

Case No. \_\_\_\_\_

---

IN THE SUPREME COURT OF NEVADA

---

HARVEST MANAGEMENT SUB LLC,  
Petitioner,

Electronically Filed  
Apr 18 2019 01:45 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 12 OF 14**

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DENNIS L. KENNEDY, Nevada Bar No. 1462  
SARAH E. HARMON, Nevada Bar No. 8106  
ANDREA M. CHAMPION, Nevada Bar No. 13461  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
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SHarmon@BaileyKennedy.com  
AChampion@BaileyKennedy.com

*Attorneys for Petitioner*  
HARVEST MANAGEMENT SUB LLC

**April 18, 2019**

---

**APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF**  
**VOLUME 12 OF 14**

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26	Opposition to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment and Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues	2130-2171

## **APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF**

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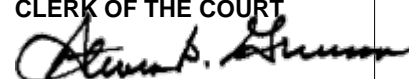
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TAB 23

TAB 23

Electronically Filed  
Dec 27 2018 03:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court**Marquis Aurbach Coffing**Micah S. Echols, Esq.  
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tstewart@maclaw.com**Richard Harris Law Firm**Benjamin P. Cloward, Esq.  
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Telephone: (702) 444-4444  
Facsimile: (702) 444-4455  
Benjamin@RichardHarrisLaw.com  
Bryan@RichardHarrisLaw.com*Attorneys for Plaintiff, Aaron Morgan***DISTRICT COURT****CLARK COUNTY, NEVADA**

AARON M. MORGAN, individually,

Plaintiff,

vs.

Case No.: A-15-718679-C

Dept. No.: XI

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.

**NOTICE OF APPEAL**

Plaintiff, Aaron M. Morgan, by and through his attorneys of record, Marquis Aurbach Coffing and the Richard Harris Law Firm, hereby appeals to the Supreme Court of Nevada from:

(1) the Order Denying Plaintiff's Motion for Entry of Judgment, which was filed on

1 November 28, 2018 and is attached as **Exhibit 1**; and (2) the Judgment Upon the Jury Verdict,  
2 which was filed on December 17, 2018 and is attached as **Exhibit 2**.

3 Dated this 18th day of December, 2018.

4  
5 MARQUIS AURBACH COFFING

6  
7 By /s/ Micah S. Echols  
8 Micah S. Echols, Esq.  
9 Nevada Bar No. 8437  
10 Tom W. Stewart, Esq.  
11 Nevada Bar No. 14280  
12 10001 Park Run Drive  
13 Las Vegas, Nevada 89145  
14 *Attorneys for Plaintiff, Aaron Morgan*  
15  
16  
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19  
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28



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 18th day of December, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Andrea M. Champion	achampion@baileykennedy.com
Joshua P. Gilmore	jgilmore@baileykennedy.com
Sarah E. Harmon	sharmon@baileykennedy.com
Dennis L. Kennedy	dkennedy@baileykennedy.com
Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
<i>Attorneys for Defendant Harvest Management Sub, LLC</i>	

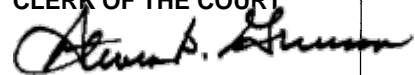
Doug Gardner, Esq.	dgardner@rsglawfirm.com
Douglas R. Rands	drands@rsgnlaw.com
Melanie Lewis	mlewis@rsglawfirm.com
Pauline Batts	pbatts@rsgnlaw.com
Jennifer Meacham	jmeacham@rsglawfirm.com
Lisa Richardson	lrichardson@rsglawfirm.com
<i>Attorneys for Defendant David E. Lujan</i>	

/s/ Leah Dell

Leah Dell, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> 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



**ORDR**

DENNIS L. KENNEDY

Nevada Bar No. 1462

SARAH E. HARMON

Nevada Bar No. 8106

JOSHUA P. GILMORE

Nevada Bar No. 11576

ANDREA M. CHAMPION

Nevada Bar No. 13461

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*Attorneys for Defendant*

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. ~~XX~~ XI

PLEASE NOTE  
DEPT. CHANGE

**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

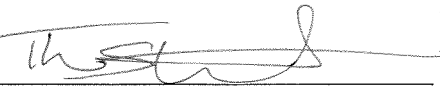
11 By: 

12 DENNIS L. KENNEDY  
13 SARAH E. HARMON  
14 JOSHUA P. GILMORE  
15 ANDREA M. CHAMPION  
16 8984 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148

18 *Attorneys for Defendant Harvest Management*  
19 *Sub LLC*

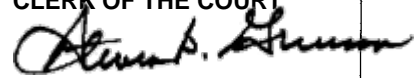
Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By: 

20 MICAH S. ECHOLS  
21 TOM W. STEWART  
22 1001 Park Run Drive  
23 Las Vegas, Nevada 89145  
24 *Attorneys for Plaintiff Aaron Morgan*

# Exhibit 2



**ORDR**

DENNIS L. KENNEDY

Nevada Bar No. 1462

SARAH E. HARMON

Nevada Bar No. 8106

JOSHUA P. GILMORE

Nevada Bar No. 11576

ANDREA M. CHAMPION

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AChampion@BaileyKennedy.com

*Attorneys for Defendant*

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-  
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Case No. A-15-718679-C

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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

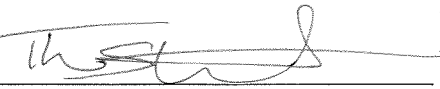
11 By: 

12 DENNIS L. KENNEDY  
13 SARAH E. HARMON  
14 JOSHUA P. GILMORE  
15 ANDREA M. CHAMPION  
16 8984 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148

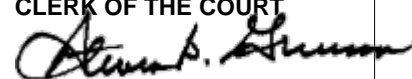
18 *Attorneys for Defendant Harvest Management*  
19 *Sub LLC*

Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By: 

20 MICAH S. ECHOLS  
21 TOM W. STEWART  
22 1001 Park Run Drive  
23 Las Vegas, Nevada 89145  
24 *Attorneys for Plaintiff Aaron Morgan*

**Marquis Aurbach Coffing**Micah S. Echols, Esq.  
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Benjamin@RichardHarrisLaw.com  
Bryan@RichardHarrisLaw.com*Attorneys for Plaintiff, Aaron Morgan***DISTRICT COURT****CLARK COUNTY, NEVADA**

AARON M. MORGAN, individually,

Plaintiff,

vs.

Case No.: A-15-718679-C

Dept. No.: XI

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 APPEAL STATEMENT**Plaintiff, Aaron Morgan, by and through his attorneys of record, Marquis Aurbach  
Coffing and the Richard Harris Law Firm, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Plaintiff, Aaron Morgan.



- 1           2.       Identify the Judge issuing the decision, judgment, or order appealed from:
- 2                   Honorable Elizabeth Gonzalez.
- 3           3.       Identify each appellant and the name and address of counsel for each appellant:
- 4                   **Appellant:** Aaron Morgan
- 5                   **Marquis Aurbach Coffing**
- 6                   Micah S. Echols, Esq.
- 7                   Tom W. Stewart, Esq.
- 8                   10001 Park Run Drive
- 9                   Las Vegas, Nevada 89145
- 10                  **Richard Harris Law Firm**
- 11                  Benjamin P. Cloward, Esq.
- 12                  Bryan A. Boyack, Esq.
- 13                  801 South Fourth Street
- 14                  Las Vegas, Nevada 89101
- 15           4.       Identify each respondent and the name and address of appellate counsel, if known,
- 16                   for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
- 17                   much and provide the name and address of that respondent's trial counsel):
- 18                   **Respondent:** David E. Lujan
- 19                   **Rands, South & Gardner**
- 20                   Douglas J. Gardner, Esq.
- 21                   1055 Whitney Ranch Drive, Suite 220
- 22                   Henderson, Nevada 89014
- 23                   **Respondent:** Harvest Management Sub LLC
- 24                   **Bailey Kennedy**
- 25                   Dennis L. Kennedy, Esq.
- 26                   Sarah E. Harmon, Esq.
- 27                   Joshua P. Gilmore, Esq.
- 28                   Andrea M. Champion, Esq.
- 8984 Spanish Ridge Avenue
- Las Vegas, Nevada 89148-1302
5.       Indicate whether any attorney identified above in response to question 3 or 4 is
- not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
- permission to appear under SCR 42 (attach a copy of any district court order granting such
- permission):
- N/A.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

The complaint was filed on May 20, 2015.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This case arises from an April 1, 2014 motor vehicle crash and the injuries sustained by Plaintiff, Aaron Morgan ("Morgan") in that crash. In his complaint, Morgan alleged three causes of action: (1) negligence against Defendant, David E. Lujan ("Lujan"); (2) negligence per se against Lujan; and (3) vicarious liability/respondent superior against Defendant, Harvest Management Sub LLC ("Harvest Management"). The Defendants jointly answered the complaint and were jointly represented by the same counsel through both trials.

The case initially proceeded to trial in November, 2017. However, on the third day of the initial trial, the Court declared a mistrial based on Defendants' counsel's misconduct. Following the mistrial, the case proceeded to a second trial in April, 2018. Throughout the litigation, all parties were aware that claims for damages were being pursued against both Defendants. Morgan's claim for vicarious liability was not contested during trial. Harvest Management's NRCP 30(b)(6) contested primary liability, but never contested Harvest Management's vicarious liability.

On the final day of trial, the District Court sua sponte created a special verdict form that inadvertently included Lujan as the only Defendant in the caption. The Court informed the parties of this omission, and the Defendants agreed they had no objection. Jury instructions were provided to the jury with the proper caption. The jury used those instructions to fill out the improperly-captioned special verdict form and render judgment in favor of Plaintiff—the jury found Defendants to be negligent and 100% at fault for the accident. As a result, the jury awarded Plaintiff \$2,980,000.

Following trial, Morgan moved the District Court to enter its proposed judgment against both Defendants or to make an explicit finding that the omission of Harvest Management from the special verdict was inadvertent and to render judgment in favor of Morgan against both Defendants, jointly and severally. The Court denied Morgan's motion, leaving the judgment only as to Lujan due to the improperly captioned special verdict form.

The order denying Morgan's motion was filed on November 28, 2018, and the judgment upon jury verdict was filed on December 17, 2018. Morgan now appeals from both the order and the judgment.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

This case has not been the subject of any prior appeal or original proceeding in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation:

N/A.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Morgan believes that this case does involve the possibility of settlement.

Dated this 18th day of December, 2018.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols

Micah S. Echols, Esq.

Nevada Bar No. 8437

Tom W. Stewart, Esq.

Nevada Bar No. 14280

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Las Vegas, Nevada 89145

*Attorneys for Plaintiff, Aaron Morgan*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 18th day of December, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Andrea M. Champion	achampion@baileykennedy.com
Joshua P. Gilmore	jgilmore@baileykennedy.com
Sarah E. Harmon	sharmon@baileykennedy.com
Dennis L. Kennedy	dkennedy@baileykennedy.com
Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
<i>Attorneys for Defendant Harvest Management Sub, LLC</i>	

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Lisa Richardson	lrichardson@rsglawfirm.com
<i>Attorneys for Defendant David E. Lujan</i>	

/s/ Leah Dell

Leah Dell, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> 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).

**Aaron Morgan, Plaintiff(s)**  
**vs.**  
**David Lujan, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 11**  
 Judicial Officer: **Gonzalez, Elizabeth**  
 Filed on: **05/20/2015**  
 Case Number History:  
 Cross-Reference Case Number: **A718679**

#### CASE INFORMATION

**Statistical Closures**  
 06/29/2018 Verdict Reached

Case Type: **Negligence - Auto**

Case Status: **06/29/2018 Closed**

#### DATE

#### CASE ASSIGNMENT

##### Current Case Assignment

Case Number A-15-718679-C  
 Court Department 11  
 Date Assigned 07/02/2018  
 Judicial Officer Gonzalez, Elizabeth

#### PARTY INFORMATION





<b>Plaintiff</b>	<b>Morgan, Aaron M</b>	<i>Lead Attorneys</i> <b>Echols, Micah S.</b> <i>Retained</i> 702-382-0711(W)
<b>Defendant</b>	<b>Harvest Management Sub LLC</b>	<b>Kennedy, Dennis L.</b> <i>Retained</i> 7025628820(W)
	<b>Lujan, David E</b>	<b>Gardner, Douglas J, ESQ</b> <i>Retained</i> 702-940-2222(W)

#### DATE




#### EVENTS & ORDERS OF THE COURT

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##### EVENTS

05/20/2015	 <b>Complaint</b> Filed By: Plaintiff Morgan, Aaron M <i>Complaint</i>
05/20/2015	Case Opened
05/28/2015	 <b>Affidavit of Service</b> Filed By: Plaintiff Morgan, Aaron M <i>Affidavit of Service - Harvest Management Sub LLC</i>
06/01/2015	 <b>Affidavit of Service</b> Filed By: Plaintiff Morgan, Aaron M <i>Affidavit of Service - David E Lujan</i>
06/16/2015	 <b>Initial Appearance Fee Disclosure</b> Filed By: Defendant Lujan, David E <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>

2026

06/16/2015	 Demand for Jury Trial Filed By: Defendant Lujan, David E <i>Demand for Jury Trial</i>
06/16/2015	 Answer to Complaint Filed by: Defendant Lujan, David E <i>Defendants' Answer to Plaintiff's Complaint</i>
10/14/2015	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption</i>
12/04/2015	 Arbitration File <i>Arbitration File</i>
12/11/2015	 Arbitration File <i>Arbitration File</i>
12/21/2015	 Joint Case Conference Report Filed By: Plaintiff Morgan, Aaron M <i>Joint case Conference Report</i>
01/21/2016	 Scheduling Order <i>Scheduling Order</i>
02/03/2016	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial</i>
08/30/2016	 Stipulation to Extend Discovery Party: Defendant Lujan, David E <i>Stipulation and Order to Extend Discovery and Continue Trial</i>
09/16/2016	 Order Setting Civil Jury Trial <i>Second Order Setting Civil Jury Trial</i>
02/22/2017	 Pre-Trial Disclosure Party: Plaintiff Morgan, Aaron M <i>Plaintiff's Pre-Trial Disclosures and Objections Pursuant to N.R.C.P. 16.1 (a)(3)</i>
02/23/2017	 Notice Filed By: Plaintiff Morgan, Aaron M <i>Notice of EDCR 2.67 Conference</i>
02/27/2017	 Joint Pre-Trial Memorandum Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff Aaron M. Morgan's and Defendants David E. Lujan and Harvest Management Sub, LLC's Joint Pre-Trial Memorandum</i>
03/06/2017	 Stipulation and Order Filed by: Plaintiff Morgan, Aaron M <i>Stipulation and Order to Exclude Defendant's Biomechanical Expert John Baker, P.E., PH.D.</i>
03/06/2017	 Notice of Entry of Stipulation and Order

