

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

MARIA MCMILLIN, an individual  
Appellant  
vs.  
ROBERT THOMPSON, individually and as  
franchise; TYRON HENDERSON,  
individually  
Respondent

No. 85065

Electronically Filed  
Aug 19 2022 03:23 p.m.

DOCKETING STATEMENT  
CIVIL APPEALS  
Elizabeth A. Brown  
Clerk of Supreme Court

## GENERAL INFORMATION

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

## WARNING

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

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

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

1. Judicial District 8 Department 1  
County Clark Judge Honorable Bitia Yeager  
District Ct. Case No. A-19-787989-C

**2. Attorney filing this docketing statement:**

Attorney Timothy A. Wiseman Telephone 702-850-7798  
Firm Morris Law Center  
Address 5450 W. Sahara Ave., Suite 330  
Las Vegas, NV 89146

Client(s) Maria McMillin

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

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

Attorney Steve T. Jaffe, & Cindie D. Hernandez Telephone 702-316-4111  
Firm Hall Jaffe & Clatyon, LLP  
Address 7425 Peak Drive  
Las Vegas, NV 89138

Client(s) Robert Thompson & Tyrone Henderson

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

Maria McMillin v. Robert Thompson - 84015 - Dismissed on procedural grounds

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

NA

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

This is a personal injury case. While on premises operated by Defendant Robert Thompson, Defendant Tyrone Henderson collided with Plaintiff Maria McMillin. (Tyrone is spelled Tyron or Tyron[e] in some documents). At the time, Mr. Henderson was an employee of Mr. Thompson. Ms. McMillin was badly injured and required extensive medical attention, including surgery to recover.

The case was disposed of by a dismissal of the entire case by order signed November 23, 2021. However, the Court granted in part a motion to alter or amend that decision on 06/24/2022. After the order was altered, the claim for negligence had been dismissed with a claim for negligent hiring, training, and supervision remaining. This amended order removed Defendant Henderson entirely from the case.

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

1. Whether the District Court erred by granting summary judgment regarding the negligence claim based on a finding that there are no allegations that the Defendants owed a duty of care when complaints should be interpreted liberally;
2. Whether the District Court erred by denying leave to amend when there were minor technical deficiencies in the pleading that could have easily been cured and about which the Defendants had notice.
3. Whether the Court erred by granting summary judgment sua sponte regarding negligence and saying that there were no questions of material fact when evidence had been submitted showing Mr. Henderson was unaware of his surroundings and not looking in the direction he was walking.

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

NA.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

No paragraph of NRAP 17 is directly applicable since this involves a tort case which has a likely jury verdict in excess of \$250,000.00. See NRAP 17(b)(5). However, despite the amount in controversy Plaintiff-Appellant believes this should be addressed by the Nevada Court of Appeals. Plaintiff anticipates that the Order will be reversed based upon well settled precedent regarding the liberal interpretation of pleadings and the fact that leave to amend should be liberally granted and on the standards for summary judgment.

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

Was it a bench or jury trial? NA

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

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Nov 23, 2021

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

NA

**17. Date written notice of entry of judgment or order was served** Nov 23, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☒ NRCP 59      Date of filing 12/14/2021

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

(b) Date of entry of written order resolving tolling motion 6/24/2022

(c) Date written notice of entry of order resolving tolling motion was served 6/24/2022

Was service by:

☐ Delivery

☒ Mail

**19. Date notice of appeal filed** 7/18/2022

---

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

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

NRAP 4(a)

---

**SUBSTANTIVE APPEALABILITY**

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

(a)

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

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The order from which this appeal is taken is a final judgment as to Mr. Tyrone Henderson and finally resolved the claim for negligence as to any Defendant. The order was certified as final pursuant to NRCP 54(b).



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

(a) Parties:

Maria McMillin - Plaintiff

Robert Thompson - Defendant

Tyrone Henderson - Defendant (Tyrone is spelled Tyron or Tyron[e] in some documents)

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

NA

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

Negligence - Disposed of on 06/24/2022 through Order to Alter or Amend Judgment  
Negligent Hiring, Retention, and Supervision - remains pending.

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

Negligent Hiring, Training, and Supervision

(b) Specify the parties remaining below:  
Maria McMillin - Plaintiff  
Robert Thompson - Defendant

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

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

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

## VERIFICATION

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

Maria McMillin  
Name of appellant

Timothy A. Wiseman, Esq.  
Name of counsel of record

August 14, 2022  
Date

/s/ Timothy A. Wiseman  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 19th day of August, 2022, I served a copy of this completed docketing statement upon all counsel of record:

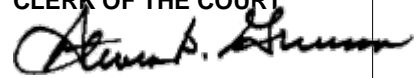
- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Steve T. Jaffe, Esq.  
Cindie D. Hernandez, Esq.  
HALL JAFFE & CLAYTON, LLP  
7425 Park Run Drive  
Las Vegas, NV 89128

Dated this 19th day of August, 2022

/s/ Nikki Beard  
Signature

# **Exhibit 1**



1 **ACOM**  
2 BRADLEY S. MAINOR, ESQ.  
3 Nevada Bar No. 7434  
4 JOSEPH J. WIRTH, ESQ.  
5 Nevada Bar No. 10280  
6 ASH MARIE GANIER, ESQ.  
7 Nevada Bar No. 14712  
8 TAELORE S. EVANS  
9 Nevada Bar. No. 14704  
10 **MAINOR WIRTH, LLP**  
11 6018 S. Fort Apache Road, Ste. 150  
12 Las Vegas, NV 89148-5652  
13 Tel: (702) 464-5000  
14 Fax: (702) 463-4440  
15 [ash@mwinjury.com](mailto:ash@mwinjury.com)  
16 *Counsel for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 MARIA MCMILLIN, Individually,  
14  
15 Plaintiff,

16 vs.

17 ROBERT THOMPSON., Individually and as  
18 Franchisee; TYRON HENDERSON,  
19 Individually; DOES I-XX Inclusive; and ROE  
20 CORPORATIONS I-XX,  
21 inclusive;

22 Defendants.

CASE NO.: A-19-787989-C  
DEPT. NO.: 19

**PLAINTIFF'S AMENDED COMPLAINT  
AND DEMAND FOR JURY TRIAL**

22 COME NOW Plaintiff, MARIA MCMILLIN, by and through her attorneys, BRADLEY  
23 S. MAINOR, ESQ., JOSEPH J. WIRTH, ESQ., ASH MARIE GANIER, ESQ. and TAELORE S.  
24 EVANS, ESQ. of the law firm of MAINOR WIRTH, and for her claims for relief against  
25 Defendants, and each of them, alleges as follows:

26 ///

27 ///

**PARTIES AND JURISDICTION**

1. Plaintiff, MARIA MCMILLIN, ("MCMILLIN") is, and at all relevant times herein, was a resident of Clark County, State of Nevada.

2. Plaintiff is informed and believes, and thereupon alleges, that Defendant, ROBERT THOMPSON, ("THOMPSON") is, and at all relevant times herein was, a franchisee of 7-ELEVEN INC., duly licensed and doing business in Clark County, State of Nevada.

3. Plaintiff is informed and believes, and thereupon alleges, that Defendant, TYRON HENDERSON, ("HENDERSON") is, and at all relevant times herein was, a resident in Clark County, State of Nevada.

4. The identities of the Defendants, DOES I through XX, are unknown at this time and may be individuals, partnerships or corporations. Plaintiff alleges that each of the Defendants designated herein as DOE DEFENDANTS are responsible in some manner for the damages herein alleged. Plaintiff will request leave of the Court to amend this Complaint to name the Defendants specifically when their identities become known.

