

DENNIS L. KENNEDY
Nevada Bar No. 1462
SARAH E. HARMON
Nevada Bar No. 8106
JOSHUA P. GILMORE
Nevada Bar No. 11576
ANDREA M. CHAMPION
Nevada Bar No. 13461
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
DKennedy@BaileyKennedy.com
SHarmon@BaileyKennedy.com
JGilmore@BaileyKennedy.com
AChampion@BaileyKennedy.com

Attorneys for Respondent
HARVEST MANAGEMENT SUB LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON M. MORGAN, individually,

Appellant,

vs.

DAVID E. LUJAN, individually; and
HARVEST MANAGEMENT SUB
LLC, a foreign limited-liability
company,

Respondents.

Supreme Court No. 77753

District Court No. A-15-718679-C

**RESPONDENT HARVEST
MANAGEMENT SUB LLC'S
RESPONSE TO DOCKETING
STATEMENT**

Electronically Filed
Feb 11 2019 03:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Pursuant to Nevada Rule of Appellate Procedure 14(f), Respondent
Harvest Management Sub LLC ("Harvest") hereby responds to Appellant

1 Aaron M. Morgan’s (“Morgan”) Docketing Statement, filed on January 31,
2 2019. Harvest’s Response is attached hereto as Exhibit A.

3 DATED this 11th day of February, 2019.

4 BAILEY ❖ KENNEDY

5 By: /s/ Dennis L. Kennedy
6 DENNIS L. KENNEDY
7 SARAH E. HARMON
8 JOSHUA P. GILMORE
9 ANDREA M. CHAMPION

10 *Attorneys for Respondent*
11 HARVEST MANAGEMENT SUB
12 LLC
13
14
15
16
17

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 11th day of February, 2019, service of the foregoing **RESPONDENT HARVEST MANAGEMENT SUB LLC'S RESPONSE TO DOCKETING STATEMENT** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

MICAH S. ECHOLS
TOM W. STEWART
**MARQUIS AURBACH
COFFING**
1001 Park Run Drive
Las Vegas, Nevada 89145

Email: mechols@maclaw.com
tstewart@maclaw.com

Attorneys for Appellant
AARON M. MORGAN

BENJAMIN P. CLOWARD
BRYAN A. BOYACK
**RICHARD HARRIS LAW
FIRM**
801 South Fourth Street
Las Vegas, Nevada 89101

Email:
Bbenjamin@richardharrislaw.com
bryan@richardharrislaw.com

Attorneys for Appellant
AARON M. MORGAN

DOUGLAS J. GARDNER
DOUGLAS R. RANDS
BRETT SOUTH
**RANDS, SOUTH &
GARDNER**
1055 Whitney Ranch Drive,
Suite 220
Henderson, Nevada 89014

Email:
dgardner@rsglawfirm.com
drands@rsgnvlaw.com
bsouth@rsgnvlaw.com

Attorneys for Respondent
DAVID E. LUJAN

ARA H. SHIRINIAN
10651 Capesthorne Way
Las Vegas, Nevada 89135

Email: arashirinian@cox.net

Settlement Program Mediator

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

EXHIBIT A

EXHIBIT A

RESPONDENT'S RESPONSE TO DOCKETING STATEMENT

A. Statement of the Case: Morgan abandoned any and all claims against Harvest during trial. He failed to prove any claim against Harvest, and he failed to present any claim against Harvest to the jury for determination.

Morgan did not allege a claim for vicarious liability against Harvest. He pled a claim for negligent entrustment. No claim for vicarious liability was tried to the jury. No evidence was offered at trial to prove a claim for vicarious liability — particularly as to the essential element of the employee acting within the course and scope of his employment. Moreover, the undisputed evidence at trial demonstrated that the employee was at lunch at the time of the accident. Thus, under the coming and going rule, Harvest cannot be vicariously liable.

The jury's verdict is not the result of an alleged "clerical error" in the caption of the special verdict form. The jury did not render a verdict against Harvest because Morgan failed to present a claim against Harvest to the jury for determination. Morgan made a voluntary and intentional decision to exclude any claim against Harvest from the jury's determination, as demonstrated by the lack of evidence offered against Harvest at trial, the lack of jury instructions pertaining to any claim against Harvest, and Morgan's explanation of the verdict form to the jury in closing arguments. Thus, the district court denied Morgan's Motion for Entry of Judgment against Harvest.

B. Issues on Appeal: Morgan never requested that Judge Elizabeth Gonzalez transfer the case back to Judge Linda Bell for determination of any of the post-trial issues on appeal. Therefore, the issue of whether or not Judge Gonzalez should have granted such relief is not a proper issue on appeal.