

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

AARON M. MORGAN, an individual,

Appellant,

vs.

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

Respondents.

Electronically Filed  
Feb 19 2019 02:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No.: 77753

Appeal from the Eighth Judicial District  
Court, the Honorable Elizabeth Gonzalez  
Presiding

**AARON MORGAN'S RESPONSE TO HARVEST MANAGEMENT'S  
MOTION TO DISMISS APPEAL AS PREMATURE**

**and**

**CONDITIONAL COUNTER-MOTION TO POSTPONE OR EXTEND  
TIME FOR CONSIDERATION OF MOTION TO DISMISS**

**Marquis Aurbach Coffing**

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*Attorneys for Appellant, Aaron M. Morgan*

MAC:15167-001 3655021\_1

## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Appellant, Aaron M. Morgan, is an individual.

Mr. Morgan is represented in this Court and in the District Court by Micah S. Echols, Esq. and Kathleen A. Wilde, Esq., of the law firm Marquis Aurbach Coffing, and Benjamin P. Cloward, Esq. and Bryan A. Boyack, Esq., of the Richard Harris Law Firm.

Dated this 15th day of February, 2018.

### **Marquis Aurbach Coffing**

/s/ Micah S. Echols  
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*Attorneys for Appellant, Aaron M. Morgan*

## **I. INTRODUCTION**

Appellant Aaron Morgan (“Morgan”) filed a notice of appeal challenging a judgment upon jury verdict and a related interlocutory order in which the District Court ruled that the jury’s verdict only applied to one of the defendants. Although judgments upon jury verdicts are typically appealable under Nevada Rule of Appellate Procedure (“NRAP”) 3A(b)(1), Harvest Management Sub LLC (“Harvest Management”) argues that Morgan’s appeal is premature because there are allegedly unresolved issues pending in the District Court.

Because the parties are currently participating in the Supreme Court Settlement Program, the instant Response urges the Court to deny Harvest Management’s motion as improperly timed. As such, Morgan asks this Court to postpone consideration of the motion because it is inefficient to expend resources litigating issues that may be unnecessary if the parties reach a settlement. Alternatively, the Court should allow Morgan 30 days from the Court’s order to file a more complete response to Harvest Management’s motion.

## **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

On April 1, 2014, Morgan sustained serious, life-altering injuries when a Montara Meadows<sup>1</sup> shuttle bus pulled in front of Morgan's moving vehicle. Morgan then filed a complaint in which he asserted three causes of action: (1) negligence against the driver of the shuttle bus, David Lujan ("Lujan" and collectively with Harvest Management, "Defendants"); (2) negligence per se against Lujan premised on his failure to obey traffic laws; and (3) vicarious liability/respondeat superior against Harvest Management based on its ownership of the shuttle bus and employment of Lujan. The Defendants jointly answered the complaint on June 16, 2015, and the case progressed in the ordinary course before the Honorable Judge Linda Bell.

Following a mistrial in November 2017 caused by Defendants, the case proceeded to a second trial in April 2018, in which the jury ultimately found Defendants negligent and 100% at fault for the accident. In addition, the jury awarded Morgan \$2,980,000 for past and future medical expenses as well as past and future pain and suffering.

On June 29, 2018, the District Court filed a Civil Order to Statistically Close Case in which the box labeled "Jury – Verdict Reached" was checked. The

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<sup>1</sup> Montara Meadows is a senior citizen community in Las Vegas which is under the purview of Harvest Management.

following Monday, when Judge Bell assumed the role of Chief Judge in the District Court, the case was reassigned to the Honorable Judge Elizabeth Gonzalez as part of a mass reassignment of cases that came with the new fiscal year. *See* Eighth Judicial District Court Administrative Order 18-05. Morgan filed a motion for entry of judgment to clarify the verdict form. Although Judge Bell presided at the trial, Judge Gonzalez decided the motion and refused to clarify the verdict.