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	Filed By: Plaintiff Morgan, Aaron M <i>Notice of Entry of Order</i>
03/07/2017	 Order Setting Civil Jury Trial <i>Third Order Setting Civil Jury Trial</i>
03/07/2017	 Notice of Appearance Party: Plaintiff Morgan, Aaron M <i>Notice of Appearance</i>
04/20/2017	 Notice of Association of Counsel Filed By: Defendant Lujan, David E <i>Notice of Association of Counsel</i>
05/10/2017	 Motion for Partial Summary Judgment Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Motion for Partial Summary Judgment Regarding Plaintiff's Past Medical Expenses</i>
05/11/2017	 Notice of Hearing Filed By: Plaintiff Morgan, Aaron M <i>Notice of Hearing</i>
06/02/2017	 Opposition Filed By: Defendant Lujan, David E; Defendant Harvest Management Sub LLC <i>Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i>
08/22/2017	 Reporters Transcript <i>Court Reporters transcript of Proceedings - June 13, 2017</i>
08/30/2017	 Order Filed By: Plaintiff Morgan, Aaron M <i>Order Granting Plaintiff's Motion for Partial Summary Judgment Regarding Plaintiff's Past Medical Treatment and Expenss</i>
08/31/2017	 Notice of Entry Filed By: Plaintiff Morgan, Aaron M <i>Notice of Entry of Order</i>
09/25/2017	 Pre-trial Memorandum Filed by: Defendant Harvest Management Sub LLC <i>Defendants David E. Lujan and Harvest Management Sub LLC's Individual Pre-Trial Memorandum</i>
10/31/2017	 Brief Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Bench Regarding Demonstrative Exhibits</i>
10/31/2017	 Brief <i>Plaintiff's Bench Regarding the Issue of Jury Selection</i>
11/06/2017	 Jury List
02/08/2018	 Reporters Transcript <i>Court Reporters transcript of Proceedings (Civil) - Jury Trial - Day 1</i>

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02/08/2018	 <b>Recorders Transcript of Hearing</b> <i>Day 2 - Jury Trial - Transcript of Proceedings - 1-7-2018</i>
02/08/2018	 <b>Transcript of Proceedings</b> <i>Transcript of Proceedings - July Trial - Day 3</i>
03/07/2018	 <b>Memorandum of Costs and Disbursements</b> Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Memorandum of Costs and Disbursements</i>
03/07/2018	 <b>Motion for Attorney Fees and Costs</b> Filed By: Plaintiff Morgan, Aaron M <i>(4/11/2018 Withdrawn) Plaintiff's Motion for Attorney Fees and Costs of Mistrial</i>
03/08/2018	 <b>Pre-Trial Disclosure</b> Party: Plaintiff Morgan, Aaron M <i>Plaintiff's Supplement to Pre-Trial Disclosures and Objections Pursuant to N.R.C.P. 16.1(a) (3)</i>
03/08/2018	 <b>Notice of Hearing</b> Filed By: Plaintiff Morgan, Aaron M <i>Notice of Hearing</i>
03/26/2018	 <b>Opposition</b> Filed By: Defendant Lujan, David E; Defendant Harvest Management Sub LLC <i>Defendant's Opposition to Plaintiff's Motion for Attorney Fees and Costs of Mistrial</i>
03/27/2018	 <b>Motion</b> Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Motion to Present a Jury Questionnaire Prior to Voir Dire or In the Alternative for More Liberal Jury Selection on Order Shortening Time</i>
03/27/2018	 <b>Receipt of Copy</b> Filed by: Plaintiff Morgan, Aaron M <i>Receipt of Copy - Plaintiff's Motion to Present a Jury Questionnaire Prior to Voir Dire or In the Alternative for More Liberal Jury Selection on Order Shortening Time</i>
03/30/2018	 <b>Trial Brief</b> Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Trial Brief</i>
04/03/2018	 <b>Jury List</b>
04/04/2018	 <b>Reporters Transcript</b> <i>Court Reporters transcript of Proceedings (Civil) - Defense Opening - 4-3-2018</i>
04/09/2018	 <b>Amended Jury List</b>
04/09/2018	 <b>Special Jury Verdict</b>
04/09/2018	 <b>Jury Instructions</b>

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04/11/2018	 Notice Filed By: Plaintiff Morgan, Aaron M <i>Notice of Plaintiff's Withdrawal of Motion</i>
04/26/2018	 Substitution of Attorney Filed by: Defendant Harvest Management Sub LLC <i>Substitution of Attorneys</i>
04/26/2018	 Errata Filed By: Defendant Harvest Management Sub LLC <i>Errata to Substitution of Attorneys</i>
05/09/2018	 Reporters Transcript <i>Court Reporters transcript of Proceedings (Civil) 4-2-2018 - Jury Trial</i>
05/09/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript of Jury Trial - 4-3-2018</i>
05/09/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript of Jury Trial - 4-4-2018</i>
05/09/2018	 Reporters Transcript <i>Recorder's Transcript of Jury Trial -4-5-2018</i>
05/09/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript of Jury Trial - 4-6-2018</i>
05/09/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript of Jury Trial - 4-9-2018</i>
06/06/2018	 Stipulation and Order Filed by: Plaintiff Morgan, Aaron M <i>Stipulation and Order To Vacate Hearing on Plaintiff's Motion for Attorney Fees and Cost of Mistrial Filed on March 7, 2018</i>
06/06/2018	 Notice of Entry of Order Filed By: Plaintiff Morgan, Aaron M <i>Notice of Entry of Order</i>
06/29/2018	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
07/02/2018	Case Reassigned to Department 11 <i>Reassigned From Judge Bell - Dept 7</i>
07/30/2018	 Notice of Appearance Party: Plaintiff Morgan, Aaron M <i>Notice of Appearance</i>
07/30/2018	 Motion for Entry of Judgment Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Motion for Entry of Judgment</i>

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08/06/2018	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
08/16/2018	 Appendix Filed By: Defendant Harvest Management Sub LLC <i>Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 1 of 4</i>
08/16/2018	 Appendix Filed By: Defendant Harvest Management Sub LLC <i>Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 2 of 4</i>
08/16/2018	 Appendix Filed By: Defendant Harvest Management Sub LLC <i>Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 3 of 4</i>
08/16/2018	 Appendix Filed By: Defendant Harvest Management Sub LLC <i>Appendix of Exhibits to Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment - Volume 4 of 4</i>
08/16/2018	 Opposition Filed By: Defendant Harvest Management Sub LLC <i>Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment</i>
09/07/2018	 Reply in Support Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Reply in Support of Motion for Entry of Judgment</i>
11/28/2018	 Order Filed By: Defendant Harvest Management Sub LLC <i>Order on Plaintiffs' motion for Entry of Judgment</i>
11/28/2018	 Notice of Entry of Order Filed By: Defendant Harvest Management Sub LLC <i>Notice of Entry of Order on Plaintiff's Motion for Entry of Judgment</i>
12/17/2018	 Judgment on Jury Verdict Filed By: Plaintiff Morgan, Aaron M <i>Judgment Upon the Jury Verdict</i>
12/18/2018	 Memorandum of Costs and Disbursements Filed By: Plaintiff Morgan, Aaron M <i>Plaintiff's Verified Memorandum of Costs</i>
12/18/2018	 Notice of Appeal Filed By: Plaintiff Morgan, Aaron M <i>Notice of Appeal</i>
12/18/2018	 Case Appeal Statement Filed By: Plaintiff Morgan, Aaron M

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*Case Appeal Statement*

12/20/2018

**Objection**

Filed By: Defendant Harvest Management Sub LLC  
*Defendant Harvest Management Sub LLC's Limited Objection to Plaintiff's Verified Memorandum of Costs*

**DISPOSITIONS**

08/30/2017

**Partial Summary Judgment** (Judicial Officer: Bell, Linda Marie)

Debtors: David E Lujan (Defendant), Harvest Management Sub LLC (Defendant)

Creditors: Aaron M Morgan (Plaintiff)

Judgment: 08/30/2017, Docketed: 08/31/2017

04/09/2018

**Verdict** (Judicial Officer: Gonzalez, Elizabeth)

Debtors: David E Lujan (Defendant)

Creditors: Aaron M Morgan (Plaintiff)

Judgment: 04/09/2018, Docketed: 12/17/2018

Total Judgment: 298,980.00

12/17/2018

**Judgment Upon the Verdict** (Judicial Officer: Gonzalez, Elizabeth)

Debtors: David E Lujan (Defendant)

Creditors: Aaron M Morgan (Plaintiff)

Judgment: 12/17/2018, Docketed: 12/17/2018

Total Judgment: 3,046,382.72

**HEARINGS**

11/29/2016

**CANCELED Status Conference** (9:00 AM) (Judicial Officer: Bell, Linda Marie)*Vacated - per Stipulation and Order*

12/29/2016

**Status Conference** (9:00 AM) (Judicial Officer: Bell, Linda Marie)*Status Conference: Status of Case Re: Trial Setting*

Matter Heard;

Journal Entry Details:

*Counsel advised discovery was completed and they had no discovery issues; the dispositive motion cut-off date is due within three weeks. COURT reviewed the trial handout and ORDERED, trial date STANDS.;*

01/31/2017

**CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Bell, Linda Marie)*Vacated - per Stipulation and Order*

02/06/2017

**CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Bell, Linda Marie)*Vacated - per Stipulation and Order*

03/07/2017

**Calendar Call** (9:00 AM) (Judicial Officer: Bell, Linda Marie)**MINUTES****Calendar Call** (04/04/2017 at 9:00 AM) (Judicial Officer: Bell, Linda Marie)

Matter Heard;

Journal Entry Details:







*Calendar Call Mr. Gardner advised he is ready to move forward with trial. Colloquy regarding scheduling. COURT ORDERED, trial VACATED and RESET. 4/4/17 9:00 AM CALENDAR CALL 4/24/17 9:00 AM JURY TRIAL;*

**SCHEDULED HEARINGS****Calendar Call** (04/04/2017 at 9:00 AM) (Judicial Officer: Bell, Linda Marie)


03/13/2017

**CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Bell, Linda Marie)*Vacated - per Judge*

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04/04/2017	<b>CANCELED Calendar Call (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) <i>Vacated</i>
04/04/2017	 <b>Calendar Call (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) Trial Date Set; Journal Entry Details: <i>Parties announced ready for trial 4 - 5 DAYS; will have exhibits and jury instructions prepared and submit to the court soon. COURT ORDERED, TRIAL DATE STANDS. 4-24-17 9:00 AM JURY TRIAL (DEPT. VII);</i>
04/24/2017	 <b>Jury Trial - FIRM (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) Vacated and Reset -sdp Off Calendar; Journal Entry Details: <i>Jury Trial OUTSIDE THE PERSPECTIVE JURY Mr. Rands advised the defendant, Mr. Lujan, has been hospitalized and requested to continue the jury trial. No opposition by Mr. Cloward, requesting a status check be set. COURT ORDERED, jury trial CONTINUED and Mr. Rands to provide medical documentation as to Mr. Lujan's hospital stay by the upcoming court date. COURT FURTHER ORDERED, exhibits returned to Counsel and trial OFF CALENDAR . 5/16/17 9:00 AM STATUS CHECK: STATUS OF THE CASE;</i>
05/16/2017	 <b>Status Check (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) <i>Status Check: Status of the Case</i> Matter Heard; Journal Entry Details: <i>Status Check: Status of the Case Mr. Gardner advised his client is making a disability claim and his daughter who is assisting him has his records. Mr. Lujan is prepared to make a record under oath. Court advised it needs the discharge paperwork from the hospital. Mr. Gardner so noted. Mr. Boyack advised a motion for partial summary judgment has been filed and would like to reset the trial after. Colloquy regarding scheduling. COURT ORDERED, trial date SET. Mr. Gardner made an oral request for the Court to review the discharge summary of Mr. Lujan in camera as he does not want to file it. COURT SO NOTED. 8/29/17 9:00 AM CALENDAR CALL 9/5/17 9:00 AM JURY TRIAL;</i>
06/13/2017	 <b>Motion for Partial Summary Judgment (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) <i>Plaintiff's Motion for Partial Summary Judgment Regarding Plaintiff's Past Medical Expenses Granted;</i> Journal Entry Details: <i>Bryan Boyack, Esq., appeared on behalf of Pltf Douglas Gardner, Esq., appeared on behalf of Deft Mr. Gardner provided the Court with medical records. Mr. Boyack argued Deft's expert should not be allowed to make any further opinions that were not disclosed in his reports. Court noted having Mr. Lujan's discharge summary. Mr. Gardner argued Deft's are prepared to respond to the affidavit, and requested more time to do so. However, if Deft's are not allowed to respond to the affidavit it should be stricken. After hearing from both sides, COURT ORDERED, Motion for Partial Summary Judgment GRANTED. Mr. Boyack indicated he would submit the proposed order. ;</i>
08/29/2017	 <b>Calendar Call (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) Trial Date Set; Journal Entry Details: <i>Calendar Call Mr. Boyack advised Mr. Cloward is currently in trial in DC 27 and will be starting another trial 9/18/17 and an issue with an expert the week of 9/25/17. Upon the Court's inquiry, the trial will remain five days. Colloquy regarding scheduling. COURT ORDERED, trial VACATED and RESET. 10/3/17 9:00 AM CALENDAR CALL 10/9/17 9:00 AM JURY TRIAL;</i>
09/05/2017	<b>CANCELED Jury Trial (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) <i>Vacated</i>
10/03/2017	 <b>Calendar Call (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie)

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	<p>Matter Heard; Journal Entry Details: <i>Upon the Court's inquiry, parties ready to go forward with trial which will consist of 5-6 witnesses; requesting the end of November. Colloquy regarding scheduling. COURT ORDERED, trial SET TO PROCEED. Additionally, Mr. Garner inquired about a witness appearing by video, Court so noted. 11/6/17 9:00 AM JURY TRIAL;</i></p>
10/09/2017	<p><b>CANCELED Jury Trial (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) <i>Vacated</i></p>
11/06/2017	<p> <b>Jury Trial (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie) <b>11/06/2017-11/08/2017</b> Trial Continues; Jury Trial Trial Continues; Jury Trial Mistrial; Journal Entry Details: <i>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;</i> Trial Continues; Jury Trial Trial Continues; Jury Trial Mistrial; Journal Entry Details: <i>Jury Trial Continued INSIDE THE PRESENCE OF THE JURY: Opening statements by Plaintiff's Counsel. OUTSIDE THE PRESENCE OF THE JURY: Mr. Cloward waived his opening statement until the Plaintiff's rest. COURT SO ORDERED. EXCLUSIONARY RULE INVOKED. INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented. (See worksheets). COURT ORDERED, trial in recess and CONTINUED. OUTSIDE THE PRESENCE OF THE JURY: Mr. Gardner made a record as to the motion in limine that granted the Plaintiff summary judgment; further stating opposition and there has not been adequate foundation laid for it. Court advised the issue was there was no expert by the Defense providing any opinion about the issues related to wrist from the defense side. Jury instructions settled. CONTINUED TO 11/8/17 10:00 AM;</i> Trial Continues; Jury Trial Trial Continues; Jury Trial Mistrial; Journal Entry Details: <i>Jury Trial Begins OUTSIDE THE PRESENCE OF THE PERSPECTIVE JURY: Colloquy regarding counsel's proposed jury instructions, trial procedures and voir dire. Mr. Cloward made an oral request to be able to move around the courtroom during voir dire citing Salazar v. State an Whitlock v. Salmon. COURT ORDERED, Mr. Cloward's request DENIED. Counsel may address the jury at the podium but may not move about the courtroom. Further colloquy regarding wage abandonment. Court advised any discussion regarding Plaintiff's employment can be done outside the presence of the jury. Parties so noted. INSIDE THE PRESENCE OF THE PERSPECTIVE JURY: Introductions by the Court and Counsel. Voir Dire conducted. OUTSIDE THE PRESENCE OF THE PERSPECTIVE JURY: Mr. Cloward made a record as to discussions during a side bar regarding secondary gain. INSIDE THE PRESENCE OF THE PERSPECTIVE JURY: Voir dire continued. OUTSIDE THE PRESENCE OF THE PERSPECTIVE JURY: Mr. Cloward stated additional concerns as to having to remain at the podium during voir dire. Court so noted. INSIDE THE PRESENCE OF THE PERSPECTIVE JURY: Voir dire continued. Peremptory challenges exercised. Court read jury instructions. Jury sworn. COURT ORDERED, trial CONTINUED and in recess for the evening. CONTINUED TO 11/7/17 10:00 AM ;</i></p>
11/07/2017	<p><b>CANCELED Status Check (9:00 AM)</b> (Judicial Officer: Bell, Linda Marie)</p>

