA").

Fiore and SpeedVegas filed this petition for this Court to decide whether Nevada recognizes a product-defect claim against a nonmerchant, one-time lessor or against a lessee who uses the product in its coached driving experiences. On November 15, 2021, this Court directed plaintiffs to file an answer addressing "the propriety of writ relief, in addition to addressing the merits of the petition." As of February 25, 2022, the petition has been fully briefed.

The following week, defendant Lamborghini indicated that it settled with all plaintiffs and asked the district court to approve the

settlements. (Ex. A, B, 3/2/22 Motions for Good Faith Settlement.) The settlements released all manufacturers, distributors, and component-part suppliers, but not petitioners. (Ex. C, 3/8/22 Reply, at 9:21-10:2.) Over petitioners' objection, the district court granted the motions. (Ex. D, 4/7/22 Orders.) Following the hearing, the district court's judicial executive assistant indicated that trial date would have to be moved. (Ex. E, Karen Lawrence E-mail.)

With the prospect of Lamborghini's dismissal and a delay of the trial, petitioners asked the district court to turn the continuance into a stay pending the resolution of this writ petition. (Ex. F, Mot. for Stay.)

The district court denied the motion for just one reason:

I find that all prejudice in this case would work against the interest of the Plaintiffs, who have very diligently pursued this case and are in danger of being in violation of the five-year rule under 41(e).

(Ex. G, 4/6/22 Hr'g Tr., at 17:22-24.)<sup>1</sup> The court added that

you have the remedy of seeking the relief from the Supreme Court so that if they intend to proceed on the writ, I'm sure that they will grant a stay in that case.

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<sup>1</sup> See also Ex. H, Attachment to Ian Samson E-mail, Proposed Order Denying Stay 3:12-13 ("A stay is prejudicial to Plaintiffs, who have diligently pursued their case for trial. Defendants have not demonstrated they are entitled to a stay."). Petitioners will provide a file-stamped copy of this order, once entered.

(Ex. G, 4/6/22 Hr’g Tr., at 18:1-4.)

### ARGUMENT

#### **A. The District Court’s Order Ignores that a Stay Would Toll the Five-Year Rule**

For four decades, this Court has held that “[a]ny period during which the parties are prevented from bringing an action to trial by reason of a stay order shall not be computed in determining the five-year period of Rule 41(e).” *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982).<sup>2</sup>

Here, the trial is already set to be continued and could easily be stayed. The district court was even “sure” this Court would issue such a stay if it “intends to proceed on the writ.” The only reason the district court did not do so itself appears to be its misconception that the five-year rule in 41(e) would continue to run during the stay, such that they “are in danger of being in violation of the five-year rule.” In fact, a stay would protect plaintiffs by *tolling* the NRCP 41(e) period.

Setting aside the district court’s misunderstanding, the factors under NRAP 8(c) strongly favor a stay.

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<sup>2</sup> Under recent amendments to NRCP 41(e), plaintiffs also benefitted from automatic extensions during the COVID-19 pandemic. *See* Eighth Judicial District Court Administrative Order 20-01 (March 13, 2020).

## **B. The Petition Has Substantial Merit**

In the stay analysis, “likelihood of success” under NRAP 8(c)(4) generally means that the petition presents a “substantial case on the merits when a serious legal question is involved.” *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000).

The petition here is meritorious. NRAP 8(c)(4). The petition presents questions of law—not fact or discretion—and their resolution will be dispositive to the products-liability claims, including all of the claims involving Fiore and the Ben-Kely plaintiffs.

### **1. *This Court Is Likely to Follow the Second Restatement in Dismissing the Products Claims***

In deciding whether strict products liability can be extended to a one-time seller or lessor—even in a commercial context—this Court is likely to follow *Elley v. Stephens*, which itself cites the Restatement (Second) of Torts § 402A (1965) in holding that “a strict liability theory is not applicable to an occasional seller of a product, who does not, in the regular course of his business, sell such a product.” 104 Nev. 413, 418, 760 P.2d 768, 771 (1988). In quoting comment f to § 402A, this Court confirmed that it does not matter whether the seller knows that the product will be used in a commercial setting, as when a car owner

“sells it to a dealer in used cars.” *Id.* at 418 n.3, 760 P.2d at 771 n.3.

Even the district court admitted that it “understood” this argument (Ex. G, 4/6/22 Hr’g Tr., at 17:25-1), and this Court will likely agree with the states that apply this Restatement view, as well.<sup>3</sup> This Court is unlikely to make Nevada the first and only jurisdiction in the nation that permits a jury to assess strict products liability against a one-time seller or lessor.

## **2. *This Court Is Likely to Dismiss Fiore***

Ben-Kely’s claims against Fiore are independently barred by the NIIA. As a paid member of SpeedVegas’s board of directors, who draws a salary separate from the lease, Fiore was a co-employee of Ben-Kely under NRS 616A.105. NRS chapter 86 bars all plaintiffs’ claims because the conduct of which Fiore is accused applies equally to SpeedVegas.

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<sup>3</sup> See, e.g., *Lyzhoft v. Waconia Farm Supply*, No. A12-2237, 2013 WL 3368832, at \*4 (Minn. Ct. App. July 8, 2013) (affirming dismissal of strict products liability claim against one-time lessor); *Smith v. Nick’s Catering Serv.*, 549 F.2d 1194, 1196 (8th Cir. 1977) (“only a mass lessor similar to a manufacturer or a retailer could be held strictly liable”); *Bachner v. Pearson*, 479 P.2d 319, 328 (Alaska 1970) (“Just as strict liability has not been imposed in cases of single transaction, non-commercial sales, no such liability will result where the lease in question is an isolated occurrence outside the usual course of the lessor’s business.”); *Price v. Shell Oil Co.*, 466 P.2d 722, 728 (Cal. 1970) (“[F]or the doctrine of strict liability in tort to apply to a lessor of personality, the lessor should be found to be in the business of leasing . . .”).

Any duty to plaintiffs necessarily flows from Fiore's role as a director of SpeedVegas. *See Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 394, 399 P.3d 350, 351 (2017).

### **3. *These Issues of Law Require Clarification***

Not every summary-judgment denial merits writ review. But here the relevant facts are undisputed: all agree, for instance, that Fiore is not a Lamborghini dealer and has not leased vehicles on other occasions. The bench and bar need clarification on the legal questions. This petition, now fully briefed, is a proper vehicle for their resolution.

#### **C. A Stay Will Preserve the Object of the Petition—to Narrow the Issues for Trial**

A stay is also necessary because the pretrial resolution of the products-liability question was expressly the object of the petition. NRAP 8(c)(1); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252–53, 89 P.3d 36, 38–39 (2004). The petition emphasizes the necessity of deciding the legal question *before* trial: the instruction that petitioners could be liable as product sellers would affect the jury's view of the negligence claim. (Pet'n 20.) Fiore in particular would be prejudiced by facing a joint-and-several judgment as a product defendant, with the potential difficulty of obtaining a bond to vindicate his appeal rights.



(Pet’n 20-21.) “At a minimum, both plaintiffs’ and said Defendants’ ability to prepare for trial and assess potential settlement will be aided by this Court’s clarification of these important legal issues.” (Pet’n 20.)

Proceeding to trial without this guidance—especially when the petition is fully briefed and the current trial date will be continued—would defeat this object of the petition.

**D. Lamborghini’s Absence from the Trial Heightens the Need for a Stay to Avoid the Prejudice of Trying the Products-Liability Case Solely Against Petitioners**

Especially in light of recent events, petitioners would be prejudiced without a stay. *See* NRAP 8(c)(2). When this petition was filed, the trial was going to proceed—regardless of the outcome of the petition—on a products-liability theory against the party with the greatest knowledge of the alleged defects, Lamborghini. With Lamborghini’s settlement, the trial has changed in four critical ways:

*First*, if the jury finds a defect, petitioners may be exposed to a judgment in excess of the settlement yet unable to pursue Lamborghini as the responsible party. *Black & Decker (U.S.), Inc. v. Essex Grp., Inc.*, 105 Nev. 344, 345, 775 P.2d 698, 699 (1989); NRS 17.245.

*Second*, both plaintiffs and petitioners have relied on Lamborghini’s access to critical evidence and superior knowledge. Yet the

parties now may have to return all of Lamborghini's confidential information, including evidence marked for use at trial.

*Third*, the writ petition is now dispositive on whether product defect may be tried to the jury, at all, greatly streamlining the issues and parties: Fiore, solely a product defendant, and Ben-Kely, solely a product plaintiff, would both be out. Absent a stay, the trial will be significantly prolonged with prejudicial products claims, litigated against those least equipped to defend a car they had no part in designing, building, or selling. Proceeding now increases the risk of multiple trials.

*Fourth*, as a potential product defendant, SpeedVegas could be exposed uncapped punitive damages. NRS 42.005(1). Worse, the *evidence* for such damages would include issues related to the alleged product defects tainting the punitives award if this Court ultimately strikes the products claims. A stay would ensure that the verdict is not inflamed by evidence that punishes SpeedVegas for Lamborghini's actions.

**E. With the Petition Briefed and the Trial Continued,  
a Stay Will Not Prejudice Plaintiffs**

Plaintiffs will face no serious or irreparable harm from a stay. NRAP 8(c)(3). Indeed, while “mere delay . . . normally does not constitute irreparable harm,” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248,

253, 89 P.3d 36, 39 (2004), here the delay is particularly minimal:

*First*, the petition has been fully briefed since February 25 and will be decided now on the briefs or after oral argument. NRAP 34.

*Second*, the parties already face a continuance. Plaintiffs have not complained that a continuance would irreparably damage their case. The district court's contrary finding under NRCP 41(e) misunderstands that a stay *protects* plaintiffs' ability to bring their claims to trial.

*Third*, plaintiffs face no financial urgency. They have received substantial funds from Lamborghini. Indeed, learning whether the product-defect claims are viable would avoid the unnecessary expense of trying moot claims. In this circumstance, when a continuance is already inevitable, it makes little sense to deny a stay that would ensure Supreme Court guidance for the eventual trial.

### CONCLUSION

Several circumstances necessitate a stay of the trial: the petition has been fully briefed, the primary product defendant has settled, and the petition is now the determinative factor in whether the trial includes any claim based on alleged defects in a product that was the subject of a one-time lease. This Court should have the opportunity to resolve the petition. To let that happen, this Court should grant a stay.

Dated this 8th day of April, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

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*Attorneys for Petitioners*

### CERTIFICATE OF SERVICE

I certify that on April 8, 2022, I submitted the foregoing “Motion for Stay Pending Writ Petition” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

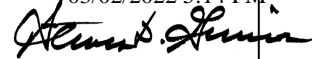
The Honorable Nancy L. Allf  
DISTRICT COURT JUDGE – DEPT. 27  
200 Lewis Avenue  
Las Vegas, Nevada 89155

*Respondent*

/s/ Cynthia Kelley  
An Employee of Lewis Roca Rothgerber Christie LLP

**EXHIBIT A**

**EXHIBIT A**



CLERK OF THE COURT

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*Attorneys for Defendant,**Automobili Lamborghini America, LLC***DISTRICT COURT****CLARK COUNTY, NEVADA**

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE BEN-  
KELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY, GWENDOLYN  
WARD, as Personal Representative of the  
ESTATE OF CRAIG SHERWOOD, deceased,  
GWENDOLYN WARD, individually and as  
surviving spouse of CRAIG SHERWOOD;  
GWENDOLYN WARD, as mother and natural  
guardian of ZANE SHERWOOD, surviving  
minor child of CRAIG SHERWOOD,

Plaintiffs,

vs.

SPEED VEGAS, LLC, a foreign-limited liability  
company; VULCAN MOTOR CLUB, LLC  
d/b/a WORLD CLASS DRIVING, a New Jersey

Case No.: A-17-757614-C

Dept. No.: XXVII

**DEFENDANT AUTOMOBILI  
LAMBORGHINI AMERICA, LLC'S  
MOTION FOR DETERMINATION OF  
GOOD FAITH SETTLEMENT AS TO  
BEN-KELY PLAINTIFFS ON AN ORDER  
SHORTENING TIME**

**[HEARING REQUESTED]**



limited liability company; SLOAN VENTURES  
90, LLC, a Nevada limited liability company;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; the ESTATE OF CRAIG  
SHERWOOD and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; TOM MIZZONE, an  
individual; SCOTT GRAGSON, an individual;  
PHIL FIORE aka FELICE FIORE, an  
individual; DOES I-X; and ROE ENTITIES I-X,  
inclusive,

Defendant,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD; GWENDOLYN WARD,  
individually and as surviving spouse of CRAIG  
SHERWOOD; GWENDOLYN WARD, as  
mother and natural guardian of ZANE  
SHERWOOD, surviving minor child of CRAIG  
SHERWOOD,

Crossclaim Plaintiffs,

vs.

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate; DOES IX,  
inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE  
BENKELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

vs.

ESTATE OF CRAIG SHERWOOD; DOES I-  
X, inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD,

Crossclaim Plaintiff,

vs.

SPEED VEGAS, LLC, a foreign-limited  
liability company; WORLD CLASS DRIVING,  
an unknown entity, SLOANE VENTURES 90,  
LLC, a Nevada limited liability company;  
ROBERT BARNARD, an individual;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; FELICE J. FIORE,  
JR.; DOES INDIVIDUALS I-X; and ROE  
ENTITIES I-X, inclusive

Crossclaim Defendants,

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1                    **DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S**  
2                    **MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT AS TO**  
3                    **BEN-KELY PLAINTIFFS ON AN ORDER SHORTENING TIME**

4                    COMES NOW Defendant Automobili Lamborghini America, LLC ("Lamborghini America"),  
5                    by and through its counsel of record, and hereby moves this Honorable Court for an Order determining  
6                    that the settlement between Lamborghini America and ESTATE OF GIL BEN-KELY by  
7                    ANTONELLA BEN-KELY as the duly appointed representative of the Estate and as the widow and  
8                    heir of Decedent Gil Ben-Kely; SHON BEN-KELY, son and heir of decedent Gil Ben-Kely; and  
9                    NATHALIE BEN-KELY-SCOTT, daughter and heir of decedent Gil Ben-Kely was reached in good  
10                  faith within the meaning of NRS 17.245. This Motion is made and based upon NRS 17.245, the  
11                  pleadings and paper on file herein, together with the attached Memorandum of Points and Authorities,  
12                  and any oral argument this Court may wish to entertain at the time of hearing this Motion.

13                  Dated this 2<sup>nd</sup> day of March, 2022.

14                    **WILEY PETERSEN LAW OFFICES**

15                    By: /s/ Ryan S. Petersen

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25                    H. FRANKLIN HOSTETLER, III (PRO HAC VICE)  
26                    **MUSICK, PEELER & GARRETT LLP**  
27                    650 Town Center Drive, Suite 1200  
28                    Cosa Mesa, California 92626

*Attorneys for Defendant,*  
                     *Automobili Lamborghini America, LLC*

**ORDER SHORTENING TIME**

IT IS HEREBY ORDERED that the hearing on DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT AS TO BEN-KELY PLAINTIFFS ON AN ORDER SHORTENING TIME shall be heard on the 10<sup>th</sup> day of March, 2022, at the hour of 10:30 a.m.~~xxx~~ before Department XXVII or as soon thereafter as counsel may be heard.

IT IS FURTHER ORDERED that any opposition to the Motion must be filed no later than the 7<sup>th</sup> day of March, 2022.

IT IS FURTHER ORDERED that any reply in support of the Motion must be filed no later than the 8<sup>th</sup> day of March, 2022.

Dated this 2<sup>nd</sup> day of March, 2022.

Dated this 2nd day of March, 2022

Nancy L. Alf  
DISTRICT COURT JUDGE TW

Respectfully Submitted:

**WILEY PETERSEN LAW OFFICES**

**6F9 DAB E596 00D6**  
**Nancy Alf**  
**District Court Judge**

By: /s/ Ryan S. Petersen

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*Attorneys for Defendant,  
Automobili Lamborghini America, LLC*

**DECLARATION OF SUSAN V. VARGAS IN SUPPORT OF  
MOTION FOR ORDER SHORTENING TIME**

I, Susan V. Vargas declare as follows:

1. I am an attorney duly licensed to practice before all courts in the state of California and admitted *pro hac vice* by this Court in the above-captioned matter. I am a partner with the law firm, King & Spalding LLP, counsel of record for defendant Automobile Lamborghini America, LLC (“Lamborghini America”).

2. I have personal knowledge of the facts set forth in this Declaration and could testify competently to them if called to do so, except as to those matters of which I am informed and believe to be true.

3. This Order Shortening Time is necessary so that Lamborghini America’s Motion for Determination of Good Faith Settlement as to the Ben-Kely Plaintiffs (“Motion”) may be heard as soon as possible for the reasons explained herein. Lamborghini America and the Sherwood Plaintiffs have requested that Lamborghini America’s Motion for Determination of Good Faith Settlement as to the Sherwood Plaintiffs (“Sherwood Motion”) be heard on an order shortening time for reasons outlined in that motion and that supporting Declaration of Lamborghini America’s counsel. With respect to this Motion, Lamborghini America requests that it be heard at the same time as the Sherwood Motion so Lamborghini America does not continue to incur unnecessary costs in this matter awaiting a hearing that may fall at a later date than the Sherwood Motion. Further, Lamborghini America and the Ben-Kely Plaintiffs desire to finalize their settlement quickly, particularly given the firm trial date of April 25, 2022.

4. On February 28, 2022, I spoke with JD Murdock who is counsel for the only other remaining defendant, Felice Fiore, Jr., in the Ben-Kely Plaintiffs’ case. I explained the reasons for bringing the Sherwood Motion on shortened time. I informed Mr. Murdock that this Motion would also be brought on an order shortening time so that it could be heard at the same time as the Sherwood Motion. With permission from counsel for the Ben-Kely Plaintiffs, I disclosed the settlement amount to Mr. Murdock. I asked Mr. Murdock to inform me whether his client, Felice Fiore, Jr., would be

1 filing an objection to this Motion. On March 1, 2022, Mr. Murdock informed me that Mr. Fiore would  
2 likely be objecting to this Motion.

3 5. For the reasons outlined in paragraph of 3 of this Declaration and the Declaration filed  
4 in support of the Sherwood Motion, Lamborghini America requests that this Motion be heard at the  
5 same time on an order shortening time.

6 Under penalty of perjury, under the laws of the State of Nevada, I declare that the foregoing is  
7 true and correct. Executed this 2<sup>nd</sup> day of March, 2022 at Torrance, California.