On December 18, 2018, Morgan filed a notice of appeal from the interlocutory order denying his motion for entry of judgment and the judgment upon the jury verdict. As explained in Morgan's Docketing Statement, the issues on appeal center on Judge Gonzalez's determination that the jury's verdict pertained to only one of the Defendants. Morgan's appeal also implicates *Hornwood v. Smith's Food King No. 1*, 105 Nev. 188, 191, 772 P.2d 1284, 1286 (1989), because Judge Gonzalez rejected Mr. Morgan's argument that Judge Bell, the jurist who presided over every aspect of the case, including both trials, is better equipped to address purported irregularities in the verdict form.

On December 27, 2018, this Court issued a Notice of Referral to Settlement Program and Suspension of Rules.<sup>2</sup> The Settlement Judge filed a report in this

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<sup>2</sup> *See* **Exhibit 1**.

Court on January 24, indicating that this case is appropriate for the NRAP 16 Settlement Program.<sup>3</sup>

### **III. LEGAL ARGUMENT**

NRAP 16(a) provides that any civil appeal in which all parties are represented by counsel may be assigned to the Court's Settlement Program. Although participation is favored, this Court's Settlement Program Administrator determines whether use of the Program is actually sensible in a given case. Upon the Program Administrator's recommendation, the Clerk of this Court notifies parties if their case has been assigned to the Settlement Program.

Under NRAP 16(a)(1), the Clerk's assignment notice automatically stays the time for requesting transcripts and filing briefs. This Court frequently rejects motions to dismiss so the parties can focus on settlement efforts. *See, e.g., West Charleston Lofts I, LLC v. Interior Specialists, Inc.*, Case No. 57152 (Order Denying Motion Jan. 5, 2011); *SNHD v. Clark County*, Case No. 61320 (Order Sept. 7, 2012); *Park West Companies, Inc. v. Amazon Construction Corporation*, Case No. 70154 (Order Denying Motion July 19, 2016).<sup>4</sup> This approach is sensible

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<sup>3</sup> *See* **Exhibit 2**. Earlier this week, the parties agreed to continue the February 26, 2019 settlement conference before Settlement Judge Shirinian to March 19, 2019.

<sup>4</sup> *See* **Exhibit 3**.

because the Settlement Program has an excellent success rate, and there is no need to expend resources on cases that can be resolved.

Here, Harvest Management filed its motion to dismiss several weeks after the case was assigned to the NRAP 16 Settlement Program. Harvest Management's motion is thus ill-timed because the parties are actively participating in the Settlement Program with the goal of resolving their dispute. And, as such, this Court should deny Harvest Management's Motion to Dismiss, at least for the time being, so that the parties can focus their attention on settlement efforts.

Alternatively, Morgan submits that this Court should postpone consideration of the motion to dismiss or extend the due date for responsive pleadings because it is likely that the issues before the Court will be resolved in the upcoming month. Given the March 19, 2019 Settlement Conference, the parties are already discussing settlement negotiations to gauge how best to use their time with the Settlement Judge. Because everyone must participate in good faith, Morgan is cautiously optimistic that a settlement will eliminate the need for appellate litigation. Thus, to summarize, it is inefficient to expend resources on a motion to dismiss while the parties should be focused on settlement. Therefore, this Court should deny Harvest Management's motion with the right to renew after the

completion of the scheduled settlement conference, if necessary. Alternatively, the Court should allow Morgan 30 days from the Court's order to file a more complete response to Harvest's motion.

#### **IV. CONCLUSION**

Since the parties are actively participating in this Court's Settlement Program, Morgan respectfully submits that the Court should reject Harvest Management's motion to dismiss as ill-timed. Alternatively, this Court should extend the time for a more substantive response by 30 days, particularly because the issues raised in Harvest Management's motion are likely to become moot.

Dated this 15th day of February, 2019.