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*Vacated - On in Error*  
*Status Check: Settlement Documents*

11/09/2017



**Status Check (10:30 AM)** (Judicial Officer: Bell, Linda Marie)

*Status Check: Trial Setting*

Matter Heard; Status Check: Trial Setting

Journal Entry Details:

*Upon the Court's inquiry, Mr. Cloward advised he is unable to begin trial this upcoming Monday as two of the three Drs are unavailable. Colloquy regarding scheduling. COURT ORDERED, trial date SET. 3/6/18 9:00 AM CALENDAR CALL 4/2/18 9:00 AM JURY TRIAL (FIRM);*

03/06/2018



**Calendar Call (9:00 AM)** (Judicial Officer: Bell, Linda Marie)

Matter Heard;

Journal Entry Details:

*Mr. Cloward announced ready for trial. COURT ORDERED, TRIAL DATE STANDS. 4-02-18 9:00 AM JURY TRIAL (FIRM);*

04/02/2018



**Jury Trial - FIRM (9:00 AM)** (Judicial Officer: Bell, Linda Marie)

**04/02/2018-04/06/2018, 04/09/2018**

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

*JURY PRESENT. Testimony and exhibits presented (see worksheets). CONFERENCE AT BENCH. Defense rests. Court instructed the Jury. Closing statements by Mr. Cloward and Mr. Rands. Rebuttal by Mr. Cloward. At the hour of 3:33 p.m., Jury retired to deliberate. JURY PRESENT. At the hour of 5:29 p.m., the Jury reached a verdict in accordance with the verdict which was filed in OPEN COURT; Plaintiff awarded damages in the amount of \$2,980,980.00. Court thanked and excused the jurors.;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

*JURY PRESENT. Testimony presented (see worksheet). Plaintiff rests. OUTSIDE THE PRESENCE OF THE JURY. Jury instructions settled on record. COURT ORDERED, matter CONTINUED. CONTINUED TO: 4/9/18 9:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

*JURY PRESENT. Testimony and exhibits presented (see worksheets). COURT ORDERED, matter CONTINUED. CONTINUED TO: 4/6/18 9:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;



Verdict for Plaintiff;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding instructions to the Jury with respect to the previous trial. JURY PRESENT. Testimony and exhibits presented (see*

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	<p>worksheets). <i>COURT ORDERED, matter CONTINUED. CONTINUED TO: 4/5/18 10:30 AM;</i></p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Verdict for Plaintiff;</p> <p>Journal Entry Details:</p> <p><i>PROSPECTIVE JURY PANEL PRESENT. CONFERENCE AT BENCH. Peremptory challenges exercised. Court instructed Jury. Eight Jurors and two alternates selected and sworn. Opening statements by Mr. Cloward and Mr. Gardner. COURT ORDERED, matter CONTINUED. CONTINUED TO: 4/4/18 9:00 AM;</i></p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Verdict for Plaintiff;</p> <p>Journal Entry Details:</p> <p><i>JURY TRIAL FIRM....PLAINTIFF'S MOTION TO PRESENT A JURY QUESTIONNAIRE PRIOR TO VOIR DIRE OR IN THE ALTERNATIVE FOR MORE LIBERAL JURY SELECTION ON ORDER SHORTENING TIME OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. Colloquy regarding Plaintiff's Motion. COURT ORDERED, Motion DENIED as it was filed untimely. PROSPECTIVE JURY PANEL PRESENT. Voir dire of panel. CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED. CONTINUED TO: 4/3/18 10:00 AM;</i></p>
04/02/2018	<p><b>Motion</b> (9:00 AM) (Judicial Officer: Bell, Linda Marie)</p> <p><i>Plaintiff's Motion to Present a Jury Questionnaire Prior to Voir Dire or In the Alternative for More Liberal Jury Selection on Order Shortening Time</i></p> <p>Denied;</p>
04/10/2018	<p> <b>Motion for Attorney Fees and Costs</b> (9:00 AM) (Judicial Officer: Bell, Linda Marie)</p> <p><b>04/10/2018, 05/24/2018</b></p> <p><i>Plaintiff's Motion for Attorney Fees and Costs of Mistrial</i></p> <p>Matter Continued;</p> <p>Off Calendar;</p> <p>Journal Entry Details:</p> <p><i>Court advised the Motion has been withdrawn as of 04/11/18, and should have been taken off calendar.;</i></p> <p>Matter Continued;</p> <p>Off Calendar;</p> <p>Journal Entry Details:</p> <p><i>Matter called, no parties present. COURT ORDERED, matter CONTINUED. CONTINUED TO: 5/24/18 9:00 AM;</i></p>
11/06/2018	<p> <b>Motion for Judgment</b> (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p><i>Plaintiff's Motion for Entry of Judgment</i></p> <p>Motion Denied; Plaintiff's Motion for Entry of Judgment</p> <p>Journal Entry Details:</p> <p><i>Mr. Stewart argued the actions of defense counsel were pretty clear throughout the trial he was representing individual Pltf. and Harvest Management. During counsels opening statement he introduced Harvest as his 36(b) client, no dispute Mr. Lujan was in the course and scope of his employment, driving the bus at the time of the accident. Further, Due to an inadvertent error on the verdict form, left off Harvest Management and when counsel noticed this, consulted the NRCP governing special verdicts and 49(a) allows for the Court to make a finding about something not submitted to the jury. Mr. Kennedy argued motion should be denied since and essentially it stems from two premises. The first, whatever the claim was, negligent entrustment or vicarious liability was apparently abandoned at some point early on and was never presented to the jury. Further, you go through the first trial, every step of the way where a lawyer would of said, this is my client, this is the claim that I am defending and it does not happen. It did not happen if voir dire, does not happen when naming witnesses for the jury and in the first trial does not happen in the opening statement and that ends in a mistrial.</i></p>

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*Then you go to the second trial, nothing in voir dire, nothing in opening statement about the claim, nothing in the jury instructions, nothing in closing arguments and most importantly, there is nothing on the verdict form. Court inquired why on the jury instructions the caption includes the corporate Deft. and on the special verdict form, it does not. Mr. Kennedy stated he does not know and as to the jury instructions, they are printed off the regular caption that had that Deft. on it. When you look at the jury instructions, there are no jury instructions as to the theories asserted against Harvest Management and if you look at the verdict form, Deft. is singular. Additionally, with respect to that inconsistency, when you look at what counsel says in closing arguments to the jury, counsel argued there is no question counsel understands it is a sole Deft., showing the form on the apparently on the ELMO, this is what the form will look like and this is what you should do. You should find Mr. Lujan is 100% negligent and Pltf. 0% and you should make a finding against Mr. Lujan, the Pltf. and that is what the jury does. Further, Mr. Kennedy argued procedurally they never tried the case against that Deft. As to the master servant theory, Mr. Kennedy stated that is not actual plead, it is mentioned and nothing in there that pleads that theory. In fact, the evidence is, Mr. Lujan was having lunch and returning from lunch when the accident happened. Also, Rule 49 does not get them there, Rule 49 allows the Court to add implicit findings, does not allow the Court to allow add a party Deft. and a claim to a jury verdict form where the jury form does not include them to start with. As to negligent entrustment, Mr. Kenney argued they asked that the individual Deft. Mr. Lujan be found 100% negligent and that was the finding. Mr. Steward further argued inadvertent error on instructions. Mr. Boyack advised the Judge had prepared the special verdict form and along with that what does Harvest Management want the special verdict to look like if there is no comparative negligence on the corporate Deft. There was no evidence presented in any of the trial that he was not within the course and scope. The corporate representative who was put on the stand during the trial discusses he was an employee, discusses the facts of the accident and never does she bring up on direct or cross examination that he was on a break and we are not on the hook here or any assertion of that. Colloquy. COURT ORDERED, motion DENIED. While there is an inconsistency in the caption of the jury instructions and special verdict form, it does not appear to be any additional instructions that would lend credence to the fact that the claims against Harvest Management Sub, LLC, were submitted to the jury. Judgement to be submitted to the Court.;*

DATE

FINANCIAL INFORMATION

**Defendant** Harvest Management Sub LLC

Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/21/2018</b>	<b>0.00</b>

**Defendant** Lujan, David E

Total Charges	223.00
Total Payments and Credits	223.00
<b>Balance Due as of 12/21/2018</b>	<b>0.00</b>

**Plaintiff** Morgan, Aaron M

Total Charges	887.50
Total Payments and Credits	887.50
<b>Balance Due as of 12/21/2018</b>	<b>0.00</b>

**Plaintiff** Morgan, Aaron M

Appeal Bond Balance as of 12/21/2018	<b>500.00</b>
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## DISTRICT COURT CIVIL COVER SHEET

A-15-718679-C

County, Nevada

Case No.

VII

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Aaron M. Morgan

Defendant(s) (name/address/phone):

David E. Lujan; Harvest Management Sub LLC.

Attorney (name/address/phone):

Adam W. Williams

Richard Harris Law Firm

801 S. 4th Street

Las Vegas, Nevada 89101

Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate (select case type and estate value)</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

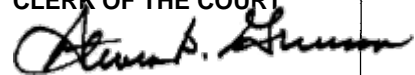
Business Court filings should be filed using the Business Court civil coversheet.

5/20/15

Date

Signature of initiating party or representative

See other side for family-related case filings.



**ORDR**

DENNIS L. KENNEDY

Nevada Bar No. 1462

SARAH E. HARMON

Nevada Bar No. 8106

JOSHUA P. GILMORE

Nevada Bar No. 11576

ANDREA M. CHAMPION

Nevada Bar No. 13461

**BAILEY❖KENNEDY**

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Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

SHarmon@BaileyKennedy.com

JGilmore@BaileyKennedy.com

AChampion@BaileyKennedy.com

*Attorneys for Defendant*

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. ~~XX~~ XI

PLEASE NOTE  
DEPT. CHANGE

**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

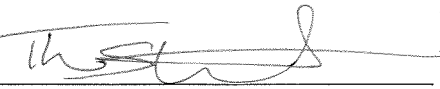
11 By: 

12 DENNIS L. KENNEDY  
13 SARAH E. HARMON  
14 JOSHUA P. GILMORE  
15 ANDREA M. CHAMPION  
16 8984 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148

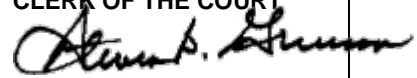
18 *Attorneys for Defendant Harvest Management*  
19 *Sub LLC*

Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By: 

20 MICAH S. ECHOLS  
21 TOM W. STEWART  
22 1001 Park Run Drive  
23 Las Vegas, Nevada 89145  
24 *Attorneys for Plaintiff Aaron Morgan*



1 **NEOJ**

DENNIS L. KENNEDY

2 Nevada Bar No. 1462

SARAH E. HARMON

3 Nevada Bar No. 8106

JOSHUA P. GILMORE

4 Nevada Bar No. 11576

ANDREA M. CHAMPION

5 Nevada Bar No. 13461

**BAILEY ♦ KENNEDY**

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7 Telephone: 702.562.8820

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8 DKennedy@BaileyKennedy.com

SHarmon@BaileyKennedy.com

9 JGilmore@BaileyKennedy.com

ACHampion@BaileyKennedy.com

10 *Attorneys for Defendant*

11 HARVEST MANAGEMENT SUB LLC

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-  
Liability Company; DOES 1 through 20; ROE  
19 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 ///

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A true and correct copy is attached hereto.

DATED this 28th day of November, 2018.

BAILEY❖KENNEDY

By: /s/ Sarah E. Harmon  
DENNIS L. KENNEDY  
SARAH E. HARMON  
JOSHUA P. GILMORE  
ANDREA M. CHAMPION

*Attorneys for Defendants*  
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:

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

Email: Benjamin@richardharrislaw.com  
Bryan@richardharrislaw.com

and

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

Email: Mechols@maclaw.com  
Tstewart@maclaw.com

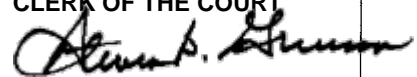
*Attorneys for Plaintiff*  
AARON M. MORGAN

---

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

Email: dgardner@rsglawfirm.com  
*Attorney for Defendant*  
DAVID E. LUJAN

/s/ Josephine Baltazar  
Employee of BAILEY❖KENNEDY



**ORDR**

DENNIS L. KENNEDY

Nevada Bar No. 1462

SARAH E. HARMON

Nevada Bar No. 8106

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Nevada Bar No. 11576

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SHarmon@BaileyKennedy.com

JGilmore@BaileyKennedy.com

AChampion@BaileyKennedy.com

*Attorneys for Defendant*

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. ~~XX~~ XI

PLEASE NOTE  
DEPT. CHANGE

**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

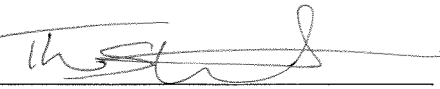
11 By: 

12 DENNIS L. KENNEDY  
13 SARAH E. HARMON  
14 JOSHUA P. GILMORE  
15 ANDREA M. CHAMPION  
16 8984 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148

18 *Attorneys for Defendant Harvest Management*  
19 *Sub LLC*

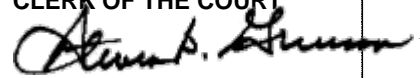
Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By: 

20 MICAH S. ECHOLS  
21 TOM W. STEWART  
22 1001 Park Run Drive  
23 Las Vegas, Nevada 89145  
24 *Attorneys for Plaintiff Aaron Morgan*





**JGJV**  
**Richard Harris Law Firm**  
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Bryan A. Boyack, Esq.  
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Bryan@RichardHarrisLaw.com

**Marquis Aurbach Coffing**  
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Facsimile: (702) 382-5816  
mechols@maclaw.com  
tstewart@maclaw.com

*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,<sup>1</sup> and the issues having been duly tried and the jury having duly rendered its verdict.<sup>2</sup>

IT IS ORDERED AND ADJUDGED that PLAINTIFF, AARON M. MORGAN, have a recovery against DEFENDANT, DAVID E. LUJAN, 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
<b>Total Damages</b>	<b>\$2,980,980.00</b>

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 \$62.23 per day]

**PLAINTIFF'S TOTAL JUDGMENT**

Plaintiff's total judgment is as follows:

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

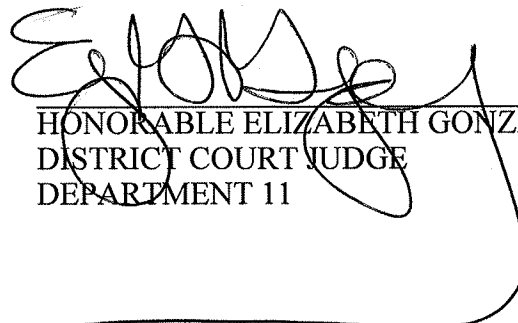
<sup>1</sup> This case was reassigned to the Honorable Elizabeth Gonzalez, District Court Judge, in July 2018.