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11 Susan V. Vargas  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Lamborghini America was named as a defendant in the lawsuit filed by ESTATE OF GIL BEN-  
4 KELY by ANTONELLA BEN-KELY as the duly appointed representative of the Estate and as the  
5 widow and heir of Decedent GIL BEN-KELY; SHON BEN-KELY, son and heir of decedent GIL  
6 BEN-KELY; and NATHALIE BEN-KELY-SCOTT, daughter and heir of decedent GIL BEN-KELY  
7 (the “Ben-Kely Plaintiffs”) on June 28, 2017. The Ben-Kely Plaintiffs subsequently filed an Amended  
8 Complaint on July 26, 2017. Lamborghini America timely answered the Ben-Kely Plaintiffs’  
9 Amended Complaint on August 17, 2017 denying all claims asserted against it, and asserting  
10 affirmative defenses. The only crossclaim against Lamborghini America was filed by the Estate of  
11 Craig Sherwood and this has been dismissed. The parties have engaged in extensive discovery,  
12 including written discovery, over 30 party and fact witness depositions, and expert discovery, including  
13 over 20 expert depositions. Discovery is now closed. On January 27, 2022, the Court set a firm trial  
14 date of April 25, 2022.

15 After a mediation with Justice Nancy Saitta (ret.) and continued negotiations with counsel for  
16 the Ben-Kely Plaintiffs and Lamborghini America, a confidential settlement has been reached between  
17 the Ben-Kely Plaintiffs and Lamborghini America that will resolve all claims asserted by the Ben-Kely  
18 Plaintiffs. In exchange for the settlement amount, the Ben-Kely Plaintiffs will execute a full release in  
19 a Confidential Settlement Agreement and Release in favor of Lamborghini America and the Ben-Kely  
20 Plaintiffs will execute a Stipulation for Dismissal with Prejudice of their Complaint as to Lamborghini  
21 America with each party to bear their respective attorneys’ fees and costs. This settlement is contingent  
22 upon this Court granting the instant motion.

23 Lamborghini America moves this Court for an Order determining that the settlement was  
24 reached in good faith, thereby affording the protections of NRS § 17.245. As the trial date is quickly  
25 approaching and the Sherwood Motion is requested to be heard on shortened time, Lamborghini  
26 America seeks a determination on an order shortening time for this Motion and the same hearing date  
27 for both Motions.

28 ///

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

This automotive product liability case arises from a single-vehicle crash that occurred on Sunday, February 12, 2017 at the SpeedVegas “driving experience” closed course track in Las Vegas, Nevada. Craig Sherwood was driving the subject 2015 Lamborghini Aventador, and Gil Ben-Kely, a driving coach employed by SpeedVegas, was the passenger. As Mr. Sherwood was completing his seventh and final lap around the track, he failed to reduce his speed and did not appropriately negotiate the right-left turns at the end of the track's straightway. The subject vehicle left the outside of the track, came back across the track into the inside of the track, left the track a third time, and ultimately collided with stacked tires and then a concrete barrier wall. The impact cracked and displaced the concrete barrier wall. After the impact, the subject vehicle and some of the stacked tires caught on fire. Mr. Sherwood and Mr. Ben-Kely both died as a result of the injuries they sustained.

Following the crash, Mr. Ben-Kely's wife, Antonella Ben-Kely, and his adult children, Shon Ben-Kely and Nathalie Ben-Kely-Scott, filed a wrongful death lawsuit. In their Fifth Amended Complaint, the Ben-Kely Plaintiffs assert claims against Lamborghini America, SpeedVegas, Vulcan Motor Club d/b/a World Class Driving, Sloan Ventures 90, LLC, Motorsport Services International, LLC, Aaron Fessler, the Estate of Craig Sherwood, Tom Mizzone, Scott Gragson, and Felice Fiore, Jr. The Ben-Kely Plaintiffs' Fifth Amended Complaint sought punitive damages against Lamborghini America, but this Court granted Lamborghini America's Motion for Summary Judgment or, in the alternative, Partial Summary Judgment as to that claim.

Defendant Lamborghini America did not design or manufacture the subject vehicle. Lamborghini America is the distributor in the United States for new Lamborghini vehicles which are designed and manufactured by a non-party entity in Italy. Further, the subject vehicle was modified and altered for racetrack use after it left Lamborghini America. Lamborghini America denies liability for all of the claims asserted by the Ben-Kely Plaintiffs, but it negotiated an arms-length settlement with the Ben-Kely Plaintiffs to buy its peace from this matter and avoid the continuing costs of litigation and the uncertainty of trial.

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### 1 **III. LEGAL ARGUMENT**

#### 2 **A. Legal Standard**

3 NRS 17.245 provides as follows:

4 When a release or covenant not to sue or not to enforce judgment is given in good faith to one  
5 of two or more persons liable for the same injury or the same wrongful death:

- 6 (a) It does not discharge any of the other tortfeasors from liability for the injury or  
7 wrongful death unless its terms so provide, but it reduces the claim against the  
8 others to the extent of any amount stipulated by the release or covenant, or in  
9 the amount of the consideration paid for it, whichever is the greater; and
- (b) It discharges the tortfeasor to whom it is given from all liability for  
contribution and for equitable indemnity to any other tortfeasor.

10 When determining whether a settlement was reached in good faith, the Court may consider the  
11 following factors:

- 12 1. The amount paid in settlement;
- 13 2. The allocation of the settlement proceeds to plaintiffs;
- 14 3. The insurance policy limits of settling defendants;
- 15 4. The financial condition of settling defendants; and
- 16 5. The existence of collusion, fraud or tortious conduct aimed to injure the interests of non-  
17 settling defendants.

18 *Doctors Company v. Vincent*, 120 Nev. 644, 651 (2004); *In re MGM Grand Hotel Fire Litig.*, 570 F.  
19 Supp. 913, 927 (D. Nev. 1983). Moreover, the determination of a good faith settlement “should be left  
20 to the discretion of the trial court based upon all relevant facts available, and that, in the absence of an  
21 abuse of that discretion, the trial court’s findings should not be disturbed.” *Velsicol Chemical Corp. v.*  
22 *Davidson*, 107 Nev. 356, 360 (1991).

23 The settlement reached between the Ben-Kely Plaintiffs and Lamborghini America satisfies  
24 each of the relevant factors, and this Court should find that the settlement was reached in good faith.

#### 25 **B. All Factors Weigh in Favor of a Determination of Good Faith**

##### 26 1. Amount Paid in Settlement

27 The settlement amount between the Ben-Kely Plaintiffs and Lamborghini America is  
28 confidential by agreement of the settling parties, and the confidentiality of the settlement amount is a

condition of the settlement. However, at the hearing of this Motion, counsel for Lamborghini America will disclose the settlement amount to the Court *in camera*. In addition, the settlement amount has already been disclosed to counsel for the remaining defendant, Felice Fiore, Jr., in the Ben-Kely Plaintiffs' case.

In deciding to resolve this matter and reach the agreed settlement amount, the parties took into consideration the viability of the claims that could be asserted against Lamborghini America, the alleged losses by the Ben-Kely Plaintiffs, the likelihood of success at trial for each party, the costs and fees associated with proceeding to trial and any subsequent appeals, and the value in resolving the Ben-Kely Plaintiffs' claims prior to trial. After a mediation and arms-length negotiations among counsel, the parties determined that the agreed settlement amount was an appropriate compromise of their disputed claims. As a result, this factor weighs in favor of a finding of good faith.

#### 2. Allocation of Settlement Proceeds to Plaintiffs

The entire settlement amount will be paid to ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY as the duly appointed representative of the Estate and as the widow and heir of Decedent GIL BEN-KELY; SHON BEN-KELY, son and heir of decedent GIL BEN-KELY; and NATHALIE BEN-KELY-SCOTT, daughter and heir of decedent GIL BEN-KELY, and the Ben-Kely Plaintiffs' counsel of record. At the hearing of this Motion, counsel for the Ben-Kely Plaintiffs will disclose the allocation among the Ben-Kely Plaintiffs to the Court *in camera*.

#### 3. Insurance Policy Limits of Settling Defendants

The amount of the settlement was not influenced by any issues related to insurance coverage. As such, this factor is not relevant to the pending good faith settlement determination.

#### 4. Financial Condition of Settling Defendants

Similarly, the financial condition of Lamborghini America was not a relevant factor in reaching the settlement with the Ben-Kely Plaintiffs. The settlement negotiations did not require any consideration of a reduction in the settlement amount because of the financial status of Lamborghini America. Thus, the financial condition of Lamborghini America is not a factor relevant to the determination of good faith by the Court.

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1                   5. Existence of Collusion, Fraud or Tortious Conduct Aimed to Injure the Interests of Non-  
2                   Settling Defendants

3                   The settlement between the Ben-Kely Plaintiffs and Lamborghini America was reached after a  
4 mediation with Justice Nancy Saitta (ret.) and follow-up arms-length negotiations that occurred after  
5 expert discovery was completed in this case and motions *in limine* had been ruled upon. There has  
6 been no collusion, fraud or tortious conduct on the part of any of the settling parties, and there is no  
7 evidence to suggest otherwise.

8                   Moreover, the settlement between the Ben-Kely Plaintiffs and Lamborghini America will not  
9 prejudice the interests of the non-settling defendants. In fact, there have already been numerous  
10 settlements between various parties over the course of this action that resolved some of the claims  
11 raised in the case. No non-settling defendant has objected to any of the prior settlements on the basis  
12 that a settlement was aimed to injure their interests. This settlement should be no different.

13                  Discovery in this case is complete, and both parties have evaluated the nature and validity of  
14 their allegations, claims and defenses, and their chances of success at trial in light of the costs associated  
15 with proceeding to trial. The settlement amount represents a reasoned and carefully evaluated  
16 assessment of the risks faced by the settling parties should they proceed to trial given all of the facts  
17 and circumstances of the case. As such, this settlement should be determined to have been reached in  
18 good faith, and Lamborghini America's motion should be granted.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Lamborghini America respectfully requests an Order determining  
3 that the settlement between the Ben-Kely Plaintiffs and Lamborghini America was reached in good  
4 faith within the meaning of NRS § 17.245, and providing Lamborghini America with the protections  
5 afforded therein, including third party actions for contribution and/or indemnification.

6 DATED this 2<sup>nd</sup> day of March, 2022.

7 **WILEY PETERSEN LAW OFFICES**

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18 *Attorneys for Defendant,*  
19 *Automobili Lamborghini America, LLC*

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Estate of Gil Ben-Kely,  
Plaintiff(s)

CASE NO: A-17-757614-C

7 vs.

DEPT. NO. Department 27

8  
9 World Class Driving,  
Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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**EXHIBIT B**

**EXHIBIT B**

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25 *Automobili Lamborghini America, LLC*

26 **DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE BEN-  
KELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY, GWENDOLYN  
WARD, as Personal Representative of the  
ESTATE OF CRAIG SHERWOOD, deceased,  
GWENDOLYN WARD, individually and as  
surviving spouse of CRAIG SHERWOOD;  
GWENDOLYN WARD, as mother and natural  
guardian of ZANE SHERWOOD, surviving  
minor child of CRAIG SHERWOOD,

Plaintiffs,

vs.

SPEED VEGAS, LLC, a foreign-limited liability  
company; VULCAN MOTOR CLUB, LLC  
d/b/a WORLD CLASS DRIVING, a New Jersey

Case No.: A-17-757614-C

Dept. No.: XXVII

**DEFENDANT AUTOMOBILI  
LAMBORGHINI AMERICA, LLC'S  
MOTION FOR DETERMINATION OF  
GOOD FAITH SETTLEMENT AS TO  
SHERWOOD PLAINTIFFS ON AN  
ORDER SHORTENING TIME**

**[HEARING REQUESTED]**

limited liability company; SLOAN VENTURES  
90, LLC, a Nevada limited liability company;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; the ESTATE OF CRAIG  
SHERWOOD and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; TOM MIZZONE, an  
individual; SCOTT GRAGSON, an individual;  
PHIL FIORE aka FELICE FIORE, an  
individual; DOES I-X; and ROE ENTITIES I-X,  
inclusive,

Defendant,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD; GWENDOLYN WARD,  
individually and as surviving spouse of CRAIG  
SHERWOOD; GWENDOLYN WARD, as  
mother and natural guardian of ZANE  
SHERWOOD, surviving minor child of CRAIG  
SHERWOOD,

Crossclaim Plaintiffs,

vs.

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate; DOES IX,  
inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE  
BENKELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

vs.

ESTATE OF CRAIG SHERWOOD; DOES I-  
X, inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD,

Crossclaim Plaintiff,

vs.

SPEED VEGAS, LLC, a foreign-limited  
liability company; WORLD CLASS DRIVING,  
an unknown entity, SLOANE VENTURES 90,  
LLC, a Nevada limited liability company;  
ROBERT BARNARD, an individual;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; FELICE J. FIORE,  
JR.; DOES INDIVIDUALS I-X; and ROE  
ENTITIES I-X, inclusive

Crossclaim Defendants,

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1                    **DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S**  
2                    **MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT AS TO**  
3                    **SHERWOOD PLAINTIFFS ON AN ORDER SHORTENING TIME**

4                    COMES NOW Defendant Automobili Lamborghini America, LLC ("Lamborghini America"),  
5 by and through its counsel of record, and hereby moves this Honorable Court for an Order determining  
6 that the settlement between Lamborghini America and GWENDOLYN WARD, as Personal  
7 Representative of the ESTATE OF CRAIG SHERWOOD; GWENDOLYN WARD, individually and  
8 as surviving spouse of CRAIG SHERWOOD; GWENDOLYN WARD, as mother and natural guardian  
9 of ZANE SHERWOOD, surviving minor child of CRAIG SHERWOOD was reached in good faith  
10 within the meaning of NRS 17.245. This Motion is made and based upon NRS 17.245, the pleadings  
11 and paper on file herein, together with the attached Memorandum of Points and Authorities, and any  
12 oral argument this Court may wish to entertain at the time of hearing this Motion.

13                    Dated this 2<sup>nd</sup> day of March, 2022.

14                    **WILEY PETERSEN LAW OFFICES**

15                    By: /s/ Ryan S. Petersen  
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*Attorneys for Defendant,*  
                    *Automobili Lamborghini America, LLC*

**ORDER SHORTENING TIME**

IT IS HEREBY ORDERED that the hearing on DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT AS TO SHERWOOD PLAINTIFFS ON AN ORDER SHORTENING TIME shall be heard on the 10th day of March, 2022, at the hour of 10:30 a.m./~~p.m.~~ before Department XXVII or as soon thereafter as counsel may be heard.

IT IS FURTHER ORDERED that any opposition to the Motion must be filed no later than the 7th day of March, 2022.

IT IS FURTHER ORDERED that any reply in support of the Motion must be filed no later than the 8th day of March 2022.

Dated this 2nd day of March, 2022.

Dated this 2nd day of March, 2022

Nancy L Alf  
DISTRICT COURT JUDGE TW

Respectfully Submitted:

**WILEY PETERSEN LAW OFFICES**

**F7B B34 C9DF D28F**  
**Nancy Alf**  
**District Court Judge**

By: /s/ Ryan S. Petersen

RYAN S. PETERSEN, ESQ.  
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*Attorneys for Defendant,  
Automobili Lamborghini America, LLC*

**DECLARATION OF SUSAN V. VARGAS IN SUPPORT OF  
MOTION FOR ORDER SHORTENING TIME**

I, Susan V. Vargas declare as follows:

1. I am an attorney duly licensed to practice before all courts in the state of California and admitted *pro hac vice* by this Court in the above-captioned matter. I am a partner with the law firm, King & Spalding LLP, counsel of record for defendant Automobile Lamborghini America, LLC (“Lamborghini America”).

2. I have personal knowledge of the facts set forth in this Declaration and could testify competently to them if called to do so, except as to those matters of which I am informed and believe to be true.

3. This Order Shortening Time is necessary so that Lamborghini America’s Motion for Determination of Good Faith Settlement as to the Sherwood Plaintiffs (“Motion”) may be heard as soon as possible for the reasons explained herein. Minor Plaintiff Zane Sherwood is a Canadian citizen and resident. In addition to seeking this Court’s approval of the minor’s compromise petition for Zane Sherwood, his counsel will seek approval for the release of any claim belonging to minor Zane Sherwood pursuant to Canadian law in a court within the province of Ontario, Canada. Lamborghini America’s Canadian counsel, Jeremy Rankin of McMillan LLP in Toronto, Ontario, has explained that the process for approval in Canada may take more than a month. It is imperative that this Motion be heard as soon as possible so that the Sherwood Plaintiffs’ counsel may provide the Canadian court with this Court’s order finding that Lamborghini America’s settlement with the Sherwood plaintiffs was reached in good faith. Given the Court’s setting of a firm trial date of April 25, 2022 in this case, time is of the essence.

4. On February 28, 2022, I informed JD Murdock, counsel for the remaining defendants SpeedVegas and Felice Fiore, Jr., that this Motion would be brought on an order shortening time. I asked Mr. Murdock to inform me whether he would be filing an objection to the Motion. On March 1, 2022, with permission from counsel for the Sherwood Plaintiffs, I disclosed the settlement amount to Mr. Murdock. At that time, he informed me that SpeedVegas and Felice Fiore, Jr. would likely be objecting to this Motion.

5. For the reasons outlined in paragraph of 3 of this Declaration, counsel for Lamborghini America and the Sherwood Plaintiffs request that this Motion be heard on an order shortening time. Concurrently filed with this Motion, Lamborghini America has also filed its Motion for Determination of Good Faith Settlement as to the Ben-Kely Plaintiffs on OST. Lamborghini America requests that both motions be set for hearing at the same time.

Under penalty of perjury, under the laws of the State of Nevada, I declare that the foregoing is true and correct. Executed this 2<sup>nd</sup> day of March, 2022 at Torrance, California.

*L. Vaz*

Susan V. Vargas



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Lamborghini America was named as a defendant in the lawsuit filed by GWENDOLYN  
4 WARD, as Personal Representative of the ESTATE OF CRAIG SHERWOOD; GWENDOLYN  
5 WARD, individually and as surviving spouse of CRAIG SHERWOOD; and GWENDOLYN WARD,  
6 as mother and natural guardian of ZANE SHERWOOD, surviving minor child of CRAIG  
7 SHERWOOD (the “Sherwood Plaintiffs”) on August 17, 2018. Lamborghini America timely  
8 answered the Sherwood Plaintiffs’ Complaint on October 10, 2018 denying all claims asserted against  
9 it, and asserting affirmative defenses. The only crossclaim against Lamborghini America was filed by  
10 the Estate of Craig Sherwood and this has been dismissed. The parties have engaged in extensive  
11 discovery, including written discovery, over 30 party and fact witness depositions, and expert  
12 discovery, including over 20 expert depositions. Discovery is now closed. On January 27, 2022, the  
13 Court set a firm trial date of April 25, 2022.