5. The names and capacities, whether individual, corporate, associates, co-partnership, or any other business form or entity of defendants named herein as ROE CORPORATIONS I through XX, inclusive, are unknown at this time and therefore said defendants are sued by such fictitious names. The roles of these defendants may include, but is not necessarily limited to, (i) owning and/or operating any employees, agents, servants, and/or joint ventures of the defendants named herein responsible in some manner for the losses, injuries, and damages alleged herein, (ii) managers with some control over and responsibility for DOE DEFENDANTS, (iii) business entities controlled by and/or associated with the defendants named herein, including but not limited to parent corporations, wholly owned subsidiaries, and/or alter egos, (iv) persons and/or business entities who bear some responsibility for the policies and procedures that caused or contributed to the losses, injuries, and damages alleged herein, (v) active tortfeasors individually responsible in some manner for the losses, injuries, and damages alleged herein, (vi) passive tortfeasors individually responsible in some manner for the losses, injuries, and damages alleged herein, (vii) employers, principles, masters, and/or joint ventures of the

defendants named herein responsible in some manner for the losses, injuries, and damages alleged herein, (viii) individuals and/or business entities involved in the hiring, firing, and/or supervision of DOE DEFENDANTS. Based upon information and belief, the defendants so designated herein as ROE CORPORATIONS I through XX, inclusive, are responsible in some manner for their agency, master/servant or joint venture relationship with the defendants named herein, or otherwise contributed to, as a proximate cause, the events complained of herein. Leave of this Court will be requested to amend this complaint to name the defendants specifically when their identities become known.

6. Plaintiff is informed and believes and thereupon alleges that at all relevant times, each of the Defendants, including such fictitiously named Defendants, were the agents and employees of each of the remaining Defendants and were at all times mentioned, acting within the course and scope of that agency and employment. Each of the Defendants authorized and ratified the acts of the remaining Defendants.

7. That all the facts and circumstances that give rise to the subject lawsuit occurred within the County of Clark, State of Nevada.

**II.**  
**FIRST CAUSE OF ACTION**  
***(Negligence)***

8. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1 through 7 above as if fully set forth herein.

9. At all times herein relevant, Defendant THOMPSON was the Franchise owner and/or operators of a certain 7-ELEVEN located at 4800 N. Jones Blvd., Las Vegas, NV 89130, wherein the below incident occurred.

10. On or about September 17, 2017, Plaintiff MCMILLIN (was a business invitee at Defendant THOMPSON'S 7-ELEVEN, establishment located at 4800 N. Jones Blvd., Las Vegas, NV 89130.

11. On said date, Plaintiff MCMILLIN was retrieved a donut from a display case in the store. Unexpectedly, a 7-Eleven employee Defendant HENDERSON collided with her person

1 and caused her to fall to the ground. Plaintiff landed on her hip and sustained significant injury  
2 that required surgical intervention.

3 12. At the time of the subject incident, Defendant DOE EMPLOYEE was working  
4 within the course and scope of his employment with Defendant, 7-ELEVEN, INC. Because  
5 Defendant DOE EMPLOYEE was acting within the course and scope of his employment, service,  
6 or agency with Defendant 7-ELEVEN, INC., said Defendant is vicariously liable for the injuries  
7 sustained by Plaintiff as alleged above.

8 13. As a direct and proximate result of the negligence of Defendants, and each of  
9 them, Plaintiff was seriously injured and caused to suffer great pain of body and mind, all or some  
10 of which may be permanent and disabling in nature, aggravating to her general and compensatory  
11 damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

12 14. As a further direct and proximate result of the negligence of Defendants, and each  
13 of them, Plaintiff incurred expenses for medical care, treatment and expenses incidental thereto,  
14 and Plaintiff may be required in the future to incur expenses for medical care and treatment.

15 15. That Plaintiff has been required to retain the services of MAINOR WIRTH, LLP  
16 to prosecute this action and is entitled to reasonable attorney's fees and costs incurred herein.

### 17 III.

#### 18 **SECOND CAUSE OF ACTION**

##### 19 *(Negligent Hiring, Training and Supervision)*

20 16. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1 through 15  
21 above as if fully set forth herein.

22 17. Defendant THOMPSON, as the Franchisee and owner/operator of a 7-ELEVEN,  
23 store, DOES I through XX, and/or ROE CORPORATIONS I through XX, had a duty to exercise  
24 due care in the selection, training, supervision, oversight, direction, retention and control of its  
25 employees and/or agents, retained by it to perform and provide services.

26 18. Defendants owed a duty to Plaintiff to hire responsible employees who could  
27 perform the duties assigned to them without invading the rights of Plaintiff.

28 19. Defendants breached the above-referenced duty when they negligently, carelessly,



1 and recklessly hired, trained, supervised, oversaw, directed and/or retained Defendant  
2 HENDERSON, who negligently ran through the aisles of the store before colliding with  
3 Plaintiff's person.

4 20. As a direct and proximate result of the negligence of Defendants, and each of  
5 them, Plaintiff was seriously injured and caused to suffer great pain of body and mind, all or some  
6 of which may be permanent and disabling in nature, aggravating to her general and compensatory  
7 damages in an amount in excess of Fifteen thousand Dollars (\$15,000.00).

8 21. As a further direct and proximate result of the negligence of Defendants, and each  
9 of them, Plaintiff incurred expenses for medical care, treatment and expenses incidental thereto,  
10 and Plaintiff may be required in the future to incur expenses for medical care and treatment.

11 22. That Plaintiff has been required to retain the services of MAINOR WIRTH, LLP  
12 to prosecute this action and is entitled to reasonable attorney's fees and costs incurred herein.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays judgment against the Defendants, and each of them, as  
15 follows:

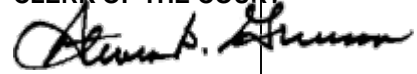
- 16 1. General and compensatory damages in an amount in excess of \$15,000.00;
- 17 2. For special damages in excess of \$15,000.00;
- 18 3. Medical and incidental expenses incurred and to be incurred;
- 19 4. Lost wages and loss of earning capacity;
- 20 5. Loss of household services;
- 21 6. Costs of suit, reasonable attorney fees, interest incurred herein; and
- 22 7. For other and further relief as is just and proper.

23 DATED this 14<sup>th</sup> day of January, 2020.

24 **MAINOR WIRTH, LLP**

25 /s/ Ash M. Ganier  
26 ASH MARIE GANIER, ESQ.  
27 Nevada Bar No. 14712  
28 6018 S. Fort Apache Road, Ste. 150  
Las Vegas, NV 89148-5652  
Counsel for Plaintiff

# **Exhibit 2**



NEO  
STEVEN T. JAFFE, ESQ.  
Nevada Bar No. 7035  
[sjaffe@lawhjc.com](mailto:sjaffe@lawhjc.com)  
CINDIE D. HERNANDEZ, ESQ.  
Nevada Bar No. 7218  
[chernandez@lawhjc.com](mailto:chernandez@lawhjc.com)

**HALL JAFFE & CLAYTON, LLP**  
7425 Peak Drive  
Las Vegas, Nevada 89128  
(702) 316-4111  
Fax (702) 316-4114

*Attorneys for Defendants  
Robert Thompson and Tyrone Henderson*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARIA MCMILLIN , an individual,  
  
Plaintiff,

v.

ROBERT THOMPSON; Individually and as  
Franchisee; TYRON HENDERSON,  
Individually; DOES I-XX, inclusive; and ROE  
CORPORATIONS I - XX, inclusive,  
  
Defendants.

CASE NO. A-19-787989-C  
DEPT. NO. 1

**NOTICE OF ENTRY:**

**ORDER GRANTING DEFENDANT  
TYRON[E] HENDERSON'S MOTION  
FOR JUDGMENT ON THE  
PLEADINGS, OR IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

**AND**

**ORDER GRANTING DEFENDANT  
ROBERT THOMPSON'S MOTION  
FOR JUDGMENT ON THE  
PLEADINGS, OR IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

**AND**

**ORDER DENYING PLAINTIFF'S  
COUNTERMOTION TO AMEND  
COMPLAINT**

1 TO: ALL PARTIES ABOVE-NAMED; and

2 TO: THEIR RESPECTIVE ATTORNEYS OF RECORD.

3 PLEASE TAKE NOTICE that an ORDER GRANTING DEFENDANT TYRON[E]  
4 HENDERSON'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE  
5 ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT, AND ORDER GRANTING  
6 DEFENDANT ROBERT THOMPSON'S MOTION FOR JUDGMENT ON THE  
7 PLEADINGS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT,  
8 AND ORDER DENYING PLAINTIFF'S COUNTERMOTION TO AMEND COMPLAINT  
9 was entered on November 23, 2021, a copy of which is attached hereto.