<sup>2</sup> 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:

PLAINTIFF, AARON M. MORGAN, is hereby awarded \$3,046,382.72 against DEFENDANT, DAVID E. LUJAN, 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 13 day of Dec., 2018.

  
HONORABLE ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE  
DEPARTMENT 11

Respectfully Submitted by:

Dated this 12<sup>TH</sup> day of December, 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*

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

# Exhibit 1

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

APR - 9 2018

BY: *J. M. Brown*  
J. 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 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	<b>TOTAL</b>	\$ <u>2,980,980.</u> <u>00</u>

15

16 DATED this 9<sup>th</sup> day of April, 2018.

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18   
19 FOREPERSON

20 ARTHUR J. ST. LAURENT  
21  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**December 29, 2016**

---

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

---

**December 29, 2016      9:00 AM      Status Conference**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 03B

**COURT CLERK:** Louisa Garcia

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney

**JOURNAL ENTRIES**

- Counsel advised discovery was completed and they had no discovery issues; the dispositive motion cut-off date is due within three weeks. COURT reviewed the trial handout and ORDERED, trial date STANDS.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**March 07, 2017**

---

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

---

**March 07, 2017      9:00 AM      Calendar Call**

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

**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:** Gardner, Douglas J, ESQ      Attorney

**JOURNAL ENTRIES**

- Calendar Call

Mr. Gardner advised he is ready to move forward with trial. Colloquy regarding scheduling.  
COURT ORDERED, trial VACATED and RESET.

4/4/17 9:00 AM CALENDAR CALL

4/24/17 9:00 AM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 04, 2017**

---

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

---

**April 04, 2017      9:00 AM      Calendar Call**

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

**COURT CLERK:** Phyllis Irby

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney

**JOURNAL ENTRIES**

- Parties announced ready for trial 4 - 5 DAYS; will have exhibits and jury instructions prepared and submit to the court soon. COURT ORDERED, TRIAL DATE STANDS.

4-24-17 9:00 AM JURY TRIAL (DEPT. VII)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 24, 2017**

---

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

---

**April 24, 2017      9:00 AM      Jury Trial - FIRM**

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

**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- Jury Trial

**OUTSIDE THE PERSPECTIVE JURY**

Mr. Rands advised the defendant, Mr. Lujan, has been hospitalized and requested to continue the jury trial. No opposition by Mr. Cloward, requesting a status check be set. COURT ORDERED, jury trial CONTINUED and Mr. Rands to provide medical documentation as to Mr. Lujan's hospital stay by the upcoming court date. COURT FURTHER ORDERED, exhibits returned to Counsel and trial OFF CALENDAR .

5/16/17 9:00 AM STATUS CHECK: STATUS OF THE CASE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Negligence - Auto

# COURT MINUTES

**May 16, 2017**

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

**May 16, 2017**                      **9:00 AM**                      **Status Check**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Boyack, Bryan A.	Attorney
	Cloward, Benjamin P.	Attorney
	Gardner, Douglas J, ESQ	Attorney

## JOURNAL ENTRIES

- Status Check: Status of the Case

Mr. Gardner advised his client is making a disability claim and his daughter who is assisting him has his records. Mr. Lujan is prepared to make a record under oath. Court advised it needs the discharge paperwork from the hospital. Mr. Gardner so noted. Mr. Boyack advised a motion for partial summary judgment has been filed and would like to reset the trial after. Colloquy regarding scheduling. COURT ORDERED, trial date SET. Mr. Gardner made an oral request for the Court to review the discharge summary of Mr. Lujan in camera as he does not want to file it. COURT SO NOTED.

8/29/17 9:00 AM CALENDAR CALL

9/5/17 9:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**June 13, 2017**

---

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

---

**June 13, 2017      9:00 AM      Motion for Partial  
Summary Judgment**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Marwanda Knight

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                         Gardner, Douglas J, ESQ      Attorney

**JOURNAL ENTRIES**

- Bryan Boyack, Esq., appeared on behalf of Pltf  
Douglas Gardner, Esq., appeared on behalf of Deft

Mr. Gardner provided the Court with medical records.

Mr. Boyack argued Deft s expert should not be allowed to make any further opinions that were not disclosed in his reports. Court noted having Mr. Lujan s discharge summary. Mr. Gardner argued Defts are prepared to respond to the affidavit, and requested more time to do so. However, if Defts are not allowed to respond to the affidavit it should be stricken. After hearing from both sides, COURT ORDERED, Motion for Partial Summary Judgment GRANTED.

Mr. Boyack indicated he would submit the proposed order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**August 29, 2017**

---

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

---

**August 29, 2017      9:00 AM      Calendar Call**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Sylvia Perry  
Elizabeth Vargas

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:** Boyack, Bryan A.      Attorney  
Gardner, Douglas J, ESQ      Attorney  
Attorney

**JOURNAL ENTRIES**

- Calendar Call

Mr. Boyack advised Mr. Cloward is currently in trial in DC 27 and will be starting another trial 9/18/17 and an issue with an expert the week of 9/25/17. Upon the Court's inquiry, the trial will remain five days. Colloquy regarding scheduling. COURT ORDERED, trial VACATED and RESET.

10/3/17 9:00 AM CALENDAR CALL

10/9/17 9:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**October 03, 2017**

---

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

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**October 03, 2017      9:00 AM      Calendar Call**

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

**COURT CLERK:** Sylvia Perry

**RECORDER:** Gail Reiger

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
Gardner, Douglas J, ESQ      Attorney

**JOURNAL ENTRIES**

- Upon the Court's inquiry, parties ready to go forward with trial which will consist of 5-6 witnesses; requesting the end of November. Colloquy regarding scheduling. COURT ORDERED, trial SET TO PROCEED. Additionally, Mr. Garner inquired about a witness appearing by video, Court so noted.

11/6/17 9:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto****COURT MINUTES****November 06, 2017**

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

**November 06, 2017      9:00 AM****Jury Trial****Jury Trial****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15A**COURT CLERK:** Sylvia Perry**RECORDER:** Renee Vincent**REPORTER:****PARTIES**

<b>PRESENT:</b>	Boyack, Bryan A.	Attorney
	Cloward, Benjamin P.	Attorney
	Gardner, Douglas J, ESQ	Attorney
	Lujan, David E	Defendant
	Morgan, Aaron M	Plaintiff
	Rands, Douglas R	Attorney

**JOURNAL ENTRIES**

- Jury Trial Begins

**OUTSIDE THE PRESENCE OF THE PERSPECTIVE JURY:**

Colloquy regarding counsel's proposed jury instructions, trial procedures and voir dire. Mr. Cloward made an oral request to be able to move around the courtroom during voir dire citing Salazar v. State an Whitlock v. Salmon. COURT ORDERED, Mr. Cloward's request DENIED. Counsel may address the jury at the podium but may not move about the courtroom. Further colloquy regarding wage abandonment. Court advised any discussion regarding Plaintiff's employment can be done outside the presence of the jury. Parties so noted.

**INSIDE THE PRESENCE OF THE PERSPECTIVE JURY:**

Introductions by the Court and Counsel. Voir Dire conducted.

OUTSIDE THE PRESENCE OF THE PERSPECTIVE JURY:

Mr. Cloward made a record as to discussions during a side bar regarding secondary gain.

INSIDE THE PRESENCE OF THE PERSPECTIVE JURY:

Voir dire continued.

OUTSIDE THE PRESENCE OF THE PERSPECTIVE JURY:

Mr. Cloward stated additional concerns as to having to remain at the podium during voir dire. Court so noted.

INSIDE THE PRESENCE OF THE PERSPECTIVE JURY:

Voir dire continued. Peremptory challenges exercised. Court read jury instructions. Jury sworn. COURT ORDERED, trial CONTINUED and in recess for the evening.

CONTINUED TO 11/7/17 10:00 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**November 07, 2017**

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

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**November 07, 2017      10:30 AM**

**Jury Trial**

**Jury Trial**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney  
                 Lujan, David E      Defendant  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- Jury Trial Continued

INSIDE THE PRESENCE OF THE JURY:

Opening statements by Plaintiff's Counsel.

OUTSIDE THE PRESENCE OF THE JURY:

Mr. Cloward waived his opening statement until the Plaintiff's rest. COURT SO ORDERED.  
EXCLUSIONARY RULE INVOKED.

INSIDE THE PRESENCE OF THE JURY:

Testimony and exhibits presented. (See worksheets). COURT ORDERED, trial in recess and  
CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY:

PRINT DATE: 12/21/2018

Page 11 of 26

Minutes Date: December 29, 2016

**2062**

Mr. Gardner made a record as to the motion in limine that granted the Plaintiff summary judgment; further stating opposition and there has not been adequate foundation laid for it. Court advised the issue was there was no expert by the Defense providing any opinion about the issues related to wrist from the defense side. Jury instructions settled.

CONTINUED TO 11/8/17 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**November 08, 2017**

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

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**November 08, 2017      10:00 AM      Jury Trial**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Cloward, Benjamin P.	Attorney
	Gardner, Douglas J, ESQ	Attorney
	Lujan, David E	Defendant
	Morgan, Aaron M	Plaintiff
	Rands, Douglas R	Attorney

**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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**November 09, 2017**

---

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

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**November 09, 2017      10:30 AM      Status Check      Status Check: Trial Setting**

**HEARD BY:** Bell, Linda Marie      **COURTROOM:** RJC Courtroom 03B

**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney

**JOURNAL ENTRIES**

- Upon the Court's inquiry, Mr. Cloward advised he is unable to begin trial this upcoming Monday as two of the three Drs are unavailable. Colloquy regarding scheduling. COURT ORDERED, trial date SET.

3/6/18 9:00 AM CALENDAR CALL

4/2/18 9:00 AM JURY TRIAL (FIRM)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**March 06, 2018**

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

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**March 06, 2018      9:00 AM      Calendar Call**

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

**COURT CLERK:** Phyllis Irby

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:** Cloward, Benjamin P.      Attorney

**JOURNAL ENTRIES**

- Mr. Cloward announced ready for trial. COURT ORDERED, TRIAL DATE STANDS.

4-02-18 9:00 AM JURY TRIAL (FIRM)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 02, 2018**

---

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

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**April 02, 2018      9:00 AM      Jury Trial - FIRM**

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

**COURT CLERK:** Aja Brown

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Morgan, Aaron M      Plaintiff  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- JURY TRIAL FIRM....PLAINTIFF'S MOTION TO PRESENT A JURY QUESTIONNAIRE PRIOR TO VOIR DIRE OR IN THE ALTERNATIVE FOR MORE LIBERAL JURY SELECTION ON ORDER SHORTENING TIME

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. Colloquy regarding Plaintiff's Motion. COURT ORDERED, Motion DENIED as it was filed untimely.

PROSPECTIVE JURY PANEL PRESENT. Voir dire of panel. CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 4/3/18 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 03, 2018**

---

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

---

**April 03, 2018      10:00 AM      Jury Trial - FIRM**

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

**COURT CLERK:** Aja Brown

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney  
                 Morgan, Aaron M      Plaintiff  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- PROSPECTIVE JURY PANEL PRESENT. CONFERENCE AT BENCH. Peremptory challenges exercised. Court instructed Jury. Eight Jurors and two alternates selected and sworn. Opening statements by Mr. Cloward and Mr. Gardner. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 4/4/18 9:00 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 04, 2018**

---

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

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**April 04, 2018      10:15 AM      Jury Trial - FIRM**

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

**COURT CLERK:** Aja Brown

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney  
                 Morgan, Aaron M      Plaintiff  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding instructions to the Jury with respect to the previous trial.

JURY PRESENT. Testimony and exhibits presented (see worksheets). COURT ORDERED, matter CONTINUED.

CONTINUED TO: 4/5/18 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 05, 2018**

---

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

---

**April 05, 2018      10:30 AM      Jury Trial - FIRM**

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

**COURT CLERK:** Aja Brown

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney  
                 Morgan, Aaron M      Plaintiff  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- JURY PRESENT. Testimony and exhibits presented (see worksheets). COURT ORDERED, matter CONTINUED.

CONTINUED TO: 4/6/18 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 06, 2018**

---

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

---

**April 06, 2018      9:00 AM      Jury Trial - FIRM**

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

**COURT CLERK:** Aja Brown

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney  
                 Morgan, Aaron M      Plaintiff  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- JURY PRESENT. Testimony presented (see worksheet). Plaintiff rests.

OUTSIDE THE PRESENCE OF THE JURY. Jury instructions settled on record. COURT ORDERED,  
matter CONTINUED.

CONTINUED TO: 4/9/18 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 09, 2018**

---

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

---

**April 09, 2018      9:00 AM      Jury Trial - FIRM**

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

**COURT CLERK:** Aja Brown

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Boyack, Bryan A.      Attorney  
                 Cloward, Benjamin P.      Attorney  
                 Gardner, Douglas J, ESQ      Attorney  
                 Morgan, Aaron M      Plaintiff  
                 Rands, Douglas R      Attorney

**JOURNAL ENTRIES**

- JURY PRESENT. Testimony and exhibits presented (see worksheets). CONFERENCE AT BENCH. Defense rests. Court instructed the Jury. Closing statements by Mr. Cloward and Mr. Rands. Rebuttal by Mr. Cloward. At the hour of 3:33 p.m., Jury retired to deliberate.

