

Case No. _____

IN THE SUPREME COURT OF NEVADA

HARVEST MANAGEMENT SUB LLC,
Petitioner,

Electronically Filed
Apr 18 2019 01:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
CHIEF JUDGE,

Respondent,

- and -

AARON M. MORGAN and DAVID E. LUJAN,
Real Parties in Interest.

District Court Case No. A-15-718679-C, Department VII

**APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 11 OF 14**

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April 18, 2019

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 11 OF 14

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

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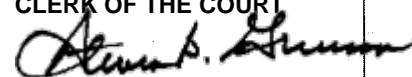
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TAB 18

TAB 18

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*Attorneys for Plaintiff, Aaron M. Morgan***DISTRICT COURT****CLARK COUNTY, NEVADA**

AARON M. MORGAN, individually,

Plaintiff,

vs.

DAVID E. LUJAN, individually; HARVEST
MANAGEMENT SUB LLC; a Foreign Limited-
Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

Defendants.

Case No.: A-15-718679-C

Dept. No.: XI

PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

Plaintiff, Aaron M. Morgan, in this matter, by and through his attorneys of record,
Benjamin P. Cloward, Esq. and Bryan A. Boyack, Esq., of the Richard Harris Law Firm, and
Micah S. Echols, Esq. and Tom W. Stewart, Esq., of Marquis Aurbach Coffing, hereby files
Plaintiff's Motion for Entry of Judgment. This motion is made and based on the papers and

pleadings on file herein, the attached memorandum of points and authorities, and the oral argument before the Court.

NOTICE OF MOTION

You and each of you, will please take notice that **PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT** will come on regularly for hearing on the 04 day of Sept., 2018 at the hour of 9:00 A.m. or as soon thereafter as counsel may be heard, in Department 11 in the above-referenced Court.

Dated this ____ day of July, 2018.

MARQUIS AURBACH COFFING

By _____
Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiff, Aaron M. Morgan

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 9, 2018, a Clark County jury rendered judgment in favor of Plaintiff, Aaron Morgan ("Morgan"), and against Defendants, David Lujan ("Lujan") and Harvest Management Sub LLC ("Harvest Management"), in the amount of \$2,980,980.00, plus pre- and post-judgment interest.¹ It was undisputed during trial that Lujan was acting within the course and scope of his employment with Harvest Management at the time of the traffic accident at the center of the case. All evidence and testimony indicated Morgan sought relief from, and that judgment would be entered against, both Defendants. However, the special verdict form prepared by the Court (the "special verdict form") inadvertently omitted Harvest Management from the caption, despite Harvest Management being listed on the pleadings and jury instructions upon which the jury

¹ See Special Verdict, attached as **Exhibit 1**.

1 relied when reaching the verdict itself. The Court acknowledged this omission, and Defendants
2 conceded they had no objection to it. Accordingly, Morgan respectfully requests this Court enter
3 judgment against both Defendants, in accordance with the jury instructions, pleadings,
4 testimony, and evidence, either by (a) simply entering the proposed judgment attached hereto or,
5 (b) by making an explicit finding that the judgment was rendered against both Defendants
6 pursuant to NRCP 49(a) and then entering judgment accordingly.²

7 **II. FACTUAL BACKGROUND**

8 On April 1, 2014, Morgan was driving his Ford Mustang north on McLeod Drive in the
9 right lane. Morgan approached the intersection with Tompkins Avenue. At that time, Lujan,
10 who was driving a shuttle bus owned by Harvest Management, entered the intersection driving
11 east from the Paradise Park driveway, and attempted to cross McLeod Drive heading east on
12 Tompkins Avenue. The front of Morgan's car struck the side of Defendants' bus in a major
13 collision resulting in total loss of Morgan's vehicle and serious bodily injuries. Morgan was
14 transported from the scene of the accident to Sunrise Hospital. The emergency room physicians
15 focused on potential head trauma and injuries to the cervical spine and to Morgan's wrists.
16 Morgan was eventually discharged with instructions to follow up with a primary care physician.
17 A week later, Morgan sought treatment for pain in his neck, lower-back, and both wrists.

18 Over the next two years, Morgan underwent a series of treatments and procedures for his
19 injuries—including bilateral medial branch block injections to his thoracic spine; injections to
20 ease the pain from his bilateral triangular fibrocartilage tears; left wrist arthroscope and
21 triangular fibrocartilage tendon repair with debridement, incurring approximately nearly
22 \$264,281.00 in medical expenses.

23 **III. PROCEDURAL HISTORY**

24 On May 5, 2015, Morgan filed a complaint for negligence and negligence per se against
25 Lujan and vicarious liability against Harvest Management. In jointly answering the complaint,
26 both Defendants were represented by the same counsel and both named in the caption.

27
28 ² See proposed Judgment Upon the Jury Verdict, attached as **Exhibit 2**.

1 After a lengthy discovery period, the case initially proceeded to trial in early November,
2 2017. During the initial trial, Lujan testified that he was employed by Montara Meadows, a local
3 entity under the purview of Harvest Management:

4 [Morgan's counsel]: All right. Mr. Lujan, at the time of the accident in April of
5 2014, were you employed with Montara Meadows?

6 [Lujan]: Yes.

7 [Morgan's counsel]: And what was your employment?

8 [Lujan]: I was the bus driver.

9 [Morgan's counsel]: Okay. And what is your understanding of the relationship
10 of Montara Meadows to Harvest Management?

11 [Lujan]: Harvest Management was our corporate office.

12 [Morgan's counsel]: Okay.

13 [Lujan]: Montara Meadows is just the local --

14 [Morgan's counsel]: Okay. All right. And this accident happened April 1,
15 2014, correct?

16 [Lujan]: Yes, sir.³

17 However, on the third day of the initial trial, the Court declared a mistrial based on
18 Defendants' counsel's misconduct.⁴

19 Following the mistrial, the case proceeded to a second trial the following April.
20 Vicarious liability was not contested during trial. Instead, Harvest Management's
21 NRCP 30(b)(6) representative contested primary liability—the representative claimed that either
22 Morgan or an unknown third party was primarily responsible for the accident—but did not
23 contest Harvest Management's own vicarious liability.⁵

24 ³ Transcript of Jury Trial, November 8, 2017, attached as **Exhibit 3**, at 109 (direct examination
25 of Lujan).

26 ⁴ See **Exhibit 3** at 166 (the Court granting Plaintiff's motion for mistrial); see also Court
27 Minutes, November 8, 2017, attached as **Exhibit 4**.

28 ⁵ See Transcript of Jury Trial, April 5, 2018, attached as **Exhibit 5**, at 165–78 (testimony of
Erica Janssen, NRCP 30(b)(6) witness for Harvest Management); Transcript of Jury Trial,
April 6, 2018, attached as **Exhibit 6**, at 4–15 (same).

1 On the final day of trial, the Court *sua sponte* created a special verdict form that
2 inadvertently included Lujan as the only Defendant in the caption. The Court informed the
3 parties of this omission, and the Defendants explicitly agreed they had no objection:

4 THE COURT: Take a look and see if -- will you guys look at that verdict
5 form? I know it doesn't have the right caption. I know it's just the one we used
6 the last trial. See if that looks sort of okay.

7 [Defendants' counsel]: Yeah. That looks fine.

8 THE COURT: I don't know if it's right with what you're asking for for
9 damages, but it's just what we used in the last trial which was similar sort of.

10 At the end of the six-day jury trial, jury instructions were provided to the jury with the
11 proper caption.⁶ The jury used those instructions to fill-out the improperly-captioned special
12 verdict form and render judgment in favor of Plaintiff—the jury found Defendants to be
13 negligent and 100% at fault for the accident.⁷ As a result, the jury awarded Plaintiff \$2,980,000.⁸

14 IV. LEGAL ARGUMENT

15 This Court should enter the proposed Judgment on the Jury Verdict attached as
16 **Exhibit 2**—it provides that judgment was rendered against both Lujan and Harvest Management
17 because such a result conforms to the pleadings, evidence, and jury instructions upon which the
18 jury relied in reaching the special verdict.

19 In the alternative, the Court should make an explicit finding pursuant to NRCP 49(a) that
20 the special verdict was rendered against both Defendants and then enter judgment accordingly.
21 NRCP 49(a) provides, in certain circumstances, the Court may make a finding on an issue not
22 raised before a special verdict was rendered. Indeed, when a special verdict is used, “the court
23 may submit to the jury written questions susceptible of categorical or other brief
24 answer . . . which might properly be made under the pleadings and evidence.” NRCP 49(a).
25 Further, “[t]he court shall give to the jury such explanation and instruction concerning the matter

26 ⁶ See Jury Instructions cover page, attached as **Exhibit 7**, at 1.

27 ⁷ See **Exhibit 1**.

28 ⁸ *Id.*

1 thus submitted as may be necessary to enable the jury to make its findings upon each issue.” *Id.*
2 However, “[i]f in so doing the court omits any issue of fact raised by the pleadings or by the
3 evidence, each party waives the right to a trial by jury of the issue so omitted unless before the
4 jury retires the party demands its submission to the jury. *As to an issue omitted without such*
5 *demand the court may make a finding*; or, if it fails to do so, it shall be deemed to have made a
6 finding in accord with the judgment on the special verdict.” *Id.* (emphasis added).

7 Here, the record plainly supports judgment being rendered against both Defendants.
8 However, should the Court wish to clarify the issue for the record, the Court should make an
9 explicit finding that the omission of Harvest Management from the special verdict was
10 inadvertent and, as a result, that judgment was rendered in favor of Morgan and both against
11 Defendants, jointly and severally.

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiff Aaron Morgan respectfully requests this Court enter
14 the proposed Judgment on the Jury Verdict attached as **Exhibit 2**. In the alternative, Plaintiff
15 requests this Court to make an explicit finding that judgment in this matter was rendered against
16 both Defendants and then enter judgment accordingly.

17 Dated this 30th day of July, 2018.

18 MARQUIS AURBACH COFFING

19
20 By /s/ Micah S. Echols

21 Micah S. Echols, Esq.

22 Nevada Bar No. 8437

23 Tom W. Stewart, Esq.

24 Nevada Bar No. 14280

25 10001 Park Run Drive

26 Las Vegas, Nevada 89145

27 Attorneys for Plaintiff, Aaron M. Morgan

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th day of July, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁹

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<i>Attorneys for Defendant Harvest Management Sub, LLC</i>	

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<i>Attorneys for Defendant David E. Lujan</i>	

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

N/A

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

⁹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR - 9 2018

BY: *A. M. Brown*
A. M. BROWN, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO: A-15-718679-C

DEPT. NO: VII

AARON MORGAN,

Plaintiff,

vs.

DAVID LUJAN,

Defendant.

SPECIAL VERDICT

We, the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

QUESTION NO. 1: Was Defendant negligent?

ANSWER: Yes ☒ No ☐

If you answered no, stop here. Please sign and return this verdict.

If you answered yes, please answer question no. 2.

QUESTION NO.2: Was Plaintiff negligent?

ANSWER: Yes ☐ No ☒

If you answered yes, please answer question no. 3.

If you answered no, please skip to question no. 4.

///

A-15-718679-C
SJV
Special Jury Verdict
4738215



1 **QUESTION NO. 3:** What percentage of fault do you assign to each party?

2 Defendant: 100

3 Plaintiff: 0

4 Total: 100%

5 Please answer question 4 without regard to you answer to question 3.

6 **QUESTION NO. 4:** What amount do you assess as the total amount of Plaintiff's damages?

7 (Please do not reduce damages based on your answer to question 3, if you answered question 3.

8 The Court will perform this task.)

9 Past Medical Expenses

\$ 208,480. 00

10 Future Medical Expenses

\$ 1,156,500. 00

11 Past Pain and Suffering

\$ 116,000. 00

12 Future Pain and Suffering

\$ 1,500,000. 00

13 TOTAL

\$ 2,980,980. 00

14
15
16 DATED this 9th day of April, 2018.

17
18 Arthur J. St. Laurent
19 FOREPERSON

20 ARTHUR J. ST. LAURENT
21
22
23
24
25
26
27
28

Exhibit 2

JGJV

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Attorneys for Plaintiff, Aaron M. Morgan

DISTRICT COURT

CLARK COUNTY, NEVADA

AARON M. MORGAN, individually,

Plaintiff,

vs.

DAVID E. LUJAN, individually; HARVEST
MANAGEMENT SUB LLC; a Foreign Limited-
Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

Defendants.

CASE NO.: A-15-718679-C

Dept. No.: XI

JUDGMENT UPON THE JURY VERDICT

JUDGMENT UPON THE JURY VERDICT

This action came on for trial before the Court and the jury, the Honorable Linda Marie Bell, District Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.¹

IT IS ORDERED AND ADJUDGED that Plaintiff, AARON M. MORGAN, have a recovery of DEFENDANTS, DAVID E. LUJAN and HARVEST MANAGEMENT SUB LLC, for the following sums:

Past Medical Expenses	\$208,480.00
Future Medical Expenses	+\$1,156,500.00
Past Pain and Suffering	+\$116,000.00
Future Pain and Suffering	+\$1,500,000.00
Total Damages	\$2,980,980.00

IT IS FURTHER ORDERED AND ADJUDGED that AARON M. MORGAN's past damages of \$324,480 shall bear Pre-Judgment interest in accordance with *Lee v. Ball*, 121 Nev. 391, 116 P.3d 64 (2005) and NRS 17.130 at the rate of 5.00% per annum plus 2% from the date of service of the Summons and Complaint on May 28, 2015, through the entry of the Special Verdict on April 9, 2018:

PRE-JUDGMENT INTEREST ON PAST DAMAGES:

05/28/15 through 04/09/18 = **\$65,402.72**

[(1,051 days) at (prime rate (5.00%) plus 2 percent = 7.00%) on \$324,480 past damages]

[Pre-Judgment Interest is approximately \$53.23 per day]

PLAINTIFF'S TOTAL JUDGMENT

Plaintiff's total judgment is as follows:

Total Damages:	\$2,980,980.00
Prejudgment Interest:	\$65,402.72
TOTAL JUDGMENT	\$3,046,382.72

¹ See Special Verdict filed on April 9, 2018, attached as **Exhibit 1**.

Now, THEREFORE, Judgment Upon the Jury Verdict in favor of the Plaintiff is as follows:

AARON M. MORGAN is hereby awarded \$3,046,382.72 against Defendants, DAVID E. LUJAN and HARVEST MANAGEMENT SUB LLC, which shall bear post-judgment interest at the adjustable legal rate from the date of the entry of judgment until fully satisfied. Post-judgment interest at the current 7.00% rate accrues interest at the rate of \$584.24 per day.

Dated this ____ day of _____, 2018.

HONORABLE ELIZABETH GONZALEZ
DISTRICT COURT JUDGE
DEPARTMENT 11

Respectfully Submitted by:

Dated this ____ day of July, 2018.

MARQUIS AURBACH COFFING

By _____
Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
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10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiff, Aaron M. Morgan

[CASE NO. A-15-718679-C—JUDGMENT UPON THE JURY VERDICT]

Exhibit 3



1 RTRAN

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 AARON MORGAN,

8 Plaintiff,

9 vs.

10 HARVEST MANAGEMENT, SUB, LLC,

11 Defendants.

)
)
) CASE NO. A718679
)
) DEPT. VII
)
)
)

12
13 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 8, 2017

14 TRANSCRIPT OF JURY TRIAL

15 APPEARANCES:

16
17 For the Plaintiff:

BENJAMIN CLOWARD, ESQ.
BRYAN BOYACK, ESQ.

18
19 For the Defendants:

DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

20 RECORDED BY: RENEE VINCENT, COURT RECORDER
21
22
23
24
25

1 THE WITNESS: Thank you, Your Honor.
2 THE COURT: Thank you.
3 Mr. Cloward, please call your next witness.
4 MR. CLOWARD: Thank you, Your Honor. We would call the
5 Defendant --
6 THE COURT: Okay.
7 MR. CLOWARD: -- Mr. Lujan.
8 THE COURT: Sir, come on up, please.
9 [Counsel confer]
10 THE MARSHAL: If you would remain standing, face the Clerk,
11 raise your right hand to be sworn in, please.
12 **DAVID LUJAN**
13 [having been called as witness and being duly sworn testified as
14 follows:]
15 THE CLERK: Thank you.
16 THE COURT: Good afternoon, sir. Go ahead and have a seat.
17 THE WITNESS: Thank you.
18 THE COURT: And if you could please state your name and
19 then spell it for the record.
20 THE WITNESS: Okay. David Lujan, D-A-V-I-D L-U-J-A-N.
21 THE COURT: Thank you.
22 **DIRECT EXAMINATION**
23 BY MR. BOYACK:
24 Q All right. Mr. Lujan, at the time of the accident in April of 2014,
25 were you employed with Montara Meadows?

1 A Yes.

2 Q And what was your employment?

3 A I was the bus driver.

4 Q Okay. And what is your understanding of the relationship of
5 Montara Meadows to Harvest Management?

6 A Harvest Management was our corporate office.

7 Q Okay.

8 A Montara Meadows is just the local --

9 Q Okay. All right. And this accident happened April 1, 2014,
10 correct?

11 A Yes, sir.

12 Q All right. And --

13 THE COURT: I'm sorry, Mr. Boyack. Could counsel approach
14 for a second?

15 [Bench conference begins at 2:31 p.m.]

16 THE COURT: It's nothing you did. I just have an IT guy here to
17 look at something that's wrong with my computer.

18 MR. BOYACK: Oh, okay. Okay.

19 THE COURT: So I'm just going to take a break, if that's all right
20 with you.

21 MR. BOYACK: Okay. Yeah. We can take a break.

22 THE COURT: I just need to take a break because the IT guy is
23 here to do something with my computer.

24 MR. GARDNER: No problem, Judge. No problem.

25 THE COURT: All right.

1 somebody and he was DUI and hauled off in the police car. There is no
2 way, no way to unring the bell. There is no way to unring the bell, and I
3 have never -- I truthfully have never insisted on a mistrial. I've halfheartedly,
4 you know, Your Honor, I may be way out of -- to kind of create a record, but
5 there's no way to recover from this. There is no way to recover from this.

6 THE COURT: All right. Anything else, Mr. Rands?

7 MR. RANDS: I just disagree on that issue. I mean, he
8 presented the case that, yes, my client, due to this accident he was arrested
9 because he had his medication -- pain medication, nothing more than that
10 and we're fighting it to -- he hasn't been convicted. I think that would cure
11 the issue and we could move on.

12 THE COURT: You know, I actually was hoping that when
13 Mr. Gardner said it that was just a mistake that we could just tell the jurors
14 that he hadn't been arrested, which, I think, might be something that was
15 fixable. Unfortunately, under the circumstances, I just don't think so. So I'm
16 going to grant Mr. Cloward's motion for mistrial. We're going to have to
17 figure out when we can do this again. I can start Monday if you want. I
18 actually could start tomorrow if you want, but we might not have a jury panel.

19 MR. CLOWARD: I would have to confer, obviously, with the
20 witnesses. I would be open Monday, fortunately, to do it. I do -- I could do it
21 Monday. I'd have to --you know, I'd need --

22 THE COURT: Mr. Rands?

23 MR. CLOWARD: -- I'd need some time -- Your Honor, I'd need
24 some time to confer with the experts. I can take a moment and begin to
25 make those phone calls now.

1 THE COURT: No, sir. You don't need to come tomorrow, but
2 they'll let you know if we're going to start again on Monday, all right?


3 THE DEFENDANT: Okay. Yeah. Because I need to request
4 the time off from work.

5 THE COURT: Okay. Well, if you need something from the
6 Court, we can always get you something, too, sir. All right.

7 THE DEFENDANT: Thank you.

8 [Proceeding concluded at 5:04 p.m.]
9
10
11
12
13
14

15 ATTEST: We do hereby certify that we have truly and correctly transcribed
16 the audio-visual recording of the proceeding in the above-entitled case to
17 the best of our ability.

18 
19 _____

20 Deborah Anderson, Transcriber, CET-998

21
22 Liesl Springer

23 Liesl Springer, Transcriber
24

25 Date: February 5, 2018

Exhibit 4

Negligence - Auto

COURT MINUTES

November 08, 2017

A-15-718679-C Aaron Morgan, Plaintiff(s)
 vs.
 David Lujan, Defendant(s)

November 08, 2017 10:00 AM Jury Trial

HEARD BY: Bell, Linda Marie COURTROOM: RJC Courtroom 15A

COURT CLERK: Perry, Sylvia

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

Aaron M Morgan	Plaintiff
Benjamin P. Cloward	Attorney for Plaintiff
David E Lujan	Defendant
Douglas R Rands	Attorney for Defendant
Douglas J Gardner, ESQ	Attorney for Defendant

JOURNAL ENTRIES

INSIDE THE PRESENCE OF THE JURY:

Testimony and exhibits presented (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY:

Arguments by Mr. Gardner advising reference to the auto citation is not relevant and prejudicial as not relevant. Opposition by Mr. Cloward stating it would be used for impeachment purposes. Further arguments by Counsel. COURT ORDERED, traffic citation inadmissible.

INSIDE THE PRESENCE OF THE JURY:

Testimony and exhibits continued.

OUTSIDE THE PRESENCE OF THE JURY:

Mr. Cloward move for a mistrial as Mr. Garner referred to a pending accident Plaintiff was involved in. Mr. Gardner advised it was brought up for impeachment purposes. COURT ORDERED, matter TRAILED. MATTER RECALLED, Court stated findings and ORDERED, mistrial GRANTED.

INSIDE THE PRESENCE OF THE JURY:

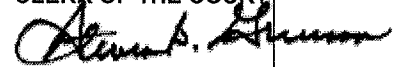
Court thanked and excused the Jury.

OUTSIDE THE PRESENCE OF THE JURY:

Colloquy regarding scheduling. COURT ORDERED, status check SET.

11/9/18 9:00 AM STATUS CHECK: TRIAL SETTING

Exhibit 5



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 AARON MORGAN,
9 Plaintiff,

CASE#: A-15-718679-C
DEPT. VII

10 vs.

11 DAVID LUJAN

12 Defendant.

13 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
14 JUDGE

15 THURSDAY, APRIL 5, 2018
16 RECORDER'S TRANSCRIPT OF HEARING
17 CIVIL JURY TRIAL

18 APPEARANCES:

19 For the Plaintiff:

DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

21 For the Defendant:

22 BRYAN BOYACK, ESQ.
23 BENJAMIN CLOWARD, ESQ.

24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 THE WITNESS: Erica Janssen. E-R-I-C-A J-A-N-S-S-E-N.

2 THE COURT: Thank you.

3 Mr. Cloward, whenever you are ready.

4 MR. CLOWARD: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MR. CLOWARD:

7 Q Ms. Janssen, how are you today?

8 A I'm well.

9 Q Good. I just have a couple questions. And we'll get you on and
10 off, okay?

11 A Thank you.

12 Q And is it Ms. Jansin or Jan --

13 A Jansen.

14 Q Jansen okay. All right, Ms. Janssen, did you have an
15 opportunity to review the sworn testimony of Mr. Lujan in this matter?