10 DATED this 23rd day of November, 2021.

11  
12 HALL JAFFE & CLAYTON, LLP

13 By: /s/ Cindie D. Hernandez, Esq.  
14 STEVEN T. JAFFE, ESQ.  
15 Nevada Bar No. 7035  
16 CINDIE D. HERNANDEZ, ESQ.  
17 Nevada Bar No. 7218  
18 7425 Peak Drive  
19 Las Vegas, Nevada 89128  
20 *Attorney for Defendants Robert*  
21 *Thompson and Tyrone Henderson*  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of **HALL JAFFE &**  
3 **CLAYTON, LLP**, and on this 23rd day of November, 2021, I served a copy of the foregoing  
4 **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT TYRON[E]**  
5 **HENDERSON'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE**  
6 **ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT, AND ORDER**  
7 **GRANTING DEFENDANT ROBERT THOMSPON'S MOTION FOR JUDGMENT ON**  
8 **THE PLEADINGS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY**  
9 **JUDGMENT, AND ORDER DENYING PLAINTIFF'S COUNTERMOTION TO**  
10 **AMEND COMPLAINT** as follows:

- 11 ☐ **U.S. MAIL** — By depositing a true copy thereof in the U.S. Mail, first class postage  
12 prepaid and addressed as listed below; and/or  
13 ☐ **FACSIMILE** — By facsimile transmission to the facsimile number(s) shown below;  
14 and/or  
15 ☐ **HAND DELIVERY** — By hand-delivery to the addresses listed below; and/or  
16 ☒ **ELECTRONIC SERVICE** — Pursuant to the Court's CM/ECF e-filing  
17 system.

18 Bradley S. Mainor, Esq.  
19 Joseph J. Wirth, Esq.  
20 Ash Marie Blackburn, Esq.  
21 Joseph W. Guindy, Esq.  
22 MAINOR WIRTH, LLP  
23 6018 S. Fort Apache Rd. Ste. 150  
24 Las Vegas, NV 89148  
25 *Attorneys for Plaintiff*

26 /s/ Jamie Soquena  
27 An Employee of  
28 HALL JAFFE & CLAYTON, LLP

OGSJ

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARIA MCMILLIN, an individual,

Plaintiff,

vs.

ROBERT THOMPSON; Individually  
and as Franchisee; TYRON  
HENDERSON, Individually; DOES I-  
XX, inclusive; and ROE  
CORPORATIONS I - XX, inclusive,

Defendants.

Case No.: A-19-787989-C  
Department: 1

**ORDER GRANTING DEFENDANT  
TYRON[E] HENDERSON'S MOTION FOR  
JUDGMENT ON THE PLEADINGS, OR IN  
THE ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

**AND**

**ORDER GRANTING DEFENDANT ROBERT  
THOMPSON'S MOTION FOR JUDGMENT  
ON THE PLEADINGS, OR IN THE  
ALTERNATIVE, MOTION FOR SUMMARY  
JUDGMENT**

**AND**

**ORDER DENYING PLAINTIFF'S  
COUNTERMOTION TO AMEND  
COMPLAINT**

**HEARING DATE: October 27, 2021  
HEARING TIME: 9:30 A.M.**

On October 27, 2021, the hearing was conducted on Defendant TYRON[E] HENDERSON'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT – and – DEFENDANT ROBERT THOMPSON'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT – and – COUNTERMOTION FOR LEAVE TO AMEND PLAINTIFF'S COMPLAINT, with Steven T. Jaffe, Esq., appearing on behalf of the Defendants, and Ash Marie Blackburn, Esq., appearing on behalf of the Plaintiff, the matter having been fully briefed and all supporting materials been reviewed, and having heard oral argument

1 by counsel, the court hereby makes the following findings of fact and conclusions of law pursuant to  
2 NRCP 56(c), the standard of review afforded to the Defendants' motion:

3 **I.**

4 **FINDINGS OF FACT**

5 1. On September 17, 2017, Plaintiff Maria McMillin and Defendant Tyron[e]  
6 Henderson were involved in an incident at a 7-Eleven, Inc. store, owned and operated by  
7 Defendant Robert Thompson, when they accidentally bumped into each other.

8 2. Their incident was recorded on video surveillance footage through equipment  
9 of Mr. Thompson and 7-Eleven, Inc., the authenticity of which the parties do not dispute,  
10 and which was considered by the court when entertaining argument herein.

11 3. Plaintiff learned of Defendant Tyron[e] Henderson's true identity, and correct  
12 name spelling, on July 18, 2019.

13 4. Their incident is the subject of the litigation as set forth in Plaintiff's First  
14 Amended Complaint.

15 5. Plaintiff's First Amended Complaint contains two causes of action for  
16 negligence and negligent hiring, retention and supervision.

17 6. Plaintiff's First Cause of Action, however, includes no allegations regarding  
18 any duty(ies) owed by either Mr. Thompson or Mr. Henderson to Plaintiff.

19 7. Plaintiff's First Cause of Action includes no allegations that either Mr.  
20 Thompson or Mr. Henderson breached any duty(ies) to Plaintiff.

21 8. Plaintiff's First Cause of Action includes no allegations that Plaintiff's injuries  
22 were legally caused by the breaches of the duty(ies).

23 9. Mr. Henderson is Mr. Thompson's employee, not an employee of 7-Eleven,  
24 Inc. as plead by the Plaintiff.

25 10. The deadline to amend pleadings expired on April 22, 2021.

26 11. Plaintiff did not move for leave to further amend her pleadings by the April 22,  
27 2021, deadline as required by court order.

II.

CONCLUSIONS OF LAW

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1. Under NRCP 56(c), summary judgment is appropriate when “after a review of the record viewed in a light most favorable to the nonmoving party, there remains no issues of material fact.” *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 444, 956 P.2d 1382, 1385 (1998), citing *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

2. Summary judgment will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCP 56(c); see also *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005), quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

3. Under *Sadler v. PacifiCare of Nev.*, “in order to state a claim for negligence a plaintiff must allege that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages.” 130 Nev. 990, 995, 340 P.3d 1264, 1265 (2014).

4. In Plaintiff's Amended Complaint, there are no allegations in the first Cause of Action, that the Defendants owed the Plaintiff a duty of care, or that they breached that duty. See Amended Complaint, 3-4.

5. Having reviewed the accident video footage in the light most favorable to the Plaintiff, the court finds that there is no genuine dispute as to any material fact and the Defendants are entitled to judgment as a matter of law, because no duty of care was owed or breached by the Defendants to the Plaintiff.

PLAINTIFF'S COUNTERMOTION FOR LEAVE TO AMEND COMPLAINT

1. A court's standard for review when considering a counter motion is one for an abuse of discretion. *Coronado Med. Center Owners Ass'n v. United Ins. Co. of America*,



2020 WL 6882719 \*1, \*2, No. 77943, No. 78477 (Nev., Nov. 23, 2020)(unpublished).

2. NRCP 15(a) and 16(b) govern a party’s request for leave to amend pleadings where the requested amendment concerns one brought after all discovery deadlines have expired. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 281, 357 P.3d 966, 968 (Nev. App. 2015).