JURY PRESENT. At the hour of 5:29 p.m., the Jury reached a verdict in accordance with the verdict which was filed in OPEN COURT; Plaintiff awarded damages in the amount of \$2,980,980.00. Court thanked and excused the jurors.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 10, 2018**

---

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

---

**April 10, 2018      9:00 AM      Motion for Attorney Fees  
and Costs**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Aja Brown

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Matter called, no parties present. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 5/24/18 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**May 24, 2018**

---

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

---

**May 24, 2018      9:00 AM      Motion for Attorney Fees  
and Costs**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 03B

**COURT CLERK:** Nancy Maldonado

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Court advised the Motion has been withdrawn as of 04/11/18, and should have been taken off calendar.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

November 06, 2018

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

**November 06, 2018      9:00 AM      Motion for Judgment      Plaintiff's Motion for Entry of Judgment**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: April Watkins

RECORDER: Jill Hawkins

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Boyack, Bryan A.	Attorney
	Champion, Andrea M.	Attorney
	Harmon, Sarah E.	Attorney
	Kennedy, Dennis L.	Attorney
	Stewart, Thomas W,	Attorney

**JOURNAL ENTRIES**

- Mr. Stewart argued the actions of defense counsel were pretty clear throughout the trial he was representing individual Pltf. and Harvest Management. During counsels opening statement he introduced Harvest as his 36(b) client, no dispute Mr. Lujan was in the course and scope of his employment, driving the bus at the time of the accident. Further, Due to an inadvertent error on the verdict form, left off Harvest Management and when counsel noticed this, consulted the NRCPC governing special verdicts and 49(a) allows for the Court to make a finding about something not submitted to the jury. Mr. Kennedy argued motion should be denied since and essentially it stems from two premises. The first, whatever the claim was, negligent entrustment or vicarious liability was apparently abandoned at some point early on and was never presented to the jury. Further, you go through the first trial, every step of the way where a lawyer would of said, this is my client, this is the claim that I am defending and it does not happen. It did not happen if voir dire, does not happen when naming witnesses for the jury and in the first trial does not happen in the opening statement and that ends in a mistrial. Then you go to the second trial, nothing in voir dire, nothing in opening

statement about the claim, nothing in the jury instructions, nothing in closing arguments and most importantly, there is nothing on the verdict form. Court inquired why on the jury instructions the caption includes the corporate Deft. and on the special verdict form, it does not. Mr. Kennedy stated he does not know and as to the jury instructions, they are printed off the regular caption that had that Deft. on it. When you look at the jury instructions, there are no jury instructions as to the theories asserted against Harvest Management and if you look at the verdict form, Deft. is singular. Additionally, with respect to that inconsistency, when you look at what counsel says in closing arguments to the jury, counsel argued there is no question counsel understands it is a sole Deft., showing the form on the apparently on the ELMO, this is what the form will look like and this is what you should do. You should find Mr. Lujan is 100% negligent and Pltf. 0% and you should make a finding against Mr. Lujan, the Pltf. and that is what the jury does. Further, Mr. Kennedy argued procedurally they never tried the case against that Deft. As to the master servant theory, Mr. Kennedy stated that is not actual plead, it is mentioned and nothing in there that pleads that theory. In fact, the evidence is, Mr. Lujan was having lunch and returning from lunch when the accident happened. Also, Rule 49 does not get them there, Rule 49 allows the Court to add implicit findings, does not allow the Court to allow add a party Deft. and a claim to a jury verdict form where the jury form does not include them to start with. As to negligent entrustment, Mr. Kenney argued they asked that the individual Deft. Mr. Lujan be found 100% negligent and that was the finding. Mr. Steward further argued inadvertent error on instructions. Mr. Boyack advised the Judge had prepared the special verdict form and along with that what does Harvest Management want the special verdict to look like if there is no comparative negligence on the corporate Deft. There was no evidence presented in any of the trial that he was not within the course and scope. The corporate representative who was put on the stand during the trial discusses he was an employee, discusses the facts of the accident and never does she bring up on direct or cross examination that he was on a break and we are not on the hook here or any assertion of that. Colloquy. COURT ORDERED, motion DENIED. While there is an inconsistency in the caption of the jury instructions and special verdict form, it does not appear to be any additional instructions that would lend credence to the fact that the claims against Harvest Management Sub, LLC, were submitted to the jury. Judgement to be submitted to the Court.



**PLAINTIFF'S EXHIBITS****CASE NO. A-15-718679-C**

Morgan v. Lujan, Management Sub LLC

		Stipulated	Date Offered	Objection	Date Admitted
1.	Traffic Accident Report				
2.	Form 5 Code List				
3.	Property Damage Estimate for Morgan's Vehicle				
4.	Photos of Morgan Vehicle				
5.	AMR Records				
6.	Sunrise Hospital Records				
7.	Urgent Care Records				
8.	Ryan Grabow, MD Records				
9.	Nevada Comprehensive Pain Center Records				
10.	Las Vegas Valley Chiropractic Records				
11.	Las Vegas Radiology Records				
12.	William Muir, MD Records				
13.	PayLater Pharmacy Records				
14.	Advanced Spine and Rehabilitation Records				
15.	Southern Hills Hospital Records				
16.	Radiology Specialists, Ltd. Records				
17.	PBS Anesthesia Records				
18.	Fremont ER Records				
19.	Andrew Cash, M.D. Records				
20.	ATI Physical Therapy Records				
21.	Terrence Clauretje, CV, TH, FS				
22.	Terrance Dinneen, M.S. CV, TH, FS				
23.	Photos of Accident Scene				
24.	Video of Accident Scene				
25.	Complaint				
26.	Answer				
27.	Order re: Wrist				
28.	Las Vegas Radiology Films (2 CD's)				

## **DEFENDANT'S TRIAL EXHIBITS**

**CASE NO. A-15-718679-C**

Morgan v. Lujan, Management Sub LLC

Date    Offered    OBJ    Admitted    Date

A.	Incident/Accident Report					
B.	Driver Statement Report					
C.	Incident Diagram					
D.	Accident Information Card					
E.	State of Nevada Traffic Accident Report					
F.	Repair Estimate (Plaintiff's vehicle)					
G.	Sixteen (16) colored photographs of Plaintiff's vehicle					
H.	Nine (9) colored photographs of Defendant's vehicle					
I.	U.S. Department of Transportation Alcohol Testing Forms Results (as to Defendant)					
J.	Las Vegas Metropolitan Police Department Traffic Collision Information					
K.	Expert, Steven M. Sanders, Report					

L.	Expert, Sharon J. McNair, Report					
M.	Expert, Jeffrey F. Magrowski, Report					

## COURT'S EXHIBITS

CASE NO. A719679

Date Offered

Objection

Date Admitted

1. QUESTION FROM JUROR # 5	11/7/17	N	11/7/17
2. " " " " # 5	I	I	I
3. " " " " # 5	I	I	I
4. QUESTION FROM JUROR # 5	11/8/17	N	11/8/17
5. " " " " # 1	I	I	I
6. " " " " # 1	I	I	I
7. " " " " # 2	I	I	I
8. QUESTION FROM JUROR # 2	11/8/17	N	11/8/17
9. " " " " # 9	I	I	I
10. " " " " # 9	I	I	I
11. QUESTION FROM JUROR # 9	11/8/17	N	11/8/17

# EXHIBIT(S) LIST

Case No.: A718679

Hearing / Trial Date: 04/02/18

Dept. No.: VII

Judge: Linda Marie Bell

Court Clerk: Aja Brown

Plaintiff: Aaron Morgan

Recorder / Reporter: Renee Vincent

Counsel for Plaintiff: Bryan Boyak and Benjamin

vs.

Cloward

Defendant: David Lujan

Counsel for Defendant: Douglas Gardner and

Douglas Rands

## HEARING / TRIAL BEFORE THE COURT

### PLAINTIFF'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
1					
2					
3	PROPERTY DAMAGE ESTIMATE MORGAN VEH	4/4/18	N	4/4/18	ws
4	PHOTOS OF MORGAN'S VEHICLE	4/4/18	N	4/4/18	ws
5					
6	SUNRISE HOSPITAL RECORDS	4/9/18	N	4/9/18	ws
7	URGENT CARE RECORDS	4/4/18	N	4/4/18	ws
8					
9	NEVADA COMPREHENSIVE PAIN CTR RECS	4/5/18	N	4/5/18	ws
10	LAS VEGAS VALLEY CHIROPRACTIC RECS	4/5/18	N	4/5/18	ws
11	LAS VEGAS RADIOLOGY RECORDS	4/5/18	N	4/5/18	ws
12					
13					
14					
15					
16					
17					

Case No: A718U79

VS.

PLAINTIFF'S

[illegible]

# EXHIBIT(S) LIST

Case No.: A718679

Hearing / Trial Date: 04/02/18

Dept. No.: VII

Judge: Linda Marie Bell

Court Clerk: Aja Brown

Plaintiff: Aaron Morgan

Recorder / Reporter: Renee Vincent

Counsel for Plaintiff: Bryan Boyak and Benjamin

vs.

Cloward

Defendant: David Lujan

Counsel for Defendant: Douglas Gardner and

Douglas Rands

## HEARING / TRIAL BEFORE THE COURT

### COURT'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
1	QUESTION FROM JUROR # 6 (ASKED)	4/4/18	N/A	4/4/18	wa
2	QUESTION FROM JUROR # 6 (ASKED)	4/4/18	N/A	4/4/18	wa
3	QUESTION FROM JUROR # 6 (ASKED)	4/5/18	N/A	4/5/18	wa
4	QUESTION FROM JUROR # 6 (ASKED)	4/5/18	N/A	4/5/18	wa
5	QUESTION FROM JUROR # 5 (ASKED)	4/5/18	N/A	4/5/18	wa
6	QUESTION FROM JUROR # 8 (ASKED)	4/5/18	N/A	4/5/18	wa
7	QUESTION FROM JUROR # 10 (ASKED)	4/5/18	N/A	4/5/18	wa
8	QUESTION FROM JUROR # 9 (ASKED)	4/5/18	N/A	4/5/18	wa
9	QUESTION FROM JUROR # 6 (ASKED)	4/6/18	N/A	4/6/18	wa
10	QUESTION FROM JUROR # 6 (ASKED)	4/6/18	N/A	4/6/18	wa
11	QUESTION FROM JUROR # 5 (ASKED)	4/6/18	N/A	4/6/18	wa
12	QUESTION FROM JUROR # 5 (ASKED)	4/6/18	N/A	4/6/18	wa
13	QUESTION FROM JUROR # 5 (ASKED)	4/6/18	N/A	4/6/18	wa
14	QUESTION FROM JUROR # 5 (ASKED)	4/6/18	N/A	4/6/18	wa
15	QUESTION FROM JUROR # 10 (ASKED)	4/6/18	N/A	4/6/18	wa
16	QUESTION FROM JUROR # 10 (ASKED)	4/6/18	N/A	4/6/18	wa
17	QUESTION FROM JUROR # 10 (ASKED)	4/6/18	N	4/6/18	wa

## EXHIBIT(S) LIST

**Case No: A718679**

**Aaron Morgan**

VS.

**David Lujan**

## COURT'S EXHIBITS

[illegible]





EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

**MICAH S. ECHOLS, ESQ.**  
**10001 PARK RUN DR.**  
**LAS VEGAS, NV 89145**

**DATE: December 21, 2018**  
**CASE: A-15-718679-C**

**RE CASE:** AARON M. MORGAN vs. DAVID E. LUJAN; HARVEST MANAGEMENT SUB LLC

NOTICE OF APPEAL FILED: December 18, 2018

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order *re: Judgment Upon the Jury Verdict filed December 17, 2018*

---

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

---

*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER ON PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT; NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT; JUDGMENT UPON THE JURY VERDICT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

AARON M. MORGAN,

Plaintiff(s),

vs.

DAVID E. LUJAN; HARVEST  
MANAGEMENT SUB LLC,

Defendant(s),

Case No: A-15-718679-C

Dept No: XI

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 21 day of December 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

JM

*Clerk of the Supreme Court*

12/20/2018

125755  
\$250.00

Inv.Date	Inv.No.	Invoice Description
12-20-2018	MSE15167-1.	


Amount
250.00

125755

**Total:****\$250.00**

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12/20/2018

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*Clerk of the Supreme Court*

201 S. Carson St., Ste. # 201  
Carson City, NV 89701



⑈ 125755 ⑈ ⑆ 122400779⑆0002100543⑈

**From:** efilng@nvcourts.nv.gov  
**Sent:** Thursday, December 27, 2018 3:19 PM  
**To:** BKfederaldownloads  
**Subject:** Notification of Electronic Filing in MORGAN VS. LUJAN, No. 77753

**Supreme Court of Nevada**

**NOTICE OF ELECTRONIC FILING**

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**Notice is given of the following activity:**

**Date and Time of Notice:** Dec 27 2018 03:18 p.m.

**Case Title:** MORGAN VS. LUJAN  
**Docket Number:** 77753  
**Case Category:** Civil Appeal

**Document Category:** Notice of Appeal  
**Submitted by:** Clark Co. Clerk  
**Official File Stamp:** Dec 27 2018 03:16 p.m.  
**Filing Status:** **Accepted and Filed**

**Docket Text:** Filed Notice of Appeal. Appeal docketed in the Supreme Court this day.  
(Docketing statement mailed to counsel for appellant.)

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

**Clerk's Office has electronically mailed notice to:**

Benjamin Cloward  
Douglas Gardner  
Joshua Gilmore

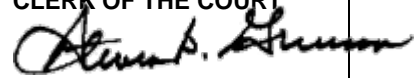
Bryan Boyack  
Thomas Stewart  
Andrea Champion  
Dennis Kennedy  
Micah Echols  
Sarah Harmon

**No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:**

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.

TAB 24

TAB 24



**MEJD**

DENNIS L. KENNEDY

Nevada Bar No. 1462

SARAH E. HARMON

Nevada Bar No. 8106

JOSHUA P. GILMORE

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*Attorneys for Defendant*

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 MOTION  
FOR ENTRY OF JUDGMENT**

Hearing Date:

Hearing Time:

Defendant Harvest Management Sub LLC ("Harvest"), hereby requests that the Court enter judgment in favor of Harvest on any and all claims for relief alleged by Plaintiff Aaron Morgan ("Mr. Morgan") in this action. (A proposed Judgment is attached hereto as Exhibit A.) Mr. Morgan failed to present any evidence in support of his claims, failed to refute the defendants' evidence offered in defense of these claims, failed to submit these claims to the jury for determination, and has ostensibly chosen to abandon his claims against Harvest.

///

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

3 DATED this 21st day of December, 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  
9 *Attorneys for Defendant*

HARVEST MANAGEMENT SUB LLC



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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that Defendant Harvest Management Sub LLC’s Motion for Entry of Judgment will come on for hearing before the Court in Department XI, on the 25 day of January, 2019, at the hour of \_\_:\_\_.m., or as soon thereafter as counsel can be heard.

DATED this 21st day of December, 2018.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy  
DENNIS L. KENNEDY  
SARAH E. HARMON  
JOSHUA P. GILMORE  
ANDREA M. CHAMPION

*Attorneys for Defendant*  
HARVEST MANAGEMENT SUB LLC

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Although there is some confusion as to what cause of action Mr. Morgan asserted against Harvest in this action — negligent entrustment or vicarious liability — there is no dispute that at the recent trial of this matter, Mr. Morgan wholly failed to pursue — and in fact appears to have abandoned — his claim for relief against Harvest. Specifically:

- He did not reference Harvest in his introductory remarks to the jury regarding the identity of the Parties and expected witnesses, (Ex. 10,<sup>1</sup> at 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,<sup>2</sup> 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 Harvest's liability for his damages;
- 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,<sup>3</sup> at 121:4-136:19, 157:13-161:10);
- He did not include his claim against Harvest in the jury instructions, (Ex. 13<sup>4</sup>); 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, (Ex. 14<sup>5</sup>).

<sup>1</sup> Excerpts of Recorder's Tr. of Hrg. Civil Jury Trial (Apr. 2, 2018) are attached as Exhibit 10, at Vol. III of App. at H384-H619.

<sup>2</sup> Excerpts of Recorder's Tr. of Hrg. Civil Jury Trial (Apr. 3, 2018) are attached as Exhibit 11, at Vol. IV of App. at H620-H748.

<sup>3</sup> 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 H749-H774.

<sup>4</sup> A true and correct copy of the Jury Instructions (Apr. 9, 2018) is attached as Exhibit 13, at Vol. IV of App. at H775-H814.

<sup>5</sup> A true and correct copy of the Special Verdict (Apr. 9, 2018) is attached as Exhibit 14, at Vol. IV of App. at H815-816.

1 In addition to abandoning his claims against Harvest, Mr. Morgan also failed to refute the  
2 evidence offered by the defendants at trial which established that Harvest could not, as a matter of  
3 law, be liable for either negligent entrustment or vicarious liability — specifically, (1) David Lujan’s  
4 (“Mr. Lujan”) testimony that he was on a lunch break when the accident occurred; and (2) Mr.  
5 Lujan’s testimony that he had never been in an accident before.