16 A No.

17 Q Okay. Are you aware that Mr. Lujan was the driver?

18 A Yes.

19 Q Okay. Do you disagree that Mr. Lujan testified that Mr. Morgan
20 did nothing wrong?

21 MR. GARDNER: Form of the question, I object.

22 MR. RANDS: Objection. She also said she didn't read his
23 testimony.

24 MR. CLOWARD: They have a position, 30[b][6] has a position,
25 corporation has a position. She can state that.

1 THE COURT: Overruled.

2 Mr. Cloward, do you want to re-ask the question?

3 MR. CLOWARD: Sure.

4 THE COURT: Thank you.

5 BY MR. CLOWARD:

6 Q And -- we're going to read Mr. Lujan's testimony tomorrow into
7 the record.

8 A Okay.

9 Q So we'll do that. And if it's not accurate then the jurors will know
10 that I misrepresented things, but it -- have you been made aware of the facts
11 in this case?

12 A Generally.

13 Q Okay. You weren't here the last time we were in trial, correct?

14 A No.

15 Q That case ended prematurely, correct?

16 A It did.

17 Q You know Mr. Lujan sat on the stand and he testified to jurors
18 about what happened?

19 A If you say so.

20 Q Did you know that that happened?

21 A I was not aware of that, no.

22 Q Okay. So you're not aware of whether not Mr. Janssen [sic]
23 said at that time that Aaron --

24 THE COURT: Mr. Lujan, I think you mean.

25 MR. CLOWARD: Or I mean -- I'm sorry, it's getting late in the

1 day.

2 THE COURT: It is late.

3 MR. CLOWARD: Judge, this happens to me and I'm sorry.

4 BY MR. CLOWARD:

5 Q So you're not aware of Mr. Jan -- Mr. Lujan took the stand and
6 told individuals that Mr. Morgan did nothing wrong?

7 MR. GARDNER: Hold on. Let's object. I think form of the
8 question is not appropriate. I think it's argumentative.

9 THE COURT: Counsel approach.

10 MR. GARDNER: And she's already testified that --

11 THE COURT: All right. Counsel approach. Counsel approach.

12 [Bench conference begins at 4:35 p.m.]

13 THE COURT: All right.

14 MR. GARDNER: She's already testified that she hasn't looked
15 at the records. She -- so, for him to ask about what was in the records that
16 she hasn't seen; I just don't think that's appropriate. So I guess she could
17 say, I don't know, but --

18 MR. CLOWARD: But I mean, if she says I don't know, that's
19 fine. I'm going to read his transcript into the record tomorrow. So --

20 THE COURT: All right.

21 MR. CLOWARD: -- if she says I don't know then --

22 THE COURT: I mean she's the corporate representative, so I
23 think he's entitled to ask questions about the position of the corporation with
24 respect to the case.

25 MR. GARDNER: Fair enough. Yeah.

1 THE COURT: Yeah, all right.

2 MR. CLOWARD: Thanks.

3 [Bench conference ends at 4:36 p.m.]

4 THE COURT: Objection is overruled.

5 BY MR. CLOWARD:

6 Q Okay. So are you aware of what Mr. Lujan testified to last time?

7 A No.

8 Q Have you had an opportunity to read Mr. Morgan's deposition?

9 A Yes.

10 Q And have you had a chance to review the facts in this matter?

11 A Could you be more specific?

12 Q Sure. With regard to the way that the accident took place, the
13 crash took place, are you familiar with the facts in this case?

14 A Regarding the collision itself, yes.

15 Q And have you had an opportunity to speak with Mr. Lujan about
16 what he claims happened?

17 A Yes.

18 Q So you are aware that he was parked in a park in his shuttle
19 bus having lunch, correct?

20 A That's my understanding, yes.

21 Q You're understanding that he proceeded to exit the park and
22 head east on Tompkins?

23 A Yes.

24 Q You're understanding that he had a stop sign?

25 A I'm not aware of a stop sign, but I do understand that it was a

1 driveway going into the park.

2 Q Okay. If Mr. Lujan testified that he had a stop sign, do you
3 dispute that?

4 A I -- I can't confirm or deny it.

5 Q Okay. So you don't know whether he had a stop sign, or you
6 don't know whether he did not have a stop sign; fair to say?

7 A That's correct.

8 Q Do you have a position one way or another as to whether
9 Mr. Morgan had a stop sign?

10 A My understanding is he did not.

11 Q Okay. And are you aware that Mr. Lujan testified that he looked
12 both directions before proceeding into the road?

13 A That's my understanding, yes.

14 Q And that he claims to have seen Mr. Morgan coming, or that he
15 did not see Mr. Morgan coming?

16 MR. GARDNER: I need to object. I think these are
17 inappropriate questions because we don't have Lujan's stuff right in front of
18 us, and I don't think he should be able to be asking that kind of question.

19 MR. CLOWARD: This is the corporate spokesperson, Your
20 Honor. The corporation was also sued in this case.

21 THE COURT: All right. But at this point, she's already testified
22 that she's not familiar with Mr. Lujan's testimony, Mr. Cloward, so.

23 MR. CLOWARD: Okay.

24 BY MR. CLOWARD:

25 Q I'm going to show you the answer that you filed in this case,

1 okay.

2 MR. CLOWARD: Your Honor, may I approach?

3 THE COURT: Go ahead.

4 MR. CLOWARD: This is Exhibit 26. Move that into evidence.

5 MR. GARDNER: What is it?

6 MR. CLOWARD: It's the answer.

7 MR. GARDNER: The pleading.

8 MR. CLOWARD: Do you have any objection?

9 MR. GARDNER: No, it's a public record anyway, isn't it?

10 MR. CLOWARD: Yeah.

11 BY MR. CLOWARD:

12 Q Okay. So, Ms. Janssen, if you can just get the binder in front of
13 you. Exhibit 26, if you wouldn't mind turning to that.

14 THE COURT: Admitting 26?

15 MR. CLOWARD: Yes.

16 THE COURT: All right. 26 will be admitted.

17 [PLAINTIFF'S EXHIBIT 26 ADMITTED]

18 BY MR. CROWDER:

19 Q Are you there?

20 A Yes.

21 Q Okay. Thank you. If you can just turn to page 3. Now I want to
22 make sure, you testified that you don't know what Mr. Lujan said last trial,
23 true?

24 A Correct.

25 Q You have spoken to Mr. Lujan about what he knows, though,

1 correct?

2 A Yes.

3 Q And you're aware of what Mr. Morgan testified to during his
4 deposition, correct?

5 A Yes.

6 Q Okay. So the second affirmative defense, that's a defense that
7 you have to prove in this case. It's actually your burden of proof. And it
8 says, "The negligence of Plaintiff caused or contributed to any injuries or
9 damages that Plaintiff may have sustained, and the negligence of Plaintiff in
10 comparison with the alleged negligence of Defendants, if any, requires that
11 the damages of Plaintiff be denied or be diminished in proportion to the
12 amount of negligence attributable to the Plaintiff."

13 So what was it that Aaron did that was more negligent than
14 Mr. Lujan?

15 A Our shuttle bus is quite large and very visible, and it managed
16 to cross three lanes of traffic and enter the fourth lane when the collision
17 took place. Essentially, I'm saying that your client needs to look out.

18 Q So it was his fault for assuming that Mr. Lujan would obey the
19 rules of the road and would stop at the stop sign? It's Aaron's fault?

20 A He had the last opportunity to avoid the accident.

21 Q Are you aware of what actions he took to avoid the accident?

22 A I believe he braked and swerved.

23 Q Okay. What could Mr. Lujan have done differently?

24 MR. GARDNER: Object. Speculation and irrelevant, frankly.

25 MR. CLOWARD: It's their employee.

1 THE COURT: Overruled.

2 THE WITNESS: I'm sorry. Could you repeat the question?

3 BY MR. CLOWARD:

4 Q Sure. What could Mr. Lujan have done definitely?

5 A Well I think that's obvious -- waited.

6 Q Do you think he could have maybe stopped at the stop sign?

7 A Well, if you say there's a stop sign there, then yes.

8 Q And he didn't do that, did he?

9 MR. GARDNER: Object. Argumentative. Form of the
10 question.

11 MR. CLOWARD: This is cross examination [sic], Your Honor.

12 THE COURT: Overruled.

13 BY MR. CROWDER:

14 Q He didn't do that did he?

15 A I believe he did stop and simply pulled out.

16 Q So he didn't look left, and he didn't look right.

17 A I believe he did both.

18 Q So was he trying to beat traffic? Was he trying to gun it in front
19 of Aaron?

20 A No, I don't think so.

21 Q Because either he saw Aaron coming -- if he stopped at the
22 stop sign, and he looks left and he looks right, either he sees Aaron coming
23 and he tries to beat him, or he just -- he doesn't look left and right, and that's
24 how he ended up causing the collision.

25 THE COURT: Mr. Gardner?

1 MR. GARDNER: Object. Form of the question.

2 THE COURT: I'm not sure what your question was there.

3 BY MR. CLOWARD:

4 Q Don't you agree that if he would have stopped at the stop sign
5 and looked left, and then looked right, he would have seen Aaron coming?

6 A That's very likely. But we've all had encounters with cars that
7 we simply have not seen.

8 Q So do you agree that if it's not safe to enter into the intersection,
9 then you should stop and slowly move out and look, and slowly move out
10 and look, until you know that it's clear to enter into the intersection?

11 MR. GARDNER: Object. Argumentative, form of the question,
12 and goes beyond the evidence.

13 THE COURT: Sustained.

14 BY MR. CLOWARD:

15 Q What should a driver do if they pull up to a stop sign and they
16 can't see whether traffic is coming left or right? What should they do?

17 A If they can't see, what they taught me in driver's ed was to pull
18 forward slightly and look again.

19 Q Okay. Did Mr. Lujan do that?

20 A I don't know.

21 Q You agree that nobody has indicated that Mr. Morgan was
22 speeding, true?

23 A So far I haven't heard that during this trial.

24 Q You hired an expert, Dr. Baker, who will come on Monday, true?

25 A True.

1 Q Dr. Baker didn't say that Aaron was speeding, did he?

2 A I don't know.

3 Q Okay. Have you read his report?

4 A No.

5 Q If you turn the page, fourth affirmative defense, "The damages
6 and injuries sustained by the Plaintiff, if any, as alleged in the complaint
7 were caused in whole or in part, or were contributed to by reason of
8 Plaintiff's violation of the Nevada revised statutes and the provision of
9 applicable codes and ordinances concerning the operation of a motor
10 vehicle."

11 So what rule of the road did Aaron violate?

12 MR. GARDNER: Object. Foundation, relevance.

13 MR. CLOWARD: It's their answer, Your Honor. This is their
14 affirmative defense. I'm entitled to talk to the facts of this affirmative
15 defense.

16 MR. GARDNER: Fair enough.

17 THE COURT: Overruled.

18 THE WITNESS: Failure to exercise adequate look out.

19 BY MR. CLOWARD:

20 Q And who says that he didn't do that?

21 A Again, our bus crossed several lanes of traffic, and the collision
22 took place in the far right lane. More significantly, your client, as I
23 understand, said that he didn't see the bus coming until the last moment.

24 Q Did you also hear where my client testified that he thought that
25 your bus driver was going to obey the rules and was going to stop at the

1 park at the stop sign that he had right there?

2 A I believe that's what your client said.

3 Q Is it unreasonable for my client to have trusted that Mr. Lujan
4 would follow the rules of the road and stop at a stop sign?

5 A I think that's reasonable.

6 Q Okay. The seventh affirmative defense. "That the injuries
7 sustained by the Plaintiff, if any, were caused by acts of unknown third
8 persons who are not agents, servants, or employees of these answering
9 Defendants, and who were not acting on behalf of these answering
10 Defendants in any manner or form, and as such, the Defendants are not
11 liable in any manner to the Plaintiff."

12 Who is this third person, this third party, that supposedly caused
13 this crash?

14 A I don't know.

15 Q If you don't know, then why is it that there's blame being placed
16 on some third party?

17 A That's why we've hired an expert.

18 Q Is the expert that you haven't read his report?

19 A No.

20 Q So is it your belief that the expert is going to come in on
21 Monday and say that a third party caused this accident?

22 MR. GARDNER: Object. Argumentative.

23 THE WITNESS: No, I don't know the answer to that --

24 THE COURT: Overruled.

25 THE WITNESS: -- question anyhow.

1 BY MR. CLOWARD:

2 Q As you sit here right now, are you aware of some third party that
3 somehow was responsible for causing this crash?

4 A I am not.

5 Q Okay. Can I read to you the testimony of Mr. Lujan?

6 A Certainly.

7 Q Okay. This is the question: "Mr. Lujan, earlier you testified -- I
8 don't want to put words in your mouth, so I'm going to ask you this way. Did
9 you testify earlier that you've never placed blame on Aaron for this
10 accident?"

11 Answer: "No. I don't think I place blame on Aaron."

12 Mr. Lujan didn't place blame on Aaron, but you're here placing
13 blame on Aaron, correct?

14 A I am.

15 Q I'm going to also read to you testimony from Mr. Lujan where he
16 said, and I quote, "And you would agree with me, Aaron did nothing to cause
17 this accident?"

18 MR. GARDNER: Object. She already said she's not familiar
19 with these, she hasn't read them.

20 MR. CLOWARD: I'm asking her if she agrees or disagrees with
21 Mr. Lujan's sworn trial testimony.

22 THE COURT: Overruled.

23 MR. GARDNER: It's probably taken out of context, though,
24 Your Honor. I mean --

25 MR. CLOWARD: Your Honor, I'm happy to have Mr. Gardner

1 read it.

2 THE COURT: If it is taken out of context, then obviously, you
3 can ask Mr. Cloward to read the whole thing.

4 MR. CLOWARD: I'll read it. You can follow along.

5 BY MR. CLOWARD:

6 Q This is what Mr. Lujan was asked: Question, "You would
7 agree with me that Aaron, driving on McCloud at this intersection, had the
8 right-of-way at the time of the accident, correct?" Answer, "Yes."

9 MR. CLOWARD: Did I read that okay? Please confirm that I
10 read it.

11 MR. GARDNER: Go finish your cross examination.

12 MR. CLOWARD: I just want him to verify --

13 THE COURT: Mr. Gardner, he was just --

14 MR. GARDNER: It's a public record. I believe that's what it
15 says, yeah.

16 MR. CLOWARD: Did I read it correctly?

17 THE COURT: Counsel, approach for a minute.

18 [Bench Conference Begins]

19 THE COURT: All right. It's been a long day, and I get it, but
20 Mr. Gardner, Mr. Cloward was just showing you because you were
21 complaining that he wasn't reading the whole thing, so he was just showing
22 you the document so that you could see it. I don't know what this behavior
23 is about from you. I expect you to act better than this.

24 MR. GARDNER: What am I doing wrong?

25 MR. CLOWARD: All I was asking is --

1 THE COURT: Well, you snapped at him whenever he was
2 trying to show you the document.

3 MR. GARDNER: She doesn't know anything about an answer.

4 THE COURT: All right. Well then that's your fault for not
5 preparing your corporate representative.

6 MR. GARDNER: Oh [indiscernible].

7 THE COURT: Seriously.

8 [Bench Conference Ends]

9 THE COURT: All right. We're going to break for the evening
10 folks.

11 During this break, you're admonished not to talk or converse
12 among yourselves or with anyone else on any subject connected with this
13 trial; read, watch, or listen to any report of or commentary on the trial or any
14 person connected with this trial by any medium of information, including
15 without limitation, newspapers, television, internet, and radio; or form or
16 express any opinion on any subject connected with the trial until the case is
17 finally submitted to you. I remind you not to do any independent research.

18 We'll see you tomorrow at 9 o'clock. Everybody have a good
19 night.

20 THE BAILIFF: Please rise for the jury.

21 [Jury out]

22 THE COURT: All right. As I said a moment ago, I understand
23 it's been a long day. It's been a long couple of days. It's been a long couple
24 of days for all of us.

25 However, I expect everyone in this courtroom to treat everyone

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4 Karen Watson

5 Karen Watson
6 Transcriber

7 Liesl Springer

8 Liesl Springer
9 Transcriber

10 Meribeth Ashley

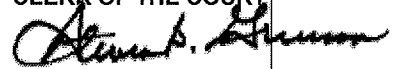
11 Meribeth Ashley
12 Transcriber

13 Deborah Anderson

14 Deborah Anderson
15 Transcriber

16 Date: May 4, 2018
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Exhibit 6



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 AARON MORGAN,
9 Plaintiff,

CASE#: A-15-718679-C
DEPT. VII

10 vs.

11 DAVID LUJAN

12 Defendant.

13 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
14 JUDGE

15 FRIDAY, APRIL 6, 2018
16 RECORDER'S TRANSCRIPT OF HEARING
17 CIVIL JURY TRIAL

18 APPEARANCES:

19 For the Plaintiff:

BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

21 For the Defendant:

22 DOUGLAS GARDNER, ESQ.
23 DOUGLAS RANDS, ESQ.

24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 THE COURT: Perfect. Thank you.

2 ERICA JANSSEN

3 [having been called as a witness and having been previously sworn, testified
4 further as follows:]

5 DIRECT EXAMINATION CONTINUED

6 BY MR. CLOWARD:

7 Q Ms. Janssen, how are you this morning?

8 A I'm doing well. Thank you. How are you?

9 Q Okay. Good. I'd just like to finish up just a few questions, and
10 then we can -- we can move on, okay?

11 A Okay.

12 Q All right. So I'd like to read to you the testimony of Mr.
13 Lujan, the driver, in this -- in this case, okay?

14 A Okay.

15 MR. CLOWARD: Do you mind if I start there?

16 MR. RANDS: No.

17 BY MR. CLOWARD:

18 Q "Q Do you have any proof that negligence of Arron
19 caused or contributed to any injuries?

20 "A No."

21 Where you aware that Mr. Lujan testified to that?

22 A I am now.

23 Q Okay. Another question:

24 "Mr. Lujan, earlier you testified -- I don't want to put words
25 in your mouth so I'm going to ask you this way. Did you

1 testified earlier that you've never placed blame on Arron for this
2 accident?
3 "A No. I don't think I placed blame on Aaron."
4 Were you aware that Mr. Lujan testified to that?
5 A No.
6 Q "Q And you didn't tell the officer at the scene it
7 was Aaron's fault, correct?
8 "A No. I never placed blame."
9 Were you aware that he testified to that?
10 A No.
11 Q "Q You would agree with me that Aaron driving on
12 McLeod at this intersection had the right-of-way at the time of
13 the accident, correct?
14 "A Yes."
15 Are you aware that he testified to that?
16 A No.
17 Q Okay.
18 MR. CLOWARD: That's it.
19 MR. RANDS: Thank you.
20 BY MR. CLOWARD:
21 Q Now that you're aware of what Mr. Lujan testified to, is it still
22 your position that Mr. Morgan is at fault for this crash?
23 A I believe he has some comparative negligence.
24 Q Okay. Thank you.
25 A Ultimately it's the jury's decision.

1 Q Thank you.

2 CROSS-EXAMINATION

3 BY MR. RANDS:

4 Q Good morning, Ms. Janssen.

5 A Good morning.

6 Q You are here today as a representative of the Defendant,
7 correct?

8 A Correct.

9 Q And you're employed by the Defendant?

10 A Correct.

11 Q Okay. And how long have you been so employed?

12 A Four years.

13 Q Okay. And at the last trial of this matter, you were not present,
14 correct?

15 A No.

16 Q You were not here representing the Defendant in that matter?

17 A No.

18 Q So you didn't hear any of the testimony that's been read to you
19 today?

20 A No, I did not.

21 Q Okay. Now, some questions were read to you from an exhibit in
22 the -- that is the answer to the complaint.

23 A Yes, I have it here.

24 Q Do you know what an answer to the complaint is?

25 A A response to allegations raised in -- in the lawsuit.

1 Q And did you prepare that answer?

2 A No.

3 Q Did you have any -- anything to do with preparing that answer?

4 A I provided, I believe, the names of the correct Defendant.

5 Q Okay.

6 A Company Defendant, I should say.

7 Q And who prepared -- who signed it? Is -- look on the last page
8 there.

9 A Douglas J. Gardner, Esquire.

10 Q Okay. And is it your understanding that Mr. Gardner prepared
11 the complaint?

12 A Yes.

13 Q Okay.

14 A The answer, I should say.

15 Q The answer, I'm sorry. I'm starting to act like Mr. Cloward now.
16 I can't get my -- I can't get my things correct.

17 MR. CLOWARD: Hopefully you don't lose your hair.

18 MR. RANDS: I hope so, too. I told you I'd rather have it go
19 gray than go away, but --

20 BY MR. RANDS:

21 Q The answer to the complaint, and that's general -- in your
22 understanding, is that generally prepared by the attorney?

23 A Always.

24 Q Okay. And as the substance of the complaint, did you have any
25 input into that?

1 A The answer?

2 Q The answer. Oh, geez, I'm sorry. I'll write it big right here.

3 Answer.

4 A No.

5 Q Okay. And the answer to the complaint is the first pleading filed

6 in a lawsuit, or some -- most the time it's the first pleading filed the Defense

7 in the lawsuit; is that your understanding?

8 A Yes.

9 Q Okay. And it's your understanding that oftentimes things are

10 filed in the complaint in anticipation that information may come up during the

11 discovery process, correct?

12 A If you're referring to the answer.

13 Q The answer. I wrote it right here. I'm sorry. Maybe I'll borrow

14 some of your coffee. The answer to the complaint, correct?

15 A I'm sorry, can you repeat the question?

16 Q Okay. Is it your understanding, in filing an answer to the

17 complaint, that's generally something filed by the attorney?

18 A Yes.

19 Q And you didn't sign a verification of that complaint --

20 A No.

21 Q -- or answer, did you?

22 A No.

23 Q Okay. And it's anticipation that things may arise during the

24 discovery process, correct?

25 A Yes.

1 Q And it's your understanding that if those affirmative defenses
2 aren't made at the first, they can be waived?

3 A Yes, I am aware of that.

4 Q Okay. So if you don't make something anticipating that
5 something may arise, you waive that defense?

6 A Yes.

7 Q So you put things in that sometimes may or may not come to
8 fruition?

9 A Yes, that would be correct.

10 Q Okay. And the answer process is something that's generally
11 done in most lawsuits, correct?

12 A I think it's probably pretty much every time.

13 Q Uh-huh. And, again, you didn't have an opportunity to hear Mr.
14 Lujan testify?

15 A I did not.

16 Q And did you read the transcript of his testimony --

17 A No.

18 Q -- at any time?

19 A No.

20 Q That's all the questions that I have. Thank you for your time.

21 THE COURT: Anything else, Mr. Cloward?

22 MR. CLOWARD: Just a couple redirect.

23 **REDIRECT EXAMINATION**

24 BY MR. CLOWARD:

25 Q Ms. Janssen, isn't it true that you are a -- you're an employee in

1 risk management?