#### **Marquis Aurbach Coffing**

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Bryan@RichardHarrisLaw.com

*Attorneys for Appellant, Aaron M. Morgan*



## **CERTIFICATE OF SERVICE**

I hereby certify that **AARON MORGAN'S RESPONSE TO HARVEST MANAGEMENT'S MOTION TO DISMISS APPEAL AS PREMATURE and CONDITIONAL COUNTER-MOTION TO POSTPONE OR EXTEND TIME FOR CONSIDERATION OF MOTION TO DISMISS** was filed electronically with the Nevada Supreme Court on the 15th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Douglas Gardner  
Joshua Gilmore  
Andrea Champion  
Dennis Kennedy  
Sarah Harmon

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Ara H. Shirinian, Esq.  
10651 Capesthorpe Way  
Las Vegas, NV 89135  
*Settlement Judge*

/s/ Leah Dell  
Leah Dell, an employee of  
Marquis Aurbach Coffing

# Exhibit 1

**IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK**

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 Case No. A718679

**NOTICE OF REFERRAL TO SETTLEMENT PROGRAM AND SUSPENSION  
OF RULES**

TO: Marquis Aurbach Coffing \ Micah S. Echols, Thomas W. Stewart  
Richard Harris Law Firm \ Bryan A. Boyack, Benjamin P. Cloward  
Bailey Kennedy \ Andrea M. Champion, Joshua P. Gilmore, Sarah E. Harmon,  
Dennis L. Kennedy  
Rands, South & Gardner/Henderson \ Douglas J. Gardner

This notice is to inform you that this appeal may be assigned to the court's Settlement Program. See NRAP 16(a). The issuance of this notice automatically stays the time for filing a request for transcripts under NRAP 9, and for filing briefs under NRAP 31. See NRAP 16(a)(1).

The docketing statement must be filed and served within 20 days of the date of this notice. This timeline is not stayed by this notice.

DATE: December 27, 2018

Elizabeth A. Brown, Clerk of Court

By: Linda Hamilton  
Deputy Clerk

Notification List

Electronic

Marquis Aurbach Coffing \ Micah S. Echols  
Marquis Aurbach Coffing \ Thomas W. Stewart  
Rands, South & Gardner/Henderson \ Douglas J. Gardner  
Bailey Kennedy \ Dennis L. Kennedy  
Bailey Kennedy \ Sarah E. Harmon  
Bailey Kennedy \ Joshua P. Gilmore  
Bailey Kennedy \ Andrea M. Champion  
Richard Harris Law Firm \ Benjamin P. Cloward  
Richard Harris Law Firm \ Bryan A. Boyack

18-910664

## Exhibit 2

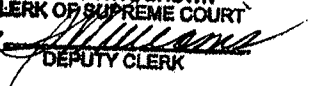
IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON M. MORGAN, INDIVIDUALLY,  
Appellant,  
vs.  
DAVID E. LUJAN, INDIVIDUALLY; AND  
HARVEST MANAGEMENT SUB LLC, A  
FOREIGN LIMITED-LIABILITY  
COMPANY,  
Respondents.

No. 77753

**FILED**

JAN 24 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

**SETTLEMENT PROGRAM**  
**EARLY CASE ASSESSMENT REPORT**

After conducting a premediation conference with counsel pursuant to NRAP 16(b), I make the following recommendation to the court regarding this appeal:

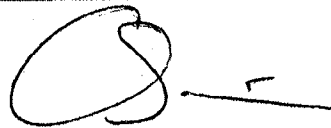
- ☒ This case is appropriate for the program and a mediation session will be scheduled/has been scheduled for:

2/26/19 @ 10:00 am @ Bailey  
Kennedy

- ☐ This case is not appropriate for mediation and should be removed from the settlement program.

- ☐ The premediation conference has not been conducted or is continued because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Settlement Judge

cc: All Counsel

19-03829

## Exhibit 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

WEST CHARLESTON LOFTS I, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND CHRISTOPHER  
COMMERCIAL, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Appellants,

vs.

INTERIOR SPECIALISTS, INC., A  
CALIFORNIA CORPORATION,

Respondent.

No. 57152

**FILED**

**JAN 05 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DENYING MOTION

Respondent has filed a motion requesting this court to dismiss this appeal for lack of jurisdiction. We deny the motion. This denial is without prejudice to respondent's right to renew the motion, if necessary, upon completion of settlement proceedings.

It is so ORDERED.

*[Signature]*, C.J.

cc: Thomas J. Tanksley, Settlement Judge  
Marquis & Aurbach  
McCullough, Perez & Associates, Ltd.