3. In those instances, the party seeking the amendment must first demonstrate “good cause” for missing the deadlines under Rule 16(b). *Id.* Only after a finding of good cause is made under Rule 16(b), may this court next consider whether the amendment proposed under Rule 15(a) is appropriate. *Id.*

4. To determine whether “good cause” exists under Rule 16(b), “the basic inquiry for the trial court is whether the filing deadline cannot reasonably be met despite the diligence of the party seeking the amendment.” *Nutton*, 131 Nev. at, 286–87, 357 P.3d at 971. Establishing good cause following the expiration of the deadline established by the scheduling order requires stringent analysis under Rule 16(b). *Hernandez v. Creative Concepts, Inc.* 295 F.R.D. 500, 505 (D. Nev. 2013).

5. In moving for leave to amend her First Amended Complaint, Plaintiff did not demonstrate good cause under Rule 16(b) to support her leave to amend her pleadings because she did not explain her untimely conduct, the importance of the requested untimely action, the potential prejudice in allowing the untimely conduct, and the availability of a continuance to cure the prejudice by allowing the amendment.

6. Because the predicate analysis showing good cause under Rule 16(a) was not demonstrated by the Plaintiff to support her leave to amend, no Rule 15(a) analysis was undertaken by the court, nor was it required.

7. In addition, a party in possession of information in advance of the amendment deadline, and does nothing to cure the pleading deficiency before the deadline expires, should not be granted leave to amend. *Nutton*, at 286-87, 357 P.3d at 971-72, citing *Perfect Pearl*, 889 F.Supp.2d at 457.

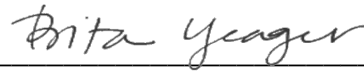
//

1           **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**, that Defendant  
2 Tyron[e] Henderson's and Defendant Robert Thompson's Motion for Judgment on the  
3 Pleadings or in the Althernative Motion for Summary Judgment is **GRANTED**.

4           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, that Plaintiff Maria  
5 McMillin's Countermotion to Amend Complaint is **DENIED**.

6  
7  
8           IT IS SO ORDERED.

Dated this 23rd day of November, 2021

9 

10  
11           **A78 99B F2A8 95C9**  
12           **Bita Yeager**  
13           **District Court Judge**  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Maria McMillin, Plaintiff(s)

CASE NO: A-19-787989-C

7 vs.

DEPT. NO. Department 1

8 7-Eleven, Inc, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 11/23/2021

15 Joseph Wirth

joe@mwinjury.com

16 Ash Ganier

ash@mwinjury.com

17 Bradley Mainor

brad@mwinjury.com

18 Lindsay Hayes

Lindsay@mwinjury.com

19 Andrea Navarro

andrea@mwinjury.com

20 Cindie Hernandez

chernandez@lawhjc.com

21 Natalie Cothran

Natalie@mwinjury.com

22 Krysta Wheeler

krysta@mwinjury.com

23 Jamie Soquena

jsoquena@lawhjc.com

24 Joseph Guindy

jguindy@mwinjury.com

25 Kathy Hernandez

khernandez@mwinjury.com

26  
27  
28

Gregory Scott

gscott@lawhjc.com

Erika Parker

eparker@lawhjc.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/24/2021

Melissa Roose

Resnick & Louis, P.C.  
Attn: Melissa Roose, Esq.  
8925 W. Russell Road, Suite 220  
Las Vegas, NV, 89148

Steven Jaffe

Hall Jaffe & Clayton , LLP  
Attn: Steven Jaffe  
7425 Peak Drive  
Las Vegas, NV, 89128

# **Exhibit 3**

OGSJ

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARIA MCMILLIN, an individual,

Plaintiff,

vs.

ROBERT THOMPSON; Individually  
and as Franchisee; TYRON  
HENDERSON, Individually; DOES I-  
XX, inclusive; and ROE  
CORPORATIONS I - XX, inclusive,

Defendants.

Case No.: A-19-787989-C  
Department: 1

**ORDER GRANTING DEFENDANT  
TYRON[E] HENDERSON'S MOTION FOR  
JUDGMENT ON THE PLEADINGS, OR IN  
THE ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

**AND**

**ORDER GRANTING DEFENDANT ROBERT  
THOMPSON'S MOTION FOR JUDGMENT  
ON THE PLEADINGS, OR IN THE  
ALTERNATIVE, MOTION FOR SUMMARY  
JUDGMENT**

**AND**

**ORDER DENYING PLAINTIFF'S  
COUNTERMOTION TO AMEND  
COMPLAINT**

**HEARING DATE: October 27, 2021  
HEARING TIME: 9:30 A.M.**

On October 27, 2021, the hearing was conducted on Defendant TYRON[E] HENDERSON'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT – and – DEFENDANT ROBERT THOMPSON'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT – and – COUNTERMOTION FOR LEAVE TO AMEND PLAINTIFF'S COMPLAINT, with Steven T. Jaffe, Esq., appearing on behalf of the Defendants, and Ash Marie Blackburn, Esq., appearing on behalf of the Plaintiff, the matter having been fully briefed and all supporting materials been reviewed, and having heard oral argument

1 by counsel, the court hereby makes the following findings of fact and conclusions of law pursuant to  
2 NRCP 56(c), the standard of review afforded to the Defendants' motion:

3 **I.**

4 **FINDINGS OF FACT**

5 1. On September 17, 2017, Plaintiff Maria McMillin and Defendant Tyron[e]  
6 Henderson were involved in an incident at a 7-Eleven, Inc. store, owned and operated by  
7 Defendant Robert Thompson, when they accidentally bumped into each other.

8 2. Their incident was recorded on video surveillance footage through equipment  
9 of Mr. Thompson and 7-Eleven, Inc., the authenticity of which the parties do not dispute,  
10 and which was considered by the court when entertaining argument herein.

11 3. Plaintiff learned of Defendant Tyron[e] Henderson's true identity, and correct  
12 name spelling, on July 18, 2019.

13 4. Their incident is the subject of the litigation as set forth in Plaintiff's First  
14 Amended Complaint.

15 5. Plaintiff's First Amended Complaint contains two causes of action for  
16 negligence and negligent hiring, retention and supervision.

17 6. Plaintiff's First Cause of Action, however, includes no allegations regarding  
18 any duty(ies) owed by either Mr. Thompson or Mr. Henderson to Plaintiff.

19 7. Plaintiff's First Cause of Action includes no allegations that either Mr.  
20 Thompson or Mr. Henderson breached any duty(ies) to Plaintiff.

21 8. Plaintiff's First Cause of Action includes no allegations that Plaintiff's injuries  
22 were legally caused by the breaches of the duty(ies).

23 9. Mr. Henderson is Mr. Thompson's employee, not an employee of 7-Eleven,  
24 Inc. as plead by the Plaintiff.

25 10. The deadline to amend pleadings expired on April 22, 2021.

26 11. Plaintiff did not move for leave to further amend her pleadings by the April 22,  
27 2021, deadline as required by court order.  
28

II.

CONCLUSIONS OF LAW

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1. Under NRCP 56(c), summary judgment is appropriate when “after a review of the record viewed in a light most favorable to the nonmoving party, there remains no issues of material fact.” *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 444, 956 P.2d 1382, 1385 (1998), citing *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

2. Summary judgment will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCP 56(c); see also *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005), quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

3. Under *Sadler v. PacifiCare of Nev.*, “in order to state a claim for negligence a plaintiff must allege that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages.” 130 Nev. 990, 995, 340 P.3d 1264, 1265 (2014).

4. In Plaintiff's Amended Complaint, there are no allegations in the first Cause of Action, that the Defendants owed the Plaintiff a duty of care, or that they breached that duty. See Amended Complaint, 3-4.

5. Having reviewed the accident video footage in the light most favorable to the Plaintiff, the court finds that there is no genuine dispute as to any material fact and the Defendants are entitled to judgment as a matter of law, because no duty of care was owed or breached by the Defendants to the Plaintiff.