2 A Yes.

3 Q Okay. And have you testified in court before?

4 A I have.

5 Q On how many occasions?

6 A A number of times.

7 Q Okay. So you're familiar with the process?

8 A I am.

9 Q You're familiar with how lawsuits operate?

10 A Yes.

11 Q You're familiar that you don't have to come to court and assert

12 certain defenses, true?

13 A I disagree.

14 Q I mean, Mr. Rands just indicated that you can abandon or waive

15 certain defenses. Do you agree with that process -- that --

16 A We can, but we wouldn't want to.

17 Q Okay. And in this matter, you've continued to allege that Mr.

18 Morgan is at fault and that a third party is at fault, true?

19 A That's our answer.

20 Q Okay.

21 A And, ultimately, it's up to the jury to decide that.

22 Q Okay. Now, do you know what interrogatories are?

23 A Yes.

24 Q They're sworn -- sworn testimony in writing?

25 A Yes.

1 Q And you signed --
2 MR. CLOWARD: Well, may I approach, Your Honor?
3 THE COURT: Uh-huh.
4 MR. RANDS: May I also, Your Honor?
5 THE COURT: Yes.
6 BY MR. CLOWARD:
7 Q Do you recognize this?
8 A Okay.
9 Q Do you recognize that document?
10 A I do.
11 Q And are those the answers that were provided in response to
12 our interrogatories?
13 A Yes.
14 Q And, in fact, you were the one that prepared those?
15 A Actually, our attorney did.
16 Q Okay.
17 A I signed the verification.
18 Q So where it says, on interrogatory number 14, and you can
19 follow along with me:
20 "Please provide the full name of the person answering the
21 interrogatories on behalf of the Defendant, Harvest
22 Management Sub, LLC, and state in what capacity your are
23 authorized to respond on behalf of said Defendant.
24 "A Erica Janssen, Holiday Retirement, Risk Management."
25 A Yes.

1 Q That's what the document says, correct?

2 A Correct. Yes.

3 Q That's your signature, correct?

4 A It is.

5 Q Thank you.

6 MR. CLOWARD: No further questions, Your Honor.

7 **RECROSS-EXAMINATION**

8 BY MR. RANDS:

9 Q Again, we're going to give the jury a crash course in litigation.
10 Interrogatories are written questions that are -- is it your understanding that
11 interrogatories are written questions provided to either side?

12 A Yes.

13 Q And they're generally prepared, with the assistance of the
14 Defendant or a representative of the Defendant, by the attorneys, correct?

15 A Yes.

16 Q And you signed a verification. And let's read the verification.

17 A Yes.

18 Q Would you read that, please?

19 A Oh, I'm sorry. I don't have the document in front of me.

20 MR. RANDS: May I approach, Your Honor.

21 THE COURT: Go ahead.

22 THE WITNESS: Would you like me to read it out loud?

23 BY MR. RANDS:

24 Q Yes.

25 A Okay. I'll just start --

1 Q Verification at the top.

2 A "Verification. State of Oregon, County of Clackamas. I,
3 Erica Janssen, being first duly sworn, deposes and says I am
4 the Defendant's representative in this -- in the instant action. I
5 have read the foregoing Defendant's answers to Plaintiff's first
6 set of interrogatories and know the contents thereof, that the
7 answers made therein are true to the best of my knowledge
8 except as to those answers made on information and belief, and
9 as to those answers, I believe them to be true. "

10 Q Thank you. So would it be fair to say that after reviewing the
11 answers you signed that verification?

12 A Yes.

13 MR. RANDS: Okay. That's all I have. Thank you very much.

14 MR. CLOWARD: One more follow up, Your Honor.

15 THE COURT: Yes.

16 **FURTHER REDIRECT EXAMINATION**

17 BY MR. CLOWARD:

18 Q In addition to the documents that Mr. Rands mentioned, you
19 also reviewed documents that were within your investigative report, your file,
20 true?

21 A I have a file, yes.

22 Q And, for instance --

23 MR. CLOWARD: Your Honor, may I approach?

24 THE COURT: You may.

25 MR. RANDS: Can I see what you --

1 BY MR. CLOWARD:

2 Q Do you recognize this document?

3 A I do.

4 Q Okay. Can you tell the jurors what that document is?

5 A It's titled "Accident Information Card, Other Vehicle".

6 Q Okay. And that's a document that Mr. Lujan would have filled

7 out, true?

8 A There is no name or signature on it.

9 Q Is that one of your internal documents?

10 A It is.

11 Q Okay. So, obviously, if it's one of your company's internal

12 documents, Mr. Morgan would not have filled that out, true?

13 A In terms of who completed that document?

14 Q Yes.

15 A I believe it was our driver.

16 Q Okay.

17 A But I can't say that with certainty. He did not sign it or put his

18 name on it.

19 Q Okay. May I read to you what it says?

20 A Sure.

21 Q "I was pulling out of the driveway to cross McLeod Drive. Car

22 was on McLeod and did not see him. He ran into the bus." Do you agree

23 that's what the document says?

24 A Yes.

25 Q Do you agree that's the narrative that Mr. Lujan gave?

1 A I can generally agree with that, yes.

2 Q Okay. So you agree that he didn't see Mr. Morgan?

3 A If that's what he says.

4 Q Okay. Thank you.

5 A Thank you.

6 MR. RANDS: Nothing further, Your Honor.

7 THE COURT: All right. Any questions from the jury? No.

8 Thank you, ma'am. You can go back to your seat.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Cloward, please call your next witness.

11 MR. CLOWARD: We will call Mr. Morgan to resume the
12 testimony.

13 THE COURT: Sir, come back on up. Go ahead and have a
14 seat. I'll remind you that you are still under oath.

15 MR. CLOWARD: I'm sorry, Your Honor. Did you say I could --

16 THE COURT: Go ahead. Uh-huh.

17 MR. CLOWARD: Oh, okay. I didn't hear. I'm sorry.

18 THE COURT: I didn't say that, but you're welcome to go ahead.

19 MR. CLOWARD: Okay.

20 THE COURT: I just reminded Mr. Morgan that he was still
21 under oath. That's it.

22 MR. CLOWARD: Got you. Okay.

23 **AARON MORGAN**

24 [having been called as a witness and having been previously sworn, testified
25 further as follows:]

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4 Antoinette M. Franks

5 Antoinette M. Franks
6 Transcriber

7 Michelle Rogan

8 Michelle Rogan
9 Transcriber

10 Tami S. Mayes

11 Tami. S. Mayes
12 Transcriber

13 Lee Ann Nussbaum

14 Lee Ann Nussbaum
15 Transcriber

16
17 Date: May 4,2018

18

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Exhibit 7

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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR - 9 2018
BY, *Ajam Brown*
AJAM. BROWN, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

AARON M. MORGAN

Plaintiff,

vs.

DAVID E. LUJAN, HARVEST
MANAGEMENT SUB LLC

Defendants.

CASE NO.: A-15-718679-C
DEPT. NO.: VII

JURY INSTRUCTIONS

A-15-718679-C
JI
Jury Instructions
4738216



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Notification of Service

Case Number: A-15-718679-C
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
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Filing Details

Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	7/30/2018 5:13 PM PST
Filing Type	Motion for Entry of Judgment - MEJD (CIV)
Filing Description	Plaintiff's Motion for Entry of Judgment
Filed By	Peter Floyd

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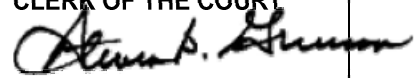
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TAB 19

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HARVEST MANAGEMENT SUB LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

AARON M. MORGAN, individually,

Plaintiff,

vs.

DAVID E. LUJAN, individually; HARVEST
MANAGEMENT SUB LLC; a Foreign-Limited-
Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

Defendants.

Case No. A-15-718679-C

Dept. No. XI

**DEFENDANT HARVEST
MANAGEMENT SUB LLC'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR ENTRY OF JUDGMENT**

Hearing Date: September 14, 2018

Hearing Time: In Chambers

Defendant Harvest Management Sub LLC ("Harvest"), hereby opposes the Motion for Entry
of Judgment (the "Motion") filed by Plaintiff Aaron M. Morgan ("Mr. Morgan") on July 30, 2018.

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This Opposition is made and based on the following memorandum of points and authorities, the papers and pleadings on file, and any oral argument the Court may allow.¹

DATED this 16th day of August, 2018.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

JOSHUA P. GILMORE

ANDREA M. CHAMPION

Attorneys for Defendants

HARVEST MANAGEMENT SUB LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In the recent trial of this matter, Plaintiff Mr. Morgan wholly failed to pursue — and in fact appeared to have abandoned — the single claim (for negligent entrustment) that he asserted against Harvest, the former employer of the individual defendant, David E. Lujan (“Mr. Lujan”). In particular, Mr. Morgan failed to do any of the following at trial:

- He did not reference Harvest in his introductory remarks to the jury regarding the identity of the Parties and expected witnesses, (Ex. 10,² 17:2-24, 25:7-26:3);
- He did not mention Harvest or his claim against Harvest during jury voir dire, (*id.* at 33:2-93:22, 97:6-188:21, 191:7-268:12; Ex. 11,³ at 3:24-65:7, 67:4-110:22);
- He did not reference Harvest or his claim against Harvest in his opening statement, (Ex. 11, at 126:7-145:17);
- He offered no evidence regarding any liability of Harvest for his damages;

¹ The Motion is currently scheduled to be heard in chambers by the Court on September 14, 2018. Harvest respectfully requests that, if the Court finds it appropriate, the Motion be set for hearing so that the parties can be heard on this important issue.

² Excerpts of Recorder’s Tr. of Hrg. Civil Jury Trial (Apr. 2, 2018) are attached as Exhibit 10, at Vol. III of App. at H000384-H000619.

³ Excerpts of Recorder’s Tr. of Hrg. Civil Jury Trial (Apr. 3, 2018) are attached as Exhibit 11, at Vol. IV of App. at H000620-H000748.

- He did not elicit any testimony from any witness that could have supported his claim against Harvest;
- He did not reference Harvest or his claim against Harvest in his closing argument or rebuttal closing argument, (Ex. 12,⁴ at 121:4-136:19, 157:13-161:10);
- He did not include his claim against Harvest in the jury instructions, (Ex. 13⁵); and
- He did not include Harvest in the Special Verdict Form, never asked the jury to assess liability against Harvest, and, in fact, gave the jury no option to find Harvest liable for anything, (Mot. at Ex. 1).

Now, having obtained a verdict in excess of \$3 million (when interest is considered) against Mr. Lujan, and perhaps regretting his trial strategy, Mr. Morgan asks the Court to “fix” the jury’s verdict and enter judgment against Harvest. Mr. Morgan attempts to classify the verdict form as merely an inadvertent clerical error that easily can be corrected by this Court. To the contrary, assessing liability against Harvest would require that this Court ignore the record and impose liability where none has been proven to exist, supplanting the jury’s verdict with its own determination. Essentially, Mr. Morgan requests that the Court engage in reversible error by determining the ultimate liability of a party — rather than an issue of fact, as contemplated by Nevada Rule of Civil Procedure 49(a). Thus, Mr. Morgan’s Motion must be denied.

Alarming, Mr. Morgan’s Motion is based on multiple half-truths and blatant misrepresentations. For example, Mr. Morgan asserts — without a single citation to supporting evidence in the record (*because there is none*) — that (1) the issue of whether Mr. Lujan was acting within the course and scope of his employment at the time of the accident was “undisputed,” (Mot. at 2:21-23); (2) the issue of vicarious liability was uncontested by Harvest, (*id.* at 4:21-22); and (3) “the record plainly supports” a judgment against both Mr. Lujan and Harvest, (*id.* at 6:7). The record, however, demonstrates the complete opposite.

///

⁴ Excerpts of Recorder’s Tr. of Hrg. Civil Jury Trial (Apr. 9, 2018) are attached hereto as Exhibit 12, at Vol. IV of App. at H000749-H000774.

⁵ A true and correct copy of the Jury Instructions (Apr. 9, 2018) are attached as Exhibit 13, at Vol. IV of App. at H000775-H000814.

1 First, in his Complaint, Mr. Morgan pled a claim for negligent entrustment, not vicarious
2 liability, and Harvest denied these allegations in its Answer. (Ex. 1,⁶ at ¶¶ 15-22; Ex. 2,⁷ at 2:8-9,
3 3:9-10.) Far from being undisputed or uncontested, *Harvest squarely denied liability*. Thereafter,
4 Mr. Morgan took no steps at trial to satisfy his burden of proof as to either negligent entrustment or
5 vicarious liability. He developed no testimony and offered no evidence even suggesting that Mr.
6 Lujan was acting within the course and scope of his employment with Harvest at the time of the
7 accident. Nor did he develop any testimony or offer any evidence suggesting that Mr. Lujan was an
8 inexperienced, incompetent, or reckless driver prior to the accident, or that Harvest knew or should
9 have known of such (alleged) driving history. More importantly, Mr. Morgan failed to rebut the
10 evidence offered by Mr. Lujan and Harvest which proved that Harvest could not be liable for either
11 vicarious liability or negligent entrustment — specifically, Mr. Lujan’s testimony that he was on a
12 lunch break when the accident occurred and that he had never been in an accident before.

13 Given the lack of *any* evidence offered at trial against Harvest, there is no legal basis for
14 entry of judgment against Harvest. Mr. Morgan’s Motion — characterizing the verdict as a simple
15 mistake — borders on dishonesty. Therefore, Harvest respectfully requests that Mr. Morgan’s
16 Motion be denied in its entirety and that a judgment be entered consistent with the jury’s verdict —
17 solely against Mr. Lujan.

18 II. RELEVANT FACTS AND PROCEDURAL HISTORY

19 A. The Pleadings.

20 On May 20, 2015, Mr. Morgan filed a Complaint against Mr. Lujan and Harvest. (*See*
21 *generally* Ex. 1.) The only claim alleged against Harvest in the Complaint is captioned “Vicarious
22 Liability/Respondeat Superior,” but the allegations of the claim are more akin to a claim for
23 *negligent entrustment*. (*Id.* at ¶¶ 15-22 (alleging that Harvest negligently entrusted the vehicle to
24 Mr. Lujan despite the fact that it knew or should have known that Mr. Lujan was an incompetent,
25 inexperienced, or reckless driver).)

26 ⁶ A true and correct copy of the Complaint (May 20, 2015) is attached as Exhibit 1, at Vol. I of App. at H000001-
27 H000006.

28 ⁷ A true and correct copy of Defs.’ Answer to Pl.’s Compl. (June 16, 2015) is attached as Exhibit 2, at Vol. I of
App. at H000007-H000013.

1 Despite the title of the claim, the third cause of action fails to allege that Mr. Lujan was
2 acting within the course and scope of his employment at the time of the accident. (*Id.*) Rather, the
3 only reference to “course and scope” in the entire Complaint is as follows:

4 On or about April 1, 2014, Defendants, [*sic*] were the owners,
5 employers, family members[,] and/or operators of a motor vehicle,
6 while in the *course and scope of employment* and/or family purpose
7 and/or other purpose, which was *entrusted* and/or driven in such a
negligent and careless manner so as to cause a collision with the
vehicle occupied by Plaintiff.

8 (*Id.* at ¶ 9 (emphasis added).)

9 On June 16, 2015, Mr. Lujan and Harvest filed Defendants’ Answer to Plaintiff’s
10 Complaint.⁸ (*See generally* Ex. 2.) The Defendants denied Paragraph 9 of the Complaint, including
11 its implied allegation that Mr. Lujan was acting within the course and scope of his employment at
12 the time of the accident. (Ex. 1, at ¶ 9; Ex. 2, at 2:8-9.) Harvest admitted that it employed Mr. Lujan
13 as a driver, that it owned the vehicle involved in the accident, and that it had entrusted control of the
14 vehicle to Mr. Lujan. (Ex. 1, at ¶¶ 16-18; Ex. 2, at 3:7-8.) However, Harvest denied that: (i) Mr.
15 Lujan was incompetent, inexperienced, or reckless in the operation of the vehicle; (ii) it knew or
16 should have known that he was incompetent, inexperienced, or reckless in the operation of motor
17 vehicles; (iii) Mr. Morgan was injured as a proximate consequence of Harvest’s alleged negligent
18 entrustment of the vehicle to Mr. Lujan; and (iv) Mr. Morgan suffered damages as a direct and
19 proximate result of Harvest’s alleged negligent entrustment of the vehicle to Mr. Lujan. (Ex. 1, at ¶¶
20 19-22; Ex. 2, at 3:9-10.) Harvest’s and Mr. Lujan’s Answer also included an affirmative defense of
21 comparative liability. (Ex. 2, at 3:16-21.)⁹

22 ///

23 ///

24 ///

25 ⁸ Mr. Morgan’s Motion emphasizes that Mr. Lujan and Harvest were represented by the same counsel. (Mot. at
26 3:25-26.) This fact is irrelevant. Liability cannot be imputed to Harvest simply because it shared counsel with its
employee. Mr. Morgan still bore the burden of proving his claims against both defendants.

27 ⁹ Harvest’s and Mr. Lujan’s Answer was admitted into evidence during the second trial, as Exhibit 26. (Excerpts
28 of Recorder’s Tr. of Hrg. Civil Jury Trial (Apr. 5, 2018), attached hereto as Exhibit 3, at Vol. I of App. at H000014-
H000029, at 169:25-170:17.)

1 **B. Discovery.**

2 On April 14, 2016, Mr. Morgan propounded interrogatories on Harvest.¹⁰ (*See generally* Ex.
3 4.¹¹) The interrogatories included a request regarding the background checks Harvest performed
4 prior to hiring Mr. Lujan, (*id.* at 6:25-7:2), and a request regarding any disciplinary actions Harvest
5 had taken against Mr. Lujan in the five years preceding the accident which related to Mr. Lujan's
6 operation of a Harvest vehicle, (*id.* at 7:15-19). There were no interrogatories propounded upon
7 Harvest which concerned whether Mr. Lujan was acting within the course and scope of his
8 employment at the time of the accident. (*See generally* Ex. 4.)

9 On October 12, 2016, Harvest served its Responses to Mr. Morgan's Interrogatories. (*See*
10 *generally* Ex. 5.¹²) Harvest answered Interrogatory No. 5, regarding the pre-hiring background
11 checks relating to Mr. Lujan, as follows:

12 Mr. Lujan was hired in 2009. As part of the qualification process, *a*
13 *pre-employment DOT drug test was conducted as well as a criminal*
14 *background screen and a motor vehicle record.* Also, since he held a
15 CDL, an *inquiry with past/current employers within three years of the*
16 *date of application was conducted and were **satisfactory.*** A DOT
17 *physical medical certification was obtained and monitored for renewal*
18 *as required. MVR was ordered yearly to monitor activity of personal*
19 *driving history and **always came back clear.*** Required Drug and
20 Alcohol Training was also completed at the time of hire and included
21 the effects of alcohol use and controlled substances use on an
22 individual's health, safety, work environment and personal life, signs
23 of a problem with these and available methods of intervention.

19 (*Id.* at 3:2-19 (emphasis added).) Further, in response to Interrogatory No. 8, regarding past
20 disciplinary actions taken against Mr. Lujan, Harvest's response was "**None.**" (*Id.* at 4:17-23
21 (emphasis added).)¹³

22 ///

23 ¹⁰ Mr. Morgan also propounded interrogatories on Mr. Lujan, but Mr. Lujan failed to serve any responses. Mr.
24 Morgan never moved to compel Mr. Lujan to answer the interrogatories and never deposed Mr. Lujan.

25 ¹¹ A true and correct copy of Pl.'s First Set of Interrogs. to Def. Harvest Mgmt. Sub LLC (Apr. 14, 2016) is
attached as Exhibit 4, at Vol. 1 of App. at H000030-H000038.

26 ¹² A true and correct copy of Def. Harvest Mgmt. Sub, LLC's Resps. to Pl.'s First Set of Interrogs. (Oct. 12, 2016)
is attached as Exhibit 5, at Vol. I of App. at H000039-H000046.

27 ¹³ Portions of Harvest's Responses to Mr. Morgan's Interrogatories were read to the jury during the second trial,
28 (Excerpts of Recorder's Tr. of Hrg. Civil Jury Trial (Apr. 6, 2018), attached hereto as Exhibit 6, at Vol. I of App. at
H000047-H000068, at 10:22-13:12).

1 No other discovery regarding Harvest's alleged liability for negligent entrustment and/or
2 respondeat superior was conducted by Mr. Morgan. In fact, Mr. Morgan never even deposed an
3 officer, director, employee, or other representative of Harvest as a fact witness or a Nevada Rule of
4 Civil Procedure 30(b)(6) witness.

5 **C. The First Trial.**

6 This case was first tried to a jury on November 6, 2017 through November 8, 2017. (*See*
7 *generally* Ex. 7¹⁴; Ex. 8.¹⁵) At the start of the first trial, when the Court asked the prospective jurors
8 if they knew any of the Parties or their counsel, the Court asked about Mr. Morgan, Plaintiff's
9 counsel, Mr. Lujan, and defense counsel. (Ex. 7, at 36:24-37:25.) No mention was made of Harvest,
10 and no objection was raised by Mr. Morgan. (*Id.*) Further, when the Court asked counsel to name
11 their witnesses to determine if the prospective jurors were familiar with any witnesses, no officer,
12 director, employee, or other representative of Harvest was named as a potential witness. (*Id.* at 41:1-
13 21.)

14 Mr. Morgan also never referenced Harvest, his express claim for negligent entrustment, or
15 his attempted claim for vicarious liability during voir dire or his opening statement. (*Id.* at 45:25-
16 121:20, 124:13-316:24; Ex. 9,¹⁶ at 6:4-29:1.) In fact, Harvest was not mentioned until the third day
17 of the first trial, while Mr. Lujan was on the witness stand. Mr. Lujan's relevant testimony is as
18 follows:

19 BY MR. BOYACK:

20 Q: All right. Mr. Lujan, at the time of the accident in April of 2014,
were you employed with Montara Meadows?

21 A: Yes.

22 Q: And what was your employment?

23 A: I was the bus driver.

24 Q: Okay. And what is your understanding of the relationship of
Montara Meadows to Harvest Management?

25 A: Harvest Management was our corporate office.

26 Q: Okay.

27 A: Montara Meadows is just the local--

28 (Ex. 8, at 108:23-109:8.)

¹⁴ Excerpts of Tr. of Jury Trial (Nov. 6, 2017) are attached as Exhibit 7, at Vol. II of App. at H000069-H000344.

¹⁵ Excerpts of Tr. of Jury Trial (Nov. 8, 2017) are attached as Exhibit 8, at Vol. III of App. at H000345-H000357.

¹⁶ Excerpts of Tr. of Jury Trial (Nov. 7, 2017) are attached as Exhibit 9, at Vol. III of App. at H000358-H000383.

1 Mr. Lujan also provided the only evidence during trial which was relevant to claims of either
2 negligent entrustment or vicarious liability:

3 Q: Okay. And isn't it true that you said to [Mr. Morgan's] mother you
4 were sorry for this accident?

5 A: Yes.

6 Q: And that you were actually pretty worked up and crying after the
7 accident?

8 A: I don't know that I was crying. I was more concerned than I was
9 crying --

10 Q: Okay.

11 A: -- *because I never been in an accident like that.*

12 (*Id.* at 111:16-24 (emphasis added).)