14 After negotiation among counsel for the Sherwood Plaintiffs and for Lamborghini America, a  
15 confidential settlement has been reached between the Sherwood Plaintiffs and Lamborghini America  
16 that will resolve all claims asserted by the Sherwood Plaintiffs. In exchange for the settlement amount,  
17 the Sherwood Plaintiffs will execute a full release in a Confidential Settlement Agreement and Release  
18 in favor of Lamborghini America and the Sherwood Plaintiffs will execute a Stipulation for Dismissal  
19 with Prejudice of their Complaint as to Lamborghini America with each party to bear their respective  
20 attorneys’ fees and costs. Counsel for Minor Plaintiff Zane Sherwood will seek judicial approval in  
21 the province of Ontario, Canada for the release of any Canadian claim belonging to Minor Plaintiff  
22 Zane Sherwood. In addition to seeking judicial approval in Canada, this settlement is contingent upon  
23 this Court granting the instant motion and approving the minor’s compromise petition that will be filed  
24 in the near future.

25 Lamborghini America moves this Court for an Order determining that the settlement was  
26 reached in good faith, thereby affording the protections of NRS § 17.245. As the trial date is quickly  
27 approaching, Lamborghini America seeks a determination on an order shortening time.

28 ///

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

This automotive product liability case arises from a single-vehicle crash that occurred on Sunday, February 12, 2017 at the SpeedVegas “driving experience” closed course track in Las Vegas, Nevada. Craig Sherwood, a Canadian resident, was driving the subject 2015 Lamborghini Aventador, and Gil Ben-Kely, a driving coach employed by SpeedVegas, was the passenger. As Mr. Sherwood was completing his seventh and final lap around the track, he failed to reduce his speed and did not appropriately negotiate the right-left turns at the end of the track's straightway. The subject vehicle left the outside of the track, came back across the track into the inside of the track, left the track a third time, and ultimately collided with stacked tires and then a concrete barrier wall. The impact cracked and displaced the concrete barrier wall. After the impact, the subject vehicle and some of the stacked tires caught on fire. Mr. Sherwood and Mr. Ben-Kely both died as a result of the injuries they sustained.

Following the crash, Mr. Sherwood’s wife, Gwendolyn Ward, filed a wrongful death lawsuit against Lamborghini America, SpeedVegas, Felice Fiore, Jr., and the Ben-Kely estate on behalf of herself, her minor son Zane Sherwood, and Mr. Sherwood’s estate (the “Sherwood Plaintiffs”). As to Lamborghini America, the lawsuit alleges that the subject 2015 Aventador was defectively designed, manufactured, distributed and sold and asserted causes of action against Lamborghini America for: wrongful death, negligence, negligent products liability, and strict products liability. The Sherwood Plaintiffs’ Complaint sought punitive damages against Lamborghini America, but this Court granted Lamborghini America’s Motion for Partial Summary Judgment as to that claim.

Defendant Lamborghini America did not design or manufacture the subject vehicle. Lamborghini America is the distributor in the United States for new Lamborghini vehicles which are designed and manufactured by a non-party entity in Italy. Further, the subject vehicle was modified and altered for racetrack use after it left Lamborghini America. Lamborghini America denies liability for any and all of the claims asserted by the Sherwood Plaintiffs, but it negotiated an arms-length settlement with the Sherwood Plaintiffs to buy its peace from this matter and avoid the continuing costs of litigation and the uncertainty of trial.

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### 1 **III. LEGAL ARGUMENT**

#### 2 **A. Legal Standard**

3 NRS 17.245 provides as follows:

4 When a release or covenant not to sue or not to enforce judgment is given in good faith to one  
5 of two or more persons liable for the same injury or the same wrongful death:

- 6 (a) It does not discharge any of the other tortfeasors from liability for the injury or  
7 wrongful death unless its terms so provide, but it reduces the claim against the  
8 others to the extent of any amount stipulated by the release or covenant, or in  
9 the amount of the consideration paid for it, whichever is the greater; and
- (b) It discharges the tortfeasor to whom it is given from all liability for  
contribution and for equitable indemnity to any other tortfeasor.

10 When determining whether a settlement was reached in good faith, the Court may consider the  
11 following factors:

- 12 1. The amount paid in settlement;
- 13 2. The allocation of the settlement proceeds to plaintiffs;
- 14 3. The insurance policy limits of settling defendants;
- 15 4. The financial condition of settling defendants; and
- 16 5. The existence of collusion, fraud or tortious conduct aimed to injure the interests of non-  
17 settling defendants.

18 *Doctors Company v. Vincent*, 120 Nev. 644, 651 (2004); *In re MGM Grand Hotel Fire Litig.*, 570 F.  
19 Supp. 913, 927 (D. Nev. 1983). Moreover, the determination of a good faith settlement “should be left  
20 to the discretion of the trial court based upon all relevant facts available, and that, in the absence of an  
21 abuse of that discretion, the trial court’s findings should not be disturbed.” *Velsicol Chemical Corp. v.*  
22 *Davidson*, 107 Nev. 356, 360 (1991).

23 The settlement reached between the Sherwood Plaintiffs and Lamborghini America satisfies  
24 each of the relevant factors, and this Court should find that the settlement was reached in good faith.

#### 25 **B. All Factors Weigh in Favor of a Determination of Good Faith**

##### 26 1. Amount Paid in Settlement

27 The settlement amount between the Sherwood Plaintiffs and Lamborghini America is  
28 confidential by mutual agreement of the settling parties, and the confidentiality of the settlement

1 amount is a condition of the settlement. However, at the hearing of this Motion, counsel for  
2 Lamborghini America and/or the Sherwood Plaintiffs will disclose the settlement amount to the Court  
3 *in camera*. In addition, the settlement amount has already been disclosed to counsel for the remaining  
4 defendants, SpeedVegas and Felice Fiore, Jr.

5 In deciding to resolve this matter and reach the agreed settlement amount, the parties took into  
6 consideration the viability of the claims that could be asserted against Lamborghini America, the  
7 alleged losses by the Sherwood Plaintiffs, the likelihood of success at trial for each party, the costs and  
8 fees associated with proceeding to trial and any subsequent appeals, and the value in resolving the  
9 Sherwood Plaintiffs' claims prior to trial. After arms-length negotiations among counsel, the parties  
10 determined that the agreed settlement amount was an appropriate compromise of their disputed claims.  
11 As a result, this factor weighs in favor of a finding of good faith.

12 2. Allocation of Settlement Proceeds to Plaintiffs

13 The entire settlement amount will be paid to GWENDOLYN WARD, as Personal  
14 Representative of the ESTATE OF CRAIG SHERWOOD; GWENDOLYN WARD, individually and  
15 as surviving spouse of CRAIG SHERWOOD; GWENDOLYN WARD, as mother and natural guardian  
16 of ZANE SHERWOOD, surviving minor child of CRAIG SHERWOOD, and the Sherwood Plaintiffs'  
17 counsel of record. At the hearing of this Motion, counsel for the Sherwood Plaintiffs will disclose the  
18 allocation among the Sherwood Plaintiffs to the Court *in camera*.

19 3. Insurance Policy Limits of Settling Defendants

20 The amount of the settlement was not influenced by any issues related to insurance coverage.  
21 As such, this factor is not relevant to the pending good faith settlement determination.

22 4. Financial Condition of Settling Defendants

23 Similarly, the financial condition of Lamborghini America was not a relevant factor in reaching  
24 the settlement with the Sherwood Plaintiffs. The settlement negotiations did not require any  
25 consideration of a reduction in the settlement amount because of the financial status of Lamborghini  
26 America. Thus, the financial condition of Lamborghini America is not a factor relevant to the  
27 determination of good faith by the Court.  
28

1                   5. Existence of Collusion, Fraud or Tortious Conduct Aimed to Injure the Interests of Non-  
2                   Settling Defendants

3                   The settlement between the Sherwood Plaintiffs and Lamborghini America was reached after  
4                   extensive arms-length and face-to-face negotiations that occurred after expert discovery was completed  
5                   in this case and motions *in limine* had been ruled upon. There has been no collusion, fraud or tortious  
6                   conduct on the part of any of the settling parties, and there is no evidence to suggest otherwise.

7                   Moreover, the settlement between the Sherwood Plaintiffs and Lamborghini America will not  
8                   prejudice the interests of the non-settling defendants. In fact, there have already been numerous  
9                   settlements between various parties over the course of this action that resolved some of the claims  
10                  raised in the case. No non-settling defendant has objected to any of the prior settlements on the basis  
11                  that a settlement was aimed to injure their interests. This settlement should be no different.

12                 Discovery in this case is complete, and both parties have evaluated the nature and validity of  
13                 their allegations, claims and defenses, and their chances of success at trial in light of the costs associated  
14                 with proceeding to trial. The settlement amount represents a reasoned and carefully evaluated  
15                 assessment of the risks faced by the settling parties should they proceed to trial given all of the facts  
16                 and circumstances of the case. As such, this settlement should be determined to have been reached in  
17                 good faith, and Lamborghini America's motion should be granted.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Lamborghini America respectfully requests an Order determining  
3 that the settlement between the Sherwood Plaintiffs and Lamborghini America was reached in good  
4 faith within the meaning of NRS § 17.245, and providing Lamborghini America with the protections  
5 afforded therein, including third party actions for contribution and/or indemnification.

6 DATED this 2<sup>nd</sup> day of March, 2022.

7 **WILEY PETERSEN LAW OFFICES**

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Estate of Gil Ben-Kely,  
7 Plaintiff(s)

CASE NO: A-17-757614-C

8 vs.

DEPT. NO. Department 27

9 World Class Driving,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 3/2/2022

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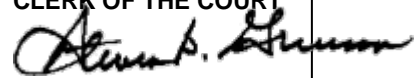


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**EXHIBIT C**

**EXHIBIT C**



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*Attorneys for Defendant,  
Automobili Lamborghini America, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE BEN-  
KELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY, GWENDOLYN  
WARD, as Personal Representative of the  
ESTATE OF CRAIG SHERWOOD, deceased,  
GWENDOLYN WARD, individually and as  
surviving spouse of CRAIG SHERWOOD;  
GWENDOLYN WARD, as mother and natural  
guardian of ZANE SHERWOOD, surviving  
minor child of CRAIG SHERWOOD,

Plaintiffs,

vs.  
SPEED VEGAS, LLC, a foreign-limited liability  
company; VULCAN MOTOR CLUB, LLC  
d/b/a WORLD CLASS DRIVING, a New Jersey  
limited liability company; SLOAN VENTURES

Case No.: A-17-757614-C

Dept. No.: XXVII

**DEFENDANT AUTOMOBILI  
LAMBORGHINI AMERICA, LLC'S  
REPLY TO SPEEDVEGAS AND FELICE  
FIORE, JR.'S COMBINED OPPOSITION  
TO DEFENDANT AUTOMOBILI  
LAMBORGHINI AMERICA, LLC'S  
MOTIONS FOR DETERMINATION OF  
GOOD FAITH SETTLEMENT AS TO  
EACH GROUP OF PLAINTIFFS ON AN  
ORDER SHORTENING TIME**

**Hearing Date: March 10, 2022  
Time: 10:30 a.m. PST**

90, LLC, a Nevada limited liability company;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; the ESTATE OF CRAIG  
SHERWOOD and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; TOM MIZZONE, an  
individual; SCOTT GRAGSON, an individual;  
PHIL FIORE aka FELICE FIORE, an  
individual; DOES I-X; and ROE ENTITIES I-X,  
inclusive,

Defendant,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD; GWENDOLYN WARD,  
individually and as surviving spouse of CRAIG  
SHERWOOD; GWENDOLYN WARD, as  
mother and natural guardian of ZANE  
SHERWOOD, surviving minor child of CRAIG  
SHERWOOD,

Crossclaim Plaintiffs,

vs.

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate; DOES IX,  
inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE  
BENKELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

vs.

ESTATE OF CRAIG SHERWOOD; DOES I-  
X, inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD,

Crossclaim Plaintiff,

vs.

SPEED VEGAS, LLC, a foreign-limited  
liability company; WORLD CLASS DRIVING,  
an unknown entity, SLOANE VENTURES 90,  
LLC, a Nevada limited liability company;  
ROBERT BARNARD, an individual;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; FELICE J. FIORE,  
JR.; DOES INDIVIDUALS I-X; and ROE  
ENTITIES I-X, inclusive

Crossclaim Defendants,

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I, Susan V. Vargas declare as follows:

1. I am an attorney duly licensed to practice before all courts in the state of California and admitted *pro hac vice* by this Court in the above-captioned matter. I am a partner with the law firm, King & Spalding LLP, counsel of record for defendant Automobile Lamborghini America, LLC (“Lamborghini America”).

2. I have personal knowledge of the facts set forth in this Declaration and could testify competently to them if called to do so, except as to those matters of which I am informed and believe to be true.

3. Attached to the appendix as Exhibit A is a true and correct copy of excerpts from the deposition of defendant Felice “Phil” Fiore, Jr. dated March 10, 2021.

4. Attached to the appendix as Exhibit B is a true and correct copy of excerpts from the deposition of expert witness Harold John Miller dated April 7, 2021.

5. Attached to the appendix as Exhibit C is a true and correct copy of the primary report of expert witness Jack Ridenour, P.E.

6. Attached to the appendix as Exhibit D is a true and correct copy of the rebuttal report of expert witness Jack Ridenour, P.E.

7. Attached to the appendix as Exhibit E is a true and correct copy of the primary report of expert witness Elizabeth H. Raphael, M.D., F.A.C.E.P.

8. Attached to the appendix as Exhibit F is a true and correct copy of the rebuttal report of expert witness Elizabeth H. Raphael, M.D., F.A.C.E.P.

9. During the course of this action, counsel for Defendants SpeedVegas and Felice Fiore, Jr., has informed me that they are insured for the claims against them for the incident giving rise to this action, with primary policy limits in the amount of \$5,000,000 and excess policy limits in the amount of an additional \$5,000,000. Attached to the appendix as Exhibits G and H are true and correct copies of the declaration pages for these policies which were produced in discovery.



1           10.     Attached as to the appendix Exhibit I is a true and correct copy of responses by  
2 SpeedVegas to interrogatories propounded by Lamborghini America, set one.

3           11.     Attached as to the appendix Exhibit J is a true and correct copy of excerpts from the  
4 deposition of SpeedVegas mechanic Paul Crifasi dated December 16, 2019.

5           Under penalty of perjury, under the laws of the State of Nevada, I declare that the foregoing is  
6 true and correct. Executed this 8th day of March, 2022 at Las Vegas, Nevada.

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10 Susan V. Vargas  
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1                                    **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

2            **A.     The Settlements Were Reached in Good Faith**

3            SpeedVegas and Felice Fiore, Jr.’s Combined Opposition fails to show a lack good faith by  
4            Lamborghini America, the Ben-Kely Plaintiffs, and the Sherwood Plaintiffs in reaching their respective  
5            settlements. The settlement amounts—which are confidential, but have been shared with counsel for  
6            SpeedVegas and Mr. Fiore, and will be disclosed to the Court *in camera*—confirm the seriousness of  
7            the settlements. If fact, as to the settlement with the Ben-Kely Plaintiffs, even to suggest that Justice  
8            Nancy Saitta (ret.) mediated and negotiated a bad faith settlement between the settling parties borders  
9            on the absurd.

10           The liability of Lamborghini America to each group of plaintiffs was and is vigorously disputed.  
11           When hearing Lamborghini America’s motion for summary judgment against the Ben-Kely Plaintiffs,  
12           this Court commented that the defense based on lack of causation—that Mr. Ben-Kely’s death was  
13           inevitable from his injury on impact, apart from any alleged vehicle defect—was “compelling,” but  
14           just not sufficient for summary judgment. See July 6, 2021, hearing transcript at p. 79; see also Vargas  
15           reply declaration, Exhibit E (biomechanical report) & Exhibit F (biomechanical rebuttal) to the  
16           Appendix of Evidence (“AOE”). Supported with that defense and others, Lamborghini America  
17           negotiated an arms-length settlement in good faith with the Ben-Kely Plaintiffs. While SpeedVegas  
18           and Mr. Fiore now cite the suggestion by plaintiffs’ expert Harold John Miller that the 2015  
19           Lamborghini Aventador should have been built with a five-point racing harness, Mr. Miller conceded  
20           this would not have met Federal Motor Vehicle Safety Standards. He further admitted that the evidence  
21           this racing restraint would have prevented Mr. Ben-Kely’s aortic tear was lacking. Moreover, a defense  
22           expert rebuttal report contradicted his argument. See Vargas reply declaration, Exhibit B (pp. 124,  
23           197–198), Exhibit F (pp. 3–4) to the AOE.

24           Defense expert reports showed that the fire that followed the crash did not result from any  
25           defect in the subject vehicle. See Vargas reply declaration, Exhibit C and Exhibit D to the AOE. If  
26           plaintiffs had proceeded to trial against Lamborghini America, that expert evidence would have shown  
27           that the vehicle fuel tank system was well-designed and well-made, but there was no chance it could  
28           remain intact as it was overpowered by the massive crash forces and deformation of the right side of

1 the vehicle. *Id.*

2 The settling parties, on each side, elected to avoid the risks of proceeding to trial. Nothing in  
3 the opposition by SpeedVegas and Mr. Fiore shows that counsel for the Ben-Kely Plaintiffs, counsel  
4 for the Sherwood Plaintiffs, and counsel for Lamborghini America did anything less than engage in  
5 arms-length negotiations to obtain *the best settlement they could for their respective clients*. The  
6 settlements were reached in good faith.

7 **B. Under NRS 17.245, the Settling Parties Have No Duty to Procure a Dismissal of**  
8 **Product Liability Claims Against Non-settling Parties SpeedVegas and Fiore**

9 Since the 1997 amendment of NRS 17.245 by the Legislature, when a release is given to a  
10 tortfeasor in good faith, it “**does not** discharge any of the other tortfeasors from liability for the injury  
11 or wrongful death unless its terms so provide”—it does, however, reduce the claim against the others—  
12 and it “**discharges** the tortfeasor to whom it is given from all liability for contribution and for equitable  
13 indemnity to any other tortfeasor.” NRS 17.245 (emphasis added).