PLAINTIFF'S COUNTERMOTION FOR LEAVE TO AMEND COMPLAINT

1. A court's standard for review when considering a countermotion is one for an abuse of discretion. *Coronado Med. Center Owners Ass'n v. United Ins. Co. of America*,



2020 WL 6882719 \*1, \*2, No. 77943, No. 78477 (Nev., Nov. 23, 2020)(unpublished).

2. NRCP 15(a) and 16(b) govern a party’s request for leave to amend pleadings where the requested amendment concerns one brought after all discovery deadlines have expired. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 281, 357 P.3d 966, 968 (Nev. App. 2015).

3. In those instances, the party seeking the amendment must first demonstrate “good cause” for missing the deadlines under Rule 16(b). *Id.* Only after a finding of good cause is made under Rule 16(b), may this court next consider whether the amendment proposed under Rule 15(a) is appropriate. *Id.*

4. To determine whether “good cause” exists under Rule 16(b), “the basic inquiry for the trial court is whether the filing deadline cannot reasonably be met despite the diligence of the party seeking the amendment.” *Nutton*, 131 Nev. at, 286–87, 357 P.3d at 971. Establishing good cause following the expiration of the deadline established by the scheduling order requires stringent analysis under Rule 16(b). *Hernandez v. Creative Concepts, Inc.* 295 F.R.D. 500, 505 (D. Nev. 2013).

5. In moving for leave to amend her First Amended Complaint, Plaintiff did not demonstrate good cause under Rule 16(b) to support her leave to amend her pleadings because she did not explain her untimely conduct, the importance of the requested untimely action, the potential prejudice in allowing the untimely conduct, and the availability of a continuance to cure the prejudice by allowing the amendment.

6. Because the predicate analysis showing good cause under Rule 16(a) was not demonstrated by the Plaintiff to support her leave to amend, no Rule 15(a) analysis was undertaken by the court, nor was it required.

7. In addition, a party in possession of information in advance of the amendment deadline, and does nothing to cure the pleading deficiency before the deadline expires, should not be granted leave to amend. *Nutton*, at 286-87, 357 P.3d at 971-72, citing *Perfect Pearl*, 889 F.Supp.2d at 457.

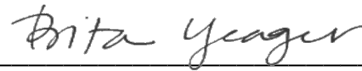
//

1           **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**, that Defendant  
2 Tyron[e] Henderson's and Defendant Robert Thompson's Motion for Judgment on the  
3 Pleadings or in the Althernative Motion for Summary Judgment is **GRANTED**.

4           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, that Plaintiff Maria  
5 McMillin's Countermotion to Amend Complaint is **DENIED**.

6  
7  
8           IT IS SO ORDERED.

Dated this 23rd day of November, 2021

9 

10  
11           **A78 99B F2A8 95C9**  
12           **Bita Yeager**  
13           **District Court Judge**  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Maria McMillin, Plaintiff(s)

CASE NO: A-19-787989-C

7 vs.

DEPT. NO. Department 1

8 7-Eleven, Inc, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 11/23/2021

15 Joseph Wirth	joe@mwinjury.com
16 Ash Ganier	ash@mwinjury.com
17 Bradley Mainor	brad@mwinjury.com
18 Lindsay Hayes	Lindsay@mwinjury.com
19 Andrea Navarro	andrea@mwinjury.com
20 Cindie Hernandez	chernandez@lawhjc.com
21 Natalie Cothran	Natalie@mwinjury.com
22 Krysta Wheeler	krysta@mwinjury.com
23 Jamie Soquena	jsoquena@lawhjc.com
24 Joseph Guindy	jguindy@mwinjury.com
25 Kathy Hernandez	khernandez@mwinjury.com

26  
27  
28

Gregory Scott

gscott@lawhjc.com

Erika Parker

eparker@lawhjc.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/24/2021

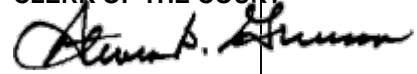
Melissa Roose

Resnick & Louis, P.C.  
Attn: Melissa Roose, Esq.  
8925 W. Russell Road, Suite 220  
Las Vegas, NV, 89148

Steven Jaffe

Hall Jaffe & Clayton , LLP  
Attn: Steven Jaffe  
7425 Peak Drive  
Las Vegas, NV, 89128

# **Exhibit 4**



NEO  
STEVEN T. JAFFE, ESQ.  
Nevada Bar No. 7035  
[sjaffe@lawhjc.com](mailto:sjaffe@lawhjc.com)  
CINDIE D. HERNANDEZ, ESQ.  
Nevada Bar No. 7218  
[chernandez@lawhjc.com](mailto:chernandez@lawhjc.com)

**HALL JAFFE & CLAYTON, LLP**  
7425 Peak Drive  
Las Vegas, Nevada 89128  
(702) 316-4111  
Fax (702) 316-4114

*Attorneys for Defendants  
Robert Thompson and Tyrone Henderson*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MARIA MCMILLIN , an individual,  
  
Plaintiff,

v.

ROBERT THOMPSON; Individually and as  
Franchisee; TYRON HENDERSON,  
Individually; DOES I-XX, inclusive; and ROE  
CORPORATIONS I - XX, inclusive,  
  
Defendants.

CASE NO. A-19-787989-C  
DEPT. NO. 19

**NOTICE OF ENTRY OF ORDER  
GRANTING IN PART AND DENYING  
IN PART PLAINTIFF'S MOTION TO  
ALTER OR AMEND JUDGMENT  
PURSUANT TO NRCP 59**

TO: ALL PARTIES ABOVE-NAMED; and

TO: THEIR RESPECTIVE ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that an ORDER GRANTING IN PART AND DENYING IN  
PART PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO

///

///

///

///

///

1 NRCP 59 was entered on June 24, 2022, a copy of which is attached hereto.

2 DATED this 24th day of June 2022.

3 **HALL JAFFE & CLAYTON, LLP**

4 By: /s/ Cindie D. Hernandez

5 STEVEN T. JAFFE, ESQ.

6 Nevada Bar No. 7035

7 CINDIE D. HERNANDEZ, ESQ.

8 Nevada Bar No. 7218

9 7425 Peak Drive

10 Las Vegas, Nevada 89128

11 *Attorney for Defendant*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

☐ **FACSIMILE** — By facsimile transmission to the facsimile number(s) shown below; and/or

☐ **HAND DELIVERY** — By hand-delivery to the addresses listed below; and/or

☒ **ELECTRONIC SERVICE** — Pursuant to the Court’s CM/ECF e-filing system.

/s/ Jamie Soquena  
An Employee of  
**HALL JAFFE & CLAYTON, LLP**



1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 MARIA MCMILLIN, an individual,

5 Plaintiff,

6 v.

Case No. A-19-787989-C

7 ROBERT THOMPSON; Individually and as  
8 Franchisee; TYRON HENDERSON,  
9 Individually; DOES I-XX, inclusive; and  
10 ROE CORPORATIONS I - XX, inclusive,

Dept. No. 1

11 Defendants.

12  
13 **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO**  
14 **ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59**

15 On February 2, 2022, a hearing was conducted on PLAINTIFF'S MOTION TO ALTER OR  
16 AMEND JUDGMENT PURSUANT TO NRCP 59, with Ash Marie Blackburn, Esq., appearing on  
17 behalf of Plaintiff, and Steven T. Jaffe, Esq., appearing on behalf of the Defendants. The matter  
18 having been fully briefed, all supporting materials having been reviewed, and following oral  
19 argument by counsel. The Court hereby orders as follows:

20 **PROCEDURAL HSTORY**

21 On December 13, 2019, a Stipulation and Order to Allow Plaintiff to Amend Complaint was  
22 filed, to add Robert Thompson, Franchisee, as a party in the place and stead of 7-ELEVEN Inc., and  
23 Tyron[e] Henderson be substituted in the place and stead of Doe Employee. On January 14, 2020,  
24 Plaintiff filed an Amended Complaint; however, it did not fully replace "Doe Employee" with  
25 "Defendant Tyron[e] Henderson" and "7-Eleven, Inc." with "Defendant Robert Thompson." The  
26 deadline to amend pleadings was April 22, 2021. On September 22, 2021, Defendants Robert  
27  
28

1 Thompson and Tyrone Henderson filed a Motion for Judgment on the Pleadings, or in the  
2 Alternative, Motion for Summary Judgment on Plaintiff's Negligence claim. Plaintiff filed an  
3 Opposition and Countermotion to Amend on October 6, 2021. The parties presented oral argument  
4 on the motion on October 27, 2021. On that day, the Court granted the motion applying a summary  
5 judgment standard. An Order Granting Summary Judgment was filed on November 23, 2021.