13 Q: Okay. So this was a big accident?

14 A: Well, it was for me *because I've never been in one in a bus*, so it
15 was for me.

16 (*Id.* at 112:8-10 (emphasis added).)

17 After counsel for Mr. Morgan completed his examination of Mr. Lujan, the court permitted
18 the jury to submit its own questions. A juror — not Mr. Morgan — asked Mr. Lujan:

19 THE COURT: *Where were you going at the time of the accident?*

20 THE WITNESS: *I was coming back from lunch. I had just ended
21 my lunch break.*

22 THE COURT: *Any follow up? Okay. Sorry. Any follow up?*

23 MR. BOYACK: *No, Your Honor.*

24 (*Id.* at 131:21-24, 132:18, 132:22-133:2 (emphasis added).)

25 Later that day, the first trial ended prematurely as a result of a mistrial, when defense counsel
26 inquired about a pending DUI charge against Mr. Morgan. (*Id.* at 150:15-152:14, 166:12-18.)

27 **D. The Second Trial.**

28 **1. Mr. Morgan Never Mentioned Harvest in His Introductory Remarks to the Jury.**

The second trial of this action commenced on April 2, 2018. (*See generally* Ex. 10.) The second trial was very similar to the first trial regarding the lack of reference to and the lack of evidence offered regarding Harvest. First, Harvest was not officially identified as a party when the court requested that counsel identify themselves and the Parties for the jury. In fact, counsel for the defense merely stated as follows:

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1 MR. GARDNER: Hello everyone. What a way to start a Monday,
2 right? In my firm we've got myself, Doug Gardner and then Brett
3 South, who is not here, but this is Doug Rands, and then my client,
4 Erica¹⁷ is right back here. Let's see, I think that's it for me.

5 (*Id.* at 17:15-18.) Mr. Morgan did not object or inform the prospective jurors that the case also
6 involved Harvest, or a corporate defendant, or even the employer of Mr. Lujan. (*Id.* at 17:19-24.)

7 When the Court asked the prospective jurors whether they knew any of the Parties or their
8 counsel, there was no mention of Harvest — only Mr. Lujan was named as a defendant:

9 THE COURT: All right. Thank you.

10 Did you raise your hand, sir? No. Anyone else? Does anyone
11 know the plaintiff in this case, Aaron Morgan? And there's no
12 response to that question. Does anyone know the plaintiff's attorney
13 in this case, Mr. Cloward? Any of the people he introduced? Any
14 people on [*sic*] his firm? No response to that question.

15 ***Do any of you know the defendant in this case, David Lujan?***

16 There's no response to that question. Do any of you know Mr.
17 Gardner or any of the people he introduced, Mr. Rands? No response
18 to that question.

19 (*Id.* at 25:6-14 (emphasis added).) Again, consistent with his approach in the first trial and
20 throughout the remainder of this second trial, Mr. Morgan did not object or clarify that the case also
21 involved a claim against Mr. Lujan's employer, Harvest. (*Id.* at 25:15-22.)

22 Finally, when the Court asked the Parties to identify the witnesses they planned to call during
23 trial, no mention was made of any officer, director, employee, or other representative of Harvest —
24 not even the representative, Erica Janssen, who was attending trial. (*Id.* at 25:15-26:3.)

25 **2. Mr. Morgan Never Mentioned Harvest or His Claim for Negligent**
26 **Entrustment/Vicarious Liability in Voir Dire or His Opening Statement.**

27 Just as with the first trial, Mr. Morgan failed to reference Harvest or his claim for negligent
28 entrustment/vicarious liability during voir dire. (*Id.* at 33:2-93:22, 97:6-188:21, 191:7-268:12; Ex.
11, at 3:24-65:7, 67:4-110:22.) Moreover, during Mr. Morgan's opening statement, Plaintiff's
counsel never made a single reference to Harvest, a corporate defendant, vicarious liability,

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¹⁷ In the second trial, Mr. Lujan chose not to attend. Mr. Gardner's introduction referenced Erica Janssen, a representative of Harvest.

negligent entrustment, or even the fact that there were two defendants in the action. (Ex. 11, at 126:7-145:17.) Plaintiff's counsel merely stated:

[MR. CLOWARD:] Let me tell you about what happened in this case. And this case starts off with the actions of Mr. Lujan, who's not here. He's driving a shuttlebus. He worked for a retirement [indiscernible], shuttling elderly people. He's having lunch at Paradise Park, a park here in town. . . .

Mr. Lujan gets in his shuttlebus and it's time for him to get back to work. So he starts off. Bang. Collision takes place. He doesn't stop at the stop sign. He doesn't look left. He doesn't look right.

(*Id.* at 126:15-25.) Plaintiff's counsel made no reference to any evidence to be presented during the trial which would demonstrate that Mr. Lujan was acting in the course and scope of his employment at the time of the accident or that Harvest negligently entrusted the vehicle to Mr. Lujan. (*Id.* at 126:7-145:17.)

3. The Only Evidence Offered and Testimony Elicited Demonstrated That Harvest Was Not Liable for Mr. Morgan's Injuries.

On the fourth day of the second trial, Mr. Morgan called Erica Janssen, the Rule 30(b)(6) representative of Harvest, as a witness during his case in chief. (Ex. 3, at 164:13-23.) Ms. Janssen confirmed that it was Harvest's understanding that Mr. Lujan had been at a park in a shuttlebus having lunch and that the accident occurred as he exited the park:

[MR. CLOWARD:]

Q: And have you had an opportunity to speak with Mr. Lujan about what he claims happened?

[MS. JANSSEN:]

A: Yes.

Q: *So you are aware that he was parked in a park in his shuttle bus having lunch, correct?*

A: *That's my understanding, yes.*

Q: You're understanding that he proceeded to exit the park and head east on Tompkins?

A: Yes.

(*Id.* at 168:15-23 (emphasis added).)

Mr. Morgan never asked Ms. Janssen where she was employed, her title, whether Harvest employed Mr. Lujan, what Mr. Lujan's duties were, or any other questions that might have elicited evidence to support a claim for negligent entrustment or vicarious liability. (*Id.* at 164:21-177:17;

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1 Ex. 6, at 4:2-6:1.) In fact, it wasn't until redirect examination that Mr. Morgan even referenced the
2 fact that Ms. Janssen was in risk management for Harvest:

3 [MR. CLOWARD:]

4 Q: So where it says, on interrogatory number 14, and you can follow
along with me:

5 "Please provide the full name of the person answering
6 the interrogatories on behalf of the Defendant, Harvest
7 Management Sub, LLC, and state in what capacity your
[sic] are authorized to respond on behalf of said
Defendant.

8 "A. Erica Janssen, Holiday Retirement, Risk
Management."

9 A: Yes.

10 (Ex. 6, at 11:18-25.) Other than this acknowledgement that Ms. Janssen executed interrogatory
11 responses on behalf of Harvest, Mr. Morgan, again, failed to elicit any evidence on redirect
12 examination to support a claim for negligent entrustment or vicarious liability. (*Id.* at 9:23-12:6,
13 13:16-15:6.)

14 On the fifth day of the second trial, Mr. Morgan rested his case (*id.* at 55:6-7), again, with no
15 evidence presented to support a claim for vicarious liability or negligent entrustment — i.e.,
16 evidence of Mr. Lujan's driving history; Harvest's knowledge of Mr. Lujan's driving history;
17 disciplinary actions Harvest took against Mr. Lujan prior to the accident; background checks Harvest
18 performed on Mr. Lujan; alcohol and drug testing Harvest performed on Mr. Lujan; Mr. Lujan's job
19 duties; Harvest's policy regarding the use of company vehicles to drive to and from lunch; whether
20 Mr. Lujan was required to clock-in and clock-out during his shifts; or whether any residents of the
21 retirement home were passengers on the bus at the time of the accident, among other facts.¹⁸

22 During the defense's case in chief — not Mr. Morgan's — defense counsel read portions of
23 Mr. Lujan's testimony from the first trial into the record. (*Id.* at 195:7-203:12.) As referenced
24 above, this testimony included that: (1) Mr. Lujan worked as a bus driver for Montara Meadows at
25 the time of the accident; (2) Harvest was the "corporate office" for Montara Meadows; (3) the

26
27 ¹⁸ It should be noted that despite the lack of evidence on these issues, Plaintiff's counsel stated, during his closing
28 argument, that there were no passengers on the bus at the time of the accident. (Ex. 12, at 124:15-17) ("That this
company transporting our elderly members of the community is going to follow the rules of the road. *Aren't we lucky*
that there weren't other people on the bus? Aren't we lucky?") (emphasis added)).

1 accident occurred when Mr. Lujan was leaving Paradise Park; and (4) Mr. Lujan had never been in
2 an “accident like that” or an accident in a bus before. (*Id.* at 195:8-17, 195:25-196:10, 196:19-24,
3 197:8-10.)

4 This testimony, coupled with Ms. Janssen’s testimony that Mr. Lujan was on his lunch break
5 at the time of the accident, is the complete universe of evidence offered at the second trial that even
6 tangentially concerns Harvest.

7 **4. There Are No Jury Instructions Pertaining to the Claim Against Harvest.**

8 As Mr. Morgan points out in his Motion, the jury instructions provided to the jury included
9 the correct caption for this action and listed both Mr. Lujan and Harvest as defendants. (Ex. 13, at
10 1:6-12.) However, Mr. Morgan fails to disclose in his Motion that neither party submitted any jury
11 instructions *pertaining to vicarious liability, actions within the course and scope of employment,*
12 *negligent entrustment, or corporate liability.* (See generally Ex. 13.)

13 Again, this is entirely consistent with Mr. Morgan’s trial strategy. He all but ignored Harvest
14 throughout the trial process.

15 **5. Mr. Morgan Failed to Include Harvest in the Special Verdict Form.**

16 On the last day of trial, before commencing testimony for that day, the Court provided the
17 Parties with a sample jury form that the Court had used in its last car accident trial.

18 THE COURT: Take a look and see if – will you guys look at that
19 verdict form? *I know it doesn’t have the right caption. I know it’s just*
20 *the one we used the last trial.* See if that looks sort of okay.

21 MR. RANDS: Yeah. That looks fine.

22 THE COURT: I don’t know if it’s right with what you’re asking for for
23 damages, but *it’s just what we used in the last trial which was similar*
24 *sort of.*

25 (Ex. 12, at 5:20-6:1 (emphasis added).) Later that same day, after the defense rested its case,
26 Plaintiff’s counsel informed the Court that it only wanted to make one change to the special verdict
27 form that the Court had proposed:

28 MR. BOYACK: On the verdict form we just would like the past and
future medical expenses and pain and suffering to be differentiated.

THE COURT: Yeah. Let me see.

MR. BOYACK: Just instead of the general.

THE COURT: That’s fine. That’s fine.

MR. BOYACK: Yeah. *That’s the only change.*

THE COURT: *That was just what we had laying around, so.*

MR. BOYACK: Yeah.

THE COURT: So you want – got it. Yeah. That looks great. I actually prefer that as well.

MR. BOYACK: Yeah. *That was the only modification.*

THE COURT: That’s better if we have some sort of issue.

MR. BOYACK: Right.

(*Id.* at 116:11-23 (emphasis added).) The Special Verdict Form approved by Mr. Morgan — after his edits were accepted and incorporated by the Court — makes no mention of Harvest (which is entirely consistent with Mr. Morgan’s trial strategy).

Mr. Morgan asserts that the Special Verdict form simply “inadvertently omitted Harvest Management from the caption.” (Mot. at 2:24-25.) This is disingenuous. Not only does the caption list Mr. Lujan as the sole defendant, (*id.* at Ex. 1, at 1:6-12), but:

- The Special Verdict form only asked the jury to determine whether the “*Defendant*” was negligent, (*id.* at 1:17 (emphasis added));
- The Special Verdict form did not ask the jury to find Harvest liable for anything, (*id.*);
- The Special Verdict form directed the jury to apportion fault only between “*Defendant*” and Plaintiff, with the percentage of fault totaling 100 percent, (*id.* at 2:1-4 (emphasis added)); and
- Mr. Morgan never objected to the failure to apportion fault between Plaintiff and the two defendants, as is required by NRS 41.141, (*id.*).

6. Mr. Morgan Never Mentioned Harvest or His Claim Against Harvest in His Closing Arguments.

Finally, in closing arguments, Plaintiff’s counsel never even mentioned Harvest or Mr. Morgan’s claim for negligent entrustment or vicarious liability. (Ex. 12, at 121:5-136:19.) Plaintiff’s counsel merely made references to the testimony of Erica Janssen and the fact that she: (1) contested liability; (2) blamed Mr. Morgan for the accident; (3) blamed an unknown third party for the accident; and (4) was unaware that Mr. Lujan had previously testified that Mr. Morgan had done nothing wrong and was not to blame for the accident. (*Id.* at 122:10-123:5.)

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Further, and perhaps the clearest example of the impropriety of Mr. Morgan's Motion, Plaintiff's counsel *explained to the jury, in closing, how to fill out the Special Verdict form*. His remarks on liability were *limited exclusively to Mr. Lujan*:

So when you are asked to fill out the special verdict form there are a couple of things that you are going to fill out. This is what the form will look like. Basically, the first thing that you will fill out is *was the Defendant negligent*. Clear answer is yes. **Mr. Lujan**, in his testimony that was read from the stand, said that [Mr. Morgan] had the right of way, said that [Mr. Morgan] didn't do anything wrong. That's what the testimony is. Dr. Baker didn't say that it was [Mr. Morgan's] fault. You didn't hear from any police officer that came in to say that it was [Mr. Morgan's] fault. The only people in this case, the only people in this case that are blaming [Mr. Morgan] are the corporate folks. They're the ones that are blaming [Mr. Morgan]. So was Plaintiff negligent? That's [Mr. Morgan]. No. *And then from there you fill out this other section. What percentage of fault do you assign each party? Defendant, 100 percent, Plaintiff, 0 percent.*

(*Id.* at 124:20-125:6 (emphasis added).) Plaintiff's counsel also failed to mention Harvest or the claim alleged against Harvest in his rebuttal closing argument. (*Id.* at 157:13-161:10.)

III. LEGAL ARGUMENT

A. A Judgment Cannot Be Entered Against Harvest Because It Would Be Contrary to the Pleadings, Evidence, and Jury Instructions in This Case.

Mr. Morgan's primary argument in bringing this Motion is that the Court should enter judgment against Harvest "because such a result conforms to the pleadings, evidence, and jury instructions upon which the jury relied in reaching the special verdict." (Mot. at 5:14-17; *see also Id.* at 2:23-24, 6:7.) However, Mr. Morgan fails to cite to a single piece of evidence or even a jury instruction that would demonstrate that the jury intended to find Harvest liable for the claim alleged in the Complaint. Rather, Mr. Morgan makes unsupported assertions that the claim of vicarious liability was not contested at trial, (*id.* at 4:21-22), and that it was undisputed that Mr. Lujan was acting within the course and scope of his employment with Harvest at the time of the accident, (*id.* at 2:21-23).

The record establishes that Mr. Morgan failed to meet his burden of proof as to any claim he alleged (or attempted to allege) against Harvest. The record further establishes that Harvest cannot be liable for vicarious liability or negligent entrustment, as a matter of law, because Mr. Lujan was at

1 lunch when the accident occurred and he has no prior history of reckless or negligent driving.
2 Finally, the record establishes that Mr. Morgan — whether through carelessness, a strategic trial
3 decision, or acceptance of the futility of his claim — completely ignored Harvest and Harvest’s
4 alleged liability at trial and chose to focus solely on Mr. Lujan’s liability and the amount of his
5 damages. Thus, there is no factual basis for entry of judgment against Harvest.

6 **1. Mr. Morgan Failed to Prove That Harvest Was Vicariously Liable for**
7 **Mr. Lujan Injuries or Liable for Negligent Entrustment.**

8 Mr. Morgan asserts that the issue of vicarious liability was not contested. (Mot. at 4:21-22.)
9 This is not true. Harvest contested liability for the only claim pled in the Complaint — negligent
10 entrustment — and for the attempted claim of vicarious liability, by denying these allegations in its
11 Answer. (Ex. 1, at ¶¶ 9, 19-22; Ex. 2, at 2:8-9, 3:9-10.) Thus, as the plaintiff, Mr. Morgan bore the
12 burden of proving his claims against Harvest at trial. *Porter v. Sw. Christian Coll.*, 428 S.W.3d 377,
13 381 (Tex. App. 2014) (“A plaintiff pleading respondeat superior bears the burden of establishing that
14 the employee acted within the course and scope of his employment.”); *Montague v. AMN*
15 *Healthcare, Inc.*, 168 Cal. Repr. 3d 123, 126 (Cal. Ct. App. 2014) (“The plaintiff bears the burden
16 of proving that the employee’s tortious act was committed within the scope of his or her
17 employment.”); *Willis v. Manning*, 850 So. 2d 983, 987 (La. Ct. App. 2003) (recognizing that the
18 plaintiff bears the burden of proof on a claim for negligent entrustment); *Dukes v. McGimsey*, 500
19 S.W.2d 448, 451 (Tenn. Ct. App. 1973) (“The plaintiff has the burden of proving negligent
20 entrustment of an automobile.”)

21 Not only did Mr. Morgan fail to prove his claim, but the evidence adduced at trial actually
22 demonstrated that Harvest could not be liable for either vicarious liability or negligent entrustment.
23 Specifically, the undisputed evidence offered at trial proved that Mr. Lujan was at lunch at the time
24 of the accident and had never been in an accident before. (Ex. 3, at 168:15-23; Ex. 6, at 196:19-24,
25 197:8-10.) Such evidence prevents the imposition of a judgment against Harvest.

26 *J&C Drilling Co. v. Salaiz*, 866 S.W.2d 632 (Tex. App. 1993), is instructive on this issue:

27 We reject appellees’ contention that the issue of course and
28 scope was not contested. Appellants’ answer contained a
general denial, which put in issue all of the allegations of

appellees' petition, including the allegation that Gonzalez was acting in the course and scope of his employment with J&C. Because appellees had the burden of proof on this issue, it was not necessary for appellants to present evidence negating course and scope in order to contest the issue. In any event, as is discussed below, evidence was presented that Gonzalez was on a personal errand at the time of the accident, refuting the allegation that he was acting in the course and scope of his employment.

(*Id.* at 635).

a. Mr. Morgan Did Not Prove a Claim for Vicarious Liability, and Based on the Sole Evidence Offered at Trial Which Relates to This Claim, No Judgment Can Be Entered Against Harvest.

While Mr. Morgan's Complaint states one claim for relief against Harvest entitled "Vicarious Liability/Respondeat Superior," the allegations contained therein do not actually reflect a theory of respondeat superior — i.e., that Mr. Lujan was acting within the course and scope of his employment with Harvest at the time of the accident. (*See* Ex. 1 at ¶¶ 15-22.) Rather, his claim was akin to a claim for negligent entrustment, alleging that: (1) Mr. Lujan was employed as a driver for Harvest; (2) Harvest entrusted him with the vehicle; (3) Mr. Lujan was an incompetent, inexperienced, and/or reckless driver; and (4) Harvest actually knew, or should have known, of Mr. Lujan's inexperience or incompetence. (*See id.*)

It is anticipated that Mr. Morgan will argue that one general allegation in his Complaint which references the course and scope of employment was sufficient to state a claim for respondeat superior. (*Id.* at ¶ 9.) Even assuming *arguendo* that Mr. Morgan alleged a claim for vicarious liability, he failed to prove this claim at trial. Vicarious liability and/or respondeat superior applies to an employer only when: "(1) the actor at issue was an employee[;] and (2) the action complained of occurred within the course and scope of the actor's employment." *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223, 1225-26, 925 P.2d 1175, 1179, 1180-81 (1996) (holding that an employer is not liable if an employee's tort is an "independent venture of his own" and was "not committed in the course of the very task assigned to him") (quoting *Prell Hotel Corp. v. Antonacci*, 86 Nev. 390, 391, 469 P.2d 399, 400 (1970)).

Mr. Morgan failed to offer any evidence as to Mr. Lujan's status at the time of the accident. The *only* facts adduced at trial that are related to Mr. Lujan's employment were: (1) that Mr. Lujan

1 was an employee of Montara Meadows (a bus driver); (2) that Mr. Lujan drove the bus to Paradise
2 Park for a lunch break; (3) that the accident occurred as Mr. Lujan was exiting the park; and (3) that
3 Harvest is the “corporate office” of Montara Meadows. (See Ex. 3, at 168:15-23; Ex. 6, at 195:8-17,
4 195:25-196:10.)

5 Mr. Morgan failed to establish whether Mr. Lujan was “on the clock” during his lunch break,
6 whether Mr. Lujan had returned to work and was transporting passengers at the time of the accident,
7 whether Mr. Lujan had to “clock in” after his lunch break, whether Mr. Lujan was permitted to use a
8 company vehicle while on his lunch break, or whether Harvest Management even knew that Mr.
9 Lujan was using a company vehicle during his lunch breaks. Without developing these facts, there is
10 insufficient evidence, under Nevada law, to conclude that Mr. Lujan was acting in the course and
11 scope of his employment at the time of the accident.

12 Moreover, the evidence offered by Mr. Lujan and Harvest demonstrates that Harvest is not
13 vicariously liable for Mr. Morgan’s injuries. Nevada has adopted the “going and coming rule.”
14 Under this rule, “[t]he tortious conduct of an employee in transit to or from the place of employment
15 will not expose the employer to liability, unless there is a special errand which requires driving.”
16 *Molino v. Asher*, 96 Nev. 814, 817-18, 618 P.2d 878, 879-80 (1980); *see also Nat’l Convenience*
17 *Stores, Inc. v. Fantauzzi*, 94 Nev. 655, 658, 584 P.2d 689, 691 (1978). The rule is premised upon the
18 idea that the “employment relationship is “suspended” from the time the employee leaves until he
19 returns, or that in commuting, he is not rendering service to his employer.” *Tryer v. Ojai Valley*
20 *Sch.*, 12 Cal. Rptr. 2d 114, 116 (Cal. Ct. App. 1992) (quoting *Hinman v. Westinghouse Elec. Co.*,
21 471 P.2d 988, 990-91 (Cal. 1970)).