14 SpeedVegas and Mr. Fiore improperly ask this Court to override and frustrate the statute. They  
15 ask this Court to manipulate its analysis of the good-faith settlement to effect a discharge of the product  
16 liability claims against them—even though the Legislature has provided that those claims are not  
17 discharged—and also to block the discharge of their claims against Lamborghini America for  
18 contribution and equitable indemnity—even though the Legislature has provided for the discharge of  
19 those claims where, as here, a release has been given in good faith.

20 Citing *Medallion Development v. Converse Consultants*, 113 Nev. 27, 930 P.2d 115, 120  
21 (1997), SpeedVegas and Mr. Fiore ask this Court to ignore the statute and create an overriding effect  
22 to the policy of equitable indemnity. But as they must admit, and as the Supreme Court explained in  
23 *The Doctors Co. v. Vincent*, 120 Nev. 644, 654, 98 P.3d 681, 688 (2004), the Legislature responded to  
24 the decision in *Medallion* by amending NRS 17.245 “to provide that a good-faith settlement insulates  
25 the settling party from claims of both contribution and implied indemnity.” *The Doctors Co.*, 120 Nev.  
26 at 654, 98 P.3d at 688.

27 We recognize that the 1997 amendments to NRS 17.245, precluding  
28 indemnity actions where the indemnity obligor’s settlement is in good  
faith, are not in doctrinal harmony with a right of implied indemnity. . . .

1                   However, the Legislature has determined that **the preeminent**  
2                   **consideration is encouragement of settlement** and has thus included  
3                   indemnity as one of the remedies foreclosed in the event of a good-faith  
4                   settlement.

5                   *Id.*, 120 Nev. at 656 n.28 (emphasis added).

6                   When the Legislature amended NRS 17.245 to include the discharge of indemnity claims, the  
7                   *Medallion* decision had already explained that equitable indemnity involved a claim by one who has  
8                   “passive” liability against one who is an “active wrongdoer,” but the Legislature still determined that  
9                   a good-faith settlement should—and does—discharge claims for equitable indemnity. *See Medallion*,  
10                  113 Nev. at 32–34.

11                  Any duty to negotiate a settlement for Mr. Fiore with the Ben-Kely Plaintiffs, or for  
12                  SpeedVegas and Mr. Fiore with the Sherwood Plaintiffs, falls to SpeedVegas, Mr. Fiore and their  
13                  insurers—who issued liability coverage with primary and excess policy limits totaling **\$10,000,000**.  
14                  *See Doctors Company v. Vincent*, 120 Nev. 644, 651 (2004) (considering insurance policy limits); *In*  
15                  *re MGM Grand Hotel Fire Litig.*, 570 F. Supp. 913, 927 (D. Nev. 1983) (same); Vargas reply  
16                  declaration, ¶ 9, Exhibit A (pp. 82–83), Exhibit G, Exhibit H to the AOE. The strategy by SpeedVegas  
17                  and Mr. Fiore’s insurers not to settle the claims against them is not a decision made by Lamborghini  
18                  America.

19                  Lamborghini America had no duty to settle the claims against SpeedVegas or Mr. Fiore.  
20                  Further, the subject vehicle had been modified when Mr. Fiore bought it used. *See* Vargas reply  
21                  declaration, Exhibit A (pp. 58–59) to the AOE. Thereafter, SpeedVegas modified the subject vehicle  
22                  further. *See id.*, Exhibit A (p. 93), Exhibit I (p. 3, resp. to interrog. 2), Exhibit J (pp. 119–120, 240–  
23                  241) to the AOE. As is common in a settlement releasing a company for claims that include product  
24                  liability, the settlement agreements negotiated by Lamborghini America include the release of  
25                  Lamborghini America, all Lamborghini companies and parent and subsidiary companies including  
26                  Automobili Lamborghini S.p.A., all Lamborghini dealers wherever located, all Lamborghini suppliers,  
27                  all entities involved in the design, development, testing, certification, manufacture, distribution,  
28                  warranty, sale, recall or repair of the subject Lamborghini vehicle and any of its components, and all  
29                  other persons, firms and corporations in any way participating in the design, manufacture, repair, recall  
30                  or sale of the subject Lamborghini vehicle—but not the release of the remaining Defendants, Mr. Fiore

(as to the Ben-Kely Plaintiffs) and SpeedVegas and Mr. Fiore (as to the Sherwood Plaintiffs), or any insurance carriers for any remaining party.

The statutory structure contemplates that each defendant alleged to be a joint tortfeasor will negotiate its own settlement with the injured parties. NRS 17.245 prescribes the discharge that the released parties obtain from all liability for contribution and for equitable indemnity to any other tortfeasor, whom the statute expects to be outside the scope of the settlement. The law does not compel one defendant to settle the claims against another. This argument is contradictory to the spirit of the statute and the policy arguments promoting settlement.

**C. SpeedVegas and Mr. Fiore Fail to Present Any Evidence That Warrants Denial of a Determination That the Settlements Were Concluded in Good Faith**

The choice by SpeedVegas, Mr. Fiore, and their insurers to risk an adverse judgment rather than pursue settlement is no basis to deny a determination that Lamborghini America obtained the release from the Ben-Kely Plaintiffs and the release from the Sherwood Plaintiffs through good-faith settlements. SpeedVegas and Mr. Fiore will receive setoffs; they are entitled to nothing more. NRS 17.245.

If SpeedVegas and Mr. Fiore ultimately incur an adverse judgment, it will be based on their own liability. The more they argue that they are left at risk by the settlements, the more they contradict the arguments in their mandamus petition before the Nevada Supreme Court that they have no liability. The decision to pursue a complete defense instead of negotiating settlements—from their collective policy limits of \$10,000,000—is a strategy decision that their insurers have chosen to make. That does not negate the good faith of the settlements fairly negotiated by Lamborghini America.

Further, the facts contradict their unsupported claims here that they were merely passive pawns of Lamborghini America in providing the subject vehicle to Mr. Sherwood and Mr. Ben-Kely. Both SpeedVegas and Mr. Fiore have been sued for their own negligence, and SpeedVegas has been sued for the negligence of its employees. *See, e.g.,* Sherwood Complaint at pp. 4–6 (discussing “racetrack” and operations), pp. 12–16 (1st, 2nd, 3rd, 4th, and 5th causes of action); Ben-Kely 5th Amended Complaint at pp. 17–20, 25 (2nd cause of action vs. Fiore). The alleged negligence of SpeedVegas in operating the racetrack, for example, is wholly unrelated to the product liability claim against

1 Lamborghini America.

2 Even with respect to product liability, if the case against SpeedVegas and Mr. Fiore proceeds  
3 to trial, they will face a greater burden than Lamborghini America would have. Under Nevada Jury  
4 Instruction 7.1, one element of product liability is whether the product “was used in a manner which  
5 was reasonably foreseeable by the defendant[.]” In this instance, SpeedVegas and Mr. Fiore knew  
6 things that Lamborghini America did not: the precise conditions of the SpeedVegas track where the  
7 vehicle was being operated—including, for example, the alleged inadequate track design, lack of  
8 sufficient “runoff area,” and a deficient tire barrier to mitigate the crash forces from impacting the  
9 concrete barrier wall. Moreover, the vehicle had been modified when Mr. Fiore bought it used: The  
10 exhaust system had been modified and a larger rear wing that was not moveable had been installed.  
11 See Vargas reply declaration, Exhibit A (pp. 58–59) to the AOE. SpeedVegas modified the subject  
12 vehicle even further for its off-road track use: Expensive carbon–ceramic brakes appropriate for lawful  
13 use on streets and highways were replaced with cheaper steel rotors for track use and a passenger-side  
14 instructor brake was installed. See *id.*, Exhibit A (p. 93), Exhibit I (p. 3, resp. to interrog. 2), Exhibit J  
15 (pp. 119–120, 240,–241) to the AOE. SpeedVegas and Mr. Fiore are responsible for the decision to  
16 take a vehicle made for lawful use on streets and highways, modify it, and put it in the hands of thrill-  
17 seeking novices on the SpeedVegas track.

18 Lamborghini America properly advised in its moving papers that neither insurance policy limits  
19 nor its own financial condition was a limiting factor in reaching the settlement amounts. No authority  
20 supports SpeedVegas and Mr. Fiore’s suggestion that Lamborghini America had to pay more—  
21 especially where, as here, the liability of the settling party was vigorously contested.

22 No evidence shows anything improper in the allocation of settlement proceeds by the plaintiffs.  
23 The Ben-Kely Plaintiffs have now disclosed their allocations by percentage, and the Sherwood  
24 Plaintiffs will disclose their allocations *in camera* when the motions are heard.

25 No evidence shows any collusion to injure the remaining, non-settling defendants.

26 Finally, the reasons for hearing this motion on shortened time, needing to seek approval for the  
27 release of any claim belonging to minor Zane Sherwood pursuant to Canadian law in a Canadian court  
28 as well as the approval process of the minor’s compromise in this Court before the April 25, 2022 trial

1 date, were explained in the moving papers and appropriately accepted by this Court. SpeedVegas and  
2 Mr. Fiore have shown no evidence to the contrary.

3 **D. Conclusion**

4 For the reasons set forth above and in the moving papers, Lamborghini America respectfully  
5 requests:

- 6 • an Order determining that the settlement between the Ben-Kely Plaintiffs and  
7 Lamborghini America was reached in good faith within the meaning of NRS § 17.245,  
8 providing the released parties and related entities the protections afforded therein,  
9 including discharge of all liability for contribution or indemnification.
- 10 • an Order determining that the settlement between the Sherwood Plaintiffs and  
11 Lamborghini America was reached in good faith within the meaning of NRS § 17.245,  
12 providing the released parties and related entities the protections afforded therein,  
13 including discharge of all liability for contribution or indemnification.

14  
15 DATED this 8th day of March, 2022.

16 **WILEY PETERSEN LAW OFFICES**

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18 By: /s/ Ryan Petersen

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the law firm WILEY PETERSEN, and that on this 8<sup>th</sup> day of March 2022, I caused to be served a true and correct copy of the foregoing **DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S REPLY TO SPEEDVEGAS AND FELICE FIORE, JR.'S COMBINED OPPOSITION TO DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S MOTIONS FOR DETERMINATION OF GOOD FAITH SETTLEMENT AS TO EACH GROUP OF PLAINTIFFS ON AN ORDER SHORTENING TIME** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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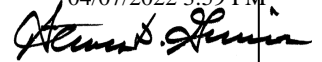


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/s/ Chastity Dugenia  
An employee of WILEY PETERSEN LAW OFFICES

**EXHIBIT D**

**EXHIBIT D**

  
CLERK OF THE COURT

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*Automobili Lamborghini America, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE BEN-  
KELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY, GWENDOLYN  
WARD, as Personal Representative of the  
ESTATE OF CRAIG SHERWOOD, deceased,  
GWENDOLYN WARD, individually and as  
surviving spouse of CRAIG SHERWOOD;  
GWENDOLYN WARD, as mother and natural  
guardian of ZANE SHERWOOD, surviving  
minor child of CRAIG SHERWOOD,

Plaintiffs,

vs.

Case No.: A-17-757614-C

Dept. No.: XXVII

**ORDER GRANTING DEFENDANT  
AUTOMOBILI LAMBORGHINI  
AMERICA, LLC'S MOTION FOR  
DETERMINATION OF GOOD FAITH  
SETTLEMENT AS TO BEN-KELY  
PLAINTIFFS**

SPEED VEGAS, LLC, a foreign-limited liability company; VULCAN MOTOR CLUB, LLC d/b/a WORLD CLASS DRIVING, a New Jersey limited liability company; SLOAN VENTURES 90, LLC, a Nevada limited liability company; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER, an individual; the ESTATE OF CRAIG SHERWOOD and AUTOMOBILI LAMBORGHINI AMERICA, LLC, a foreign limited liability company; TOM MIZZONE, an individual; SCOTT GRAGSON, an individual; PHIL FIORE aka FELICE FIORE, an individual; DOES I-X; and ROE ENTITIES I-X, inclusive,

Defendant,

GWENDOLYN WARD, as Personal Representative of the ESTATE OF CRAIG SHERWOOD; GWENDOLYN WARD, individually and as surviving spouse of CRAIG SHERWOOD; GWENDOLYN WARD, as mother and natural guardian of ZANE SHERWOOD, surviving minor child of CRAIG SHERWOOD,

Crossclaim Plaintiffs,

vs.

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY as the duly appointed representative of the Estate; DOES IX, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants,

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE  
BENKELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

vs.

ESTATE OF CRAIG SHERWOOD; DOES I-  
X, inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD,

Crossclaim Plaintiff,

vs.

SPEED VEGAS, LLC, a foreign-limited  
liability company; WORLD CLASS DRIVING,  
an unknown entity, SLOANE VENTURES 90,  
LLC, a Nevada limited liability company;  
ROBERT BARNARD, an individual;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; FELICE J. FIORE,  
JR.; DOES INDIVIDUALS I-X; and ROE  
ENTITIES I-X, inclusive

Crossclaim Defendants,

///

///

1 ///

2 **ORDER GRANTING DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S**  
3 **MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT**  
4 **AS TO BEN-KELY PLAINTIFFS**

5 The Motion of Defendant Automobili Lamborghini America, LLC ("Lamborghini America")  
6 for Determination of Good Faith Settlement as to the Ben-Kely Plaintiffs came on for hearing before  
7 the Honorable Nancy Allf on March 10, 2022, and March 22, 2022. Susan V. Vargas, Esq., of King  
8 & Spalding, H. Franklin Hostetler III, Esq., of Musick, Peeler & Garrett LLP, and Ryan S. Petersen,  
9 Esq., of Wiley Petersen appeared on behalf of Lamborghini America. Ian P. Samson, Esq., of Panish  
10 Shea Boyle Ravipudi LLP and Cory M. Eschweiler, Esq., of ER Injury Attorneys appeared on behalf  
11 of the Sherwood Plaintiffs. William R. Brenske, Esq., and Scott M. Brenske, Esq., of Brenske,  
12 Andreevski & Krametbauer appeared on behalf of the Ben-Kely Plaintiffs. Alan W. Westbrook,  
13 Esq., of Perry & Westbrook, James D. Murdock II, Esq. of Taylor Anderson, LLP, and Daniel F.  
14 Polsenberg, Esq., and Abraham G. Smith, Esq., of Lewis & Roca appeared on behalf of Defendants  
15 SpeedVegas, LLC, and Felice J. Fiore, Jr.

16 Having considered the arguments of counsel, the papers and pleadings on file herein,  
17 including the respective supporting and opposing papers and arguments of the parties, and good  
18 cause having been shown, the Court now enters the following Findings of Fact, Conclusions of Law,  
19 and Order:

20 **FINDINGS OF FACT**

21 1. The incident that is the subject of this case involved a single-vehicle crash and a subsequent  
22 fire that occurred on February 12, 2017, at the SpeedVegas "driving experience" track in Las Vegas,  
23 Nevada. Craig Sherwood was driving the subject vehicle, a 2015 Lamborghini Aventador, and  
24 Gil Ben-Kely, a driving coach employed by SpeedVegas, was the passenger in the vehicle.  
25 Mr. Sherwood and Mr. Ben-Kely both died in the incident.

26 2. On June 28, 2017, Mr. Ben-Kely's surviving spouse and children, Antonella Ben-Kely, Shon  
27 Ben-Kely and Nathalie Ben-Kely-Scott filed a lawsuit on behalf of themselves and Mr. Ben-Kely's  
28 estate (collectively, the "Ben-Kely Plaintiffs") against defendants including Lamborghini America  
and SpeedVegas, among others. The Ben-Kely Plaintiffs subsequently added Mr. Fiore as a

1 defendant.

2 3. The parties engaged in extensive discovery, including written discovery, over 30 party and  
3 fact witness depositions, and expert discovery, including over 20 expert depositions. Discovery is  
4 now closed, and the case has been set for trial.

5 4. The Ben-Kely Plaintiffs and Lamborghini America have agreed to settle the claims asserted  
6 by the Ben-Kely Plaintiffs for a confidential amount, with each party to bear that party's respective  
7 attorney fees and costs. The confidential amount was disclosed to counsel for SpeedVegas and  
8 Mr. Fiore before the motion for determination of good faith settlement was filed, and the amount was  
9 disclosed to the Court *in camera* during the hearing on March 10, 2022. Mr. Fiore is the remaining  
10 non-settling Defendant.

11 5. The settlement agreement negotiated between the settling parties includes the release by the  
12 Ben-Kely Plaintiffs of all claims against Lamborghini America, all Lamborghini companies and  
13 parent and subsidiary companies, including Automobili Lamborghini S.p.A., all Lamborghini dealers  
14 wherever located, all Lamborghini suppliers, all entities involved in the design, development, testing,  
15 certification, manufacture, distribution, warranty, retail sale, recall or repair of the subject 2015  
16 Lamborghini Aventador and any of its components, and all other persons, firms and corporations in  
17 any way participating in the design, manufacture, repair, recall or retail sale of the subject 2015  
18 Lamborghini Aventador (collectively, the "Releasees"), but the settlement agreement does not release  
19 (and the Releasees do not include) the remaining Defendant, Mr. Fiore, or any insurance carriers for  
20 any remaining party.

21 6. Lamborghini America distributes new Lamborghini vehicles for retail sale and lease in the  
22 United States. Mr. Fiore was not the original purchaser of the subject vehicle, but was the owner of  
23 the subject vehicle at the time of the incident. By the time of the incident, the vehicle had been  
24 modified and repurposed for the high-speed use to which it was put at the SpeedVegas track.

25 7. The settlement negotiations were arms-length and the settlement was negotiated in good faith.

26 8. The settlement amount is not inadequate. The settling parties settled in the face of multiple  
27 uncertainties, including uncertainty as to potential liability against Lamborghini America and  
28 uncertainty as to the amount of any damages that might be awarded. The case was vigorously

defended by Lamborghini America. The settlement amount is not inadequate given the difficulty in proving crash causation, product defect and injury causation against Lamborghini America.

9. The allocation of the settlement funds among the Ben-Kely Plaintiffs is appropriate.

10. Neither insurance policy limits nor Lamborghini America's financial condition was a limiting factor in reaching the settlement amount.

11. There is no evidence of any collusion, fraud, or tortious conduct aimed to injure the interests of any non-settling defendants.

12. The arguments asserted by SpeedVegas and Mr. Fiore are insufficient to defeat Lamborghini America's motion. The release given by the Ben-Kely Plaintiffs to the Releasees was given in good faith, and no claims of contribution or equitable indemnity against any of the Releasees warrant any contrary finding.