6 Given the lack of *any* evidence offered at trial against Harvest, Mr. Morgan’s claims against  
7 Harvest should be dismissed with prejudice and judgment should be entered in favor of Harvest as to  
8 Mr. Morgan’s express claim for negligent entrustment and his implied claim for vicarious liability.

## 9 II. RELEVANT FACTS AND PROCEDURAL HISTORY

### 10 A. The Pleadings.

11 On May 20, 2015, Mr. Morgan filed a Complaint against Mr. Lujan and Harvest. (*See*  
12 *generally* Ex. 1<sup>6</sup>.) The only claim alleged against Harvest in the Complaint is captioned “Vicarious  
13 Liability/Respondeat Superior,” but the allegations of the claim are more akin to a claim for  
14 *negligent entrustment*. (*Id.* at ¶¶ 15-22 (alleging that Harvest negligently entrusted the vehicle to  
15 Mr. Lujan despite the fact that it knew or should have known that Mr. Lujan was an incompetent,  
16 inexperienced, or reckless driver).) Further, the cause of action fails to allege that Mr. Lujan was  
17 acting within the course and scope of his employment at the time of the accident. (*Id.*) Rather, the  
18 only reference to “course and scope” in the entire Complaint is as follows:

19 On or about April 1, 2014, Defendants, [*sic*] were the owners,  
20 employers, family members[,] and/or operators of a motor vehicle,  
21 while in the *course and scope of employment* and/or family purpose  
22 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.

23 (*Id.* at ¶ 9 (emphasis added).)

24 On June 16, 2015, Mr. Lujan and Harvest filed Defendants’ Answer to Plaintiff’s Complaint.  
25 (*See generally* Ex. 2.<sup>7</sup>) The Defendants denied Paragraph 9 of the Complaint, including the

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26 <sup>6</sup> A true and correct copy of the Complaint (May 20, 2015) is attached as Exhibit 1, at Vol. I of App. at H001-  
27 H006.

28 <sup>7</sup> 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 H007-H013.

1 purported allegation that Mr. Lujan was acting within the course and scope of his employment at the  
2 time of the accident. (Ex. 1, at ¶ 9; Ex. 2, at 2:8-9.) Harvest admitted that it employed Mr. Lujan as  
3 a driver, that it owned the vehicle involved in the accident, and that it had entrusted control of the  
4 vehicle to Mr. Lujan. (Ex. 1, at ¶¶ 16-18; Ex. 2, at 3:7-8.) However, Harvest denied that: (i) Mr.  
5 Lujan was incompetent, inexperienced, or reckless in the operation of the vehicle; (ii) it knew or  
6 should have known that he was incompetent, inexperienced, or reckless in the operation of motor  
7 vehicles; (iii) Mr. Morgan was injured as a proximate consequence of Harvest's alleged negligent  
8 entrustment of the vehicle to Mr. Lujan; and (iv) Mr. Morgan suffered damages as a direct and  
9 proximate result of Harvest's alleged negligent entrustment of the vehicle to Mr. Lujan. (Ex. 1, at ¶¶  
10 19-22; Ex. 2, at 3:9-10.)<sup>8</sup>

11 **B. Discovery.**

12 On April 14, 2016, Mr. Morgan propounded interrogatories on Harvest. (*See generally* Ex.  
13 4.<sup>9</sup>) The interrogatories included a request regarding the background checks Harvest performed  
14 prior to hiring Mr. Lujan, (*id.* at 6:25-7:2), and a request regarding any disciplinary actions Harvest  
15 had taken against Mr. Lujan in the five years preceding the accident which related to Mr. Lujan's  
16 operation of a Harvest vehicle, (*id.* at 7:15-19). There were no interrogatories propounded upon  
17 Harvest which concerned whether Mr. Lujan was acting within the course and scope of his  
18 employment at the time of the accident. (*See generally* Ex. 4.)

19 On October 12, 2016, Harvest served its Responses to Mr. Morgan's Interrogatories. (*See*  
20 *generally* Ex. 5.<sup>10</sup>) Harvest answered Interrogatory No. 5, regarding the pre-hiring background  
21 checks relating to Mr. Lujan, as follows:

22 Mr. Lujan was hired in 2009. As part of the qualification process, *a*  
23 *pre-employment DOT drug test was conducted as well as a criminal*  
*background screen and a motor vehicle record.* Also, since he held a

24 \_\_\_\_\_  
25 <sup>8</sup> Harvest's and Mr. Lujan's Answer was admitted into evidence during the second trial, as Exhibit 26. (Excerpts  
of Recorder's Tr. of Hrg. Civil Jury Trial (Apr. 5, 2018), attached hereto as Exhibit 3, at Vol. I of App. at H014-H029, at  
169:25-170:17.)

26 <sup>9</sup> A true and correct copy of Pl.'s First Set of Interrogs. to Def. Harvest Mgmt. Sub LLC (Apr. 14, 2016) is  
27 attached as Exhibit 4, at Vol. I of App. at H030-H038.

28 <sup>10</sup> 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 H039-H046.

CDL, an *inquiry with past/current employers within three years of the date of application was conducted and was **satisfactory**. A DOT physical medical certification was obtained and monitored for renewal as required. MVR was ordered yearly to monitor activity of personal driving history and **always came back clear**. Required Drug and Alcohol Training was also completed at the time of hire and included the effects of alcohol use and controlled substances use on an individual's health, safety, work environment and personal life, signs of a problem with these and available methods of intervention.*

(*Id.* at 3:2-19 (emphasis added).) Further, in response to Interrogatory No. 8, regarding past disciplinary actions taken against Mr. Lujan, Harvest's response was "**None**." (*Id.* at 4:17-23 (emphasis added).)<sup>11</sup>

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

**C. The First Trial.**

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

Mr. Morgan also never referenced Harvest, his express claim for negligent entrustment, or his attempted claim for vicarious liability during voir dire or his opening statement. (*Id.* at 45:25-

<sup>11</sup> Portions of Harvest's Responses to Mr. Morgan's Interrogatories were read to the jury during the second trial, (Excerpts of Recorder's Tr. of Hrg. Civil Jury Trial (Apr. 6, 2018), attached hereto as Exhibit 6, at Vol. I of App. at H047-H068, at 10:22-13:12).

<sup>12</sup> Excerpts of Tr. of Jury Trial (Nov. 6, 2017) are attached as Exhibit 7, at Vol. II of App. at H069-H344.

<sup>13</sup> Excerpts of Tr. of Jury Trial (Nov. 8, 2017) are attached as Exhibit 8, at Vol. III of App. at H345-H357.

121:20, 124:13-316:24; Ex. 9,<sup>14</sup> at 6:4-29:1.) In fact, Harvest was not mentioned until the third day of the first trial, while Mr. Lujan was on the witness stand. Mr. Lujan's relevant testimony is as follows:

BY MR. BOYACK:

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

A: Yes.

Q. And what was your employment?

A: I was the bus driver.

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

A: Harvest Management was our corporate office.

Q: Okay.

A: Montara Meadows is just the local--

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

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

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

A: Yes.

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

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

Q: Okay.

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

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

Q: Okay. So this was a big accident?

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

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

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

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

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

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

MR. BOYACK: *No, Your Honor.*

<sup>14</sup> Excerpts of Tr. of Jury Trial (Nov. 7, 2017) are attached as Exhibit 9, at Vol. III of App. at H358-H383.

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

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

**D. The Second Trial.**

**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:

MR. GARDNER: 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<sup>15</sup> is right back here. Let's see, I think that's it for me.

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

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

THE COURT: All right. Thank you.

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

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

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

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<sup>15</sup> In the second trial, Mr. Lujan chose not to attend. Mr. Gardner's introduction referenced Erica Janssen, a representative of Harvest.

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

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

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

Just as with the first trial, Mr. Morgan failed to reference Harvest or his claim for negligent 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, 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 (emphasis added).) 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 — rather, he acknowledged that Mr. Lujan was at lunch at the time of the accident. (*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



1 confirmed that it was Harvest's understanding that Mr. Lujan had been at a park in a shuttlebus  
2 having lunch and that the accident occurred as he exited the park:

3 [MR. CLOWARD:]

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

5 [MS. JANSSEN:]

A: Yes.

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

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

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

A: Yes.

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

10 Mr. Morgan never asked Ms. Janssen where she was employed, her title, whether Harvest  
11 employed Mr. Lujan, what Mr. Lujan's duties were, or any other questions that might have elicited  
12 evidence to support a claim for negligent entrustment or vicarious liability. (*Id.* at 164:21-177:17;  
13 Ex. 6, at 4:2-6:1.) In fact, it wasn't until redirect examination that Mr. Morgan even referenced the  
14 fact that Ms. Janssen was in risk management for Harvest:

15 [MR. CLOWARD:]

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

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

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

21 A: Yes.

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

26 On the fifth day of the second trial, Mr. Morgan rested his case (*id.* at 55:6-7), again, with no  
27 evidence presented to support a claim for vicarious liability or negligent entrustment — i.e.,  
28 evidence of Mr. Lujan's driving history; Harvest's knowledge of Mr. Lujan's driving history;

1 disciplinary actions Harvest took against Mr. Lujan prior to the accident; background checks Harvest  
2 performed on Mr. Lujan; alcohol and drug testing Harvest performed on Mr. Lujan; Mr. Lujan's job  
3 duties; Harvest's policy regarding the use of company vehicles to drive to and from lunch; whether  
4 Mr. Lujan was required to clock-in and clock-out during his shifts; or whether any residents of the  
5 retirement home were passengers on the bus at the time of the accident, among other facts.<sup>16</sup>

6 During the defense's case in chief — not Mr. Morgan's — defense counsel read portions of  
7 Mr. Lujan's testimony from the first trial into the record. (*Id.* at 195:7-203:12.) As referenced  
8 above, this testimony included the following facts: (1) Mr. Lujan worked as a bus driver for Montara  
9 Meadows at the time of the accident; (2) Harvest was the "corporate office" for Montara Meadows;  
10 (3) the accident occurred when Mr. Lujan was leaving Paradise Park; and (4) Mr. Lujan had never  
11 been in an "accident like that" or an accident in a bus before. (*Id.* at 195:8-17, 195:25-196:10,  
12 196:19-24, 197:8-10.)

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

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

17 Mr. Morgan never submitted any jury instructions *pertaining to vicarious liability, actions*  
18 *within the course and scope of employment, negligent entrustment, or corporate liability.* (*See*  
19 *generally* Ex. 13.) Again, this is entirely consistent with Mr. Morgan's trial strategy. He all but  
20 ignored Harvest throughout the trial process.

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

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

24 THE COURT: Take a look and see if – will you guys look at that  
25 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.

26  
27 <sup>16</sup> 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)).

MR. RANDS: Yeah. That looks fine.

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

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

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):

- The Special Verdict form only asked the jury to determine whether the “*Defendant*” was negligent, (Ex. 14, at 1:17 (emphasis added));
- The Special Verdict form did not ask the jury to find Harvest liable for anything, (*id.*); and
- 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)).

Thus, Mr. Morgan chose not to present any claim against Harvest to the jury for determination.

**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.) Further, and perhaps the clearest example of Mr. Morgan's decision to abandon his claims against Harvest,

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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.)

**E. Plaintiff's Motion for Entry of Judgment Against Harvest Was Denied By This Court.**

On July 30, 2018, Mr. Morgan filed a Motion for Entry of Judgment seeking to apply the jury's verdict against Mr. Lujan against Harvest. On November 28, 2018, this Court entered an Order denying Mr. Morgan's Motion, finding that no claims against Harvest were ever presented to the jury for determination.

**III. LEGAL ARGUMENT**

**A. Mr. Morgan Voluntarily Abandoned His Claim Against Harvest and Chose Not to Present Any Claim Against Harvest to the Jury for Determination.**

The record in this case conclusively establishes that Mr. Morgan made a conscious choice and/or strategic decision to abandon his claim against Harvest at trial. Mr. Morgan never mentioned Harvest during the introductory remarks to the jury in which the Parties and expected witnesses were introduced to the jury. (Ex. 10, at 17:2-24, 25:7-26:3.) Mr. Morgan never mentioned Harvest to the jury during voir dire or examined prospective jurors about their feelings regarding corporate liability, negligent entrustment, or vicarious liability. (*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.) Mr. Morgan never mentioned Harvest, vicarious liability, negligent

1 entrustment, or even corporate liability in his opening statement. (Ex. 11, at 126:7-145:17.) Mr.  
2 Morgan never offered a single piece of evidence or elicited any testimony from any witness which  
3 would prove the elements of either vicarious liability or negligent entrustment. Mr. Morgan never  
4 mentioned Harvest, vicarious liability, negligent entrustment, or corporate liability in his closing  
5 argument or rebuttal closing argument. (Ex. 12, at 121:4-136:19, 157:13-161:10.) Mr. Morgan  
6 failed to include questions relating to Harvest's liability or the apportionment of fault to Harvest in  
7 the Special Verdict form, despite requesting revisions to the damages question in the sample Special  
8 Verdict form proposed by the Court. (Ex. 12, at 116:11-23; *see also* Ex. 14.) Finally, Mr. Morgan  
9 failed to include a single jury instruction relating to vicarious liability, negligent entrustment, or  
10 corporate liability. (Ex. 13.)

11 Mr. Morgan employed the same strategy for litigating his claims in the first trial — he chose  
12 to focus solely on Mr. Lujan's liability for negligence. Harvest was not mentioned in the  
13 introductory remarks to the jurors, in voir dire, in opening statements, or in the examination of any  
14 witness. (Ex. 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.)  
15 Thus, the record clearly demonstrates that Mr. Morgan abandoned his claim against Harvest —  
16 likely due to a lack of evidence.

17 Typically, when a party chooses to abandon his or her claims at trial, the claims are  
18 dismissed with prejudice by stipulation either before or after the trial. It is rare that a party fails to  
19 litigate his or her alleged claims against a party yet refuses to dismiss the claims and insists that the  
20 abandoned claims should be resolved in his or her favor. Because Mr. Morgan has not sought the  
21 voluntary dismissal of his claims, Harvest respectfully requests that this Court enter judgment in  
22 favor of Harvest and against Mr. Morgan on both the express claim for negligent entrustment and the  
23 implicitly alleged claim for vicarious liability. Mr. Morgan had the opportunity for the jury to render  
24 a decision on these claims and voluntarily and intentionally chose not to present them to the jury for  
25 determination; therefore, Mr. Morgan should not be given another bite at the apple.