22 While the Nevada Supreme Court has not specifically addressed whether an employer is
23 vicariously liable for an employee’s actions during a lunch break, the express language of and policy
24 behind the “going and coming rule” suggests that an employee is not acting within the course and
25 scope of his employment when he commutes to and from lunch during a break from his
26 employment. Moreover, other jurisdictions have routinely determined that employers ***are not liable***
27 ***for an employee’s negligence during a lunch break***. *See e.g., Gant v. Dumas Glass & Mirror, Inc.*,
28 935 S.W. 2d 202, 212 (Tex. App. 1996) (holding that an employer was not liable under respondeat

superior when its employee rear-ended the plaintiff while driving back from his lunch break in a company vehicle because the test is not whether the employee is returning from his personal undertaking to “*possibly* engage in work” but rather whether the employee *has* “returned to the zone of his employment” and engaged in the employer’s business); *Richardson v. Glass*, 835 P.2d 835, 838 (N.M. 1992) (finding the employer was not vicariously liable for the employee’s accident during his lunch break because there was no evidence of the employer’s control over the employee at the time of the accident); *Gordon v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 411 So. 2d 1094, 1098 (La. Ct. App. 1982) (“Ordinarily, an employee who leaves his employer’s premises and takes his noon hour meal at home or some other place of his own choosing is outside the course of his employment from the time he leaves the work premises until he returns.”).

Because Mr. Morgan failed to offer any evidence proving that Mr. Lujan was acting within the course and scope of his employment at the time of the accident — and the only evidence regarding Mr. Lujan’s actions at the time of the accident demonstrate that he was on a lunch break — as a matter of law, judgment cannot be entered against Harvest on a claim of vicarious liability.

b. Mr. Morgan Also Failed to Prove to the Jury That Harvest Is Liable for Negligent Entrustment.

While Mr. Morgan does not address the claim of negligent entrustment in his Motion, it bears noting that he likewise failed to prove that Harvest was liable for the *sole claim actually alleged against it in the Complaint*. In Nevada, “a person who knowingly entrusts a vehicle to an inexperienced or incompetent person” may be found liable for damages resulting therefrom. *Zugel* by *Zugel v. Miller*, 100 Nev. 525, 527, 688 P.2d 310, 312 (1984). To establish negligent entrustment, a plaintiff must demonstrate: (1) that an entrustment actually occurred; and (2) that the entrustment was negligent. *Id.* at 528, 688 P.2d at 313.

It is true that Harvest conceded that Mr. Lujan was its employee and that it entrusted him with a vehicle — satisfying the first element of a negligent entrustment claim; however, the second element was contested and never proven to a jury. (Ex. 2, at 3:9-10.) Mr. Morgan offered no evidence of Harvest’s negligence in entrusting Mr. Lujan with a company vehicle. He adduced no evidence that Mr. Lujan was an inexperienced or incompetent driver. In fact, the only evidence in

1 the record relating to Mr. Lujan's driving history demonstrates that he has never been in an accident
2 before. (*See* Ex. 6, at 196:19-24; 197:8-10).

3 Mr. Morgan also failed to offer any evidence regarding Harvest's knowledge of Mr. Lujan's
4 driving history. This is likely because Harvest's interrogatory responses demonstrated early in the
5 case that it thoroughly checked Mr. Lujan's background prior to hiring him, and Harvest's annual
6 check of Mr. Lujan's motor vehicle record "always came back clear." (Ex. 5, at 3:2-19.)

7 Because Mr. Morgan failed to offer any evidence at trial that Mr. Morgan was an
8 inexperienced or incompetent driver and that Harvest knew or should have known of his
9 inexperience or incompetence, the record fails to support entry of a judgment against Harvest for
10 negligent entrustment. In fact, the undisputed evidence offered by Mr. Lujan demonstrating that he
11 has never been in an accident before precludes entry of judgment against Harvest for negligent
12 entrustment.

13 **2. The Record Belies Mr. Morgan's Contention That He Proceeded to**
14 **Verdict Against Harvest.**

15 Further undermining his current position, the record conclusively establishes that Mr.
16 Morgan made a conscious choice and/or strategic decision to abandon his claim against Harvest at
17 trial. Mr. Morgan never mentioned Harvest during the introductory remarks to the jury in which the
18 Parties and expected witnesses were introduced to the jury. (Ex. 10, at 17:2-24, 25:7-26:3.) Mr.
19 Morgan never mentioned Harvest to the jury during voir dire or examined prospective jurors about
20 their feelings regarding corporate liability, negligent entrustment, or vicarious liability. (*Id.* at 33:2-
21 93:22, 97:6-188:21, 191:7-268:12; Ex. 11, at 3:24-65:7, 67:4-110:22.) Mr. Morgan never mentioned
22 Harvest, vicarious liability, negligent entrustment, or even corporate liability in his opening
23 statement. (Ex. 11, at 126:7-145:17.) Mr. Morgan never offered a single piece of evidence or
24 elicited any testimony from any witness which would prove the elements of either vicarious liability
25 or negligent entrustment. Mr. Morgan never mentioned Harvest, vicarious liability, negligent
26 entrustment, or corporate liability in his closing argument or rebuttal closing argument. (Ex. 12, at
27 121:4-136:19, 157:13-161:10.) Mr. Morgan failed to include questions relating to Harvest's liability
28 or the apportionment of fault to Harvest in the Special Verdict form, despite requesting revisions to

1 the damages question in the sample Special Verdict form proposed by the Court.¹⁹ (Ex. 12, at
2 116:11-23; *see also* Mot. at Ex. 1.) Finally, Mr. Morgan failed to include a single jury instruction
3 relating to vicarious liability, negligent entrustment, or corporate liability. (Ex. 13.)

4 For Mr. Morgan to claim that the omission of Harvest from the Special Verdict form was a
5 mere oversight or clerical error to be corrected by the Court is completely disingenuous. Mr.
6 Morgan employed the same strategy for litigating his claims in the first trial — he chose to focus
7 solely on Mr. Lujan’s liability for negligence. Harvest was not mentioned in the introductory
8 remarks to the jurors, in voir dire, in opening statements, or in the examination of any witness. (Ex.
9 7, at 29:4-17, 36:24-37:25, 41:1-21, 45:25-121:20, 124:13-316:24; Ex. 9, at 6:4-29:1.) Thus, the
10 record clearly demonstrates that Mr. Morgan abandoned his claim against Harvest — likely due to a
11 lack of evidence.

12 **B. Mr. Morgan’s Alternative Request That Judgment Be Entered Against Harvest**
13 **Pursuant to N.R.C.P. 49(a) Is Contrary to the Law and Must Be Denied.**

14 In the alternative, Mr. Morgan asks this Court to make an explicit finding, under Nevada
15 Rule of Civil Procedure 49(a), that Harvest is jointly and severally liable for the jury’s verdict
16 against Mr. Lujan. (*See* Mot. at 5:18-6:11.) N.R.C.P. 49(a) permits a court to submit a special
17 verdict form, or special interrogatories, to the jury. If a special verdict form is submitted to the jury
18 and a particular “issue of fact raised by the pleadings or by the evidence” is omitted from the special
19 verdict form, “each party waives the right to a trial by jury of the issue omitted unless, before the
20 jury retires[,] the party demands its written submission to the jury.” N.R.C.P. 49(a). If there are any
21 omitted issues for which a demand was not made by a party, “the court may make a finding; or, if it
22 fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special
23 verdict.” *Id.* Thus, the Court is permitted to make findings on omitted *factual issues* in order to
24 avoid “the hazard of the verdict remaining incomplete and indecisive where the jury did not decide
25

26 ¹⁹ Mr. Morgan attempts to shift the blame to the Court for the Special Verdict form’s omission of Harvest. (Mot.
27 at 5:1-8.) While the Court did provide the Parties with a sample special verdict form that it had used in its most recent
28 car accident case (completely unrelated to this action), the Court clearly expected counsel to apply the correct caption
and make any other changes they wanted. (Ex. 12, at 5:20-6:1.) It is Mr. Morgan — not the Court — that is responsible
for a special verdict form that pertains solely to Mr. Lujan.

1 *every element* of recovery or defense.” 33 Fed. Proc., L. Ed. § 44:326, Omitted Issue—Substitute
2 Finding By Court (June 2018).²⁰ However, N.R.C.P 49(a) does not permit the Court to decide the
3 ultimate issue of liability or to enter judgment where there is a complete lack of evidence to support
4 a judgment.

5 This Court need not look any further than *Kinnel v. Mid-Atlantic Mausoleums, Inc.*, 850 F.2d
6 958 (3rd Cir. 1988), to determine that Mr. Morgan’s request is beyond the power of this Court and
7 completely contrary to clearly established case law. In *Kinnel*, the plaintiff brought claims against
8 two defendants — a corporate entity (Mid-Atlantic Mausoleum, Inc.) and an individual (Kennan) —
9 on the same claims for relief. *Id.* at 959. The court bifurcated the trial as to liability and damages.
10 *Id.* During the trial on liability, the court submitted written interrogatories to the jury. *Id.* However,
11 the written interrogatories failed to include any questions regarding Kennan’s individual liability.
12 *Id.* Thus, when the jury returned its verdict, it only found liability as to Mid-Atlantic Mausoleum.
13 *Id.* Nonetheless, the district court entered judgment against both defendants in its order and the jury
14 later determined damages against both defendants. *Id.* at 959-60.

15 On appeal, the Third Circuit reversed, finding that the district court erred in entering
16 judgment against Kennan *even though the claims against the defendants were indistinguishable and*
17 *the jury subsequently determined damages against both defendants.* *Id.* at 960. In reversing the trial
18 court’s entry of liability against Kennan, the Third Circuit drew a distinction between a court
19 supplying an omitted subsidiary finding (as intended by the rule) and a court supplanting the jury to
20 determine the ultimate liability of a party (which was never intended by the rule):

21 Rule 49(a) as we understand it, was designed to have the court supply
22 an omitted subsidiary finding which would complete the jury’s
23 determination or verdict. For example, although we recognize that in
24 this case no individual elements of a misrepresentation cause of action
25 were specifically framed for the jury to answer, nevertheless, the
26 district court could ‘fill in’ those subsidiary elements when the jury
returned a verdict finding that Mid-Atlantic had misrepresented
commission rates to Kinnel. Subsumed within that ultimate jury
findings were the five elements of misrepresentation, i.e., materiality,

27 ²⁰ As the Nevada Rules of Civil Procedure are closely based on the Federal Rules of Civil Procedure, Nevada
28 courts consider federal cases interpreting the rules as strong persuasive authority. *Exec. Mgmt., Ltd. v. Ticor Title Ins.*
Co., 118 Nev. 46, 53, 38 P.2d 872, 876 (2002); *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772,
776 (1990).

deception, intent, reasonable reliance and damages, each of which could be deemed to have been supplied by the court in accordance with the jury's judgment once the jury's ultimate verdict was known.

That procedure of supplying a finding subsidiary to the ultimate verdict is a far cry, however, from a procedure whereby the court in the absence of a jury verdict, determines the ultimate liability of a party, as it did here. We have been directed to no authority which would permit the district court to act as it did here in depriving Kennan of his right to a jury verdict.

Id. at 965-66 (emphasis added). In refusing to make a finding as to the ultimate liability to the individual defendant, the Court declined to “*enter the minds of the jurors to answer a question that was never posed to them . . .*” *Id.* at 967 (emphasis added) (quoting *Stradley v. Cortez*, 518 F.2d 488, 490 (3rd Cir. 1975)).²¹

Despite the fact that Rule 49(a) only applies to factual findings, and ultimate liability cannot be entered by a court under Rule 49(a),²² Mr. Morgan now invites reversible error by asking this

²¹ *Stradley* addressed a somewhat similar issue of an “omitted verdict.” In *Stradley*, the complaint named two individual defendants, Frederick Cortez, Sr. and Frederick Cortez, Jr. 518 F.2d at 489. When the deputy clerk asked the jury foreman about the verdict, the clerk only inquired if the jury found the *defendant* liable, and the clerk announced that the jury had found *Cortez, Jr.* liable for the plaintiff's injuries. *Id.* at 489-90. The jury foreman confirmed this verdict. *Id.* at 490. Four years after the judgment was entered, the plaintiff moved to change the docket and enter judgment against both defendants, claiming that the deputy clerk's examination of the jury foreman was the only reason the judgment was not entered against both defendants. *Id.* The district court denied the plaintiff's motion, refusing to treat the judgment as a “clerical error.” *Id.* The Third Circuit upheld that decision. *Id.* The Court held:

We believe that the jury/clerk colloquy, the verdict, and the entry of judgment set out in *Stradley's* motion, if anything, supports the defendant's position rather than *Stradley's*. We cannot at this late stage overturn what appears to be *a verdict consistent with the evidence presented* on plaintiff's *mere allegation that the jury intended to do other than it did* when it returned a verdict solely against Cortez, Jr. *Stradley's* claim that the jury never exonerated Senior and never indicated that its findings of liability should relate only to Junior are not borne out by the verdict, the judgment, or the record at trial.

We have *reviewed the record* of the 1970 trial and have found *no evidence that, at the time of the accident, Cortez, Jr. was acting as the agent of or under the control of his father*. While the defendants were not present or represented at trial, *their answer, specifically denying agency*, was still of record. *It was incumbent upon plaintiff to offer some evidence to prove the alleged agency relationship*.

Id. at 495 (emphasis added).

²² See *Williams v. Nat'l R.R. Passenger Corp.*, No. 90-5394, 1992 WL 230148 (E.D. Penn. Sept. 8, 1992) (refusing to determine individual recovery by each plaintiff, under Rule 49(a), because the three plaintiffs were treated jointly, and interchangeably, as the “plaintiff” throughout the case); *Jarvis v. Ford Motor Co.*, 283 F.3d 33, 56 (2002) (holding that Rule 49(a) does not apply where “the jury is required to make determinations not only of issues of fact but of ultimate liability”).

1 Court to do exactly what *Kinnel* held it cannot: to enter judgment against Harvest. The jury never
2 rendered such a verdict and the record fails to support entry of such a verdict.

3 C. **Mr. Morgan’s Failure to Request Apportionment of Damages Between the**
4 **Defendants Dooms His Current Request that Judgment Be Entered Against**
5 **Harvest.**

6 Finally, even assuming *arguendo* Mr. Morgan had proved a claim of negligent entrustment or
7 vicarious liability against Harvest (which he did not), and the Court had the power to add Harvest to
8 the jury’s verdict under Rule 49(a) (which it does not), it still would be impossible to enter judgment
9 against Harvest in this case because Mr. Morgan failed to have the jury determine how to apportion
10 liability between the defendants. Specifically, Mr. Morgan asks this Court to find that Harvest is
11 jointly and severally liable for Mr. Lujan’s conduct, (*see* Mot. at 6:7-11), despite the fact that
12 Nevada abolished joint and several liability in cases against multiple, negligent tortfeasors over
13 thirty years ago. *See Warmbrodt v. Blanchard*, 100 Nev. 703, 707-08, 692 P.2d 1282, 1285-86
14 (1984) (explaining that NRS 41.141 “eliminat[ed]” and “abolished” two common-law doctrines: (1)
15 a plaintiff’s contributory negligence as a complete bar to recovery; and (2) joint and several liability
16 against negligent defendants), *superseded by statute on other grounds as stated in Countrywide*
17 *Home Loans v. Thitchener*, 124 Nev. 725, 740-43 & n.39, 192 P.3d 243, 253-55 & n.39 (2008).

18 The law requires that “[i]n any action to recover damages for death or injury . . . in which
19 comparative negligence is asserted as a defense [and] the jury determines the plaintiff is entitled to
20 recover [damages], [the jury] shall return . . . [a] special verdict indicating the percentage of
21 negligence attributable to each party remaining in the action.”²³ NRS 41.141(1), (2)(b)(2). If a
22 plaintiff is entitled to recover against more than one defendant, then “*each defendant is severally*
23 *liable to the plaintiff only for that portion of the judgment which represents the percentage of*
24 *negligence attributable to that defendant.*”²⁴ NRS 41.141(4) (emphasis added). By way of

25 ²³ The jury does not need to find that the plaintiff was comparatively negligent to trigger the application of NRS
26 41.141; it is enough that a comparative negligence defense is asserted. *See Piroozi v. Eighth Jud. Dist. Ct. ex rel. Cnty. of*
Clark, 131 Nev. Adv. Op. 100, 363 P.3d 1168, 1171 (2015). In this case, Mr. Lujan and Harvest collectively asserted a
comparative negligence defense. (Ex. 2, at 3:16-21.)

27 ²⁴ “[B]y abandoning joint and several liability against negligent defendants, the Legislature sought to ensure that a
28 negligent defendant’s liability would be limited to an amount proportionate with his or her fault.” *Café Moda, LLC v.*
Palma, 128 Nev. 78, 82, 272 P.3d 137, 140 (2012) (citing 1973 Nev. Stat., ch. 787, at 1722; Hearing on S.B. 524 Before
the Senate Judiciary Comm., 57th Leg. (Nev. April 6, 1973)).

1 example, if a jury determines that Defendant A is 80 percent negligent and Defendant B is 20
2 percent negligent, then Defendant B is only liable for 20 percent of the judgment awarded to the
3 plaintiff. *See Café Moda, LLC v. Palma*, 128 Nev. 78, 84, 272 P.3d 137, 141 (2012).

4 Here, Harvest and Mr. Lujan jointly asserted an affirmative defense of comparative
5 negligence. (Ex. 2, at 3:16-21.) Despite the fact that Mr. Morgan had alleged negligence-based
6 claims against two defendants, he failed to ask the jury to apportion damages between Mr. Lujan and
7 Harvest as required by NRS 41.141. (*See generally* Mot. at Ex. 1.) Mr. Morgan has not (and
8 cannot) cite to any authority that allows the Court to now determine how to apportion liability
9 between the defendants (assuming there was a factual basis for entry of judgment against Harvest).
10 Indeed, it would be completely contrary to N.R.C.P. 49(a) and *Kinnel* for the Court to find that any
11 portion of the jury's \$3 million verdict could be applied to Harvest because that would be a
12 determination of ultimate liability—not a factual finding.

13 IV. CONCLUSION²⁵

14 Now, dissatisfied with his trial strategy, Mr. Morgan asks this Court to do what it cannot: to
15 enter liability against Harvest despite the complete lack of evidence to prove his claim for either
16 vicarious liability or negligent entrustment. Mr. Morgan's request is not only contrary to the record

17 ///

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26 ²⁵ Given the brevity of Mr. Morgan's Motion, his lack of citations to the record, and his failure to truly analyze the
27 evidence and procedure of this case, Harvest is concerned that Mr. Morgan may intend to file a lengthy reply that raises
28 new arguments for the first time. Any attempt to do so would be entirely improper. But, out of an abundance of caution,
should Mr. Morgan do so, Harvest reserves the right to request a surreply to address any arguments or evidence not
advanced in his Motion.

1 in this action, but also to the purpose of Rule 49(a). Thus, it must be denied. Mr. Morgan chose to
2 proceed against only Mr. Lujan at trial and he must now bear the burden of that choice.

3 DATED this 16th day of August, 2018.

4 BAILEY ♦ KENNEDY

5
6 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

JOSHUA P. GILMORE

7 ANDREA M. CHAMPION

8 *Attorneys for Defendants*

9 HARVEST MANAGEMENT SUB LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of August, 2018, service of the foregoing **DEFENDANT HARVEST MANAGEMENT SUB LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District 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:

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Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)



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Filing Attorney	Dennis Kennedy

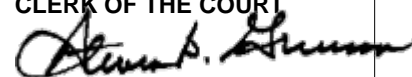
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TAB 20

TAB 20



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DISTRICT COURT

CLARK COUNTY, NEVADA

AARON M. MORGAN, individually,

Plaintiff,

vs.

DAVID E. LUJAN, individually; HARVEST
MANAGEMENT SUB LLC; a Foreign Limited-
Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

Defendants.

Case No.: A-15-718679-C
Dept. No.: XI

Hearing Date: September 14, 2018
Hearing Time: In Chambers

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF JUDGMENT

Plaintiff, Aaron M. Morgan, in this matter, by and through his attorneys of record,
Benjamin P. Cloward, Esq. and Bryan A. Boyack, Esq., of the Richard Harris Law Firm, and
Micah S. Echols, Esq. and Tom W. Stewart, Esq., of Marquis Aurbach Coffing, hereby files
Plaintiff's Reply in Support of Motion for Entry of Judgment. This Reply is made and based on

1 the papers and pleadings on file herein, the attached memorandum of points and authorities, and
2 the oral argument before the Court.

3 Dated this 6th day of September, 2018.

4
5 MARQUIS AURBACH COFFING

6
7 By /s/Tom W. Stewart
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

It is undisputed that Defendant David Lujan, while working for and driving a bus owned by Defendant Harvest Management Sub LLC, struck Plaintiff Aaron Morgan's vehicle and caused Morgan severe injury. Because of the accident, Morgan incurred significant medical bills and requires future medical care. As a result, after a six-day jury trial, Morgan prevailed on his claims of negligence and vicarious liability and was awarded roughly \$3 million against both Harvest and Lujan.¹ Morgan moved this Court, pursuant to NRCP 49, to correct an inadvertent error in the special verdict form, which was acknowledged by Lujan and Harvest during trial, to reflect the evidence and testimony adduced at trial. *See generally* Plaintiff's Motion for Entry of Judgment (the "Motion").

Now, Harvest's new counsel spends twenty-six pages, and four volumes of appendices, attempting to reinvent their case after losing that six-day jury trial, in which their client was held 100% liable for the injuries to Morgan, using comically slanted facts, new legal theories, flurries of bold and italicized text, and random citations to legal opinions from other jurisdictions. *See* Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment (the "Opposition"). In doing so, however, Harvest presents an opposition that is internally inconsistent, factually disingenuous, and legally misguided. Harvest overlooks basic, established facts and conclusions of the underlying trial: that, because it was undisputed that Lujan was in the course and scope of his employment with Harvest at the time of the accident, and because that was acknowledged by Lujan and Harvest, Harvest and Lujan consented to vicarious liability for any negligence found against Lujan. Harvest's new counsel's arguments to the contrary are not supported by the record and, thus, can be properly disregarded by this Court. As a result, this Court should discard the Opposition and, instead, grant the Motion.

¹ This six-day trial followed a prior three-day trial that was declared a mistrial because of Harvest's prior counsel improperly questioned Morgan.

II. FACTS

Throughout the Opposition, Harvest's new counsel cherry-picks portions of the record to provide purportedly factual points of reference to support arguments that are both irrelevant and untimely.² Irrespective of the portions of the record Harvest chooses to include, however, Harvest's twenty-six page Opposition, and four appendices, do not supplant the evidence and testimony adduced over six days of trial clearly demonstrating Harvest's vicarious liability for Lujan's negligence. Indeed, the record plainly supports such a finding. As demonstrated below, Harvest's consented to vicarious liability for Lujan's negligence throughout the trial and, thus, consented to judgment being rendered against them in the event Lujan was found to be negligent. Accordingly, the Motion should be granted, pursuant to NRCP 49(a).

A. **FROM THE BEGINNING, HARVEST'S CORPORATE REPRESENTATIVE WAS PRESENTED TO THE JURY AND THE COURT AS THE "CLIENT" BEING REPRESENTED.**

Harvest and Lujan were represented by the same counsel at both trials. Lujan attended the first trial, while Harvest's NRCP 30(b)(6) representative, Erica Janssen, sat at counsel's table throughout the second trial. At the beginning of the second trial, Harvest's counsel introduced her to the jury venire as his client before jury selection started:

[Harvest's counsel]: Hello everyone. What a way to start a Monday, right? In my firm we've got myself, Doug Gardner and then Brett South, who is not here, but this is Doug Rands, and *then my client, Erica is right back here.* . . .