13. Given the settlement amount, Mr. Fiore will be entitled to an offset from any adverse verdict.

14. The settlement between the Ben-Kely Plaintiffs and Lamborghini America was reached in good faith, including the release of claims against the Releasees given in good faith. The settlement and release satisfy all applicable considerations under Nevada law.

### **CONCLUSIONS OF LAW**

1. "When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death," the person or entity released is discharged "from all liability for contribution and for equitable indemnity to any other tortfeasor." NRS 17.245.

2. In determining whether a settlement has been made in good faith, the district court uses its discretion based upon all relevant facts available. *Otak Nevada, LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805 (2013).

3. Though not exclusive, factors to be considered include the amount paid in settlement, the allocation of the settlement proceeds among the plaintiffs, the insurance policy limits of the settling defendant, the financial condition of the settling defendant, and the existence of any collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants; and the court may consider the merits of any contribution or equitable indemnity claims against the settling defendant.



1 *Otak*, 129 Nev. at 805–06; *Doctors Co. v. Vincent*, 120 Nev. 644, 651-52 (2004). A settling  
2 defendant is not required to pay the full amount of its potential liability, as such a requirement would  
3 unduly discourage settlements. *Otak*, 129 Nev. at 806. Uncertainty as to the case for liability against  
4 a settling defendant and uncertainty as to the amount of any damages that might be awarded were the  
5 case to proceed to trial are appropriate considerations. *See id.*; *Velsicol Chem. Corp. v. Davidson*,  
6 107 Nev. 356, 361 (1991).

7 4. Considering the evidence presented and all relevant facts available, applying the law to the  
8 facts including the Findings of Fact above, and exercising its discretion, the Court determines that the  
9 settlement between Lamborghini America and the Ben-Kely Plaintiffs was made in good faith,  
10 including the release of claims against the Releasees given in good faith.

11 **ORDER**

12 WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, this Court  
13 hereby orders that Lamborghini America's Motion for Determination of Good Faith Settlement as to  
14 the Ben-Kely Plaintiffs is hereby GRANTED, and further, having determined that the settlement  
15 between the Ben-Kely Plaintiffs and Lamborghini America was reached in good faith, including the  
16 release of claims against the Releasees given in good faith, within the meaning of NRS § 17.245, that  
17 the Releasees are hereby accorded the protections afforded by NRS § 17.245, including discharge of  
18 all liability for contribution or for equitable indemnity to any others.

19 Lamborghini America is further excused from all local rule obligations with respect to pre-  
20 trial requirements.

21 IT IS SO ORDERED.

22  
23 Dated this 7<sup>th</sup> day of April, 2022.

Dated this 7th day of April, 2022

24 

TW

25 6E9 1FE D0A4 F8D8  
26 Nancy Allf  
27 District Court Judge  
28

Submitted by:

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/s/ Ryan Petersen

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*Ben-Kely Counterclaimants*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Estate of Gil Ben-Kely,  
7 Plaintiff(s)

CASE NO: A-17-757614-C

8 vs.

DEPT. NO. Department 27

9 World Class Driving,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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22 via United States Postal Service, postage prepaid, to the parties listed below at their last  
23 known addresses on 4/8/2022  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE BEN-  
KELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY, GWENDOLYN  
WARD, as Personal Representative of the  
ESTATE OF CRAIG SHERWOOD, deceased,  
GWENDOLYN WARD, individually and as  
surviving spouse of CRAIG SHERWOOD;  
GWENDOLYN WARD, as mother and natural  
guardian of ZANE SHERWOOD, surviving  
minor child of CRAIG SHERWOOD,

Plaintiffs,

vs.

Case No.: A-17-757614-C

Dept. No.: XXVII

**ORDER GRANTING DEFENDANT  
AUTOMOBILI LAMBORGHINI  
AMERICA, LLC'S MOTION FOR  
DETERMINATION OF GOOD FAITH  
SETTLEMENT AS TO SHERWOOD  
PLAINTIFFS**



SPEED VEGAS, LLC, a foreign-limited liability company; VULCAN MOTOR CLUB, LLC d/b/a WORLD CLASS DRIVING, a New Jersey limited liability company; SLOAN VENTURES 90, LLC, a Nevada limited liability company; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER, an individual; the ESTATE OF CRAIG SHERWOOD and AUTOMOBILI LAMBORGHINI AMERICA, LLC, a foreign limited liability company; TOM MIZZONE, an individual; SCOTT GRAGSON, an individual; PHIL FIORE aka FELICE FIORE, an individual; DOES I-X; and ROE ENTITIES I-X, inclusive,

Defendant,

GWENDOLYN WARD, as Personal Representative of the ESTATE OF CRAIG SHERWOOD; GWENDOLYN WARD, individually and as surviving spouse of CRAIG SHERWOOD; GWENDOLYN WARD, as mother and natural guardian of ZANE SHERWOOD, surviving minor child of CRAIG SHERWOOD,

Crossclaim Plaintiffs,

vs.

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY as the duly appointed representative of the Estate; DOES IX, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants,

ESTATE OF GIL BEN-KELY by  
ANTONELLA BEN-KELY as the duly  
appointed representative of the Estate and as the  
widow and heir of Decedent GIL BEN-KELY;  
SHON BEN-KELY, son and heir of the  
Decedent GIL BEN-KELY; NATHALIE  
BENKELY-SCOTT, daughter and heir of the  
decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

vs.

ESTATE OF CRAIG SHERWOOD; DOES I-  
X, inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants,

GWENDOLYN WARD, as Personal  
Representative of the ESTATE OF CRAIG  
SHERWOOD,

Crossclaim Plaintiff,

vs.

SPEED VEGAS, LLC, a foreign-limited  
liability company; WORLD CLASS DRIVING,  
an unknown entity, SLOANE VENTURES 90,  
LLC, a Nevada limited liability company;  
ROBERT BARNARD, an individual;  
MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON FESSLER,  
an individual; and AUTOMOBILI  
LAMBORGHINI AMERICA, LLC, a foreign  
limited liability company; FELICE J. FIORE,  
JR.; DOES INDIVIDUALS I-X; and ROE  
ENTITIES I-X, inclusive

Crossclaim Defendants,

///

///

1 ///

2 **ORDER GRANTING DEFENDANT AUTOMOBILI LAMBORGHINI AMERICA, LLC'S**  
3 **MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT**  
4 **AS TO SHERWOOD PLAINTIFFS**

5 The Motion of Defendant Automobili Lamborghini America, LLC ("Lamborghini America")  
6 for Determination of Good Faith Settlement as to the Sherwood Plaintiffs came on for hearing before  
7 the Honorable Nancy Allf on March 10, 2022, and March 22, 2022. Susan V. Vargas, Esq., of King  
8 & Spalding, H. Franklin Hostetler III, Esq., of Musick, Peeler & Garrett LLP, and Ryan S. Petersen,  
9 Esq., of Wiley Petersen appeared on behalf of Lamborghini America. Ian P. Samson, Esq., of  
10 Panish, Shea Boyle Ravipudi LLP and Cory M. Eschweiler, Esq., of ER Injury Attorneys appeared  
11 on behalf of the Sherwood Plaintiffs. William R. Brenske, Esq., and Scott M. Brenske, Esq., of  
12 Brenske, Andreevski & Krametbauer appeared on behalf of the Ben-Kely Plaintiffs. Alan W.  
13 Westbrook, Esq., of Perry & Westbrook, James D. Murdock II, Esq. of Taylor Anderson, LLP, and  
14 Daniel F. Polsenberg, Esq., and Abraham G. Smith, Esq., of Lewis & Roca appeared on behalf of  
15 Defendants SpeedVegas, LLC, and Felice J. Fiore, Jr.

16 Having considered the arguments of counsel, the papers and pleadings on file herein,  
17 including the respective supporting and opposing papers and arguments of the parties, and good  
18 cause having been shown, the Court now enters the following Findings of Fact, Conclusions of Law,  
19 and Order:

20 **FINDINGS OF FACT**

21 1. The incident that is the subject of this case involved a single-vehicle crash and a subsequent  
22 fire that occurred on February 12, 2017, at the SpeedVegas "driving experience" track in Las Vegas,  
23 Nevada. Craig Sherwood was driving the subject vehicle, a 2015 Lamborghini Aventador, and  
24 Gil Ben-Kely, a driving coach employed by SpeedVegas, was the passenger in the vehicle.  
25 Mr. Sherwood and Mr. Ben-Kely both died in the incident.

26 2. On August 17, 2018, Mr. Sherwood's surviving spouse, Gwendolyn Ward, filed a lawsuit on  
27 behalf of herself, her minor son Zane Sherwood, and Mr. Sherwood's estate (collectively, the  
28 "Sherwood Plaintiffs") against defendants including Lamborghini America, SpeedVegas, and Felice  
Fiore, Jr., among others.

1        3. The parties engaged in extensive discovery, including written discovery, over 30 party and  
2 fact witness depositions, and expert discovery, including over 20 expert depositions. Discovery is  
3 now closed, and the case has been set for trial.

4        4. The Sherwood Plaintiffs and Lamborghini America have agreed to settle the claims asserted  
5 by the Sherwood Plaintiffs for a confidential amount, with each party to bear that party's respective  
6 attorney fees and costs. The confidential amount was disclosed to counsel for SpeedVegas and  
7 Mr. Fiore, the remaining non-settling Defendants, before the motion for determination of good faith  
8 settlement was filed, and the amount was disclosed to the Court *in camera* during the hearing on  
9 March 10, 2022.

10       5. The settlement agreement negotiated between the settling parties includes the release by the  
11 Sherwood Plaintiffs of all claims against Lamborghini America, all Lamborghini companies and  
12 parent and subsidiary companies, including Automobili Lamborghini S.p.A., all Lamborghini dealers  
13 wherever located, all Lamborghini suppliers, all entities involved in the design, development, testing,  
14 certification, manufacture, distribution, warranty, retail sale, recall or repair of the subject 2015  
15 Lamborghini Aventador and any of its components, and all other persons, firms and corporations in  
16 any way participating in the design, manufacture, repair, recall or retail sale of the subject 2015  
17 Lamborghini Aventador (collectively, the "Releasees"), but the settlement agreement does not release  
18 (and the Releasees do not include) the remaining Defendants, SpeedVegas and Mr. Fiore, or any  
19 insurance carriers for any remaining party.

20       6. Lamborghini America distributes new Lamborghini vehicles for retail sale and lease in the  
21 United States. Mr. Fiore was not the original purchaser of the subject vehicle, but was the owner of  
22 the subject vehicle at the time of the incident. By the time of the incident, the vehicle had been  
23 modified and repurposed for the high-speed use to which it was put at the SpeedVegas track.

24       7. The settlement negotiations were arms-length and the settlement was negotiated in good faith.

25       8. The settlement amount is not inadequate. The settling parties settled in the face of multiple  
26 uncertainties, including uncertainty as to potential liability against Lamborghini America and  
27 uncertainty as to the amount of any damages that might be awarded. The case was vigorously  
28 defended by Lamborghini America. The settlement amount is not inadequate given the difficulty in

1 proving crash causation, product defect and injury causation against Lamborghini America.

2 9. The allocation of the settlement funds among the Sherwood Plaintiffs is appropriate.

3 10. Counsel for Minor Plaintiff Zane Sherwood will file a Minor's Compromise Petition seeking  
4 approval of the release of the claims asserted by Minor Plaintiff Zane Sherwood in this Court.

5 11. Counsel for Minor Plaintiff Zane Sherwood will also seek judicial approval in the province of  
6 Ontario, Canada, the location of his residence, for the release of any Canadian claim belonging to  
7 Minor Plaintiff Zane Sherwood.

8 12. Neither insurance policy limits nor Lamborghini America's financial condition was a limiting  
9 factor in reaching the settlement amount.

10 13. There is no evidence of any collusion, fraud, or tortious conduct aimed to injure the interests  
11 of any non-settling defendants.

12 14. The arguments asserted by SpeedVegas and Mr. Fiore are insufficient to defeat Lamborghini  
13 America's motion. The release given by the Sherwood Plaintiffs to the Releasees was given in good  
14 faith, and no claims of contribution or equitable indemnity against any of the Releasees warrant any  
15 contrary finding.

16 15. Given the settlement amount, SpeedVegas and Mr. Fiore will be entitled to an offset from any  
17 adverse verdict.

18 16. The settlement between the Sherwood Plaintiffs and Lamborghini America was reached in  
19 good faith, including the release of claims against the Releasees given in good faith. The settlement  
20 and release satisfy all applicable considerations under Nevada law.

### 21 **CONCLUSIONS OF LAW**

22 1. "When a release or a covenant not to sue or not to enforce judgment is given in good faith to  
23 one of two or more persons liable in tort for the same injury or the same wrongful death," the person  
24 or entity released is discharged "from all liability for contribution and for equitable indemnity to any  
25 other tortfeasor." NRS 17.245.

26 2. In determining whether a settlement has been made in good faith, the district court uses its  
27 discretion based upon all relevant facts available. *Otak Nevada, LLC v. Eighth Jud. Dist. Ct.*, 129  
28 Nev. 799, 805 (2013).

3. Though not exclusive, factors to be considered include the amount paid in settlement, the allocation of the settlement proceeds among the plaintiffs, the insurance policy limits of the settling defendant, the financial condition of the settling defendant, and the existence of any collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants; and the court may consider the merits of any contribution or equitable indemnity claims against the settling defendant. *Otak*, 129 Nev. at 805–06; *Doctors Co. v. Vincent*, 120 Nev. 644, 651-52 (2004). A settling defendant is not required to pay the full amount of its potential liability, as such a requirement would unduly discourage settlements. *Otak*, 129 Nev. at 806. Uncertainty as to the case for liability against a settling defendant and uncertainty as to the amount of any damages that might be awarded were the case to proceed to trial are appropriate considerations. *See id.*; *Velsicol Chem. Corp. v. Davidson*, 107 Nev. 356, 361 (1991).

4. Considering the evidence presented and all relevant facts available, applying the law to the facts including the Findings of Fact above, and exercising its discretion, the Court determines that the settlement between Lamborghini America and the Sherwood Plaintiffs was made in good faith, including the release of claims against the Releasees given in good faith.

### **ORDER**

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, this Court hereby orders that Lamborghini America's Motion for Determination of Good Faith Settlement as to the Sherwood Plaintiffs is hereby GRANTED, and further, having determined that the settlement between the Sherwood Plaintiffs and Lamborghini America was reached in good faith, including the release of claims against the Releasees given in good faith, within the meaning of NRS § 17.245, that the Releasees are hereby accorded the protections afforded by NRS § 17.245, including discharge of all liability for contribution or for equitable indemnity to any others.

Lamborghini America is further excused from all local rule obligations with respect to pre-trial requirements.

IT IS SO ORDERED.

Dated this 7th day of April, 2022.

Dated this 7th day of April, 2022

*Nancy L Allf*

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Nancy Allf  
District Court Judge

TW

Submitted by:

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*/s/ Ryan Petersen*

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1 **CSERV**

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Estate of Gil Ben-Kely,  
7 Plaintiff(s)

CASE NO: A-17-757614-C

8 vs.

DEPT. NO. Department 27

9 World Class Driving,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
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21 If indicated below, a copy of the above mentioned filings were also served by mail  
22 via United States Postal Service, postage prepaid, to the parties listed below at their last  
23 known addresses on 4/8/2022  
24  
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Jorge Ramirez                      Wilson Elser Moskowitz Edelman & Dicker  
Attn: Jorge A. Ramirez  
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**EXHIBIT E**

**EXHIBIT E**

## Kelley, Cynthia

---

**From:** Smith, Abraham  
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**Cc:** Helm, Jessica; Kapolnai, Emily; Kelley, Cynthia  
**Subject:** RE: Ben-Kely v. Speedway 757614

Friends,

In light of the developments yesterday, SpeedVegas and Mr. Fiore plan to seek a stay of the trial pending the resolution of the writ petition before the Supreme Court.

Very best,

**Abraham G. Smith**  
Partner

[asmith@lewisroca.com](mailto:asmith@lewisroca.com)  
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**LEWIS  ROCA**

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Begin forwarded message:

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**Subject: Ben-Kely v. Speedway 757614**

Judge Allf has a Business Court case that is older than your case and has priority over your trial that had to be moved due to Judge Allf's medical leave. They are starting April 12 and ending May 6. Can you all agree to a new trial start date? If you only need 5-6 days, we can get you in to start April 4, otherwise May 8<sup>th</sup> will be the next available date to start. Let me know.

**EXHIBIT F**

**EXHIBIT F**



*Heather S. Hume*

CLERK OF THE COURT

**MSTY**

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ENTERED KI

DISTRICT COURT  
CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by ANTONELLA  
BEN-KELY, the duly appointed  
representative of the Estate and as the  
widow and heir of Decedent GIL BEN-  
KELY; SHON BEN-KELY, son and heir of  
decedent GIL BEN-KELY; NATHALIE  
BENKEL Y-SCOTT, daughter and heir of  
the decedent GIL BEN-KELY; GWENDOLYN  
WARD, as personal representative of the  
ESTATE OF CRAIG SHERWOOD, deceased;  
GWENDOLYN WARD, individually and as  
surviving spouse of CRAIG SHERWOOD,  
deceased; GWENDOLYN WARD, as mother  
and natural guardian of ZANE SHERWOOD,  
surviving minor child of CRAIG  
SHERWOOD, deceased,

Plaintiffs,

v.

SPEEDVEGAS, LLC, a Delaware limited  
liability company; VULCAN MOTOR CLUB,  
LLC d/b/a WORLD CLASS DRIVING, a New  
Jersey limited liability company; SLOAN  
VENTURES 90, LLC, a Nevada limited  
liability company; MOTORSPORT SERVICES  
INTERNATIONAL, LLC, a North Carolina  
limited liability company; AARON  
FESSLER, an individual; the ESTATE OF  
CRAIG SHERWOOD; AUTOMOBILI

Case No.: A-17-757614-C  
Dep't 27

**MOTION FOR STAY PENDING  
WRIT PETITION AND  
ALTERNATIVE REQUEST FOR  
INTERIM STAY**

***(On Order Shortening Time)***

Hearing Date: April 6, 2022  
Hearing Time: 10:30 a.m.

LAMBORGHINI AMERICA, LLC, a foreign-limited liability company; TOM MIZZONE, an individual; SCOTT GRAGSON, an individual; PHIL FIORE aka FELICE FIORE, an individual; DOES I-X; and ROE ENTITIES XI-XX, inclusive,  
Defendants.