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27 ///

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1           B.     **Based on the Evidence Presented at Trial, Harvest Is Entitled to Judgment in Its**  
2                    **Favor as to Mr. Morgan's Claim for Either Negligent Entrustment or Vicarious**  
3                    **Liability.**

4           As the plaintiff, Mr. Morgan bore the burden of proving his claims against Harvest at trial.  
5     *Porter v. Sw. Christian Coll.*, 428 S.W.3d 377, 381 (Tex. App. 2014) (“A plaintiff pleading  
6     respondeat superior bears the burden of establishing that the employee acted within the course and  
7     scope of his employment.”); *Montague v. AMN Healthcare, Inc.*, 168 Cal. Rptr. 3d 123, 126 (Cal.  
8     Ct. App. 2014) (“The plaintiff bears the burden of proving that the employee’s tortious act was  
9     committed within the scope of his or her employment.”); *Willis v. Manning*, 850 So. 2d 983, 987  
10    (La. Ct. App. 2003) (recognizing that the plaintiff bears the burden of proof on a claim for negligent  
11    entrustment); *Dukes v. McGimsey*, 500 S.W.2d 448, 451 (Tenn. Ct. App. 1973) (“The plaintiff has  
12    the burden of proving negligent entrustment of an automobile.”) However, Mr. Morgan failed to  
13    offer any evidence in support of these claims — primarily, evidence that Mr. Lujan was acting in the  
14    course and scope of his employment at the time of the accident, or evidence that Harvest knew or  
15    reasonably should of known that Mr. Lujan was an inexperienced, incompetent, and/or reckless  
16    driver.

17           Not only did Mr. Morgan fail to prove his claim, but the evidence adduced at trial actually  
18    demonstrated that Harvest could not, as a matter of law, be liable for either vicarious liability or  
19    negligent entrustment. Specifically, the ***undisputed evidence*** offered at trial proved that Mr. Lujan  
20    was at lunch at the time of the accident and had never been in an accident before. (Ex. 3, at 168:15-  
21    23; Ex. 6, at 196:19-24, 197:8-10.) Based on such unrefuted evidence, judgment should be entered  
22    in favor of Harvest.

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

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

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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).

**1. Mr. Morgan Did Not Prove a Claim for Vicarious Liability, and Based on the Sole Evidence Offered at Trial Relating to This Claim, Judgment Should Be Entered in Favor of 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.*)

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

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

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

18 While the Nevada Supreme Court has not specifically addressed whether an employer is  
19 vicariously liable for an employee’s actions during a lunch break, the express language of and policy  
20 behind the “going and coming rule” suggests that an employee is not acting within the course and  
21 scope of his employment when he commutes to and from lunch during a break from his  
22 employment. Moreover, other jurisdictions have routinely determined that employers **are not liable**  
23 **for an employee’s negligence during a lunch break**. *See e.g., Gant v. Dumas Glass & Mirror, Inc.*,  
24 935 S.W. 2d 202, 212 (Tex. App. 1996) (holding that an employer was not liable under respondeat  
25 superior when its employee rear-ended the plaintiff while driving back from his lunch break in a  
26 company vehicle because the test is not whether the employee is returning from his personal  
27 undertaking to “**possibly** engage in work” but rather whether the employee **has** “returned to the zone  
28 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, Mr. Morgan’s implicit claim for vicarious liability should be dismissed with prejudice and judgment should be entered in favor of Harvest.

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

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.

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

Mr. Morgan also failed to offer any evidence regarding Harvest’s knowledge of Mr. Lujan’s driving history. This is likely because Harvest’s interrogatory responses demonstrated early in the

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1 case that it thoroughly checked Mr. Lujan's background prior to hiring him, and Harvest's annual  
2 check of Mr. Lujan's motor vehicle record "always came back clear." (Ex. 5, at 3:2-19.)

3 Based on the failure of evidence offered by Mr. Morgan, and Mr. Lujan's undisputed  
4 testimony regarding his lack of prior car accidents, as a matter of law, Mr. Morgan's express claim  
5 for negligent entrustment should be dismissed with prejudice and judgment should be entered in  
6 favor of Harvest.

#### 7 IV. CONCLUSION

8 For the foregoing reasons, Harvest requests that the Court enter judgment in its favor as to  
9 Mr. Morgan's claim for negligent entrustment (or vicarious liability). A proposed Judgment is  
10 attached hereto as Exhibit A.

11 DATED this 21st day of December, 2018.

12 BAILEY ♦ KENNEDY

13 By: /s/ Dennis L. Kennedy

14 DENNIS L. KENNEDY

15 SARAH E. HARMON

16 JOSHUA P. GILMORE

17 ANDREA M. CHAMPION

18 *Attorneys for Defendant*

19 HARVEST MANAGEMENT SUB LLC  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY❖KENNEDY and that on the 21st day of December, 2018, service of the foregoing **DEFENDANT HARVEST MANAGEMENT SUB LLC’S MOTION FOR ENTRY OF JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system to the following:

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Las Vegas, Nevada 89145	AARON M. MORGAN

/s/ Josephine Baltazar  
Employee of BAILEY❖KENNEDY

# **EXHIBIT A**

**JUDG**

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Nevada Bar No. 8106

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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

**PROPOSED JUDGMENT**

On \_\_\_\_\_, 2019, this matter came on for a duly-noticed hearing before the  
Honorable Elizabeth Gonzalez concerning Defendant Harvest Management Sub LLC's ("Harvest")  
Motion for Entry of Judgment. Having duly considered the pleadings and papers on file and the  
argument of counsel, and good cause appearing therefore; the Court makes the following Findings of  
Fact and Conclusions of Law and Judgment:

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**FINDINGS OF FACT**

1. On April 1, 2014, Defendant David E. Lujan (“Mr. Lujan”), an employee of Harvest, was involved in a car accident with Plaintiff Aaron M. Morgan (“Mr. Morgan”).

2. Mr. Lujan was driving a passenger bus owned by Harvest at the time of the accident.

3. On May 20, 2015, Mr. Morgan filed a Complaint against Harvest and Mr. Lujan for injuries and damages arising from the car accident.

4. In the Complaint, Mr. Morgan alleged a claim for negligent entrustment and/or vicarious liability against Harvest.

5. Mr. Morgan’s claims against Mr. Lujan and Harvest were tried before a jury from April 2, 2018 to April 9, 2018.

6. During the jury trial, Mr. Morgan failed to offer any evidence to demonstrate that Mr. Lujan was granted permission to drive the passenger bus and was acting within the course and scope of his employment at the time of the accident

7. During the jury trial, Mr. Morgan failed to offer any evidence to demonstrate that Harvest knew, or reasonably should have known, that Mr. Lujan was an incompetent, inexperienced, negligent, and/or reckless driver.

8. During the jury trial, Mr. Lujan and Harvest offered evidence to demonstrate that Mr. Lujan was on his lunch break at the time of the accident. Mr. Morgan did not dispute this evidence.

9. During the jury trial, Mr. Lujan and Harvest offered evidence to demonstrate that Mr. Lujan had never been in a car accident prior to the accident with Mr. Morgan. Mr. Morgan did not dispute this evidence.

10. The jury did not enter a verdict against Harvest on any of Morgan’s claims for relief.

**CONCLUSIONS OF LAW**

1. The elements of a claim for negligent entrustment are: (1) that an entrustment actually occurred; and (2) that the entrustment was negligent. *Zugel by Zugel v. Miller*, 100 Nev. 525, 528, 688 P.2d 310, 313 (1984).

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2. “A person who knowingly entrusts a vehicle to an inexperienced or incompetent person” may be found liable for damages resulting from negligent entrustment. *Id.* at 527, 688 P.2d at 312.

3. As the Plaintiff, Mr. Morgan bore the burden of proof regarding his claim for negligent entrustment. *Willis v. Manning*, 850 So. 2d 983, 987 (La. Ct. App. 2003); *Dukes v. McGimsey*, 500 S.W. 2d 448, 451 (Tenn. Ct. App. 1973).

4. Mr. Morgan offered no evidence to demonstrate that Mr. Lujan was an inexperienced or incompetent driver; therefore, he failed to satisfy his burden of proof regarding the essential elements of a claim for negligent entrustment.

5. Based on the undisputed evidence offered at trial, that Mr. Lujan had never been in a car accident prior to the accident with Mr. Morgan, Harvest did not and could not have known that Mr. Lujan was an incompetent or inexperienced driver.

6. Therefore, Harvest is not liable for negligent entrustment of its vehicle to Mr. Lujan, and Mr. Morgan’s claim for negligent entrustment is dismissed with prejudice.

7. To the extent that Mr. Morgan alleged a claim for vicarious liability against Harvest, the elements of a claim for vicarious liability are: (1) that the actor at issue was an employee of the defendant; and (2) that 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, 925 P.2d 1175, 1179 (1996). An employer is not liable for an employee’s independent ventures. *Id.* at 1225-26, 925 P.2d at 1180-81.

8. As the Plaintiff, Mr. Morgan bore the burden of proof regarding his claim for vicarious liability. *Porter v. Sw. Christian Coll.*, 428 S.W.3d 377, 381 (Tex. App. 2014); *Montague v. AMN Healthcare, Inc.*, 168 Cal. Rptr. 3d 123, 126 (Cal. Ct. App. 2014).

9. Mr. Morgan offered no evidence to demonstrate that Mr. Lujan had been granted permission to driver the passenger bus and was acting within the course and scope of his employment with Harvest at the time of the accident; therefore, he failed to satisfy his burden of proof regarding the essential elements of a claim for vicarious liability.

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1           10.     Based on the undisputed evidence offered at trial that Mr. Lujan was on his lunch  
2 break at the time of the accident, Mr. Lujan could not have been acting within the course and scope  
3 of his employment when the accident occurred.

4           11.     Nevada has adopted the “going and coming rule,” which holds that “[t]he tortious  
5 conduct of an employee in transit to or from the place of employment will not expose the employer  
6 to liability, unless there is a special errand which requires driving.” *Molino v. Asher*, 96 Nev. 814,  
7 817-18, 618 P.2d 878, 879-80 (1980); *Nat’l Convenience Stores, Inc. v. Fantauzzi*, 94 Nev. 655, 658,  
8 584 P.2d 689, 691 (1978).

9           12.     While Nevada has not yet specifically addressed an employer’s vicarious liability for  
10 an employee’s actions during his lunch break, based on the rationale and purpose of the “going and  
11 coming rule, it is clear that an employee is not acting within the course and scope of his or her  
12 employment while the employee is on a lunch break. *See e.g., Gant v. Dumas Glass & Mirror, Inc.*,  
13 935 S.W. 2d 202, 212 (Tex. App. 1996); *Richardson v. Glass*, 835 P.2d 835, 838 (N.M. 1992);  
14 *Gordon v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 411 So. 2d 1094, 1098 (La. Ct. App. 1982).

15           13.     Therefore, based on the undisputed evidence offered at trial, Harvest is not  
16 vicariously liable for Mr. Morgan’s injuries, and Mr. Morgan’s claim for vicarious liability is  
17 dismissed with prejudice.

18           14.     As a matter of law, Mr. Morgan failed to prove that Harvest was liable in any manner  
19 for Mr. Morgan’s injuries and/or damages.

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**JUDGMENT**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that, after a trial on the merits, any and all claims which were alleged or could have been alleged by Mr. Morgan in this action are dismissed with prejudice and judgment is entered in favor of Harvest and against Mr. Morgan on these claims. Mr. Morgan shall recover nothing hereby.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
HONORABLE ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE

Respectfully submitted by:  
BAILEY ♦ KENNEDY

By: \_\_\_\_\_  
DENNIS L. KENNEDY  
SARAH E. HARMON  
JOSHUA P. GILMORE  
ANDREA M. CHAMPION

*Attorneys for Defendant*  
HARVEST MANAGEMENT SUB LLC

## Josephine Baltazar

---

**From:** efilngmail@tylerhost.net  
**Sent:** Friday, December 21, 2018 4:37 PM  
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## Notification of Service

Case Number: A-15-718679-C  
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)  
Envelope Number: 3612853



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

### Filing Details

<b>Case Number</b>	A-15-718679-C
<b>Case Style</b>	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
<b>Date/Time Submitted</b>	12/21/2018 4:30 PM PST
<b>Filing Type</b>	Service Only
<b>Filing Description</b>	Defendant Harvest Management Sub LLC's Motion for Entry of Judgment
<b>Filed By</b>	Josephine Baltazar

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#### Document Details

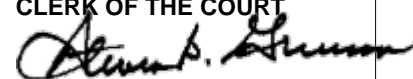
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TAB 25

TAB 25

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*Attorneys for Plaintiff, Aaron 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

**NOTICE OF ENTRY OF JUDGMENT**

1 Please take notice that the Judgment Upon Jury Verdict was filed in the above-captioned  
2 matter on December 17, 2018. A copy of the Judgment Upon Jury Verdict is attached hereto as  
3 **Exhibit 1.**

4 Dated this 2nd day of January, 2019.

5  
6 MARQUIS AURBACH COFFING

7  
8 By /s/ Micah S. Echols  
9 Micah S. Echols, Esq.  
10 Nevada Bar No. 8437  
11 Tom W. Stewart, Esq.  
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13 10001 Park Run Drive  
14 Las Vegas, Nevada 89145  
15 *Attorneys for Plaintiff, Aaron Morgan*  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of January, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

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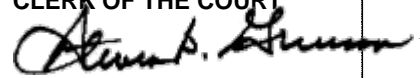
/s/ Leah Dell

Leah Dell, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> 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





**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,<sup>1</sup> and the issues having been duly tried and the jury having duly rendered its verdict.<sup>2</sup>

IT IS ORDERED AND ADJUDGED that PLAINTIFF, AARON M. MORGAN, have a recovery against DEFENDANT, DAVID E. LUJAN, 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
<b>Total Damages</b>	<b>\$2,980,980.00</b>

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 \$62.23 per day]

**PLAINTIFF'S TOTAL JUDGMENT**

Plaintiff's total judgment is as follows:

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

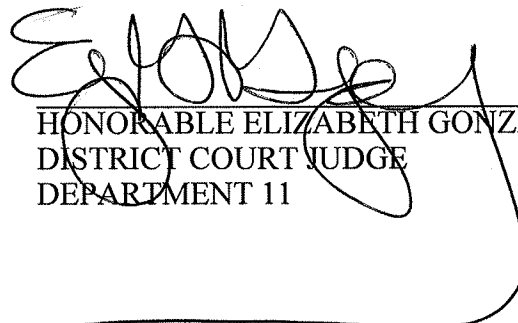
<sup>1</sup> This case was reassigned to the Honorable Elizabeth Gonzalez, District Court Judge, in July 2018.

<sup>2</sup> 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:

PLAINTIFF, AARON M. MORGAN, is hereby awarded \$3,046,382.72 against DEFENDANT, DAVID E. LUJAN, 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 13 day of Dec., 2018.

  
HONORABLE ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE  
DEPARTMENT 11

Respectfully Submitted by:

Dated this 12<sup>TH</sup> day of December, 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 1

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

APR - 9 2018

BY: *J. M. Brown*  
J. 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	\$ <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	<b>TOTAL</b>	\$ <u>2,980,980.</u> <u>00</u>

15

16 DATED this 9<sup>th</sup> day of April, 2018.

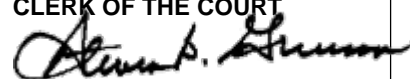
17

18   
19 FOREPERSON

20 ARTHUR J. ST. LAURENT  
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TAB 26

TAB 26

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*Attorneys for Plaintiff, Aaron 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

**OPPOSITION TO DEFENDANT  
HARVEST MANAGEMENT SUB LLC'S  
MOTION FOR ENTRY OF JUDGMENT  
and  
COUNTER-MOTION TO TRANSFER  
CASE BACK TO CHIEF JUDGE BELL  
FOR RESOLUTION OF POST-VERDICT  
ISSUES**

Plaintiff Aaron M. Morgan, by and through his attorneys of record, Micah S. Echols, Esq., and Kathleen A. Wilde, Esq., of the law firm of Marquis Aurbach Coffing, and Benjamin P. Cloward Esq., and Bryan A. Boyack, Esq. of the Richard Harris Law Firm, hereby files his Opposition to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment and



1 Counter-Motion to Return Transfer Case Back to Chief Judge Bell for Resolution of Post-  
2 Verdict Issues.

3 This Opposition and Counter-Motion are made and based upon the attached  
4 Memorandum of Points and Authorities, all papers and pleadings on file herein, and any oral  
5 argument permitted by the Court at a hearing on the matter.