Transcript of Jury Trial, April 2, 2018, attached as **Exhibit 1**, at 17 (emphasis added).

This point was again confirmed during a bench conference that occurred during jury selection, outside the presence of the jury venire:

THE COURT: Is that your client right there, folks?

[Harvest's counsel]: Yeah.

THE COURT: All right. What does your client prefer to be called?

² Specifically, Harvest's new counsel advances new arguments regarding Nevada's "going and coming rule" and its impact on vicarious liability that Harvest did not advance during trial. Opposition at 17-18. Accordingly, just as "[p]arties may not raise a new theory for the first time on appeal," this Court should also decline "to allow [Harvest] to reinvent [their] case on new grounds" after losing at trial on the merits. *See Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010).

1 [Harvest's counsel]: Erica.

2 THE COURT: Okay. Thank you. So the case is captioned, do it the way in which
3 I'm assuming is her legal name.

4 [Harvest's counsel]: *No, she's the representative of the --*

5 THE COURT: She's the representative. Oh, okay.

6 [Harvest's counsel]: *-- of the corporation.*

7 THE COURT: I thought --

8 [Harvest's counsel]: Mr. Lujan is the --

9 THE COURT: Got it. Okay. It's a different -- different person.

10 **Exhibit 1** at 94–95 (emphasis added).

11 In addition to introducing the corporate representative as a party, both sides discussed
12 theories regarding corporate defendants during voir dire, with the members of the jury venire
13 answering three separate questions about liability for corporate defendants, including one posed
14 by Harvest. *See Exhibit 1* at 47, 213, 232.

15 **B. DURING OPENING STATEMENTS, BOTH PARTIES ARGUE LUJAN
16 WAS ON THE JOB AT THE TIME OF THE ACCIDENT.**

17 Next, Morgan, during his opening statement, clearly stated that Lujan was a bus driver,
18 driving a bus—thus in the course and scope of his employment—when the accident occurred:

19 [Morgan's counsel]: Let me tell you about what happened in this case. And this
20 case starts off with the actions of Mr. Lujan, who's not here. He's driving a
21 shuttlebus. He worked for a retirement [indiscernible], shuttling elderly people.
22 He's having lunch at Paradise Park, a park here in town. . . . Mr. Lujan gets in his
23 shuttlebus and it's time for him to get back to work. So he starts off. Bang.
24 Collision takes place.

25 Transcript of Jury Trial, April 3, 2018, attached as **Exhibit 2**, at 126.

26 During their opening statement, Harvest admitted Lujan was “[their] driver” at the time
27 of the accident:

28 [Harvest's counsel]: Now, what was this accident all about? What happened in
this accident? . . . [W]e're going to show you the actions of *our driver* were not
reckless. They weren't wild. The impact did occur. We agree with that . . .

Exhibit 2 at 147 (emphasis added).

1 C. **HARVEST'S NRCP 30(B)(6) REPRESENTATIVE TESTIFIES ON**
2 **BEHALF OF HARVEST THAT LUJAN WAS A HARVEST EMPLOYEE**
3 **AT THE TIME OF THE ACCIDENT**

4 Then, Morgan called Erican Janssen, Harvest's 30(b)(6) corporate representative, on the
5 fourth and fifth days of trial. She testified that she was employed by Harvest, that she was
6 testifying on behalf of Harvest, and that she was listed in the interrogatories as the person
7 authorized to respond on behalf of Harvest. She further testified that Lujan was the driver at the
8 time of the accident:

9 [Morgan's counsel]: . . . All right, Ms. Janssen, did you have an opportunity to
10 review the sworn testimony of Mr. Lujan in this matter?

11 [Janssen]: No.

12 [Morgan's counsel]: Okay. Are you aware that Mr. Lujan was the driver?

13 [Janssen]: Yes.

14 Transcript of Jury Trial, April 5, 2018, attached as **Exhibit 3**, at 165.

15 Janssen testified that "[their] shuttlebus," driven by Lujan, was the vehicle involved in
16 the accident:

17 [Janssen]: Our shuttle bus is quite large and very visible, and it
18 managed to cross three lanes of traffic and enter the fourth lane when the collision
19 took place. Essentially, I'm saying that your client needs to look out.

20 [Morgan's counsel]: So it was his fault for assuming that Mr. Lujan would obey
21 the rules of the road and would stop at the stop sign? It's Aaron's fault?

22 [Janssen]: He had the last opportunity to avoid the accident.

23 [Morgan's counsel]: Are you aware of what actions he took to avoid the
24 accident?

25 [Janssen]: I believe he braked and swerved.

26 [Morgan's counsel]: Okay. What could Mr. Lujan have done differently?

27 [Harvest's counsel]: Object. Speculation and irrelevant, frankly.

28 [Morgan's counsel]: It's their employee.

Exhibit 3 at 171 (emphasis added).

 Additionally, Harvest's counsel confirmed that Janssen represented Harvest by eliciting
the following information on cross-examination:

1 [Harvest's counsel]: You are here today as a representative of the Defendant, correct?

2 [Janssen]: Correct.

3 [Harvest's counsel]: And you're employed by the Defendant?

4 [Janssen]: Correct.

5 Transcript of Jury Trial, April 6, 2018, attached as **Exhibit 4**, at 6.

6 Then, Janssen further established that she acted on behalf of a "company defendant,"
7 during the lawsuit:

8 [Harvest's counsel]: Did you have any -- anything to do with preparing that answer?

9 [Janssen]: I provided, I believe, the names of the correct Defendant.

10 [Harvest's counsel]: Okay.

11 [Janssen]: Company Defendant, I should say.

12 **Exhibit 4** at 7.

13 On re-direct, Janssen confirmed that she signed the verification on behalf of Harvest for
14 Harvest's answers to Morgan's interrogatories:

15 [Morgan's counsel]: And are those the answers that were provided in response
16 to our interrogatories?

17 [Janssen]: Yes.

18 [Morgan's counsel]: And, in fact, you were the one that prepared those?

19 [Janssen]: Actually, our attorney did.

20 [Morgan's counsel]: Okay.

21 [Janssen]: I signed the verification.

22 [Morgan's counsel]: So where it says, on interrogatory number 14, and you can
23 follow along with me:

24 "Please provide the full name of the person answering the
25 interrogatories on behalf of the Defendant, Harvest
26 Management Sub, LLC, and state in what capacity you are
27 authorized to respond on behalf of said Defendant.

28 "Erica Janssen, Holiday Retirement, Risk Management."

1 **Exhibit 4** at 11.

2 Finally, Janssen indicated that, following the accident, Lujan, as Harvest's driver, would
3 have filled out an "accident information card," one of Harvest's "internal documents":

4 [Morgan's counsel]: Okay. Can you tell the jurors what that document is?

5 [Janssen]: It's titled "Accident Information Card, Other Vehicle."

6 [Morgan's counsel]: Okay. And that's a document that Mr. Lujan would have
7 filled out, true?

8 [Janssen]: There is no name or signature on it.

9 [Morgan's counsel]: Is that one of your internal documents?

10 [Janssen]: It is.

11 [Morgan's counsel]: Okay. So, obviously, if it's one of your company's internal
12 documents, Mr. Morgan would not have filled that out, true?

13 [Janssen]: In terms of who completed that document?

14 [Morgan's counsel]: Yes.

15 [Janssen]: I believe it was our driver.

16 **Exhibit 4** at 14.

17 **D. HARVEST READS INTO THE RECORD LUJAN'S TESTIMONY THAT**
18 **HE WAS EMPLOYED BY HARVEST AT THE TIME OF THE**
19 **ACCIDENT.**

20 On the fifth day of trial, Harvest's counsel requested Lujan's testimony from the first trial
21 be read into the record in the jury's presence. **Exhibit 4** at 191-92. That testimony, originally
22 elicited by Morgan's counsel, explicitly indicated that Lujan was employed by Harvest as a bus
23 driver at the time of the accident:

24 [Harvest's counsel]: All right, Mr. Lujan, at the time of the accident of April
25 2014, were you employed with Montera Meadows?

26 [Lujan]: Yes.

27 [Harvest's counsel]: And what was your employment?

28 [Lujan]: I was the bus driver.

 [Harvest's counsel]: Okay. And what is your understanding of the relationship
of Montera Meadows to Harvest Management?

 [Lujan]: Harvest Management was our corporate office.

1 [Harvest's counsel]: Okay.

2 [Lujan]: Montera Meadows is just the local.

3 [Harvest's counsel]: Okay, all right. And this accident happened on April 1st,
4 2014, correct?

5 [Lujan]: Yes, sir.

6 **Exhibit 4** at 195–96.

7 **E. BOTH PARTIES REFERENCE HARVEST'S RESPONSIBILITY FOR**
8 **LUJAN'S ACTIONS.**

9 One final time during his closing, Morgan indicated that Erica Janssen, Harvest's
10 corporate representative, had taken the stand during the trial to testify about the actions of Lujan,
11 Harvest's driver, who did not contest liability:

12 [Morgan's counsel] . . . They're going to point the finger at Aaron despite the
13 fact that when Erica Janssen, the corporate representative, took the stand, she
14 didn't even know whether the driver had a stop sign. . . . [y]ou know, when we
15 talked to Ms. Janssen and said, . . . "Did you know that your driver said that
16 Aaron did nothing wrong?" "No, I didn't know that."

17 Transcript of Jury Trial, April 6, 2018, attached as **Exhibit 5**, at 122–23.

18 Likewise, Harvest indicated that Janssen testified and that Lujan did not contest liability:

19 [Harvest's counsel]: . . . [S]o this is why Ms. Janssen testified that he may have
20 had some responsibility for the accident. I'm not saying that he caused the
21 accident. There's no question Mr. Lujan should not have pulled out in front of
22 him. He had the right of way . . .

23 **Exhibit 5** at 143.

24 **F. HARVEST WAIVES OBJECTION TO MAKING CHANGES TO THE**
25 **SPECIAL VERDICT FORM.**

26 As noted in the Motion, on the final day of trial, the Court *sua sponte* created a special
27 verdict form that inadvertently included Lujan as the only Defendant in the caption. The Court
28 informed the parties of this omission, and the Defendants explicitly agreed they had no
objection:

THE COURT: Take a look and see if -- will you guys look at that verdict
form? I know it doesn't have the right caption. I know it's just the one we used
the last trial. See if that looks sort of okay.

[Harvest's counsel]: Yeah. That looks fine.

1 THE COURT: I don't know if it's right with what you're asking for for
2 damages, but it's just what we used in the last trial which was similar sort of.

3 **Exhibit 5** at 5–6.

4 The jury ultimately found Defendants to be negligent and 100% at fault for the accident.
5 Special Verdict Form, attached as **Exhibit 6**.

6 **III. LEGAL ARGUMENT**

7 **A. PRINCIPLES OF VICARIOUS LIABILITY**

8 Harvest's Opposition is seemingly premised upon a misunderstanding of vicarious
9 liability and, thus, some clarification may be helpful. *See, e.g.*, Opposition at 23–24. To begin,
10 “vicarious liability” describes the burden “a supervisory party . . . bears for the actionable
11 conduct of a subordinate . . . based on the relationship between the two parties.” *McCrosky v.*
12 *Carson Tahoe Reg'l Med. Ctr.*, 133 Nev., Adv. Op. 115, 408 P.3d 149, 152 (2017) (citing
13 BLACK'S LAW DICTIONARY 1055 (10th ed. 2014)). As a result, “[t]he supervisory party need not
14 be directly at fault to be liable, because the subordinate's negligence is imputed to the
15 supervisor.” *Id.*

16 The distinction between primary liability and the employer's separate, vicarious liability
17 is codified in NRS 41.130, which distinguishes between a primary tortfeasor's liability for
18 damages, and “where the person causing [a personal injury] is employed by another . . . or
19 corporation responsible for the conduct of the person causing the injury, that
20 other . . . corporation so responsible is liable to the person injured for damages.” Thus, “a person
21 whose liability is imputed based on the tortious acts of another is liable for the entire share of
22 comparative responsibility assigned to the other.”³ Restatement (Third) of Torts: Apportionment
23 Liability § 13 (2000).

24 Here, it is undisputed that Lujan was an employee of Harvest within the course and scope
25 of his duties with Harvest when the accident occurred. Harvest never objected to such a theory

26 ³ On this point, Harvest again makes raises a new argument regarding joint and several liability and
27 comparative negligence requirements under NRS 41.141. Opposition at 23–24. The point is irrelevant—
28 vicarious liability applies irrespective of which liability regime is the governing rule. *McCrosky*, 133
Nev., Adv. Op. 115, 408 P.3d at 152.

1 and, throughout trial, it was understood by the parties, the jury, and the Court, that Lujan was
2 employed by Harvest and on the job for Harvest when he drove the Harvest-owned bus into
3 Morgan's vehicle. As a result, Lujan's negligence, and the resulting liability, is imputed to
4 Harvest, who is vicariously liable for the negligence of their subordinate. Given this undisputed
5 vicarious liability, Morgan moves this Court to enter a judgment, or to make a finding and then
6 enter a judgment, consistent with this legal imputation of liability. Accordingly, this Court
7 should grant the Motion and enter such a judgment.

8 **B. HARVEST CANNOT OBJECT TO THE FINDINGS BECAUSE HARVEST**
9 **IMPLIEDLY CONSENTED TO VICARIOUS LIABILITY FOR LUJAN'S**
10 **NEGLIGENCE**

11 Further, throughout the life of this lawsuit, Harvest has consented to vicarious liability by
12 raising the issue themselves during trial and failing to object to the theory when raised by
13 Morgan during trial. Indeed, an issue had been tried by implied consent where a party's counsel
14 "had raised the issue in his opening argument, [opposing counsel] specifically referred to the
15 matter as an issue in the case, that the factual issue had been explored in discovery, that no
16 objection had been raised at trial to the admission of evidence relevant to the issue." *Schwartz v.*
17 *Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137, 1140 (1979). When issues not raised by the
18 pleadings are treated by express or implied consent of the parties, "they shall be treated in all
19 respects as if they had been raised in the pleadings and that, though the pleadings may be
20 amended to conform to the evidence, failure to amend does not affect the result of the trial of
21 such issues." *Essex v. Guarantee Ins. Co.*, 89 Nev. 583, 585, 517 P.2d 790, 791 (1973).

22 Here, both Harvest began jury selection by introducing Harvest's corporate representative
23 as his client to the jury venire and the judge. **Exhibit 1** at 17, 94-95. Harvest and Morgan both
24 referred to corporate defendants during voir dire. **Exhibit 1** at 47, 213, 232. During opening
25 statements, Morgan described Lujan as being on the job when the accident occurred, and Harvest
26 failed to object; likewise, during Harvest's opening, they referred to Lujan as "our driver" at the
27 time of the accident. **Exhibit 2** at 126, 147. Lujan admitted he was employed by Harvest at the
28 time of the accident. **Exhibit 4** at 195-96. Harvest's corporate representative, speaking on
behalf of Harvest, took ownership of Lujan's employment ("our driver," **Exhibit 4** at 14) and of

1 the shuttle bus Lujan drove into Morgan (“our shuttle bus,” **Exhibit 3** at 171). During closing,
2 both parties again referenced Harvest’s corporate representative testifying, on behalf of Harvest,
3 about Lujan’s involvement in the accident. **Exhibit 5** at 122–23, 143.

4 Here, just as in *Schwartz*, where the parties impliedly consented to claims during trial by
5 discussing them, failing to object to them, throughout trial, Harvest impliedly consented to
6 vicarious liability for Lujan’s actions. Harvest never objected to Lujan being outside the course
7 or scope of his employment with Harvest at the time of the accident; Lujan himself did not
8 contest liability for that accident. To the contrary, Harvest expressly took ownership for Lujan’s
9 actions and for the bus Lujan drove while on the job. That Lujan was within the course and
10 scope of his employment was plainly evident by the testimony of Harvest and Lujan themselves.
11 Thus, Harvest cannot now argue that such claims are improper; rather, because Harvest implied
12 consented to the claims throughout the six-day jury trial, this Court should recognize Harvest’s
13 vicarious liability for Lujan’s negligence.

14 To combat this, Harvest, in an interesting decision, attempts to reinterpret Morgan’s own
15 claims upon which he has already prevailed at trial. Opposition at 14–19. While Morgan
16 pursued and prevailed on his claim for vicarious liability against Harvest, Harvest’s new counsel
17 asserts that Mr. Morgan actually intended to pursue a claim of negligent entrustment.
18 Opposition at 14–19. Harvest’s new counsel concludes, with string cites to out-of-state
19 jurisdictions and a block quotation of a twenty-five year old case from a Texas appellate court,
20 that Morgan failed to prove this non-existent theory at trial. *See* Opposition at 15–19. However,
21 the argument is irrelevant—the claim was tried by the implied consent of the parties, and, thus,
22 “the claim shall be treated in all respects as if they had been raised in the pleadings.” NRCP
23 15(b). Indeed, neither Lujan nor Harvest objected to the nature of the claim against them as
24 argued by Harvest’s new counsel. Thus, to the extent Morgan “failed to amend” his pleadings to
25 conform to a negligent entrustment theory, it “does not affect the result of the trial of these
26 issues.” NRCP 15(b); *see also I. Cox Const. Co., LLC v. CH2 Investments, LLC*, 129 Nev. 139,
27 149, 296 P.3d 1202, 1204 (2013) (“NRCP 15(b) allows a court to hear an issue not raised in the
28

1 pleadings when the issue is tried with the express or implied consent of the parties). Thus,
2 Harvest's argument is unavailing, and can properly be disregarded by this Court.

3 **C. NRCP 49(A) ALLOWS A COURT TO MAKE A FINDING ABOUT**
4 **HARVEST'S CONSENTED-TO VICARIOUS LIABILITY.**

5 NRCP 49(a) provides, in certain circumstances, that this Court may make a finding "in
6 accord with the judgment on the special verdict" as to "any issue of fact raised by the pleadings
7 or by the evidence" not expressly submitted to the jury.⁴ Here, this Court should enter a finding
8 that conforms with the evidence and testimony adduced throughout discovery and trial—that
9 unanimous special verdict rendered judgment against both Lujan and Harvest. Such a finding is
10 in accordance with the principles of vicarious liability and Harvest's implied consent to that
11 vicarious liability throughout the life of this lawsuit. Accordingly, this Court should grant the
12 Motion.

13 **IV. CONCLUSION**

14 For the foregoing reasons, Plaintiff Aaron Morgan respectfully requests this Court grant
15 his Motion for Entry of Judgment.

16 Dated this 6th day of September, 2018.

17 MARQUIS AURBACH COFFING

18
19 By /s/Tom W. Stewart
20 Micah S. Echols, Esq.
21 Nevada Bar No. 8437
22 Tom W. Stewart, Esq.
23 Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiff, Aaron M. Morgan

24 ⁴ In opposition, Harvest cites a thirty-year old case from the Third Circuit and describes it as the "clearly
25 established law" that evidently demonstrates Morgan's request "is beyond the power of this Court."
26 Opposition at 20–23 (citing *Kinnel v. Mid-Atl. Mausoleums, Inc.*, 850 F.2d 958, 961 (3d Cir. 1988)).
27 However, it appears the issue is actually in dispute in the Third Circuit, which has also held that "[a]
28 special verdict, finding, or answer must be construed in light of surrounding circumstances and, in
connection with pleadings, instructions, the issue or question submitted." *Halprin v. Mora*, 231 F.2d 197,
201 (3d Cir. 1956). Decades-old Third Circuit opinions aside, Morgan's request is permissible under the
plain language of NRCP 49(a), and thus this Court need look no further to grant the Motion.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of August, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁵

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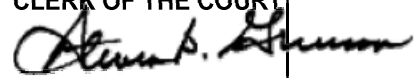
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Barb Frauenfeld
an employee of Marquis Aurbach Coffing

⁵ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1



1 RTRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

AARON MORGAN,

8

Plaintiff,

9

vs.

10

DAVID LUJAN

11

Defendant.

12

13

BEFORE THE HONORABLE **LINDA MARIE BELL**, DISTRICT COURT
JUDGE

14

MONDAY, APRIL 2, 2018

15

**RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL**

16

17

APPEARANCES:

18

For the Plaintiff:

DOUGLAS GARDNER, ESQ.

19

DOUGLAS RANDS, ESQ.

20

21

For the Defendant:

BRYAN BOYACK, ESQ.

22

BENJAMIN CLOWARD, ESQ.

23

24

25

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 MR. CLOWARD: Okay. I was just writing -- making that list.

2 My name is Ben Cloward. I have the privilege of representing
3 Aaron Morgan here who is the -- who we call the plaintiff in the case,
4 meaning he's the individual bringing the lawsuit.

5 Marge Russell is my assistant and then Brian Boyack is my co-
6 counsel in the case. And I'm a partner at a firm called the Richard Harris
7 Law Firm. Members of that firm include Richard Harris, Joshua Harris,
8 Samantha Martin, Elaine Marzola, Ian Estrada, Travis Dunsmoor, Nia
9 Killebrew, Brian Unguren, Kris Helmick, Ryan Helmick -- those two are
10 brothers -- Adam Williams, Jonathan Leavitt, Jeff Scarborough. Anybody
11 else? I think that's it.

12 THE COURT: All right.

13 MR. CLOWARD: Thank you, Your Honor.

14 THE COURT: Mr. Gardner?

15 MR. GARDNER: Hello everyone. What a way to start a
16 Monday, right? In my firm we've got myself, Doug Gardner and then Brett
17 South, who is not here, but this is Doug Rands, and then my client, Erica is
18 right back here. Let's see, I think that's it for me.

19 THE COURT: All right.

20 Ms. Clerk, if you'll please call the roll of the panel of prospective
21 jurors?

22 When your name is called, if you'll just say "here" or "present"
23 please.

24 [Clerk calls roll]

25 THE COURT: All right. Anyone whose name was not called?

1 you if you were asked to do that?

2 PROSPECTIVE JUROR NUMBER 3: No, but it is a big
3 responsibility, though.

4 MR. CLOWARD: And on the other side of the coin, you know,
5 the defendants in this case. You know, if the evidence shows what we
6 believe it will show, you know, they will be responsible. How does that make
7 you feel to know that your decision may affect -- it's going to affect one party
8 one way or another, you know, no question about it. It just, it is. And are
9 you okay with that?

10 PROSPECTIVE JUROR NUMBER 3: Yes.

11 MR. CLOWARD: Do you have any reservations or problems
12 with that?

13 PROSPECTIVE JUROR NUMBER 3: No.

14 MR. CLOWARD: Okay. Have you ever had any maybe
15 setbacks in your life, things that, you know, were hard for you to get
16 through? You've never really been placed in that situation and maybe you
17 thought that you would react differently. But then when you actually were
18 placed in that situation you were kind of like oh, I didn't really, you know, this
19 was tougher than I thought or maybe this was easier than I thought?