**MOTION FOR STAY PENDING WRIT PETITION AND  
ALTERNATIVE REQUEST FOR INTERIM STAY  
(On Order Shortening Time)**

Defendants Felice Fiore, Jr. and SpeedVegas, LLC request a stay of the trial and other pretrial proceedings pending the Supreme Court’s resolution of the petition for writ of mandamus and its issuance of a notice in lieu of remittitur.<sup>1</sup>

This Court has already determined to continue the trial, and the parties have completed briefing on the petition before the Supreme Court. A stay through the resolution of the petition will serve judicial economy and provide essential guidance on the scope of the claims for trial.

Fiore and SpeedVegas ask this Court to hear this straightforward motion on shortened time. EDCR 2.26.

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<sup>1</sup> In an ordinary appeal, the Supreme Court’s jurisdiction continues through the issuance of remittitur. *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1134 (1998); *see also Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (“[j]urisdiction in an appeal is vested solely in the supreme court until the remittitur issues to the district court”). In a writ petition, the proceedings conclude with the issuance of a “notice in lieu of remittitur.” *Maheu v. Eighth Judicial Dist. Court*, 88 Nev. 26, 33, 493 P.2d 709, 713 (1972); *Duran v. Nevada Div. of Parole & Prob.*, 2:21-CV-00582-APG-BNW, 2021 WL 2188802, at \*2 (D. Nev. May 27, 2021).

**DECLARATION IN SUPPORT OF  
EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

STATE OF NEVADA        }  
COUNTY OF CLARK       }

ABRAHAM G. SMITH makes the following declaration:

1. I am a Nevada attorney representing defendants SpeedVegas, LLC and Felice Fiore, Jr. in this action. I make this affidavit in support of the plaintiffs’ application for an order shortening time on the “Motion for Stay Pending Writ Petition and Alternative Request for Interim Stay.”

2. On October 7, 2021, SpeedVegas and Fiore filed a petition for writ of mandamus or, alternatively, prohibition seeking guidance on whether these defendants could be liable as “sellers” for purposes of products liability.

3. On November 15, 2021, the Nevada Supreme Court ordered full briefing on the petition. Since February 25, 2022, the petition has been fully briefed.

4. On March 22, 2022, this Court orally granted defendant Auomobili Lamborghini America, LLC’s (ALA’s) motions for good-faith settlements with the Bel-Kely and Sherwood plaintiffs. The hearing focused on Fiore’s and SpeedVegas’s continued liability for a claim of product defect in the Lamborghini Aventador, and the potential loss of a right to pursue ALA or the manufacturer in a claim for equitable indemnity or contribution. At the same hearing, the district court orally denied SpeedVegas’s motion for summary judgment on punitive damages, while granting summary judgment to Fiore.

5. Following the hearing, the Court’s judicial executive assistant indicated that the current trial date would be unavailable if the trial were to last longer than 5-6 days. (It is undersigned counsel’s understanding that all parties believe the trial will be much longer.) The earliest alternative date offered was May 8.

6. With the prospect of the trial being delayed until at least May 8,<sup>2</sup> and the knowledge now that ALA will be dismissed from products-liability claims, it has become clear that the Supreme Court should be given the opportunity to decide defendants' writ petition before the trial against SpeedVegas and Fiore moves forward.

7. Good cause exists to hear this motion on shortened time. If this motion were heard in the ordinary course, the parties will have already had to prepare witnesses' travel and make other arrangements for a possible May 9 trial date. In addition, if this Court denies the motion, a hearing on shortened time will minimize the likelihood of having to bring an emergency motion before the Nevada Supreme Court.

8. This motion and affidavit are made in good faith and not for the purpose of harassment or delay.

Dated this 28th day of March, 2022.

/s/ Abraham G. Smith  
ABRAHAM G. SMITH

## ORDER SHORTENING TIME

ORDERED that Defendants Speed Vegas and Fiore’s Motion for Stay Pending Writ Petition and Alternative Request for Interim Stay” will be heard on April 6 \_\_\_\_\_, 2022, at 10:30 am., in Department 27 of the Eighth Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada 89155.

Dated this 30th day of March, 2022.

**Dated this 30th day of March, 2022**

Nancy L Alf  
DISTRICT COURT JUDGE TW

**C48 2AB 207B AAA1**  
**Nancy Allf**  
**District Court Judge**

<sup>2</sup> May 8, 2022 is a Sunday. Undersigned counsel assumes that the earliest date trial could begin would be May 9.

1 POINTS AND AUTHORITIES

2 I.

3 THIS COURT SHOULD TURN ITS INTENDED TRIAL  
4 CONTINUANCE INTO A STAY PENDING THE WRIT PETITION

5 The trial in this case is already set to be continued. The Court indicated  
6 that anything longer than a five-to-six-day trial would not be able to start on  
7 April 4, as currently scheduled. The trial will therefore be continued to May 9  
8 at the earliest.

9 But as recent rulings have made clear, the Supreme Court should be  
10 given an opportunity to resolve the ultimate question of whether the trial  
11 should proceed on claims of strict products liability against SpeedVegas and  
12 Fiore. The petition before the Supreme Court has already been fully briefed.  
13 As this stage, rather than simply issuance a continuance of the trial (itself a  
14 kind of temporary stay), this Court should issue a stay so that the Supreme  
15 Court can decide the petition.

16 A. A Stay Will Preserve the Object of the  
17 Petition—to Narrow the Issues for Trial

18 Primary among the considerations for granting a stay pending a writ  
19 petition is whether the stay will preserve the object of the petition. NRAP  
20 8(c)(1); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252–53, 89 P.3d 36, 38–  
21 39 (2004).

22 Here, a stay is necessary because the pretrial resolution of the products-  
23 liability question was expressly the object of the petition. After this Court  
24 denied summary judgment as to the strict products liability causes of action  
25 asserted against Fiore and SpeedVegas, they petitioned the Nevada Supreme  
26 Court for a in which the court held that there are questions of fact as to  
27 whether they were merchant seller under Nevada strict products liability law.  
28 The petition emphasizes the necessity of deciding the legal question *before* trial:

1 the instruction that Fiore and SpeedVegas could be liable as product sellers or  
2 lessors would affect the jury's view of plaintiffs' other theories, such as  
3 negligence. (Pet'n 20.) Fiore in particular would be prejudiced by facing a joint-  
4 and-several judgment as a product defendant, with the potential difficulty of  
5 obtaining a bond to vindicate his appeal rights. (Pet'n 20-21.) "At a minimum,  
6 both plaintiffs' and said Defendants' ability to prepare for trial and assess  
7 potential settlement will be aided by [the Supreme] Court's clarification of these  
8 important legal issues." (Pet'n 20.)

9 Proceeding to trial without this guidance—especially when it now appears  
10 that the Supreme Court stands ready to resolve the petitions, and the current  
11 trial date is already going to be continued—would defeat this object of the  
12 petition.

13 **B. The Absence of Automobili Lamborghini America from the**  
14 **Trial Heightens the Need for a Stay to Avoid the**  
15 **Prejudice of Trying the Products-Liability**  
**Case Solely Against Fiore and SpeedVegas**

16 Especially in light of recent events, Fiore and SpeedVegas would be  
17 prejudiced without a stay of the trial pending the Supreme Court's  
18 consideration of their petition. See NRAP 8(c)(2). While Fiore and SpeedVegas  
19 understand that "litigation costs, even if potentially substantial, are not  
20 irreparable harm," *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d  
21 36, 39 (2004), the developments in the past week make it especially imprudent  
22 to rush to trial.

23 When Fiore and SpeedVegas filed their petition, the trial was going to  
24 proceed—regardless of the outcome of the petition—on a products-liability  
25 theory against the party with the greatest knowledge of the alleged defects,  
26 Automobili Lamborghini America, LLC (ALA).

27 With Lamborghini's settlement, the trial has changed in three critical  
28 ways:



1       *First*, Fiore and SpeedVegas, as downstream recipients of Lamborghini’s  
2 product (manufactured by ALA’s parent), have relied on ALA’s access to critical  
3 evidence and superior knowledge of the product. Yet at the hearing in which  
4 ALA’s settlement with plaintiffs was approved, ALA could not even promise  
5 that it would fulfill its previously-agreed-to obligations to provide all of the  
6 necessary exhibits for trial.<sup>3</sup>

7       *Second*, the writ petition will now be dispositive—not just on the question  
8 of whether Fiore and SpeedVegas may face products-liability claims, but  
9 whether a theory of product defect may be introduced to the jury, at all. The  
10 writ thus has a potential to greatly streamline the issues for trial. Conversely,  
11 without a stay, the trial may be prolonged with unnecessary—and prejudicial—  
12 issues, as litigated against the parties least equipped to defend the products  
13 that they had no part in manufacturing or distributing. It also greatly  
14 increases the risk of multiple trials, if the trial with the product-defect issues  
15 turns out to have been a waste of the parties’ and the Court’s resources.

16       *Third*, the denial of SpeedVegas’s motion for summary judgment on  
17 punitive damages means that it could be exposed to a verdict in excess of the

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18       <sup>3</sup> As SpeedVegas previously argued, ALA and the manufacturer of the allegedly  
19 defective Aventador and its component parts bear primary responsibility. *Black*  
20 *& Decker (U.S.), Inc. v. Essex Grp., Inc.*, 105 Nev. 344, 345, 775 P.2d 698, 699  
21 (1989). But for the Court’s determination of good-faith settlement, SpeedVegas  
22 and Fiore would full indemnity from upstream distributors and manufacturers.  
23 *See Southland Indus. v. Noveon Hilton Davis*, 2009 WL 10693547, at \*6 (D.  
24 Nev. Dec. 3, 2009) (“A passively negligent party is entitled to full indemnity  
25 from an actively negligent party.”); *Black & Decker*, 105 Nev. at 346, 775 P.2d  
26 at 699 (equitable indemnity is premised on the primary tortfeasor’s duty to  
27 protect the secondary tortfeasor).

28       A stay would nonetheless ameliorate the prejudice by ensuring that the  
Supreme Court initially reviews the scope of products liability before exposing  
SpeedVegas and Fiore to a verdict tainted by that evidence, yet potentially  
unable to recoup against the actual product manufacturer and distributor.

1 statutory cap of three times compensatory damages in NRS 42.005(1). Even  
2 more problematic from an appellate perspective, the *evidence* used to assess  
3 punitive damages could include issues related to the alleged product defects—  
4 an evidentiary record that would taint the punitives award if the Supreme  
5 Court ultimately strikes the products-liability claims. Granting a stay would  
6 ensure that the jury’s verdict is tried with the correct evidentiary record and is  
7 not inflamed by a verdict that punishes SpeedVegas for any design defects by  
8 Lamborghini.

9           **C.     In the Present Posture, with the Petition Fully**  
10           **Briefed and the Trial Set to be Continued,**  
11           **a Stay Will Not Prejudice Plaintiffs**

12           Plaintiffs will face no serious or irreparable harm from a stay. NRAP  
13 8(c)(3). Indeed, while “a mere delay in pursuing discovery and litigation  
14 normally does not constitute irreparable harm,” *Mikohn Gaming Corp. v.*  
15 *McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004), here the delay is particularly  
16 minimal, again for three reasons.

17           *First*, as noted, the petition has been fully briefed since February 25. All  
18 that remains is a decision from the Supreme Court on the briefs or after oral  
19 argument. NRAP 34. Although oral argument might extend somewhat the  
20 timeline for a decision, the setting of oral argument could itself indicate that the  
21 Supreme Court views the petition seriously.

22           *Second*, the parties are already facing a continuance through at least May  
23 9. Plaintiffs have not complained that such a continuance would irreparably  
24 damage their ability to try their case. They have not, for example, sought a  
25 preferential trial setting under NRS 16.025.

26           *Third*, as ALA’s motions for good-faith settlement made clear, plaintiffs  
27 have received substantial funds from the settling parties. Any urgency for trial  
28 on the basis of plaintiffs’ financial status has been alleviated; indeed, learning



1 whether the product-defect claims and the claims against Fiore are viable in  
2 advance of trial would avoid the unnecessary expense of trying moot claims.

3 In this circumstance, when a continuance is already inevitable, it makes  
4 little sense to deny a stay that would ensure Supreme Court guidance for the  
5 eventual trial.

6 **D. The Petition Has Substantial Merit**

7 Finally, the petition is meritorious. NRAP 8(c)(4). The petition presents  
8 questions of law—not fact or discretion—and their resolution will be dispositive  
9 to the products-liability claims, including all of the claims against Fiore.

10 **1. *The Writ Petition Need Only Present a Serious***  
11 ***Question; the District Court Need Not Believe It Erred***

12 To find that a writ petition presents a sufficient “likelihood of success” to  
13 grant a stay, the district court does *not* need to admit that it erred. Were that  
14 the standard, stay motions in the district court would almost invariably fail.  
15 *See, e.g., Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d  
16 841, 844-45 (D.C. Cir. 1977); *Mamula v. Satralloy, Inc.*, 578 F. Supp. 563, 580  
17 (S.D. Ohio 1983); *Scullion v. Wis. Power & Light Co.*, 614 N.W.2d 565, 573–74  
18 (Wis. Ct. App. 2000). It is enough that the appeal presents a “substantial case  
19 on the merits when a serious legal question is involved,” even if the district  
20 court believes it resolved the question correctly. *Fritz Hansen A/S v. District*  
21 *Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (quoting *Ruiz v. Estelle*, 650  
22 F.2d 555, 565 (5th Cir. 1981)); *accord Simon Prop. Grp., Inc. v. Taubman*  
23 *Centers, Inc.*, 262 F. Supp. 2d 794, 798 (E.D. Mich. 2003). Accordingly, an  
24 appeal is more likely to succeed if it presents legal questions subject to *de novo*  
25 appellate review than if it presents purely discretionary questions. *Scullion*,  
26 614 N.W.2d at 573–74.

27 Under this standard, courts have granted stays even when they believe  
28 the appeal will ultimately fail. For example, in one case the D.C. Circuit

1 hazarded the “tentative conclusion” that the appellant would not succeed, but  
2 given the difficulty of the legal issues, the “balance of the equities” favored  
3 granting a stay. *Wash. Metro.*, 559 F.2d at 844–45 (Leventhal, J.). Similarly,  
4 the Nevada Supreme Court granted a stay of arbitration because, even though  
5 it was unclear whether the appellant could ultimately avoid arbitration, the  
6 appeal was not frivolous. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 254,  
7 89 P.3d 36, 40 (2004).

8 **2. *The Supreme Court Is Likely to Follow the Second***  
9 ***Restatement in Dismissing the Products Claims***

10 Applying this standard here, Fiore and SpeedVegas are likely to prevail.  
11 In deciding whether strict products liability can be extended to a one-time seller  
12 or lessor—even in a commercial context—the Supreme Court is likely to follow  
13 *Elley v. Stephens*, which itself cites the Restatement (Second) of Torts § 402A  
14 (1965) in holding that “a strict liability theory is not applicable to an occasional  
15 seller of a product, who does not, in the regular course of his business, sell such  
16 a product.” 104 Nev. 413, 418, 760 P.2d 768, 771 (1988). And in quoting  
17 comment f to § 402A, the *Elley* Court indicated that it would not matter  
18 whether the seller (or lessor) knows that the buyer (or lessee) intends to use the  
19 product in a commercial setting: as when a car owner “on one occasion, sells  
20 [the car] to his neighbor, *or even sells it to a dealer in used cars.*” *Id.*, 104 Nev.  
21 at 418 n.3, 760 P.2d at 771 n.3 (emphasis added).

22 The Nevada Supreme Court is likely to agree with the states that apply  
23 this Restatement view, as well. *See, e.g., Lyzhoft v. Waconia Farm Supply*, No.  
24 A12-2237, 2013 WL 3368832, at \*4 (Minn. Ct. App. July 8, 2013) (affirming  
25 dismissal of strict products liability claim against one-time lessor because a  
26 “one-time bailment by a non-distributor can[not] result in the imposition of  
27 strict liability.”); *Smith v. Nick’s Catering Serv.*, 549 F.2d 1194, 1196 (8th Cir.  
28 1977) (“To the extent that the Missouri courts have indicated a willingness to

1 extend the strict liability doctrine to lessors, it seems likely that they would  
2 adopt the prevailing view that only a mass lessor similar to a manufacturer or a  
3 retailer could be held strictly liable.”); *Bachner v. Pearson*, 479 P.2d 319, 328  
4 (Alaska 1970) (“Just as strict liability has not been imposed in cases of single  
5 transaction, non-commercial sales, no such liability will result where the lease  
6 in question is an isolated occurrence outside the usual course of the lessor’s  
7 business.”); *Price v. Shell Oil Co.*, 466 P.2d 722, 728 (Cal. 1970); (“[F]or the  
8 doctrine of strict liability in tort to apply to a lessor of personalty, the lessor  
9 should be found to be in the business of leasing, in the same general sense as  
10 the seller of personalty is found to be in the business of manufacturing or  
11 retailing.”) The Supreme Court is unlikely to make Nevada the first and only  
12 jurisdiction in the nation that permits a jury to assess strict products liability  
13 against a one-time seller or lessor.

### 14 **3. The Supreme Court Is Likely to Dismiss Fiore**

15 Ben-Kely’s claims against Fiore are barred by the NIIA. As a paid  
16 member of SpeedVegas’s board of directors, Fiore qualifies for NIIA protection  
17 as a co-employee of Ben-Kely pursuant to NRS 616A.105. Fiore also qualifies as  
18 an employee based on his lease of the Aventador, which he made as a director.  
19 He is not excluded from employee status by NRS 616.110(9)(b) because his  
20 compensation as a board member is not contingent on sales to customers: there  
21 were no sales. Regardless, SpeedVegas also pays Fiore a monthly salary  
22 separate from the lease—i.e., that is not contingent on customers using the  
23 Aventador.

24 NRS chapter 86 bars all plaintiffs’ claims because the conduct of which  
25 Fiore is accused applies equally to SpeedVegas; Fiore owed no independent duty  
26 to plaintiffs in his individual capacity. Even if Fiore had leased the Aventador  
27 to SpeedVegas in his individual capacity, plaintiffs identify no duty Fiore owed  
28 to them in connection with the lease. *See Gardner v. Henderson Water Park*,

1 LLC, 133 Nev. 391, 394, 399 P.3d 350, 351 (2017) (affirming dismissal pursuant  
2 to NRS chapter 86 where plaintiffs failed to allege defendants breached a  
3 personal duty owed to them). Fiore was neither a merchant seller himself, nor  
4 did he lease his vehicle to a manufacturer, seller, or distributor. Any duty that  
5 Fiore could have owed to plaintiffs would have to flow from his role as a director  
6 of SpeedVegas. Because plaintiffs cannot show that Fiore owed an independent  
7 duty to them, their claims against Fiore are barred by NRS chapter 86. *See*  
8 *Gardner*, 133 Nev. at 394, 399 P.3d at 351.