6  
7 On December 14, 2021, Plaintiff filed their Motion to Alter or Amend Judgment Pursuant to  
8 NRCPP 59. Before the Motion was heard in District Court, Plaintiff filed a Notice of Appeal on  
9 December 22, 2021. The appeal was dismissed by the Nevada Supreme Court on January 25, 2022.  
10 The Nevada Supreme Court subsequently denied a motion to vacate or modify the order dismissing  
11 their appeal, noting that the appeal "may have been prematurely filed because appellant filed a  
12 timely NRCPP 59 motion to alter or amend in the district court and the motion remained pending  
13 when the instant appeal was filed." *McMillin v. Thompson* (Feb. 11, 2022), Order Denying Motion,  
14 No. 22-04613. Remittitur issued on February 23, 2022.

## 15 ORDER

16  
17 NRCPP 59(e) allows a party to file a motion to alter or amend a judgment in cases where it  
18 "may be appropriate to correct 'manifest errors of law or fact,' address 'newly discovered or  
19 previously unavailable evidence,' 'prevent manifest injustice,' or address a 'change in controlling  
20 law.'" *Panorama Towers Condo. Unit Owners' Ass'n v. Hallier*, 137 Nev. Adv. Op. 67, 498 P.3d  
21 222, 224 (2021) (citing *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190,  
22 1193 (2010)).

### 23 I. Negligence

24  
25 "In order to state a claim for negligence, a plaintiff must allege that (1) the defendant owed  
26 the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause  
27 of the plaintiff's injuries, and (4) the plaintiff suffered damages." *Sadler v. PacifiCare of Nev.*, 130  
28

1 Nev. 990, 993–94, 340 P.3d 1264, 1266–67 (2014). The Court ruled that Plaintiff’s Complaint  
2 should be dismissed for failure to allege that the Defendants owed Plaintiff a duty of care. In the  
3 Order Granting Tyron[e] Henderson’s Motion for Judgment on the Pleadings, or in the Alternative  
4 Motion for Summary Judgment and Defendant Robert Thompson’s Motion for Judgment on the  
5 Pleadings or in the Alternative, Motion for Partial Summary Judgment filed on November 23, 2021,  
6 the Court found that there are no allegations that “the Defendants owed Plaintiff a duty of care, or  
7 that they breached that duty.” The Court clarifies that this finding is premised on the fact that the  
8 correct defendants were not properly listed in the operating Amended Complaint, and the proper  
9 parties had not been properly substituted therein after leave was provided to the Plaintiff. Thus,  
10 Negligence had not been properly pled against the correct defendants. Therefore, the Court did not  
11 err in concluding that Plaintiff did not properly plead Negligence.  
12

13 II. Leave to Amend Complaint  
14

15 Under *Nutton v. Sunset Station, Inc.*, “when a motion seeking leave to amend a pleading is  
16 filed after the expiration of the deadline for filing such motions, the district court must first  
17 determine whether ‘good cause’ exists for missing the deadline under NRCP 16(b) before the court  
18 can consider the merits of the motion under the standards of NRCP 15(a).” 131 Nev. 279, 281, 357  
19 P.3d 966, 968 (2015). “In determining whether ‘good cause’ exists under Rule 16(b), the basic  
20 inquiry for the trial court is whether the filing deadline cannot reasonably be met despite the  
21 diligence of the party seeking the amendment.” 131 Nev. at 287, 357 P.3d at 971. In evaluating  
22 whether or not good cause has been shown, the Court can consider: (1) the explanation for the  
23 untimely conduct, (2) the importance of the requested untimely action, (3) the potential prejudice in  
24 allowing the untimely conduct, and (4) the availability of a continuance to cure such prejudice. *Id.*  
25

26 The Court did not err in denying leave to amend here. The deadline to amend pleadings  
27 expired on April 22, 2021. Plaintiff brought her Countermotion for Leave to Amend on October 6,  
28

2021, after the deadline to amend pleadings. However, as the Court reasoned, Plaintiff did not demonstrate good cause under Rule 16(b) for missing the deadline to support her leave to amend her pleadings. Plaintiff made no showing that the filing deadline cannot reasonably be met despite her diligence and Plaintiff did not address any of the four factors set forth in *Nutton* for the Court to consider. Therefore, the Court could not consider her countermotion under NRCP 15(a) in the absence of a “good cause” showing under NRCP 16(1), and did not err in denying Plaintiff’s Countermotion for Leave to Amend.

### III. Sua Sponte Summary Judgment

If on a motion to dismiss, under NRCP 12(b)(5), the Court considers matters outside the pleadings, the motion must be treated as one for summary judgment under Rule 56. NRCP 12(c); see also *Stevens v. McGimsey*, 99 Nev. 840, 841, 673 P.2d 499, 500 (1983). Summary judgment is “appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). When evaluating facts for the purpose of Summary Judgment, a factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.*

NRCP 56(f) provides that the court, after giving notice and a reasonable time to respond, “may (1) grant summary judgment for a nonmovant, (2) grant the motion on grounds not raised by a party; or (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.” “Although district courts have the inherent power to enter summary judgment sua sponte pursuant to [NRCP] 56, that power is contingent upon giving the losing party notice that it must defend its claim.” *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 83, 847 P.2d 731, 735 (1993). It is “troubling when a district court grants summary judgment sua sponte

1 without having taken evidence in the form of affidavits or other documents.” *Renown Reg’l. Med. v.*  
2 *Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014). The defending party must be  
3 given notice and an opportunity to defend itself before a court may grant summary judgment sua  
4 sponte. *Id. Renown* and NRCP 56(f) make it clear that a District Court can sua sponte grant  
5 summary judgment as long as the other side has notice and an opportunity to be heard. 130 Nev. at  
6 828, 335 P.3d at 202.

7  
8 a. Summary Judgment on Negligence

9 Plaintiff here had sufficient notice and opportunity to be heard as it pertains to her  
10 Negligence claim because 1) Defendants requested summary judgment as to Plaintiff’s negligence  
11 claim in the alternative and 2) Plaintiff offered evidence outside of the pleadings, which created the  
12 possibility of the motion to dismiss the negligence claim being treated as a motion for summary  
13 judgment. The Court also found no genuine issue of material fact. Therefore, the Court did not err in  
14 granting summary judgment sua sponte as to Plaintiff’s claim of Negligence.

15  
16 b. Summary Judgment on Negligent Hiring, Training, and Supervision

17 Plaintiff here did not have sufficient notice or an opportunity to be heard regarding the  
18 Court’s sua sponte decision to grant summary judgment as to the negligent hiring, training, and  
19 supervision claim. Defendants did not request in their motion that the negligent hiring, training, and  
20 supervision claim be dismissed. There was no indication that this claim was at issue until the court  
21 made its ruling. Plaintiff did not have sufficient notice and the opportunity to defend herself on that  
22 cause of action before the district court’s ruling was made. Therefore, the Court committed clear  
23 error in granting summary judgment as to Plaintiff’s second cause of action for negligent hiring,  
24 training, and supervision.

25  
26 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**, that Plaintiff’s Motion  
27 to Alter or Amend Judgment Pursuant to NRCP 59 is **GRANTED IN PART** only as it pertains to  
28

Plaintiff's cause of action for negligent hiring, training, and supervision. Accordingly, the court's prior order entered on November 23, 2021, is hereby amended pursuant to *Renown* and NRCP 59(e) to reinstate that cause of action.