20 PROSPECTIVE JUROR NUMBER 3: Well, probably being a
21 possible juror right now.

22 MR. CLOWARD: Yes.

23 PROSPECTIVE JUROR NUMBER 3: I mean, it is a big
24 responsibility. But once you get selected, you just have to deal with it and
25 really learn the process.

1 yourselves or with anyone else on any subject connected with this trial, or
2 read, watch, or listen to any report or commentary on the trial or any person
3 connected with this trial, by any medium of information, including, without
4 limitation, newspapers, television, internet and radio, or express any opinion
5 on any subject connected with the trial until the case is finally submitted to
6 you. I ask you not to do any independent research.

7 Also, during the course of the trial, the lawyers, parties,
8 witnesses, and court staff, other than the Marshall here, are not permitted to
9 talk to you at all. We can't say hello, we can't tell you where the elevator is,
10 we're not allowed to talk to you at all. It's just to protect the integrity of the
11 jury process. So if you see one of us and we ignore you, please understand
12 we are not being rude, we're just not allowed to talk to you.

13 We'll see you folks back at 1:00.

14 THE MARSHAL: Please rise for the jury.

15 [Jury exits courtroom for lunch break.]

16 THE COURT: Counsel approach for a second?

17 UNIDENTIFIED SPEAKER: I'm hurrying.

18 THE BAILIFF: Take your time.

19 [Bench Conference]

20 MR. CLOWARD: Hi.

21 THE COURT: Is that your client right there, folks?

22 MR. GARDNER: Yeah.

23 THE COURT: All right. What does your client prefer to be
24 called?

25 MR. GARDNER: Erica.

1 THE COURT: Okay. Thank you. So the case is captioned, do
2 it the way in which I'm assuming is her legal name.

3 MR. GARDNER: No, she's the representative of the --

4 THE COURT: She's the representative. Oh, okay.

5 MR. GARDNER: -- of the corporation.

6 THE COURT: I thought --

7 MR. GARDNER: Mr. Lujan is the --

8 THE COURT: Got it. Okay. It's a different -- different person.

9 MR. CLOWARD: Mr. Lujan is not in court today, but he's --

10 THE COURT: Got it.

11 MR. GARDNER: Harris, that is a creative way of saying David,
12 it's just a different way of pronouncing it.

13 MR. CLOWARD: Yeah.

14 THE COURT: I'm just trying to be sensitive to the issue, so got
15 it. That's embarrassing.

16 Okay. We have a motion, too, that didn't get a result yet. When
17 would you like to do that, because I think maybe -- let's not do it during the
18 trial so we can just focus on the trial.

19 MR. GARDNER: What was it?

20 THE COURT: A motion for fees.

21 MR. CLOWARD: For fees. I think it's scheduled for next week.

22 THE COURT: Oh. Oh, is it?

23 MR. CLOWARD: Yeah.

24 THE COURT: Oh, yeah. [Indiscernible] I confuse myself. I
25 had it on today, actually. So we can --

1 people that abuse it versus use the system legitimately the way that it's
2 intended?

3 PROSPECTIVE JUROR NUMBER 21: I think -- I think it's used
4 legitimately. I mean, when it's a -- it's -- when it's a large corporation that's
5 being sued, I mean, then you're more partial to that. Like, they have enough
6 money and they have caused harm to this person, they can give up. You
7 know, they can share the wealth really. But when it's individual cases, my
8 question comes -- where does this money come from? Because -- does the
9 state pay for that, or, I mean, does the defendant have that kind of money?

10 MR. CLOWARD: Sure. Is that something that would be, I
11 guess, important for you -- that you would kind of have as a lingering
12 thought in the back of your mind, is how is this going to be paid?

13 PROSPECTIVE JUROR NUMBER 21: I mean, it's a large sum
14 of money. Does -- if the state pays for it, then our taxes might connect with
15 it [indiscernible].

16 MR. CLOWARD: Sure. If you were instructed that that's
17 something that you really don't get to consider, that you just get to enter the
18 verdict, and then from there, the Judge enters it as a judgment and how that
19 gets paid, whether it gets paid, is something that you don't even get to think
20 about, would that bother you?

21 PROSPECTIVE JUROR NUMBER 21: I don't know. No, I
22 guess not.

23 MR. CLOWARD: Do you think it might influence what you
24 ultimately did?

25 PROSPECTIVE JUROR NUMBER 21: I mean, given the

1 PROSPECTIVE JUROR NUMBER 23: Yeah. I was taken off
2 of it rather quickly because it didn't make sense. We were -- I was the
3 person terminating -- or being a witness to a termination, and they named
4 that District Manager, as well as myself. So then they ended up just going
5 after the company, which was Walgreens.

6 MR. CLOWARD: How did that experience -- does that make
7 you upset toward lawsuits? Was it --

8 PROSPECTIVE JUROR NUMBER 23: That particular one,
9 yes.

10 MR. CLOWARD: How do you feel about lawsuits in general?

11 PROSPECTIVE JUROR NUMBER 23: I think they're all
12 unique. I mean, you know, it just depends on the particular lawsuit.

13 MR. CLOWARD: Okay. Did that experience in any way maybe
14 color the way that you view lawsuits, that maybe now you kind of think that
15 all of them are suspect?

16 PROSPECTIVE JUROR NUMBER 23: No.

17 MR. CLOWARD: Okay. Other than that lawsuit, were there
18 any were there any other instances where you were involved in the legal
19 system as a Defendant or as a Plaintiff, or anything like that?

20 PROSPECTIVE JUROR NUMBER 23: Just in depositions for
21 like for Walgreens and for CVS.

22 MR. CLOWARD: Okay. Would that be like as a corporate
23 spokesperson with them?

24 PROSPECTIVE JUROR NUMBER 23: Yes.

25 MR. CLOWARD: Like a 36(b), I think. How many times have

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4
5 Sally A. Blais

6 Sally A. Blais, Transcriber, CET 666

7
8 Crystal Thomas

9 Crystal Thomas
10 Transcriber

11 Michelle Rogan

12 Michelle Rogan
13 Transcriber

14 Erin Perkins

15 Erin Perkins
16 Transcriber

17 Lisa Sikes

18 Lisa Sikes
19 Transcriber

20 Frankie Milfred

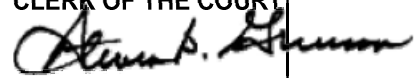
21 Frankie Milfred
22 Transcriber

23 Karen Watson

24 Karen Watson
25 Transcriber

Date: May 4, 2018

Exhibit 2



1 RTRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

AARON MORGAN,

8

Plaintiff,

9

vs.

10

DAVID LUJAN

11

Defendant.

12

13

BEFORE THE HONORABLE **LINDA MARIE BELL**, DISTRICT COURT
JUDGE

14

TUESDAY, APRIL 3, 2018

15

**RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL**

16

17

APPEARANCES:

18

For the Plaintiff:

19

DOUGLAS GARDNER, ESQ.

DOUGLAS RANDS, ESQ.

20

21

For the Defendant:

22

BRYAN BOYACK, ESQ.

BENJAMIN CLOWARD, ESQ.

23

24

25

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 counsel, and parties.

2 Ladies and gentlemen, I'm so sorry. I had something that I had
3 to take care of during the break and it took a little longer than I anticipated.
4 So I'm sorry that I made you wait, but it was entirely my fault.

5 All right. Mr. Cloward, are you ready?

6 MR. CLOWARD: Yes, Your Honor. Thank you.

7 OPENING STATEMENT BY THE PLAINTIFF

8 MR. CLOWARD: Good afternoon. This is the time that we
9 finally get to talk about the case, talk about the facts [indiscernible]. Keep in
10 mind what the attorneys say is not the evidence. This is just kind of a
11 preview of what the evidence will show.

12 So drivers must stop at stop signs. Drivers must look both ways
13 to make sure that it's safe before driving out into an intersection. These are
14 pretty basic rules that we're -- that we learn in driver's ed.

15 Let me tell you about what happened in this case. And this
16 case starts off with the actions of Mr. Lujan, who's not here. He's driving a
17 shuttlebus. He worked for a retirement [indiscernible], shuttling elderly
18 people. He's having lunch at Paradise Park, a park here in town.

19 Tompkins goes east and west and actually dead-ends at
20 Paradise. Up ahead is McLeod. And at McLeod, for traffic going west and
21 east, there is a stop sign. There is not a stop sign for traffic going north and
22 south on McLeod.

23 Mr. Lujan gets in his shuttlebus and it's time for him to get back
24 to work. So he starts off. Bang. Collision takes place. He doesn't stop at
25 the stop sign. He doesn't look left. He doesn't look right.

1963

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4 Dipti Patel

5 Dipti Patel
6 Transcriber

7 Liesl Springer

8 Liesl Springer
9 Transcriber

10 Erin Perkins

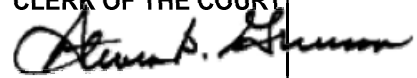
11 Erin Perkins
12 Transcriber

13 Deborah Anderson

14 Deborah Anderson
15 Transcriber

16
17 Date: May 4,2018
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Exhibit 3



1 RTRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

AARON MORGAN,

CASE#: A-15-718679-C

8

Plaintiff,

DEPT. VII

9

vs.

10

DAVID LUJAN

11

Defendant.

12

13

BEFORE THE HONORABLE **LINDA MARIE BELL**, DISTRICT COURT
JUDGE

14

THURSDAY, APRIL 5, 2018

15

**RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL**

16

17

APPEARANCES:

18

For the Plaintiff:

DOUGLAS GARDNER, ESQ.

19

DOUGLAS RANDS, ESQ.

20

21

For the Defendant:

BRYAN BOYACK, ESQ.

22

BENJAMIN CLOWARD, ESQ.

23

24

25

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 THE WITNESS: Erica Janssen. E-R-I-C-A J-A-N-S-S-E-N.

2 THE COURT: Thank you.

3 Mr. Cloward, whenever you are ready.

4 MR. CLOWARD: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MR. CLOWARD:

7 Q Ms. Janssen, how are you today?

8 A I'm well.

9 Q Good. I just have a couple questions. And we'll get you on and
10 off, okay?

11 A Thank you.

12 Q And is it Ms. Jansin or Jan --

13 A Jansen.

14 Q Jansen okay. All right, Ms. Janssen, did you have an
15 opportunity to review the sworn testimony of Mr. Lujan in this matter?

16 A No.

17 Q Okay. Are you aware that Mr. Lujan was the driver?

18 A Yes.

19 Q Okay. Do you disagree that Mr. Lujan testified that Mr. Morgan
20 did nothing wrong?

21 MR. GARDNER: Form of the question, I object.

22 MR. RANDS: Objection. She also said she didn't read his
23 testimony.

24 MR. CLOWARD: They have a position, 30[b][6] has a position,
25 corporation has a position. She can state that.

1 correct?

2 A Yes.

3 Q And you're aware of what Mr. Morgan testified to during his
4 deposition, correct?

5 A Yes.

6 Q Okay. So the second affirmative defense, that's a defense that
7 you have to prove in this case. It's actually your burden of proof. And it
8 says, "The negligence of Plaintiff caused or contributed to any injuries or
9 damages that Plaintiff may have sustained, and the negligence of Plaintiff in
10 comparison with the alleged negligence of Defendants, if any, requires that
11 the damages of Plaintiff be denied or be diminished in proportion to the
12 amount of negligence attributable to the Plaintiff."

13 So what was it that Aaron did that was more negligent than
14 Mr. Lujan?

15 A Our shuttle bus is quite large and very visible, and it managed
16 to cross three lanes of traffic and enter the fourth lane when the collision
17 took place. Essentially, I'm saying that your client needs to look out.

18 Q So it was his fault for assuming that Mr. Lujan would obey the
19 rules of the road and would stop at the stop sign? It's Aaron's fault?

20 A He had the last opportunity to avoid the accident.

21 Q Are you aware of what actions he took to avoid the accident?

22 A I believe he braked and swerved.

23 Q Okay. What could Mr. Lujan have done differently?

24 MR. GARDNER: Object. Speculation and irrelevant, frankly.

25 MR. CLOWARD: It's their employee.

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4 Karen Watson

5 Karen Watson
6 Transcriber

7 Liesl Springer

8 Liesl Springer
9 Transcriber

10 Meribeth Ashley

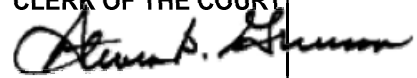
11 Meribeth Ashley
12 Transcriber

13 Deborah Anderson

14 Deborah Anderson
15 Transcriber

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17 Date: May 4,2018
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Exhibit 4



1 RTRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

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AARON MORGAN,

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Plaintiff,

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vs.

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DAVID LUJAN

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Defendant.

12

13

BEFORE THE HONORABLE **LINDA MARIE BELL**, DISTRICT COURT
JUDGE

14

FRIDAY, APRIL 6, 2018

15

**RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL**

16

17

APPEARANCES:

18

For the Plaintiff:

19

BRYAN BOYACK, ESQ.

BENJAMIN CLOWARD, ESQ.

20

21

For the Defendant:

22

DOUGLAS GARDNER, ESQ.

DOUGLAS RANDS, ESQ.

23

24

25

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Q Thank you.

2 **CROSS-EXAMINATION**

3 BY MR. RANDS:

4 Q Good morning, Ms. Janssen.

5 A Good morning.

6 Q You are here today as a representative of the Defendant,
7 correct?

8 A Correct.

9 Q And you're employed by the Defendant?

10 A Correct.

11 Q Okay. And how long have you been so employed?

12 A Four years.

13 Q Okay. And at the last trial of this matter, you were not present,
14 correct?

15 A No.

16 Q You were not here representing the Defendant in that matter?

17 A No.

18 Q So you didn't hear any of the testimony that's been read to you
19 today?

20 A No, I did not.

21 Q Okay. Now, some questions were read to you from an exhibit in
22 the -- that is the answer to the complaint.

23 A Yes, I have it here.

24 Q Do you know what an answer to the complaint is?

25 A A response to allegations raised in -- in the lawsuit.

1 Q And did you prepare that answer?

2 A No.

3 Q Did you have any -- anything to do with preparing that answer?

4 A I provided, I believe, the names of the correct Defendant.

5 Q Okay.

6 A Company Defendant, I should say.

7 Q And who prepared -- who signed it? Is -- look on the last page
8 there.

9 A Douglas J. Gardner, Esquire.

10 Q Okay. And is it your understanding that Mr. Gardner prepared
11 the complaint?

12 A Yes.

13 Q Okay.

14 A The answer, I should say.

15 Q The answer, I'm sorry. I'm starting to act like Mr. Cloward now.
16 I can't get my -- I can't get my things correct.

17 MR. CLOWARD: Hopefully you don't lose your hair.

18 MR. RANDS: I hope so, too. I told you I'd rather have it go
19 gray than go away, but --

20 BY MR. RANDS:

21 Q The answer to the complaint, and that's general -- in your
22 understanding, is that generally prepared by the attorney?

23 A Always.

24 Q Okay. And as the substance of the complaint, did you have any
25 input into that?

1 Q And you signed --

2 MR. CLOWARD: Well, may I approach, Your Honor?

3 THE COURT: Uh-huh.

4 MR. RANDS: May I also, Your Honor?

5 THE COURT: Yes.

6 BY MR. CLOWARD:

7 Q Do you recognize this?

8 A Okay.

9 Q Do you recognize that document?

10 A I do.

11 Q And are those the answers that were provided in response to
12 our interrogatories?

13 A Yes.

14 Q And, in fact, you were the one that prepared those?

15 A Actually, our attorney did.

16 Q Okay.

17 A I signed the verification.

18 Q So where it says, on interrogatory number 14, and you can
19 follow along with me:

20 "Please provide the full name of the person answering the
21 interrogatories on behalf of the Defendant, Harvest
22 Management Sub, LLC, and state in what capacity you are
23 authorized to respond on behalf of said Defendant.

24 "A Erica Janssen, Holiday Retirement, Risk Management."

25 A Yes.

1 BY MR. CLOWARD:

2 Q Do you recognize this document?

3 A I do.

4 Q Okay. Can you tell the jurors what that document is?

5 A It's titled "Accident Information Card, Other Vehicle".

6 Q Okay. And that's a document that Mr. Lujan would have filled
7 out, true?

8 A There is no name or signature on it.

9 Q Is that one of your internal documents?

10 A It is.

11 Q Okay. So, obviously, if it's one of your company's internal
12 documents, Mr. Morgan would not have filled that out, true?

13 A In terms of who completed that document?

14 Q Yes.

15 A I believe it was our driver.

16 Q Okay.

17 A But I can't say that with certainty. He did not sign it or put his
18 name on it.

19 Q Okay. May I read to you what it says?

20 A Sure.

21 Q "I was pulling out of the driveway to cross McLeod Drive. Car
22 was on McLeod and did not see him. He ran into the bus." Do you agree
23 that's what the document says?

24 A Yes.

25 Q Do you agree that's the narrative that Mr. Lujan gave?

1 MR. GARDNER: I have nothing further.

2 THE COURT: Mr. Cloward.

3 MS. CLOWARD: I don't have anything further.

4 THE COURT: All right. Anything from the jury? Great.

5 Counsel, approach.

6 You're not done yet. Hold on. Sorry.

7 [Indiscernible bench conference begins at 3:54 p.m.]

8 THE COURT: So, Mr. Baker, I'm going to ask you a question.

9 If you could just look at the jury when you answer so they can hear you.

10 THE WITNESS: Sure.

11 THE COURT: Were you able to observe any rotational

12 movement of Mr. Morgan's vehicle?

13 THE WITNESS: Of the vehicle?

14 THE COURT: Yes.

15 THE WITNESS: There should have been a slight rotation
16 based on the fact that the primary direction of force is inward. There might
17 have been a slight rotation counter clockwise. However, I don't see that to
18 have been significant.

19 THE COURT: Any follow up?

20 THE WITNESS: Not as in a spin or a real hard rotation, no. I
21 don't see that.

22 THE COURT: All right. Thank you, sir. You are now free to go.

23 THE WITNESS: Yes, ma'am.

24 MR. GARDNER: Your Honor, we're ready to start with the read
25 in. I have my gentleman here.

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AARON O'DELL, SWORN

THE COURT: Sir, go ahead and have a seat. Good afternoon.
Can you please give us your real name and then spell your real name for
the record?

MR. O'DELL: My real name?

THE COURT: Your actual name.

MR. O'DELL: Aaron O'Dell.

THE COURT: Can you spell that for me?

MR. O'DELL: A-A-R-O-N, O-D-E-L-L.

THE COURT: Okay. And you will be reading, do we have that
so we can publish it?

MR. GARDNER: I've got, this is Morgan's original. I'm
looking --

THE COURT: What --

MR. GARDNER: What's that?

THE COURT: Do you have Mr. Lujan's, right?

THE CLERK: Yes.

MR. GARDNER: Yes, I'm getting that.

THE COURT: Okay. So [indiscernible] the original so she can
publish it.

MR. CLOWARD: Your Honor, I'm not sure if we have, if he has
the original, but we wouldn't oppose a copy, printing a copy out.

THE COURT: All right.

MR. CLOWARD: Just trying to speak --

THE COURT: So we just need something -- if we can publish a

1 MR. GARDNER: Yes.

2 [Counsel confer]

3 MR. GARDNER: Okay, do you see near the bottom where it
4 says Direct Examination?

5 MR. O'DELL: Yes.

6 MR. GARDNER: Okay. I'm going to start right there.

7 [Prior testimony of David Lujan was read into the record.]

8 MR. GARDNER: All right, Mr. Lujan, at the time of the accident
9 of April 2014, were you employed with Montera Meadows?

10 MR. O'DELL: Yes.

11 MR. GARDNER: And what was your employment?

12 MR. O'DELL: I was the bus driver.

13 MR. GARDNER: Okay. And what is your understanding of the
14 relationship of Montera Meadows to Harvest Management?

15 MR. O'DELL: Harvest Management was our corporate office.

16 MR. GARDNER: Okay.

17 MR. O'DELL: Montera Meadows is just the local.

18 MR. GARDNER: Okay, all right. And this accident happened
19 on April 1st, 2014, correct?

20 MR. O'DELL: Yes, sir.

21 [Counsel confer]

22 MR. GARDNER: All right, go to page 111. Just tell me when
23 you're there.

24 MR. O'DELL: I'm here.

25 MR. GARDNER: Okay. I'm starting at the top. Okay, so this

1 accident happened on April 1st, 2014, right?

2 MR. O'DELL: Yes, sir.

3 MR. GARDNER: And it happened, you pulled out of the --
4 what's that park, Paradise Park?

5 MR. O'DELL: Yes.

6 MR. GARDNER: Pulled out of the parking lot and drove right in
7 front of Mr. Morgan; is that right?

8 MR. O'DELL: Well, I looked both ways and then I didn't see any
9 traffic coming. And then, so I proceeded across three lanes. And then we
10 collided in the right lane where he was going north, I believe.

11 MR. GARDNER: Okay, all right. And at the scene of the
12 accident, did you speak to anyone?

13 MR. O'DELL: Just the officer, and then briefly him and his
14 mother. I mean his mother and I were talking about him being -- I was
15 concerned about him.

16 MR. GARDNER: Okay. And isn't it true that you said to his
17 mother you were sorry for this accident?

18 MR. O'DELL: Yes.

19 MR. GARDNER: And that you were actually pretty worked up
20 and crying after the accident?

21 MR. O'DELL: I don't know that I was crying, I was more
22 concerned that I was crying.

23 MR. GARDNER: Okay.

24 MR. O'DELL: Because I never been in an accident like that.

25 MR. GARDNER: Okay. And isn't it true that you continued to

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4 Antoinette M. Franks

5 Antoinette M. Franks
6 Transcriber

7 Michelle Rogan

8 Michelle Rogan
9 Transcriber

10 Tami S. Mayes

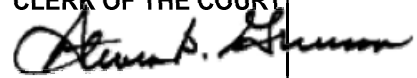
11 Tami. S. Mayes
12 Transcriber

13 Lee Ann Nussbaum

14 Lee Ann Nussbaum
15 Transcriber

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17 Date: May 4,2018
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Exhibit 5



1 RTRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

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AARON MORGAN,

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Plaintiff,

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vs.

10

DAVID LUJAN

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Defendant.

12

13

BEFORE THE HONORABLE **LINDA MARIE BELL**, DISTRICT COURT
JUDGE

14

MONDAY, APRIL 9, 2018

15

**RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL**

16

17

APPEARANCES:

18

For the Plaintiff:

19

BRYAN BOYACK, ESQ.

BENJAMIN CLOWARD, ESQ.

20

21

For the Defendant:

22

DOUGLAS GARDNER, ESQ.

DOUGLAS RANDS, ESQ.

23

24

25

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 mention there was a subsequent motor vehicle accident and he said he was
2 fine and I never pursued that.

3 THE COURT: All right. So, anything else, Mr. Cloward?

4 MR. CLOWARD: Okay. No. I just wanted to make sure that
5 the doctor was aware of that.

6 THE COURT: Great. Sir, if you want to just have a seat right
7 here we're going to bring the jury in and then we'll have you come up to the
8 stand once they're in. Just wherever, wherever you like.