9  
10 **4. *The Supreme Court Confirmed the Seriousness***  
***of the Petition by Ordering Full Briefing***

11 As a further indication of the seriousness of the questions presented in  
12 the petition, the Supreme Court ordered full briefing rather than summarily  
13 denying the petition.

14 In this circumstance, where the petition is ripe for decision, this Court  
15 should defer to the Supreme Court on the legal questions in that petition and  
16 enter a stay of the trial proceedings.

17 **II.**

18 **THIS COURT SHOULD GRANT AN INTERIM STAY TO ALLOW THE SUPREME**  
19 **COURT TO ASSESS A STAY PENDING THE RESOLUTION OF THE PETITION**

20 Alternatively, even if this Court is not inclined to stay the trial pending  
21 the outcome of the writ petition, this Court should at least impose a temporary  
22 stay to allow SpeedVegas and Fiore to seek that relief before the Supreme  
23 Court. NRAP 8(a)(2). If the Supreme Court also denies a stay, the temporary  
24 stay would lift and this Court could set a trial date.

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/s/Emily D. Kapolnai  
An Employee of Lewis Roca Rothgerber Christie LLP

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Estate of Gil Ben-Kely,  
7 Plaintiff(s)

CASE NO: A-17-757614-C

8 vs.

DEPT. NO. Department 27

9 World Class Driving,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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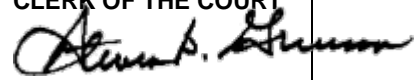


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**EXHIBIT G**

**EXHIBIT G**



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 ESTATE OF GIL BEN-KELY, ET AL.,

8 Plaintiffs,

9 vs.

10 WORLD CLASS DRIVING, ET AL.,

11 Defendants.

) CASE#: A-17-757614-C

) DEPT. XXVII

12  
13 BEFORE THE HONORABLE NANCY ALLF  
14 DISTRICT COURT JUDGE  
WEDNESDAY, APRIL 6, 2022

15 **RECORDER'S TRANSCRIPT OF PENDING MOTION**

16 APPEARANCES:

17 For the Ben-Kely Plaintiffs: WILLIAM R. BRENSKE, ESQ.

18 For Sherwood Plaintiffs: IAN SAMSON, ESQ.  
19 COREY ESCHWEILER, ESQ.

20 For Defendant Automobili RYAN PETERSEN, ESQ.  
21 Lamborghini America LLC: SUSAN V. VARAS, ESQ.

22 For Defendants Phil Fiore ALAN W. WESTBROOK, ESQ.  
23 and SpeedVegas, LLC: JAMES D. MURDOCK, II, ESQ.  
ABRAHAM G. SMITH, ESQ.  
DANIEL F. POLSENBERG, ESQ.

24  
25 RECORDED BY: VELVET WOOD, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, April 6, 2022

2  
3 [Case called at 10:33 a.m.]

4 THE COURT: All right. Good. Let's take appearances,  
5 Plaintiffs first.

6 MR. ESCHWEILER: Corey Eschweiler on behalf of the  
7 Sherwood Plaintiffs.

8 MR. BRENSKE: Bill Brenske, bar number 1806, on behalf of  
9 the Ben-Kely family.

10 THE COURT: On the phone for Plaintiffs?

11 MR. SAMSON: Good morning, Your Honor. Ian Samson on  
12 behalf of Sherwood Plaintiffs.

13 THE COURT: And for the Defendants, please?

14 MR. MURDOCK: Yes, Your Honor. J.D. Murdock on behalf of  
15 Phil Fiore and SpeedVegas.

16 THE COURT: Thank you.

17 MR. SMITH: Good morning, Your Honor. Abe Smith, and I  
18 see Dan Polsenberg and Alan Westbrook for -- also for SpeedVegas and  
19 Mr. Fiore.

20 THE COURT: All right. Mr. Polsenberg and Mr. Westbrook,  
21 your appearances, please.

22 MR. POLSENBERG: Dan Polsenberg for SpeedVegas. Good  
23 morning, Your Honor.

24 THE COURT: Good morning. And Ms. Vargas, I see --

25 MR. WESTBROOK: And I'm Alan Westbrook and I'm also

1 here for SpeedVegas and Fiore. Thank you.

2 THE COURT: Thank you. And Ms. Vargas?

3 MS. VARGAS: Good morning, Your Honor. Susan Vargas  
4 for Automobili Lamborghini America, LLC.

5 THE COURT: Thank you. All right, so this is the --

6 MR. PETERSEN: Good morning, Your Honor. Oh. Your  
7 Honor, I apologize. Ryan Petersen for Automobili Lamborghini America,  
8 LLC as well.

9 THE COURT: Sorry, Mr. Petersen. I cut you off.

10 Now, is that everyone? All right. Mr. Smith, you're standing.  
11 You must be doing the argument then on the motion for stay?

12 MR. SMITH: Yes, Your Honor. And thank you so much for  
13 putting us into your busy schedule. Just -- we do want this reported, and  
14 I don't think there are any sealing issues today. I believe there have  
15 been in past cases.

16 THE CLERK: Did you want a transcript as well?

17 MR. SMITH: We will. Yeah.

18 THE CLERK: Okay. I'll get you a form to fill out.

19 MR. SMITH: Very good.

20 THE COURT: And so that everyone knows so that I don't  
21 interrupt you again, there is a stipulation this morning with regard to the  
22 sealed hearing we did on the good faith settlement. I signed a  
23 stipulation. To let you know, I notified the Clerk's Office.

24 THE CLERK: Okay.

25 THE COURT: They will be entitled to have transcripts, but

1 that transcript will not be filed in the record in this case.

2 THE CLERK: Okay. Okay.

3 THE COURT: You might want to just check it after court.

4 THE CLERK: Okay, I will. Thank you so much.

5 THE COURT: Good enough. All right. So motion to stay?

6 MR. SMITH: Thank you, Your Honor.

7 As Your Honor knows, the issue of whether our clients, Mr.  
8 Fiore and SpeedVegas, are amenable to a claim for products liability is in  
9 front of the Supreme Court right now on a writ petition. We filed that  
10 last year, I think October. And it's been up there. There's been full  
11 briefing. As one of the parties pointed out, the Supreme Court had  
12 ordered an answer on both the propriety of the writ and on the merits of  
13 the petition. That has not been fully briefed since the end of February.

14 And so I expect the Supreme Court will either come out with  
15 a disposition or set the case for oral argument within the next month or  
16 so, at least according to their current timeline for resolving cases like  
17 this. So we're not looking at a huge imposition on the Court's trial  
18 calendar, but we are asking for a stay. And that's important not only for  
19 us but also for the Plaintiffs for purposes of suspended the five-year rule  
20 on their claims under 41(e). And it's also important for purposes of trial  
21 efficiency.

22 We knew when we filed the writ petition that although we felt  
23 our clients had the right to be dismissed from the claims of strict  
24 products liability, but nonetheless this case was going to go forward on a  
25 products theory because Lamborghini was in the case. So regardless of

1 what -- regardless of the outcome of our writ petition, the Plaintiffs were  
2 still going to present evidence of product defect, and at least  
3 Lamborghini was going to present evidence, you know, in defense  
4 against that product defect claim. So the jury was going to hear that  
5 evidence.

6 But now, the writ petition is actually going to be dispositive  
7 on the question of whether this evidence will come in at all to trial  
8 because now, we're the only defendants in the case that have a products  
9 liability claim pending against them. Lamborghini settled out, as  
10 obviously you know from the last couple of hearings where we've had  
11 the arguments on the good faith settlement. And so now, it's absolutely  
12 important that we get that guidance from the Supreme Court.

13 Now, so that -- I did want to address the timing aspect first.  
14 It's not that we -- you know, Plaintiffs claim that we're, you know,  
15 unprepared for trial and that's why we're moving for this. No, we  
16 just -- we want the efficiency of having the Supreme Court's guidance on  
17 this important issue.

18 Our concern is that -- again, and that's why we didn't move  
19 for a stay before when we understood that the case was going to have a  
20 product defect aspect to it regardless. But now that that issue's  
21 dispositive, it's all that more important that we get the guidance from the  
22 Supreme Court. Because if we don't get that guidance and the trial  
23 proceeds on a product liability theory, that could tank the verdict not  
24 only with respect to compensatory damages.

25 As you know, the jury is going to be hearing evidence of



1 negligence and also this product defect theory. And as Dan will tell you,  
2 you know, there's a -- there's a tendency to -- for jurors to -- you know, to  
3 -- once they've awarded one theory, it's very common for them to find  
4 on multiple theories. So we wouldn't be able to necessarily separate out  
5 what evidence they were looking at for the product claim versus the --  
6 versus the negligence claim.

7 But more importantly, even in the compensatory damages  
8 aspect, we have the punitive damages aspect. And although Mr. Fiore's  
9 been granted summary judgment on punitive damages, SpeedVegas has  
10 not been. And to the extent that any of the evidence that goes to  
11 whether -- you know, frankly whether Lamborghini manufactured a  
12 defective product, that could then taint the verdict on punitive damages  
13 against SpeedVegas, with SpeedVegas essentially being held liable for  
14 not just three times but potentially uncapped punitive damages as a  
15 result of the product -- of the defect manufactured by Lamborghini

16 The second issue with all of this, of course, is the pending  
17 settlement of Lamborghini. Now, the reason why I think a stay is  
18 especially -- it's actually easy in this case not only for the kind of  
19 efficiency reasons that I've described, but also to -- also to avoid a  
20 substantial prejudice. There's been some questions raised with regard  
21 to whether Lamborghini would really allow what's the foundation of the  
22 Plaintiffs' claim to even more forward once they're out. The documents  
23 that come from Lamborghini that they've planned to mark confidential,  
24 those would potentially all have to be returned to Lamborghini. And so  
25 we're talking about kind of the foundation of the Plaintiffs' own claim on

1 the product defect might be imminently returned to Lamborghini.

2           You know, both sides have marked -- have designated as  
3 exhibits the documents that Lamborghini produced, the deposition  
4 testimony, the expert reports. All of these things that depend at their  
5 core on the information that we've gotten from Lamborghini. So it  
6 would throw a huge wrench into the trial to now say, okay, we're not  
7 going to stay anything. We're going to allow this claim to go forward  
8 and potentially without the evidence that would be necessary to try  
9 those claims.

10           So I think actually, you know, granting the stay makes it easy  
11 in that sense because we can just have the Supreme Court ultimately  
12 resolve whether or not there is a claim for product defect against our  
13 client. And then if there is, we can -- you know, we can deal with the  
14 evidentiary question after that, but we don't have to deal with that -- that  
15 thorny issue at this point. And I also -- I do want to point out that  
16 although we -- you know, we were prepared to go to trial on the original  
17 trial date. The Court has already determined to continue the case.

18           And so it doesn't make sense to simply reset the trial date  
19 when we know that as that date gets pushed further out, it's more and  
20 more likely that the Supreme Court is going to come down with its  
21 decision on the writ petition. So I think in this circumstance, it's actually  
22 uniquely appropriate to just allow the Supreme Court to finish the review  
23 and then set a trial date, you know, at a time when the Supreme Court  
24 has given us that guidance on the viability of the petition.

25           One final point I want to make is just on the -- on the issue of

1 the likelihood of success. I personally understand Your Honor's ruled  
2 against us.

3 THE COURT: I take no offense by your argument. Don't  
4 worry about it.

5 MR. SMITH: And I think it's important to understand what  
6 the -- what the standard in NRAP 8(c) is really asking for. They're not  
7 asking the District Court to reverse itself or say, oh, I'm probably wrong  
8 on this question. For purposes of granting a stay pending appeal, but it's  
9 -- I mean, here, it's really even less than that. It's just pending a writ  
10 petition. The real question is whether the petition presents a substantial  
11 question on the merits. There's no dispute really.

12 It is -- if it is a substantial question, the Supreme Court has  
13 ordered full briefing albeit both on the question of the propriety of relief  
14 and also on the merits of the petition. But it's -- I mean, it's -- frankly, it's  
15 an unresolve legal question. What is the extent? What is the scope of  
16 products liability with respect to lessors? What constitutes a lessor in  
17 the -- an occasional seller or lessor versus a merchant, a seller or lessor  
18 within the realm of products liability? These are questions that have not  
19 been squarely addressed by the Supreme Court.

20 Of course, we -- you know, in our petition and in our reply  
21 brief, we've cited the cases that we think go in our favor; the  
22 [indiscernible] *Stevens* case, et cetera. But clearly, you know, the parties  
23 have different views on how to interpret that case. And so I think it's  
24 absolutely a substantial question, and it would be dispositive to a major  
25 issue in this case. So that's why we're asking for a stay.

1 I do note that Lamborghini has asked that certain  
2 proceedings go forward. Again, as long as we can reserve our request,  
3 objection, however you want to frame it that we not be precluded from  
4 using Lamborghini's evidence at the trial. Then I suppose -- you know,  
5 we understand you've already ruled against us on the -- on the good  
6 faith settlement, so perhaps that could go forward even if the actual trial  
7 date itself is stayed. Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. MURDOCK: Your Honor, may -- just --

10 MR. SMITH: Sorry.

11 MR. MURDOCK: I'm so sorry. I know that --

12 THE COURT: You may.

13 MR. MURDOCK: -- that from a trial perspective, I just have  
14 two points to make briefly if Your Honor will entertain that?

15 THE COURT: Of course.

16 MR. MURDOCK: Very well. So to speak to what Mr.  
17 Abraham just said, the trial efficiency aspect is substantial with respect  
18 to the stay. Roughly eight or nine experts are directed towards the  
19 product liability claim. That is a very substantial portion of the trial. If  
20 the product liability claim is resolved via the Nevada Supreme Court's  
21 ruling, that would probably shave off a week, if not more, of the trial.

22 So again, for trial efficiency purposes, a stay makes sense  
23 because it would be a shame to spend a week on a claim and have a  
24 ruling come back that says we shouldn't have and have to retry the case.  
25 Or in the midst of trial, be directed at something different and change

1 pace. So from a trial efficiency standpoint, the stay does make sense.

2 Separately, as Your Honor is well aware, the Plaintiffs have  
3 received substantial sums in the settlements that have been achieved.  
4 And the urgency and necessity of a trial date has been alleviated from  
5 the financial perspective for the Plaintiffs. And it makes sense for all  
6 parties to allow the Supreme Court to make its determinations and then  
7 proceed in accordingly fashion. Because again, the urgency and  
8 necessity of the financial aspect has been alleviated through the various  
9 settlements achieved in this case. So thank you.

10 THE COURT: Thank you.

11 So Automobili Lamborghini has a limited opposition. Ms.  
12 Vargas?

13 MS. VARGAS: Yes, Your Honor. Thank you.

14 With respect to our position, it is very well laid out, I think, in  
15 our limited opposition. Again in principle, we are not switching our  
16 position about the request for a stay as to the trial, but our concern is the  
17 completion of the settlement aspect of the case so that Automobili  
18 Lamborghini America can exit the case. It's bought its peace. This Court  
19 has found that the settlements with the Ben-Kely plaintiffs and the  
20 Sherwood plaintiffs were in good faith. And I know that the Sherwood  
21 plaintiffs have filed a minor's compromise, which a hearing was not  
22 requested. I don't know how soon Your Honor could rule on a minor's  
23 compromise petition, but that's also pending.

24 And with respect to the documents, Your Honor, which  
25 seems -- we would ask, Your Honor, that there was a car value so that

1 one, Your Honor could sign the orders. Mr. White (phonetic) requested  
2 that we provide either the transcript or the video. We just got your order  
3 today. We will order those today forthwith and try to get those to you as  
4 quickly as possible. If 24-hour notice is possible, we'll make that request  
5 and pay the extra to expedite it. And then again, the minor's  
6 compromise.

7 But with respect to Mr. Smith's comment about being able to  
8 reserve on behalf of SpeedVegas and Mr. Fiore not being able to -- not  
9 being precluded from utilizing Lamborghini and, Your Honor, we have a  
10 strong objection to that.

11 Number one, the court's own order indicates that upon 30  
12 days of notice of entry of either dismissal of settlement or final  
13 judgment, that all the documents that are marked confidential are to be  
14 returned. Or if they're electronic, obviously be destroyed by the parties  
15 or returned to Lamborghini's counsel. They're highly proprietary.  
16 They're trade secret. They involve testing documents, design  
17 documents, manufacturing doc.

18 And if we buy our peace, Your Honor, Automobili  
19 Lamborghini America should be entitled to stop their legal fees and  
20 expenses, and not have to chase down after these documents. If a party  
21 has specific objection to return of the documents, no one has raised or  
22 briefed that issue or requested that this Court change its order. The  
23 Court's order is that they be returned, as I said, or destroyed within 30  
24 days of notice of entry of final judgment, settlement or dismissal. And  
25 that's what it -- that's what should have occurred here, Your Honor, and

1 we should be allowed to exit the case. Thank you.

2 THE COURT: Thank you.

3 And then Mr. Samson, you filed an opposition.

4 MR. SAMSON: Thank you, Your Honor. I'd like to start  
5 where Mr. Smith ended, and that's on the likelihood of success on the  
6 merits. I really think that's the touchstone for the Court's inquiry right  
7 now. And if we point it out in our opposition, the Supreme Court did  
8 order a full briefing, but it wanted specific three thing on a specific topic  
9 which was the propriety of write relief for a denial of summary  
10 judgment. And there's a long history of Nevada case law that we  
11 provided to the Court. There's even more cases than what we've cited,  
12 indicating that the Supreme Court routinely reviews writ relief to review  
13 orders denying summary judgment. And it could mean you should go to  
14 trial, especially when there's fact-intensive questions present.

15 The exception to those rules is a bad rule of few and far  
16 between. They are not satisfied here, especially in a case where as  
17 SpeedVegas and Mr. Fiore admitted the decision on this. The court  
18 rendered its opinion denying summary judgment on the product liability  
19 was fact based. That was their position before Your Honor. That's their  
20 position -- or should still be their position now, as much as they attempt  
21 to run away from that position and now paint it as a question of law.  
22 And for that reason, they're also judicially estopped up at the Supreme  
23 Court.