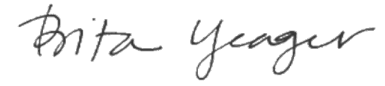
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, that Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59 is **DENIED** in all other aspects.

This Court notes that this order, combined with the prior order that is hereby incorporated by reference, resolves all claims by or against Defendant Tyron[e] Henderson and removes him as a party from the case.

IT IS FURTHER ORDERED that there is no just reason for delay for entry or enforcement of this Order, and as such this Order is certified as final pursuant to NRCP 54(b) as to the basis for Defendant Tyron[e] Henderson's dismissal from this case.

IT IS SO ORDERED.

Dated this 24th day of June, 2022



358 A4C 9786 6841  
DISTRICT COURT JUDGE  
Bita Yeager  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Maria McMillin, Plaintiff(s)

CASE NO: A-19-787989-C

7 vs.

DEPT. NO. Department 1

8 7-Eleven, Inc, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/24/2022

15 Joseph Wirth

joe@mwinjury.com

16 Ash Ganier

ash@mwinjury.com

17 Bradley Mainor

brad@mwinjury.com

18 Lindsay Hayes

Lindsay@mwinjury.com

19 Cindie Hernandez

chernandez@lawhjc.com

20 Natalie Cothran

Natalie@mwinjury.com

21 Jamie Soquena

jsoquena@lawhjc.com

22 Joseph Guindy

jguindy@mwinjury.com

23 Gregory Scott

gscott@lawhjc.com

24 Erika Parker

eparker@lawhjc.com

25 Alysse Beasley

26 alysse@mwinjury.com  
27  
28

1 If indicated below, a copy of the above mentioned filings were also served by mail  
2 via United States Postal Service, postage prepaid, to the parties listed below at their last  
3 known addresses on 6/27/2022

4 Melissa Roose

Backus, Carranza & Burden  
Attn: Melissa J. Roose, Esq  
3050 S. Durango Dr.  
Las Vegas, NV, 89117

6 Steven Jaffe

Hall Jaffe & Clayton , LLP  
Attn: Steven Jaffe  
7425 Peak Drive  
Las Vegas, NV, 89128



# Exhibit 5

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 MARIA MCMILLIN, an individual,  
5  
6 Plaintiff,

7 v.

Case No. A-19-787989-C

8 ROBERT THOMPSON; Individually and as  
9 Franchisee; TYRON HENDERSON,  
10 Individually; DOES I-XX, inclusive; and  
11 ROE CORPORATIONS I - XX, inclusive,

Dept. No. 1

12 Defendants.

13 **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO**  
14 **ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59**

15 On February 2, 2022, a hearing was conducted on PLAINTIFF'S MOTION TO ALTER OR  
16 AMEND JUDGMENT PURSUANT TO NRCP 59, with Ash Marie Blackburn, Esq., appearing on  
17 behalf of Plaintiff, and Steven T. Jaffe, Esq., appearing on behalf of the Defendants. The matter  
18 having been fully briefed, all supporting materials having been reviewed, and following oral  
19 argument by counsel. The Court hereby orders as follows:

20 **PROCEDURAL HSTORY**

21 On December 13, 2019, a Stipulation and Order to Allow Plaintiff to Amend Complaint was  
22 filed, to add Robert Thompson, Franchisee, as a party in the place and stead of 7-ELEVEN Inc., and  
23 Tyron[e] Henderson be substituted in the place and stead of Doe Employee. On January 14, 2020,  
24 Plaintiff filed an Amended Complaint; however, it did not fully replace "Doe Employee" with  
25 "Defendant Tyron[e] Henderson" and "7-Eleven, Inc." with "Defendant Robert Thompson." The  
26 deadline to amend pleadings was April 22, 2021. On September 22, 2021, Defendants Robert  
27  
28

1 Thompson and Tyrone Henderson filed a Motion for Judgment on the Pleadings, or in the  
2 Alternative, Motion for Summary Judgment on Plaintiff's Negligence claim. Plaintiff filed an  
3 Opposition and Countermotion to Amend on October 6, 2021. The parties presented oral argument  
4 on the motion on October 27, 2021. On that day, the Court granted the motion applying a summary  
5 judgment standard. An Order Granting Summary Judgment was filed on November 23, 2021.

6  
7 On December 14, 2021, Plaintiff filed their Motion to Alter or Amend Judgment Pursuant to  
8 NRCP 59. Before the Motion was heard in District Court, Plaintiff filed a Notice of Appeal on  
9 December 22, 2021. The appeal was dismissed by the Nevada Supreme Court on January 25, 2022.  
10 The Nevada Supreme Court subsequently denied a motion to vacate or modify the order dismissing  
11 their appeal, noting that the appeal "may have been prematurely filed because appellant filed a  
12 timely NRCP 59 motion to alter or amend in the district court and the motion remained pending  
13 when the instant appeal was filed." *McMillin v. Thompson* (Feb. 11, 2022), Order Denying Motion,  
14 No. 22-04613. Remittitur issued on February 23, 2022.

#### 15 ORDER

16  
17 NRCP 59(e) allows a party to file a motion to alter or amend a judgment in cases where it  
18 "may be appropriate to correct 'manifest errors of law or fact,' address 'newly discovered or  
19 previously unavailable evidence,' 'prevent manifest injustice,' or address a 'change in controlling  
20 law.'" *Panorama Towers Condo. Unit Owners' Ass'n v. Hallier*, 137 Nev. Adv. Op. 67, 498 P.3d  
21 222, 224 (2021) (citing *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190,  
22 1193 (2010)).

#### 23 I. Negligence

24  
25 "In order to state a claim for negligence, a plaintiff must allege that (1) the defendant owed  
26 the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause  
27 of the plaintiff's injuries, and (4) the plaintiff suffered damages." *Sadler v. PacifiCare of Nev.*, 130  
28

1 Nev. 990, 993–94, 340 P.3d 1264, 1266–67 (2014). The Court ruled that Plaintiff’s Complaint  
2 should be dismissed for failure to allege that the Defendants owed Plaintiff a duty of care. In the  
3 Order Granting Tyron[e] Henderson’s Motion for Judgment on the Pleadings, or in the Alternative  
4 Motion for Summary Judgment and Defendant Robert Thompson’s Motion for Judgment on the  
5 Pleadings or in the Alternative, Motion for Partial Summary Judgment filed on November 23, 2021,  
6 the Court found that there are no allegations that “the Defendants owed Plaintiff a duty of care, or  
7 that they breached that duty.” The Court clarifies that this finding is premised on the fact that the  
8 correct defendants were not properly listed in the operating Amended Complaint, and the proper  
9 parties had not been properly substituted therein after leave was provided to the Plaintiff. Thus,  
10 Negligence had not been properly pled against the correct defendants. Therefore, the Court did not  
11 err in concluding that Plaintiff did not properly plead Negligence.  
12

13 II. Leave to Amend Complaint  
14

15 Under *Nutton v. Sunset Station, Inc.*, “when a motion seeking leave to amend a pleading is  
16 filed after the expiration of the deadline for filing such motions, the district court must first  
17 determine whether ‘good cause’ exists for missing the deadline under NRCP 16(b) before the court  
18 can consider the merits of the motion under the standards of NRCP 15(a).” 131 Nev. 279, 281, 357  
19 P.3d 966, 968 (2015). “In determining whether ‘good cause’ exists under Rule 16(b), the basic  
20 inquiry for the trial court is whether the filing deadline cannot reasonably be met despite the  
21 diligence of the party seeking the amendment.” 131 Nev. at 287, 357 P.3d at 971. In evaluating  
22 whether or not good cause has been shown, the Court can consider: (1) the explanation for the  
23 untimely conduct, (2) the importance of the requested untimely action, (3) the potential prejudice in  
24 allowing the untimely conduct, and (4) the availability of a continuance to cure such prejudice. *Id.*  
25

26 The Court did not err in denying leave to amend here. The deadline to amend pleadings  
27 expired on April 22, 2021. Plaintiff brought her Countermotion for Leave to Amend on October 6,  
28

2021, after the deadline to amend pleadings. However, as the Court reasoned, Plaintiff did not demonstrate good cause under Rule 16(b) for missing the deadline to support her leave to amend her pleadings. Plaintiff made no showing that the filing deadline cannot reasonably be met despite her diligence and Plaintiff did not address any of the four factors set forth in *Nutton* for the Court to consider. Therefore, the Court could not consider her countermotion under NRCP 15(a) in the absence of a “good cause” showing under NRCP 16(1), and did not err in denying Plaintiff’s Countermotion for Leave to Amend.