9 MR. RANDS: Mr. Gardner just texted me. He's in the elevator,
10 so he'll be here.

11 THE COURT: Good. In 10 or 15 minutes he'll be here.

12 MR. RANDS: Ten or fifteen minutes, exactly, the elevators
13 here.

14 [Pause]

15 MR. GARDNER: Your Honor, I'm sorry.

16 THE COURT: This one's for Mr. Gardner.

17 All right. Can you bring in the jury? All right. Mr. Rands, here's
18 your jury instructions.

19 MR. RANDS: Thank you, Your Honor.

20 THE COURT: Take a look and see if -- will you guys look at
21 that verdict form? I know it doesn't have the right caption. I know it's just
22 the one we used the last trial. See if that looks sort of okay.

23 MR. RANDS: Yeah. That looks fine.

24 THE COURT: I don't know if it's right with what you're asking
25 for for damages, but it's just what we used in the last trial which was similar

1 THE COURT: Okay, folks. So you all have a copy or should be
2 getting a copy of the jury instructions which I will read to you.

3 [The Court read the jury instructions to the jury.]

4 THE COURT: Mr. Cloward.

5 MR. CLOWARD: Thank you, Your Honor. May I have just one
6 moment to set up here? It's been a long one. It's been a long one. This is
7 my favorite part of the case because this means that the case is pretty much
8 over. We get to go home and rest and relax a little bit.

9 When I was a little kid, I grew up in Utah, I remember one time one
10 summer we had an old Astro van, the kind with the door that opened to the
11 side, front bucket seats. And we were going on a family vacation. We were
12 going down to Bryce Canyon. I was about 7 or 8 years old and I remember
13 listening -- this is before ipods -- to an old Walkman. Remember the yellow
14 Walkmans? I was listening to a tape of Don Williams, Good Old Boys like
15 Me. Listening to that and we get down to the hotel and we were always as
16 little kids excited about the souvenirs, souvenirs, things that you could get on
17 vacation.

18 And I remember in that instance there was a shop next door to the
19 hotel. I walked into the store and I had, you know, 20 bucks or however
20 much a seven or eight year old kid has. And I was looking around and
21 looking for the perfect souvenir. And I bumped the table and a figurine fell
22 off the table onto the ground and broke. And immediately the store manager
23 came over and he said, "Hey, you break it, you buy it." And I started to
24 plead my case. "But I didn't mean to." My father walks over and kneels
25 down and says, "Look, we need to have a discussion." We had a discussion

1 and I tried to plead my case. I said, "But, Dad, I didn't even want that. But,
2 Dad, the figurine was too close to the side of the table." But, but, but all of
3 these things.

4 My father just said, "You know what? Until you walked in there and
5 bumped it, that figurine was just fine. You're the one, Ben, that walked in
6 there and bumped it. You're the one that caused the damage. The store
7 owner didn't do anything. It's not his fault. Why would it be fair for him to
8 bear the burden of this?" So reluctantly I went and paid for the figuring. I
9 told the shop owner I was sorry.

10 Well, in this case, they haven't even gotten to step one, which is to tell
11 Aaron sorry. Still today on the -- what is it now, the sixth day of trial? I
12 anticipate Counsel is going to stand up in five minutes, ten minutes,
13 however long I take, and they're going to point the finger at Aaron. They're
14 going to point the finger at Aaron despite the fact that when Erica Janssen,
15 the corporate representative, took the stand, she didn't even know whether
16 the driver had a stop sign. Yet they're still here contesting liability. They're
17 still here trying to blame Aaron. They're still here trying to blame some third
18 party.

19 When I asked Ms. Janssen, "Who's this mysterious third party that
20 you guys have been blaming for the last four years?" "I don't know, but Dr.
21 Baker is going to come and tell you who that person is." It's just to throw
22 whatever they can against the wall to see what sticks so that they don't have
23 to be responsible.

24 You know, when we talked to Ms. Janssen and said, "Did you even
25 know at the last trial in this case that your driver, when he took the stand

1 and talked to the other set of jurors that had to take time out of their life to
2 come down and listen to this case, did you even know that your driver told
3 those jurors that he didn't blame Aaron?" "No, I didn't know that." "Did you
4 know that your driver said that Aaron did nothing wrong?" "No, I didn't know
5 that."

6 Yet still today I would imagine in about 10, 15 minutes, they're going
7 to get up and they're going to continue to point a finger at Aaron. They're
8 going to say, "Well, you know what? He should have reacted differently. He
9 should have -- you know, he had time to react. This was a big bus."

10 Well, let's look at the numbers. Let's look at the calculations in the
11 case because it's important. Dr. Baker testified. Remember what he said?
12 Average human reaction time, setting aside whether the person is startled,
13 nervous, upset, anxious, emotional, under, you know, like worried. Set all
14 that aside. The average perception reaction time for anybody who's placed
15 in an emergency situation where they're required to brake, 1.5 to 2.5
16 seconds. And then in addition to that, he said and then once you add the
17 startling, once you add the surprise, once you add the emotion of the event,
18 then you add on anywhere from .2 up to a second. So now the 1.5 to 2.5
19 goes from 1.7 to potentially 3.5.

20 You might ask, well, why is this important? Why is Mr. Cloward
21 talking about perception and reaction time? The average road width is
22 about 11 feet. We know this took place in the third road or the third lane.
23 So Mr. Lujan had to travel 3 lanes of travel, 33 feet. How long would it take
24 to get 33 feet? It's basic math. 5,280 feet in a mile. Divide that by 60. If it's
25 1 mile per hour, divide that by 60 to find out how many feet you would go in

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above-entitled case to the
3 best of our ability.

4 Crystal Thomas

5 Crystal Thomas
6 Transcriber

7 Deborah Anderson

8 Deborah Anderson
9 Transcriber

10 Date: May 4,2018
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Exhibit 6

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR - 9 2018

BY: *Ajam Brown*
AJAM. BROWN, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO: A-15-718679-C

DEPT. NO: VII

AARON MORGAN,

Plaintiff,

vs.

DAVID LUJAN,

Defendant.

SPECIAL VERDICT

We, the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

QUESTION NO. 1: Was Defendant negligent?

ANSWER: Yes ☒ No ☐

If you answered no, stop here. Please sign and return this verdict.

If you answered yes, please answer question no. 2.

QUESTION NO.2: Was Plaintiff negligent?

ANSWER: Yes ☐ No ☒

If you answered yes, please answer question no. 3.

If you answered no, please skip to question no. 4.

///

A - 15 - 718679 - C
SJV
Special Jury Verdict
4738215



1989

1 **QUESTION NO. 3:** What percentage of fault do you assign to each party?

2 Defendant: 100

3 Plaintiff: 0

4 Total: 100%

5 Please answer question 4 without regard to your answer to question 3.

6 **QUESTION NO. 4:** What amount do you assess as the total amount of Plaintiff's damages?

7 (Please do not reduce damages based on your answer to question 3, if you answered question 3.

8 The Court will perform this task.)

9	Past Medical Expenses	\$ <u>208,480.</u>	<u>00</u>
10	Future Medical Expenses	\$ <u>1,156,500.</u>	<u>00</u>
11	Past Pain and Suffering	\$ <u>116,000.</u>	<u>00</u>
12	Future Pain and Suffering	\$ <u>1,500,000.</u>	<u>00</u>
13			
14	TOTAL	\$ <u>2,980,980.</u>	<u>00</u>

15

16 DATED this 9th day of April, 2018.

17

18 Arthur J. St. Laurent

19 FOREPERSON

20 ARTHUR J. ST. LAURENT

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Reception

From: efilngmail@tylerhost.net
Sent: Friday, September 07, 2018 3:18 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Reply in Support - RIS (CIV), Envelope Number: 3119811

Notification of Service

Case Number: A-15-718679-C
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Envelope Number: 3119811



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	9/7/2018 3:17 PM PST
Filing Type	Reply in Support - RIS (CIV)
Filing Description	Plaintiff's Reply in Support of Motion for Entry of Judgment
Filed By	Peter Floyd
Service Contacts	David E Lujan: Lisa Richardson (lrichardson@rsglawfirm.com) Jennifer Meacham (jmeacham@rsglawfirm.com) Harvest Management Sub LLC: Sarah Harmon (sharmon@baileykennedy.com) Dennis Kennedy (dkennedy@baileykennedy.com) Joshua Gilmore (jgilmore@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Andrea Champion (achampion@baileykennedy.com)

Other Service Contacts not associated with a party on the case:

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Benjamin Cloward . (Benjamin@richardharrislaw.com)

Douglas R. Rands . (drands@rsgnlaw.com)

Melanie Lewis . (mlewis@rsgnlawfirm.com)

Olivia Bivens . (olivia@richardharrislaw.com)

Shannon Truscello . (Shannon@richardharrislaw.com)

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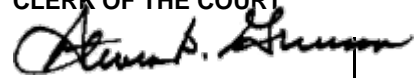
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TAB 21

TAB 21



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

AARON MORGAN	.	
	.	
Plaintiff	.	CASE NO. A-15-718679-C
	.	
vs.	.	
	.	DEPT. NO. XI
DAVID LUJAN, et al.	.	
	.	
Defendants	.	Transcript of
	.	Proceedings
.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

TUESDAY, NOVEMBER 6, 2018

APPEARANCES:

FOR THE PLAINTIFF:	BRYAN A. BOYACK, ESQ.
	THOMAS W. STEWART, ESQ.

FOR THE DEFENDANTS:	DENNIS L. KENNEDY, ESQ.
	SARAH E. HARMON, ESQ.
	ANDREA M. CHAMPION, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 6, 2018, 9:01 A.M.

2 (Court was called to order)

3 THE COURT: Morgan versus Lujan.

4 So this is your first appearance in front of me.
5 Some of you know there's a rule about 10 minutes. So each
6 side gets 10 minutes. The timers will be set. We're going to
7 start now.

8 It's your motion.

9 MR. STEWART: 'Morning, Your Honor. Tom Stewart on
10 behalf of the plaintiff.

11 We -- I was actually under the impression that
12 plaintiff's trial counsel would be here to provide some
13 additional facts, but if you'd like us to -- if you'd like us
14 to go forward on that, we can do it. The timer's still
15 running. Okay. Fantastic.

16 THE COURT: Weren't you an extern in this department
17 sometime a long time ago?

18 MR. STEWART: Yes, Your Honor. Yes, Your Honor.

19 THE COURT: Let's go.

20 MR. STEWART: The actions of defense counsel were
21 pretty clear throughout the trial that he was going to
22 represent the individual plaintiff and Harvest Management.
23 This was sort of well known throughout the proceedings. In
24 fact, during his opening he introduced Harvest's 30(b)(6) as
25 his client. It was sort of well know, there was no dispute

1 that Mr. Lujan was a bus driver acting in the course and scope
2 of his job driving the bus at the time of the accident. And
3 due to I guess sort of an inadvertent error on the verdict
4 form he left off Harvest Management. And as a result, when we
5 noticed this, we consulted the NRCP governing special
6 verdicts, and 49(a) allows for the judge to make a finding
7 about something not submitted to the jury. In the federal
8 context I believe this would be called an imputed question,
9 something that's sort of understood by all parties that was
10 not put on the verdict form. The Court has the ability to
11 make that finding. Again, as we point out in our briefing
12 [unintelligible] examples of the parties sort of litigating
13 around this idea that Mr. Lujan was acting in the course and
14 scope of his employment. Well, Harvest Management at the time
15 of the accident would thus be subject to vicarious liability
16 for any of the primary liability inferred by Mr. Lujan at the
17 time of the accident.

18 The arguments made in the opposition I don't think
19 can counteract most of that. The issue of comparative
20 negligence, anything like that, is irrelevant. Vicarious
21 liability is the liability imputed, of course, to the
22 employer. It's the burden that the employer carries to put
23 somebody in the stream of commerce, so sort of the actions
24 Harvest and Lujan at the pleading stage are irrelevant.

25 Do you have anything else, Mr. --

1 MR. BOYACK: No.

2 MR. STEWART: Okay. With that, I'd like to reserve
3 the balance of my time for rebuttal.

4 THE COURT: Thank you.

5 MR. STEWART: Thank you.

6 THE COURT: Mr. Kennedy.

7 MR. KENNEDY: Thank you, Your Honor. Dennis Kennedy
8 for defendant Harvest Management Sub LLC.

9 We've set forth in some great detail in the
10 opposition why the motion should be denied. Essentially it
11 stems from two premises. The first is that the claim --
12 whatever the claim was, negligent entrustment or vicarious
13 liability, was apparently abandoned at some point early on,
14 because it was never presented to the jury. You go through
15 the first trial, and at every step of the way where a lawyer
16 would have said, this is my client, this is the claim that I
17 am defending, it doesn't happen. It doesn't happen in voir
18 dire, it doesn't happen when you name your witnesses for the
19 jury. In the first trial it doesn't happen in the opening
20 statement. Nobody from the plaintiff's side says, and we have
21 claims against this corporate defendant. That ends in a
22 mistrial.

23 So now we go to the second trial. It's the same.
24 There's nothing in voir dire, there's nothing in the opening
25 statement about the claim, there's nothing in the jury

1 instructions, there's nothing in the closing argument, and,
2 most importantly, there's nothing on the verdict form.

3 THE COURT: So, Mr. Kennedy, tell me why -- because
4 I wasn't there, remember I got reassigned this case after the
5 trial --

6 MR. KENNEDY: Correct.

7 THE COURT: -- why on the jury instructions my
8 caption includes the corporate defendant, but on the special
9 verdict form it does not.

10 MR. KENNEDY: I do not know. But I can tell you
11 this about the jury instructions. You know, they're printed
12 off the regular caption that had that defendant on there. But
13 when you look at the jury instructions, there aren't any jury
14 instructions on the theories asserted against Harvest
15 Management. And if you look at the verdict form, it says the
16 defendant, singular.

17 THE COURT: Singular. No, I got it.

18 MR. KENNEDY: Okay.

19 THE COURT: I'm just trying to figure out why I have
20 an inconsistency between the caption on the jury instructions
21 and the special verdict form.

22 MR. KENNEDY: Right. The caption is there. The
23 problem is on the special verdict form it's not there. And
24 with respect to that inconsistency if you look at what counsel
25 says in the closing argument to the jury -- this is at page 14

1 of the opposition. We reprint out of the transcript what
2 counsel says. There's no question that counsel understands it
3 is a sole defendant. He's showing them the form apparently on
4 the Elmo, and says, this is what the form will look like and
5 here's what you should do, you should find that Mr. Lujan is
6 100 percent negligent, plaintiff zero percent, and you should
7 make a finding against Mr. Lujan, the plaintiff. And that's
8 what the jury does.

9 And now what the argument is to you, Your Honor, is,
10 well, you know, we ought to go back and revisit what the jury
11 did. Well, first off, that the first part of the argument is
12 substantively or procedurally they never tried the case
13 against that defendant. But then what the plaintiff says now
14 is, well, if you go back and look at the evidence, it is clear
15 that the case was tried against that defendant and it's
16 undisputed and no question that that defendant was liable.

17 As we point out in the opposition, all of that is
18 also incorrect. If you go back and analyze the evidence on
19 the negligent entrustment claim, which is what the complaint
20 reads, that's denied. The only evidence on that was the one
21 interrogatory -- two interrogatory answers which said, here
22 are all the things we did in investigating and testing this
23 individual before he was hired. That's it on the negligent
24 entrustment claim. There's no proof about the defendant's
25 record or any problems that defendant Lujan had.

1 With respect to the master servant theory, that's
2 not -- that should be pleaded. It's mentioned, but there is
3 nothing in there that pleads that theory. What they says is
4 it's undisputed that he was driving the bus that belonged to
5 Harvest Management. That's true. That doesn't get you there,
6 though, because you have to show that what he was doing was in
7 the course and scope of his employment. There is no evidence
8 of that. In fact, what the evidence is is he was having lunch
9 and returning from lunch when the accident happened. So, not
10 to get too deep into the weeds on the coming and going rule,
11 which we might have if the case had been tried and there was a
12 fight over jury instructions, none of that happened. And so
13 what they're saying to you is the vehicle is Rule 49. Rule 49
14 doesn't get them there. 49 allows the Court to add implicit
15 findings. It doesn't allow you to add a party defendant and a
16 claim to a jury verdict form where the verdict form doesn't
17 include them to start with, because then you'd be going back
18 and you'd have to analyze what the jury did.

19 And finally, with respect to the negligent
20 entrustment claim they asked that the individual defendant,
21 Lujan, be found 100 percent negligent. And that was the
22 finding. If you had to go back, then what this Court would
23 have to do is the Court under the negligent entrustment claim,
24 which was what was pled in the complaint, you would have to
25 then say, well, now I have to reallocate fault based on

1 evidence that doesn't exist. So what should happen with this
2 is the motion should be denied, and the judgment can be
3 entered against defendant Lujan. That's what the jury found.
4 And the claims against Harvest Management should be dismissed
5 with prejudice.

6 And I'm done if the Court has no questions.

7 THE COURT: Thank you, Mr. Kennedy.

8 So how come I have an inconsistency between the
9 special verdict form and jury instructions?

10 MR. STEWART: It was an inadvertent error. Mr.
11 Boyack might be able to shed more light on it. The court came
12 and said, we have this verdict form, I know it looks funny,
13 but --

14 THE COURT: So the judge prepared the special
15 verdict -- or the special interrogatories?

16 MR. BOYACK: Yes, Your Honor. I was present during
17 trial for plaintiffs, and, yeah, the judge had prepared the
18 special verdict form. And along with that the question is
19 what does Harvest Management want this special verdict form to
20 look like if there is no comparative negligence on this
21 corporate defendant? Do we have two lines for the defendants,
22 Mr. Lujan and Harvest Management with a percentage? There was
23 no evidence presented in any of the trial that he was not
24 within the course and scope. In fact, the corporate rep, who
25 gets put on the stand during trial, discusses he was an

1 employee, discusses the facts of the accident. Never does she
2 bring up on cross or direct examination he was on a break, we
3 aren't on the hook here, or any assertion of that. So this is
4 kind of after the fact them trying to escape the clear
5 liability that was presented, although it wasn't stated on the
6 special verdict form, defendant Lujan, defendant Harvest
7 Management. It was the defendant.

8 THE COURT: Is there any instruction on either
9 negligent entrustment or vicarious liability in the pack of
10 jury instructions?

11 MR. BOYACK: I don't believe so, Your Honor.

12 THE COURT: Yeah. Okay. Thanks.

13 The motion's denied. While there is a inconsistency
14 in the caption of the jury instructions and the special
15 verdict form, there does not appear to be any additional
16 instructions that would lend credence to the fact that the
17 claims against defendant Harvest Management Sub LLC were
18 submitted to the jury. So if you would submit the judgment
19 which only includes the one defendant, I will be happy to sign
20 it, and then you all can litigate the next step, if any,
21 related to the other defendant.

22 MR. STEWART: Thank you, Your Honor.

23 MR. BOYACK: Thank you, Your Honor.

24 MR. KENNEDY: And just for purposes of
25 clarification, that judgment will say that the claims against

1 Harvest Management are dismissed?

2 THE COURT: It will not, Mr. Kennedy.

3 MR. KENNEDY: Okay. Well, I'll just have to file a
4 motion.

5 THE COURT: That's why I say we have to do something
6 next.

7 MR. KENNEDY: Okay. I'm happy to do that.

8 THE COURT: I'm going one step at a time.

9 THE PROCEEDINGS CONCLUDED AT 9:13 A.M.

10 * * * * *

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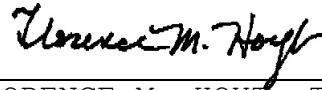
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AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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Case Number: A-15-718679-C

Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)



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Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	1/18/2019 12:28 PM PST
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Filing Description	Transcript of Proceedings: Hearing on Plaintiff's Motion for Entry of Judgment
Activity Requested	Transcript of Proceedings - TRANS (CIV)
Filed By	Jill Hawkins
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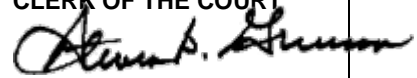
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TAB 22

TAB 22



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12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 AARON M. MORGAN, individually,

15 Plaintiff,

16 vs.

17 DAVID E. LUJAN, individually; HARVEST
18 MANAGEMENT SUB LLC; a Foreign-Limited-
19 Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

20 Defendants.

Case No. A-15-718679-C

Dept. No. XI

21
22 **NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S**
23 **MOTION FOR ENTRY OF JUDGMENT**

24 PLEASE TAKE NOTICE that an Order on Plaintiff's Motion for Entry of Judgment was
25 entered on November 28, 2018.

26 ///

27 ///

28 ///

1 A true and correct copy is attached hereto.

2 DATED this 28th day of November, 2018.

3 BAILEY ♦ KENNEDY

4
5 By: /s/ Sarah E. Harmon

6 DENNIS L. KENNEDY

7 SARAH E. HARMON

8 JOSHUA P. GILMORE

9 ANDREA M. CHAMPION

10 *Attorneys for Defendants*

11 HARVEST MANAGEMENT SUB LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 28th day of November, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District 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:

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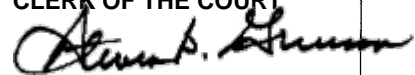
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DISTRICT COURT

CLARK COUNTY, NEVADA

AARON M. MORGAN, individually,

Plaintiff,

vs.

DAVID E. LUJAN, individually; HARVEST
MANAGEMENT SUB LLC; a Foreign-Limited-
Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

Defendants.

Case No. A-15-718679-C

Dept. No. ~~15~~ XI

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**ORDER ON PLAINTIFFS' MOTION FOR
ENTRY OF JUDGMENT**

Date of Hearing: November 6, 2018

Time of Hearing: 9:00 A.M.

On November 6, 2018, at 9:00 a.m., the Motion for Entry of Judgment came before the Court. Tom W. Stewart of Marquis Aurbach Coffing P.C. and Bryan A. Boyack of Richard Harris Law Firm appeared on behalf of Plaintiff Aaron Morgan and Dennis L. Kennedy, Sarah E. Harmon, and Andrea M. Champion of Bailey❖Kennedy appeared on behalf of Defendant Harvest Management Sub LLC.

///

1 The Court, having examined the briefs of the parties, the records and documents on file, and
2 having heard argument of counsel, and for good cause appearing,


3 HEREBY ORDERS that the Motion for Entry of Judgment shall be, and hereby is,
4 **DENIED.**

5 DATED this 26 day of November, 2018.

6
7 
8 DISTRICT COURT JUDGE

9 Respectfully submitted by:

10 BAILEY ♦ KENNEDY, LLP

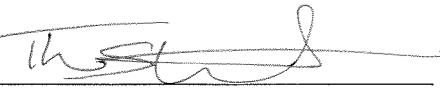
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Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
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Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
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Filing Type	Notice of Entry of Order - NEOJ (CIV)
Filing Description	Notice of Entry of Order on Plaintiff's Motion for Entry of Judgment
Filed By	Josephine Baltazar

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