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN NEVADA HEALTH  
DISTRICT,

Appellant,

vs.

CLARK COUNTY, NEVADA; BOARD  
OF COMMISSIONERS OF CLARK  
COUNTY, NEVADA; SUSAN BRAGER,  
CLARK COUNTY, NEVADA  
COMMISSIONER; STEVE SISLOCK,  
CLARK COUNTY, NEVADA  
COMMISSIONER; TOM COLLINS,  
CLARK COUNTY, NEVADA  
COMMISSIONER; LARRY BROWN,  
CLARK COUNTY, NEVADA  
COMMISSIONER; LAWRENCE  
WEEKLY, CLARK COUNTY, NEVADA  
COMMISSIONER; CHRIS  
GIUNCHIGLIANI, CLARK COUNTY,  
NEVADA COMMISSIONER; MARY  
BETH SCOW, CLARK COUNTY,  
NEVADA COMMISSIONER; AND DON  
BURNETTE, CLARK COUNTY,  
NEVADA MANAGER,

Respondents.

No. 61320

**FILED**

SEP 07 2012

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *J. Shupp*  
DEPUTY CLERK

ORDER

This appeal was docketed on July 20, 2012, and is currently assigned to this court's settlement program. The settlement judge has filed an Early Case Assessment Report indicating that the appeal is appropriate for mediation and that a session is scheduled for September 28, 2012. See NRAP 16(b) (the settlement judge shall conduct a pre-mediation telephone conference with counsel and file an Early Case

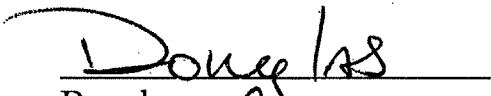


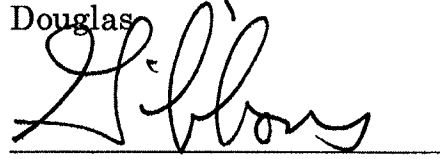
Assessment Report within 30 days indicating whether the appeal is appropriate for the program).

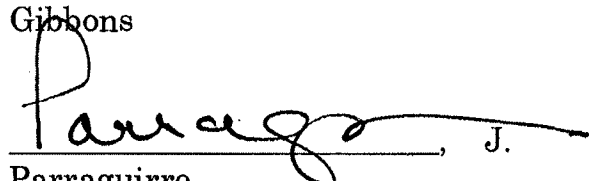
Respondents have filed a "Motion for Summary Affirmance." Appellant has opposed the motion, and requests that this appeal be allowed to proceed. Respondents have filed a reply in which they request this court to grant their motion for summary affirmance given their "showing that [appellant's] arguments are devoid of merit."

After considering the parties' filings on this matter, and in light of the settlement judge's report, we deny respondents' motion. This appeal shall proceed.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Ara H. Shirinian, Settlement Judge  
Marquis Aurbach Coffing  
Kolesar & Leatham, Chtd.

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARK WEST COMPANIES INC., A  
NEVADA CORPORATION,

Appellant,

vs.


AMAZON CONSTRUCTION  
CORPORATION, A NEVADA  
CORPORATION,

Respondent.

No. 70154

**FILED**

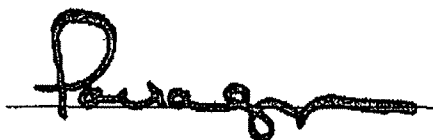
JUL 19 2016

THOMAS K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING MOTION*

Respondent has filed a motion requesting this court to dismiss this appeal for lack of jurisdiction. Appellant has opposed the motion. We deny the motion. This denial is without prejudice to respondent's right to renew the motion, if necessary, upon completion of settlement proceedings.

It is so ORDERED.<sup>1</sup>

 C.J.

cc: Lansford W. Levitt, Settlement Judge  
Marquis Aurbach Coffing  
Howard & Howard Attorneys PLLC  
Steven M. Garber & Associates, A Professional Corporation  
Gordon & Rees, LLP

<sup>1</sup>The settlement judge has filed a Settlement Program Status Report indicating that this appeal is appropriate for mediation and that a settlement conference is scheduled for August 24, 2016.