III. Sua Sponte Summary Judgment

If on a motion to dismiss, under NRCP 12(b)(5), the Court considers matters outside the pleadings, the motion must be treated as one for summary judgment under Rule 56. NRCP 12(c); see also *Stevens v. McGimsey*, 99 Nev. 840, 841, 673 P.2d 499, 500 (1983). Summary judgment is “appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). When evaluating facts for the purpose of Summary Judgment, a factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.*

NRCP 56(f) provides that the court, after giving notice and a reasonable time to respond, “may (1) grant summary judgment for a nonmovant, (2) grant the motion on grounds not raised by a party; or (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.” “Although district courts have the inherent power to enter summary judgment sua sponte pursuant to [NRCP] 56, that power is contingent upon giving the losing party notice that it must defend its claim.” *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 83, 847 P.2d 731, 735 (1993). It is “troubling when a district court grants summary judgment sua sponte

1 without having taken evidence in the form of affidavits or other documents.” *Renown Reg’l. Med. v.*  
2 *Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014). The defending party must be  
3 given notice and an opportunity to defend itself before a court may grant summary judgment sua  
4 sponte. *Id. Renown* and NRCP 56(f) make it clear that a District Court can sua sponte grant  
5 summary judgment as long as the other side has notice and an opportunity to be heard. 130 Nev. at  
6 828, 335 P.3d at 202.

7  
8 a. Summary Judgment on Negligence

9 Plaintiff here had sufficient notice and opportunity to be heard as it pertains to her  
10 Negligence claim because 1) Defendants requested summary judgment as to Plaintiff’s negligence  
11 claim in the alternative and 2) Plaintiff offered evidence outside of the pleadings, which created the  
12 possibility of the motion to dismiss the negligence claim being treated as a motion for summary  
13 judgment. The Court also found no genuine issue of material fact. Therefore, the Court did not err in  
14 granting summary judgment sua sponte as to Plaintiff’s claim of Negligence.

15  
16 b. Summary Judgment on Negligent Hiring, Training, and Supervision

17 Plaintiff here did not have sufficient notice or an opportunity to be heard regarding the  
18 Court’s sua sponte decision to grant summary judgment as to the negligent hiring, training, and  
19 supervision claim. Defendants did not request in their motion that the negligent hiring, training, and  
20 supervision claim be dismissed. There was no indication that this claim was at issue until the court  
21 made its ruling. Plaintiff did not have sufficient notice and the opportunity to defend herself on that  
22 cause of action before the district court’s ruling was made. Therefore, the Court committed clear  
23 error in granting summary judgment as to Plaintiff’s second cause of action for negligent hiring,  
24 training, and supervision.

25  
26 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**, that Plaintiff’s Motion  
27 to Alter or Amend Judgment Pursuant to NRCP 59 is **GRANTED IN PART** only as it pertains to  
28

Plaintiff's cause of action for negligent hiring, training, and supervision. Accordingly, the court's prior order entered on November 23, 2021, is hereby amended pursuant to *Renown* and NRCP 59(e) to reinstate that cause of action.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, that Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59 is **DENIED** in all other aspects.

This Court notes that this order, combined with the prior order that is hereby incorporated by reference, resolves all claims by or against Defendant Tyron[e] Henderson and removes him as a party from the case.

IT IS FURTHER ORDERED that there is no just reason for delay for entry or enforcement of this Order, and as such this Order is certified as final pursuant to NRCP 54(b) as to the basis for Defendant Tyron[e] Henderson's dismissal from this case.

IT IS SO ORDERED.

Dated this 24th day of June, 2022



358 A4C 9786 6841  
DISTRICT COURT JUDGE  
Bita Yeager  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Maria McMillin, Plaintiff(s)

CASE NO: A-19-787989-C

7 vs.

DEPT. NO. Department 1

8 7-Eleven, Inc, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/24/2022

15 Joseph Wirth

joe@mwinjury.com

16 Ash Ganier

ash@mwinjury.com

17 Bradley Mainor

brad@mwinjury.com

18 Lindsay Hayes

Lindsay@mwinjury.com

19 Cindie Hernandez

chernandez@lawhjc.com

20 Natalie Cothran

Natalie@mwinjury.com

21 Jamie Soquena

jsoquena@lawhjc.com

22 Joseph Guindy

jguindy@mwinjury.com

23 Gregory Scott

gscott@lawhjc.com

24 Erika Parker

eparker@lawhjc.com

25 Alysse Beasley

26 alysse@mwinjury.com  
27  
28



1 If indicated below, a copy of the above mentioned filings were also served by mail  
2 via United States Postal Service, postage prepaid, to the parties listed below at their last  
3 known addresses on 6/27/2022

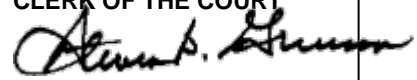
4 Melissa Roose

Backus, Carranza & Burden  
Attn: Melissa J. Roose, Esq  
3050 S. Durango Dr.  
Las Vegas, NV, 89117

6 Steven Jaffe

Hall Jaffe & Clayton , LLP  
Attn: Steven Jaffe  
7425 Peak Drive  
Las Vegas, NV, 89128

# **Exhibit 6**



**MORRIS LAW CENTER**  
SARAH A. MORRIS, ESQ.  
Nevada Bar No. 8461  
sarah@morrislawcenter.com  
TIMOTHY A. WISEMAN, ESQ.  
Nevada Bar No. 13786  
tim@morrislawcenter.com  
5450 W. Sahara Ave., Suite 330  
Las Vegas, Nevada 89146  
Telephone: (702) 850-7798  
Facsimile: (702) 850-7998  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MARIA MCMILLIN, an individual,

Plaintiff,

vs.

ROBERT THOMPSON; Individually and as  
Franchisee; TYRON HENDERSON,  
Individually; DOES I-XX, inclusive; and ROE  
CORPORATIONS I-XX, inclusive

Defendants.

Case No.: A-19-787989-C

Dept. No.: 1

**NOTICE OF APPEAL**

...

...

...

1 NOTICE is hereby given that the Plaintiff, Maria McMillan, appeal to the  
2 Supreme Court of Nevada from the District Court's ORDER GRANTING IN PART  
3 AND DENYING IN PART PLAINTIFF'S MOTION TO ALTER OR AMEND  
4 JUDGMENT PURSUANT TO NRCP 59 and all orders merged into that order.<sup>1</sup>

5  
6 Dated this 18<sup>th</sup> day of July, 2022.

7 MORRIS LAW CENTER

8  
9 By: Timothy A. Wiseman  
10 Sarah A. Morris, Esq.  
11 Nevada Bar No. 8461  
12 Timothy A. Wiseman  
13 Nevada Bar No. 13786  
14 *Attorneys for Plaintiff*  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 <sup>1</sup> This expressly includes the Order Granting Summary Judgment filed on November 23, 2021.

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF APPEAL** by the method indicated:

\_\_\_\_\_  
**BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

\_\_\_\_\_  
**BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

  X    
**BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

and addressed to the following:

Steve T. Jaffe, Esq.  
Cindie D. Hernandez, Esq.  
HALL JAFFE & CLAYTON, LLP  
7425 Park Run Drive  
Las Vegas, NV 89128  
*Attorney for Defendant*

Dated this 18<sup>th</sup> day of July, 2022.



\_\_\_\_\_  
An employee of Morris Law Center