24 Those are matters for the Supreme Court to take up, but they  
25 bear on this Court's consideration of likelihood of success on the merits.

1 So while we agree that Your Honor got those rulings correct, I also think  
2 that that -- the Supreme Court taking up the writ and granting the rulings  
3 it sought must be considered when considering likelihood of success.  
4 This kind of swims upstream. It's going against the grain in terms of the  
5 Supreme Court's general rule. The writ that they are seeking now, the  
6 likelihood of success on the merits is low.

7 That should be dispositive for the writ. As they have  
8 indicated in their -- excuse me. For the stay. As they've indicated in  
9 their papers, that's something they must show. And normally, the State  
10 bears the burden. And they're unable to do so because they are running  
11 contrary to a general rule.

12 The other arguments that have been raised here. I heard a  
13 lot about eight or nine experts for trial for the presentation of trial  
14 evidence. I'm not sure where Mr. Murdock is counting the eight or nine  
15 experts. And it sounds to me like he's including Lamborghini's experts  
16 who, as Ms. Vargas just indicated, will not be part of the trial. So that's  
17 true whether there's a stay granted or not.

18 And the remaining points that were made concerning the  
19 length of the trial, the preparedness, et cetera; none of those points bear  
20 on this Court's consideration under the rules as to whether a stay is  
21 appropriate.

22 This case has been going on, as I need not remind the Court,  
23 for more than four years. Our clients have been waiting to get to trial for  
24 a long time. Much of that, obviously, is beyond anybody's control  
25 because there was a global pandemic that intervened. But I take issue



1 with that this somehow removes the financial incentive of needing to go  
2 to trial. There's a finality point at which all cases must reach, and we've  
3 been at the precipice of that for months and months. And this is yet  
4 another attempt to at the eleventh hour to delay that and delay justice for  
5 our clients. So we strongly oppose the granting of the stay.

6 And I note that Your Honor has a very busy calendar. I'm not  
7 sure where -- as Mr. Smith said, we're only talking about a month or so --  
8 if that even works for Your Honor and we really are just talking about a  
9 month, or we would be talking about another six months. No matter  
10 how much anybody wants to just make it a couple weeks because Your  
11 Honor obviously has other trial obligations.

12 But with all that in mind, Your Honor, I think the stay should  
13 be denied. To the extent that they wish to go to the Supreme Court, I  
14 know today's hearing is being reported. So perhaps the Supreme Court  
15 would be in a better position to assess this request for a stay than Your  
16 Honor, given the likelihood of success on the merits question. But where  
17 we sit right now looking at a writ that runs contrary to the general rule,  
18 and it doesn't raise the substantial policy issues that leaves the Supreme  
19 Court to deviate from that general rule, it's our position that the stay  
20 should be denied. Thank you, Your Honor, for your time.

21 THE COURT: Thank you.

22 Mr. Brenske, do you have a position?

23 MR. BRENSKE: Yes, Your Honor. Very briefly. First, we join  
24 in Mr. Sherwood's estate and the family's opposition both in written and  
25 in oral argument today. The one concern that we have is that the five-

1 year rule is approaching in this case. I'm well aware of the Court's  
2 calendar in not only this department and in other departments, and the  
3 ability for the Court, should there be a stay now, to somehow pivot over  
4 a few weeks period of time to find a five or six-week space in your  
5 calendar. I think it might be close to impossible. So that's our biggest  
6 concern in addition to what Mr. Samson has indicated.

7 THE COURT: Thank you. And the reply, please?

8 MR. SMITH: Thank you, Your Honor. Let me address that  
9 last point first. As Your Honor knows, Rule 41(e), the five-year rule only  
10 applies during the time that the case is not stayed. So issuing a stay,  
11 even a temporary stay as we've asked in the alternative for us to have a  
12 chance to go up to the Supreme Court and seek a stay, that has the effect  
13 of tolling the five-year rule. So there's no five-year rule problem in terms  
14 of the Plaintiffs, you know, potentially losing out on a failure to  
15 prosecute. That's actually the protection that they get from a stay.

16 Let me address a couple points. Mr. Samson talked about  
17 the likelihood of success and how it's extremely rare that the Supreme  
18 Court reviews the denial of summary judgment when there are fact  
19 questions involved. I understand that the standard for getting a review  
20 of the denial of summary judgment is difficult. Then again, the Supreme  
21 Court doesn't order briefing in all cases either. They're often likely to  
22 grant to some summarily denied petition where there's not a substantial  
23 question.

24 Obviously, here, the Supreme Court has ordered full briefing.  
25 And we are in a -- in a unique situation. Mr. Samson, I believe, talked

1 about the fact questions that we -- that we raised in opposition to their  
2 motion for summary judgment. But that doesn't set aside the fact that  
3 we -- we've staked out the position that SpeedVegas and Mr. Fiore as a  
4 matter of law are not sellers or lessors within the meaning of the second  
5 restatement test for products liability.

6           So to the extent that -- again, we -- so we said yes. As a  
7 matter of law, that -- you just don't reach the threshold where we could  
8 be amenable to a claim for products liability. Now, that doesn't negate  
9 the alternative argument, right? That they would not be entitled to  
10 summary judgment. You know, there are cases, of course, where the  
11 seller question is clear as a matter of law that they are a seller, and in  
12 that case then they would be entitled to judgment. So we said, well,  
13 absolutely not. They're not entitled to summary judgment on their end.

14           But we do believe that we're entitled to summary judgment  
15 on the fact that this was a one-time lease from Mr. Fiore to SpeedVegas,  
16 which is, you know, definitionally is an -- is an occasional lessor or seller;  
17 not the merchant seller that the -- that the restatement test requires. And  
18 again, we've cited the cases. I understand it's an open -- perhaps in an  
19 open question in Nevada law, but that's precisely why it's an important  
20 question; one that the Supreme Court needs to resolve.

21           Finally, on the question of the prejudice of proceeding to  
22 trial. Yes, I understand that we are near the trial date. But again, it's not  
23 something that SpeedVegas has done that has changed the landscape;  
24 it's the settlement with Lamborghini that has drastically changed this  
25 land -- landscape. And Mr. Murdock is correct. We do intend to call, I

1 think he said, eight or nine experts including, by deposition,  
2 Lamborghini's experts. So again, that wouldn't put an imposition on  
3 Lamborghini even if they are -- even if you interpret the protective order,  
4 which I'm not sure you can, to apply beyond documents to also apply to  
5 testimony.

6 But regardless, we 've -- you know, we were in the process of  
7 designating line by line the deposition testimony of Lamborghini's  
8 experts. So we wouldn't be precluded from -- or we shouldn't be  
9 precluded from using that. So it is -- it is in fact a -- it makes a big  
10 difference to the shape of the trial, what this trial looks like, the length of  
11 the trial.

12 Again, this -- with respect to the Ben-Kely plaintiffs, this  
13 actually would be entirely dispositive on their claims. So I see it as a  
14 fairly straightforward question. Certainly, even if this Court is inclined to  
15 deny a full stay pending the write petition, we would ask the Court at  
16 least to entertain a temporary stay so that we have the opportunity to ask  
17 the Supreme Court for that relief as well.

18 THE COURT: Any other comments before I rule?

19 MR. MURDOCK: Not on this front, Your Honor. Thank you.

20 THE COURT: Okay. All right. So this is the Defendants --  
21 two of the Defendants' request for a stay. I'm going to deny the motion.  
22 I find that all prejudice in this case would work against the interest of the  
23 Plaintiffs, who have very diligently pursued this case and are in danger  
24 of being in violation of the five-year rule under 41(e). And I understand  
25 the argument about the stay. I understand the argument about the un --

1 the application of law in Nevada under the restatement. And you have  
2 the remedy of seeking the relief from the Supreme Court so that if they  
3 intend to proceed on the writ, I'm sure that they will grant a stay in that  
4 case. So for those reasons, I just think it works in unfair prejudice to the  
5 Plaintiffs not being able to go to trial.

6 MR. SMITH: Your Honor, just to clarify, you're also denying  
7 a temporary stay for us to allow --

8 THE COURT: I am.

9 MR. SMITH: Okay. Thank you.

10 THE COURT: I am. Now, you're a month away from trial. If  
11 I -- even days could affect the way that both sides proceed at this point.  
12 So the interim request is also denied for the reasons stated. And I'll task  
13 the Plaintiffs to come up with an order, probably Mr. Samson and  
14 Eschweiler. And anyone who wants to sign off on the form of order,  
15 make a record of that now.

16 MR. BRENSKE: We'll sign up on the form, Your Honor.

17 THE COURT: Thank you.

18 MS. VARGAS: Your Honor, Susan Vargas. I would like to  
19 [indiscernible] on the form of the order also. Thank you.

20 MR. MURDOCK: We would like to review it as well, Your  
21 Honor.

22 THE COURT: Good enough. So present an order as soon as  
23 you can to the order in the court inbox. And thank you all for your  
24 appearance today.

25 MR. MURDOCK: And Your Honor, one last --

1 MS. VARGAS: Thank you, Your Honor.

2 MR. MURDOCK: One last matter, Your Honor, with respect  
3 to the trial date. Mr. Fiore had just advised he has a conflict. His son's  
4 graduation falls -- now, Your Honor, had set the trial starting April 25th.  
5 Your Honor had personal conflicts that moved it to May 9th. And that  
6 two-week extension has now -- it's going to impact our client, Mr. Fiore's  
7 schedule. It gives a -- his son's graduation is May 20th, and he has a pre-  
8 planned vacation starting May 11th to May 20th.

9 So I'd like to raise that with Your Honor at a future time as to  
10 how we would address that because that is not a creation of the Defense  
11 side. We thought the trial would be wrapping up in that window. With  
12 the new May 9th trial date, that obviously affects his schedule. And so I  
13 just would like some guidance from Your Honor as to how we should  
14 raise that issue.

15 THE COURT: Well, what I would suggest is that you discuss  
16 it with your opposing counsel. Certainly, he doesn't have to be here, and  
17 the jury can be instructed not to hold it against anyone who is not  
18 present for the entirety of the trial. Does he have someone who is going  
19 to sit in for him?

20 MR. MURDOCK: He's named in his personal capacity, so.

21 THE COURT: Yeah.

22 MR. MURDOCK: It's -- there's no corporation. It's Mr. Fiore.

23 THE COURT: That's true. Well, talk to opposing counsel.

24 And certainly, I'll give an instruction.

25 And how long do you guys anticipate jury selection to take?

1 Because I -- that will affect whether I get a senior for the first week. Why  
2 don't you talk about it and let me know?

3 MR. BRENSKE: Yes, Your Honor.

4 THE COURT: All right.

5 MR. MURDOCK: I think the issue is going to be the length of  
6 trial, obviously. If it's a four-week trial, there's going to be, I suspect,  
7 many jurors that are going to have concerns about the duration.

8 THE COURT: So that you know, I'm doing a jury selection  
9 starting Tuesday for a business court case. And they agreed on a jury  
10 questionnaire, and they agreed on two days for jury selection. We're  
11 going to bring the veneer in and they're going to fill out the jury  
12 questionnaire here.

13 So if you decide you want to do something like that, talk with  
14 each other about, and I'm happy to accommodate it. It's more work for  
15 us, but we kind of signed up for the job here, so. So if that's -- that you  
16 all have an appetite for that and you can agree on a form, then I'm  
17 amenable to that as well.

18 MR. BRENSKE: Thank you, Your Honor.

19 MR. ESCHWEILER: Thank you, Your Honor.

20 THE COURT: And I'll know more next week about how it  
21 goes.

22 MR. MURDOCK: Your Honor, one last question. As for the  
23 May 9th docket, what is the Court's window for that -- that window of  
24 time? Just so we can -- we can know for purposes. I guess, how long  
25 have you --

1 THE COURT: There's an --

2 MR. MURDOCK: -- allocated for the trial?

3 THE COURT: Five weeks.

4 MR. MURDOCK: Okay.

5 THE COURT: You guys telling me you needed five weeks, so  
6 I did allocate the time.

7 MR. MURDOCK: Perfect. Thank you.

8 THE COURT: Thank you. Thanks, everybody. Stay safe and  
9 healthy.

10 MR. BRENSKE: Thank you, Your Honor.

11 MR. MURDOCK: Thank you, Your Honor.

12 MS. VARGAS: Thank you, Your Honor.

13 [Proceedings adjourned at 11:01 a.m.]

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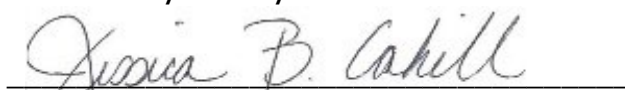
20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

23

24

25



Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708



**EXHIBIT H**

**EXHIBIT H**

---

**From:** Ian Samson <samson@psblaw.com>  
**Sent:** Wednesday, April 6, 2022 1:53 PM  
**To:** JD Murdock; Smith, Abraham; Susan Vargas; Ryan Petersen; William Brenske; bak@baklawlv.com  
**Cc:** Isolde Parr; Corey Eschweiler; Miriam Alvarez  
**Subject:** Sherwood v SpeedVegas, et al  
**Attachments:** 2022-04-06 Order Denying SpeedVegas & Fiore's Motion for Stay.docx

[EXTERNAL]

---

Counsel, please see the attached draft order.

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ESTATE OF GIL BEN-KELY by  
17 ANTONELLA BEN-KELY, the duly  
appointed representative of the ESTATE and as  
18 the widow and heir of Decedent GIL BEN-  
KELY; SHON BEN-KELY, son and heir of  
19 decedent GIL BEN-KELY; NATHALIE BEN-  
KELY-SCOTT, daughter and heir of the  
20 decedent GIL BEN-KELY, GWENDOLYN  
WARD, as Personal Representative of the  
21 ESTATE OF CRAIG SHERWOOD, deceased;  
GWENDOLYN WARD, Individually, and as  
22 surviving spouse of CRAIG SHERWOOD,  
deceased; GWENDOLYN WARD, as Mother  
23 and Natural Guardian of ZANE SHERWOOD,  
surviving minor child of CRAIG  
24 SHERWOOD, deceased,

25 Plaintiffs,

26 v.

27 SPEED VEGAS, LLC, a Delaware Limited  
liability company; SCOTT GRAGSON  
28 WORLD CLASS DRIVING, an unknown

Case No. A-17-757614-C  
Dept. No.: XXVII

**ORDER DENYING SPEEDVEGAS, LLC  
AND PHIL FIORE'S MOTION FOR STAY  
PENDING WRIT PETITION AND  
ALTERNATIVE REQUEST FOR  
INTERIM STAY**

1 entity; SLOAN VENTURES 90, LLC, a  
2 Nevada limited liability company; ROBERT  
3 BARNARD; MOTORSPORT SERVICES  
4 INTERNATIONAL, LLC, a North Carolina  
5 limited liability company; AARON FESSLER;  
6 the ESTATE OF CRAIG SHERWOOD;  
AUTOMOBILI LAMBORGHINI  
AMERICAN, LLC, a foreign limited liability  
company; FELICE J. FIORE, JR.; DOES I-X,  
inclusive; and ROE CORPORATIONS I-X,  
inclusive

7 Defendants.

8  
9 GWENDOLYN WARD, as Personal  
10 Representative of the ESTATE OF CRAIG  
11 SHERWOOD, deceased; GWENDOLYN  
12 WARD, Individually, and as surviving spouse  
13 of CRAIG SHERWOOD, deceased;  
14 GWENDOLYN WARD, as Mother and  
15 Natural Guardian of ZANE SHERWOOD,  
16 surviving minor child of CRAIG  
17 SHERWOOD, deceased,

18 Crossclaim Plaintiffs,

19 v.

20 ESTATE OF GIL BEN-KELY by  
21 ANTONELLA BEN-KELY, the duly  
22 appointed representative of the ESTATE;  
23 DOES I-X, inclusive; and ROE  
24 CORPORATIONS I-X, inclusive,

25 Crossclaim Defendants.

26 ESTATE OF BEN-KELY by ANTONELLA  
27 BEN-KELY, duly appointed representative of  
28 the Estate and widow and heir of decedent GIL  
BEN-KELY; SHON BEN-KELY, son and heir  
of decedent GIL BEN-KELY; NATHALIE  
BEN-KELY SCOTT, daughter and her of  
decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

ESTATE OF CRAIG SHERWOOD; DOES I-  
X, inclusive; and ROE CORPORATIONS I-X,  
inclusive,

Crossclaim Defendants.

1 Defendants' SpeedVegas' and Phil Fiore's Motion for Stay Pending Writ Petition and  
2 Alternative Request for Interim Stay ("Motion"), came on for a hearing on Order Shortening Time  
3 before the Honorable Nancy Allf at 10:00 a.m. on April 6, 2022.

4 Corey Eschweiler, Esq. and Ian Samson, Esq. appeared on behalf of Sherwood Plaintiffs;  
5 William R. Brenske, Esq., appeared on behalf of Ben-Kely Plaintiffs; Susan Vargas, Esq. and Ryan  
6 S. Petersen, Esq., appeared on behalf of Defendant Automobili Lamborghini America, LLC; and  
7 Abraham Smith, Esq. and James D. Murdock, Esq., appeared on behalf of Defendants SpeedVegas  
8 and Phil Fiore.

9 The Court having reviewed the papers and pleadings on file herein and having heard the  
10 arguments of counsel, issues the following Order:

11 Defendants' SpeedVegas' and Phil Fiore's Motion for Stay Pending Writ Petition and  
12 Alternative Request for Interim Stay is **DENIED**. A stay is prejudicial to Plaintiffs, who have  
13 diligently pursued their case for trial. Defendants have not demonstrated they are entitled to a stay.

14 **IT IS SO ORDERED.**

15 DATED this \_\_\_\_\_ of April, 2022.

16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 DISTRICT COURT JUDGE

19 Respectfully submitted by:

20 **PANISH SHEA BOYLE RAVIPUDI, LLLP**

21  
22 By: \_\_\_\_\_  
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*Estate of Ben-Kely, et al. v. SpeedVegas, et al*, Case No. A-17-757614-C  
**ORDER DENYING SPEEDVEGAS, LLC AND PHIL FIORE'S  
MOTION FOR STAY PENDING WRIT PETITION AND  
ALTERNATIVE REQUEST FOR INTERIM STAY**

Approved as to form and content:

**LEWIS ROCA ROTHGERBER  
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**KING & SPALDING LLP**

By: \_\_\_\_\_

By: \_\_\_\_\_

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KRAMETBAUER**

By: \_\_\_\_\_

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