6 Dated this 15th day of January, 2019.

7 MARQUIS AURBACH COFFING

8  
9 By: Kathleen Wilde

10 Micah S. Echols, Esq.

11 Nevada Bar No. 8437

12 Kathleen A. Wilde, Esq.

13 Nevada Bar No. 12522

14 10001 Park Run Drive

15 Las Vegas, Nevada 89145

16 *Attorneys for Plaintiff, Aaron Morgan*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 For over four years, Plaintiff Aaron Morgan ("Morgan") litigated three negligence-based  
20 claims against the Defendants, David Lujan ("Lujan") **and** Harvest Management Sub LLC  
21 ("Harvest Management"). During this time period, all parties understood that Morgan's claims  
22 centered on Lujan's failure to act with reasonable care while driving bus in the course of his  
23 employment and Harvest Management's liability as Lujan's employer. Consistent with this  
24 understanding, a single law firm jointly represented both Defendants up to and throughout two  
25 separate jury trials. But, because Judge Bell made a single, easily explainable error by recycling  
26 a special verdict form, new counsel for Harvest Management now argues that the jury trial  
27 established liability only as to Lujan and that, as such, this Court should enter judgment in favor  
28 of Harvest Management as to Morgan's third cause of action for vicarious liability / respondeat  
superior.

In so arguing, Harvest Management expects this Court to ignore two serious procedural  
problems, namely, the fact that Morgan's December 18, 2018, Notice of Appeal divested this

1 Court of jurisdiction to enter orders which may affect the decisions which are subject to appellate  
2 review. Relatedly, because the Court already entered a final judgment in this case, Harvest  
3 Management's motion is also improper under *SFPP, L.P. v. Second Judicial Dist. Court*, 123  
4 Nev. 608, 612, 173 P.3d 715, 717 (2007), because Harvest Management did not file a proper  
5 "motion sanctioned by the Nevada Rules of Civil Procedure."

6 These two reasons, of themselves, are grounds upon which to deny outright Harvest  
7 Management's Motion for Entry of Judgment. Yet, even if this Court considers the motion on  
8 the merits, Harvest Management's attempts to backdoor its way into a judgment that is  
9 inconsistent with the jury's verdict also must fail because Judge Bell is in a better position to  
10 address what happened during trial, this Court already rejected Harvest Management's  
11 arguments regarding NRCP 49, and there is no basis upon which to enter judgment in Harvest  
12 Management's favor. Thus, while this Court can resolve the Motion for Entry of Judgment in  
13 several different ways, the end result is the same: Harvest Management's motion must fail.

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

### 15 **A. BRIEF STATEMENT OF FACTS.**

16 On April 1, 2014, Morgan was driving northbound on McLeod Drive in the far right lane  
17 as he approached the intersection at Tompkins Avenue. At the same time, Lujan, who was  
18 driving a Montara Meadows shuttle bus during the course and scope of his employment, crossed  
19 McLeod Drive while attempting to continue eastbound onto E. Tompkins Avenue. The vehicles  
20 collided in the intersection, with the front of Morgan's car striking the side of the Montara  
21 Meadows bus. As a result of the collision, Morgan's vehicle was totaled. Worse, Morgan also  
22 sustained serious injuries which required emergency medical treatment and admission to Sunrise  
23 Hospital.

24 In the two years after the accident, Morgan underwent a series of treatments and  
25 procedures for his injuries, including bilateral medial branch block injections to his thoracic  
26 spine, injections to ease the pain from his bilateral triangular fibrocartilage tears, left wrist  
27 arthroscope and triangular fibrocartilage tendon repair with debridement. All told, these medical  
28 expenses exceeded \$264,281.

**B. RELEVANT PROCEDURAL HISTORY.**

On May 5, 2015, Morgan filed a complaint against Lujan and Harvest Management in which he asserted three causes of action: (1) negligence against David E. Lujan; (2) negligence per se against Lujan premised on his failure to obey traffic laws; and (3) vicarious liability / respondeat superior against Harvest Management Sub LLC. The Defendants jointly answered the complaint on June 16, 2015 with the assistance of Douglas J. Gardner, Esq. of Rands, South & Gardner. Mr. Gardner and his firm also represented both Defendants throughout the lengthy discovery period.<sup>1</sup>

The case then proceeded to trial in early November, 2017, where Mr. Gardner and his partner, Douglas Rands, continued to represent both Defendants jointly. Notably, during this first trial, Lujan testified that he was employed by Montara Meadows, a local entity under the purview of Harvest Management, at the time of the accident:

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

[Lujan]: Yes.

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

[Lujan]: I was the bus driver.

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

[Lujan]: Harvest Management was our corporate office.

[Morgan's counsel]: Okay.

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

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

[Lujan]: Yes, sir.<sup>2</sup>

<sup>1</sup> See, e.g., Stipulation and Order to Extend Discovery and [sic] Continue Trial Date First Request, filed August 30, 2016; Defendants David E. Lujan and Harvest Management Sub LLC's Individual Pre-Trial Memorandum, filed September 25, 2017.

<sup>2</sup> See Transcript of Jury Trial, November 8, 2017, at page 109 (direct examination of Lujan).

1 The trial was not completed, however, because the Court declared a mistrial on Day 3 on the  
2 basis of Defendants' counsel's misconduct.<sup>3</sup>

3 Following the mistrial, the case proceeded to a second trial in April 2018. Vicarious  
4 liability was not contested during trial.<sup>4</sup> Instead, Harvest Management's NRCP 30(b)(6)  
5 representative focused on primary liability by claiming that either Morgan or an unknown third  
6 party was primarily responsible for the accident.<sup>5</sup>

7 On the final day of trial, April 9, 2018, the Court *sua sponte* created a special verdict  
8 form that inadvertently included Lujan as the only Defendant in the caption.<sup>6</sup> The Court  
9 informed the parties of this omission, and the Defendants explicitly agreed they had no  
10 objection:

11 THE COURT: Take a look and see if -- will you guys look at that verdict  
12 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.

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

14 THE COURT: I don't know if it's right with what you're asking for for  
15 damages, but it's just what we used in the last trial which was similar sort of.<sup>7</sup>

16 At the end of the six-day jury trial, written instructions were provided to the jury with the  
17 proper caption.<sup>8</sup> The jury used those instructions to deliberate and fill out the improperly-  
18 captioned special verdict form. Ultimately, the jury found Defendants to negligent and 100% at  
19  
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21

22 <sup>3</sup> See Transcript from November 8, 2017, at pages 152-167, *especially* page 166; Court Minutes,  
November 8, 2017, on file herein.

23 <sup>4</sup> See Transcript of Jury Trial, April 5, 2018, at pages 165-78 (testimony of Erica Janssen, NRCP 30(b)(6)  
24 witness for Harvest Management); Transcript of Jury Trial, April 6, 2018, at pages 4-15 (same).

25 <sup>5</sup> *Id.*

26 <sup>6</sup> A copy of the special verdict form is attached hereto as **Exhibit 1**.

27 <sup>7</sup> See Transcript of Jury Trial, April 9, 2018, at pages 5-6, attached hereto as **Exhibit 2**.

28 <sup>8</sup> See Jury Instructions cover page, attached as **Exhibit 3**.

1 fault for the accident.<sup>9</sup> In addition, the jury awarded Morgan \$2,980,000 for past and future  
2 medical expenses as well as past and future pain and suffering.<sup>10</sup>

3 On April 26, 2018, the law firm of Bailey Kennedy substituted in as counsel of record for  
4 Harvest Management.<sup>11</sup> In May and early June of 2018, the parties and the Court dealt with  
5 residual issues and confusion relating to the Motion for Attorney Fees and Cost of Mistrial that  
6 Morgan withdrew on April 11, 2018, so that the motion may be addressed at once with his post-  
7 trial motion for attorney fees and costs.

8 On June 29, 2018, the Court filed a Civil Order to Statistically Close Case in which the  
9 box labeled "Jury – Verdict Reached" was checked. The following Monday, when Judge Bell  
10 assumed the role of Chief Judge, the case was reassigned to Department XI as part of the mass  
11 reassignment of cases that came with the new fiscal year.

12 On July 30, 2018, Morgan filed a Motion for Entry of Judgment in which it urged this  
13 Court to enter a written judgment against both Lujan and Harvest Management or, in the  
14 alternative, make an explicit finding in accordance with NRCP 49(a) that the jury's special  
15 verdict was rendered against both Defendants.

16 After the motion was thoroughly briefed,<sup>12</sup> the Court held a hearing during which it  
17 allowed oral arguments from the parties' counsel.<sup>13</sup> At the conclusion of the hearing, the Court  
18 verbally ruled that the inconsistency in the caption of the jury instructions and special verdict  
19 form was not enough to support judgment against both Defendants.<sup>14</sup>

20  
21 \_\_\_\_\_  
22 <sup>9</sup> See Exhibit 1.

23 <sup>10</sup> *Id.*

24 <sup>11</sup> As noted in the errata to the substitution, Bailey Kennedy is *not* counsel of record for Defendant Lujan.  
Instead, Rands, South & Gardner remains Lujan's legal counsel.

25 <sup>12</sup> See *generally* Harvest Management's Opposition filed on August 16, 2018, and four appendices  
26 thereto, as well as Morgan's Reply filed on September 7, 2018.

27 <sup>13</sup> See Minutes dated November 6, 2018, on file herein.

28 <sup>14</sup> *Id.*

1 A written Order Denying Morgan's Motion for Entry of Judgment followed on  
2 November 28, 2018. Then, on December 17, 2018, the Court entered a Judgment on the Jury  
3 Verdict against Lujan which totaled \$3,046,382.72

4 On December 18, 2018, Morgan filed a Notice of Appeal in which he requested appellate  
5 review of the Order Denying Plaintiff's Motion for Entry of Judgment and Judgment Upon the  
6 Jury Verdict.<sup>15</sup> On December 27, 2018, Morgan's appeal was docketed in the Supreme Court as  
7 case number 77753.<sup>16</sup> As of December 31, 2018, the appellate matter has been assigned to the  
8 NRAP 16 Settlement Program. Consistent with NRAP 16(a)(1), transmission of necessary  
9 transcripts and briefing are stayed pending completion of the program.

10 **III. LEGAL ARGUMENT**

11 Harvest Management's new counsel has done a fine job Tuesday morning  
12 quarterbacking. Indeed, while Bailey Kennedy did not appear in this case until weeks *after* the  
13 jury reached its verdict, Harvest Management now seeks to unravel years of litigation with an  
14 after-the-fact assessment of what did and did not happen during the trial. Indeed, in moving this  
15 Court to enter judgment in its favor, Harvest Management hopes to use confusion and distorted  
16 portions of the record once again<sup>17</sup> to draw a conclusion that is wholly incorrect.

17 This Court should reject Harvest Management's efforts because, most importantly,  
18 (A) Morgan's timely notice of appeal divested this Court of jurisdiction and (B) the Motion for  
19 Entry of Judgment is improper under *SFPP, L.P. v. Second Judicial District Court*.  
20 Alternatively, even if this Court believes it is proper to rule upon Harvest Management's motion,  
21 this Court should (C) transfer the case back to Department VII because Judge Bell presided over  
22 the trial in question; (D) deny the motion as a rehash of Harvest Management's previous request  
23 for NRCP 49(a) relief, (E) deny the motion as unsupported by the record; and/or (F) reject the

24  
25 <sup>15</sup> The Notice of Appeal is attached hereto as **Exhibit 4**.

26 <sup>16</sup> See Supreme Court Register, attached hereto as **Exhibit 5**.

27 <sup>17</sup> Morgan does not dispute the fact that this Court sided with Harvest Management in denying his Motion  
28 for Entry of Judgment. But, with all due respect for this Court, Morgan continues to believe that the  
decision was misguided.

1 motion as a matter of law because the vicarious liability / respondeat superior claim against  
2 Harvest Management is derivative of the other claims which were already tried by consent.

3           **A.       MORGAN’S NOTICE OF APPEAL DIVESTED THIS COURT OF**  
4           **JURISDICTION.**

5           “The point at which jurisdiction is transferred must [ ] be sharply delineated.” *Rust v.*  
6           *Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688-89, 747 P.2d 1380, 1382 (1987). The reason for this  
7 rule is obvious, as scarce judicial resources are wasted and confusion ensues when multiple  
8 courts address the same issues at the same time. To this end, the Supreme Court of Nevada has  
9 repeatedly held that “a timely notice of appeal divests the district court of jurisdiction” to “revisit  
10 issues that are pending before [the Supreme Court].” *Mack-Manley v. Manley*, 122 Nev. 849,  
11 855-56, 138 P.3d 525, 530 (2006); *see also Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453,  
12 455, 2010 WL 1407139<sup>18</sup> (2010). Stated inversely, once a notice of appeal has been filed,  
13 district courts are limited to entering orders “on matters that are collateral to and independent  
14 from the appealed order, i.e., matters that in no way affect the appeal’s merits.” *Mack-Manley*,  
15 122 Nev. at 855, 138 P.3d at 530.

16           Here, it is undeniable that Harvest Management filed the instant motion after Morgan  
17 filed his Notice of Appeal. As such, this Court lacks jurisdiction to revisit the Order Denying  
18 Morgan’s Motion for Entry of Judgment, the Judgment Upon Jury Verdict, or related substantive  
19 issues unless jurisdiction is returned to the Court pursuant to the *Huneycutt*<sup>19</sup> procedure.

20           Under *Huneycutt*, district courts may consider NRCP 60(b) motions for relief from  
21 judgment or order which involve the same issues that are pending before the Supreme Court of  
22 Nevada. *Foster*, 126 Nev. at 52, 228 P.3d at 455 (“[T]he district court nevertheless retains a  
23 limited jurisdiction to review motions made in accordance with this procedure”). However, the  
24 Court’s decision-making authority is limited to denying the motion for a relief from judgment or

25  
26 <sup>18</sup> Because the Supreme Court of Nevada issued two opinions in *Foster v. Dingwall*, the Westlaw citation  
27 is provided for the sake of clarity and should not be misinterpreted as a citation to an unpublished  
28 decision.

<sup>19</sup> *See Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978).

1 certifying to the Supreme Court of Nevada its inclination to revisit the issues. *See Foster*, 126  
2 Nev. at 52-53, 228 P.3d at 455; *Huneycutt*, 94 Nev. at 80-81, 575 P.2d at 585. Under the latter  
3 scenario, it is then up to the Supreme Court to decide, in its discretion, whether a remand is  
4 necessary or whether the appeal should proceed as is. *See Mack-Manley*, 122 Nev. at 856, 138  
5 P.3d at 530; *see also Post v. Bradshaw*, 422 F.3d 419, 422 (6th Cir. 2005) (noting that appellate  
6 courts do not “rubber-stamp” or grant such motions for remand as a matter of course)

7 In this case, Harvest Management has not filed an NRCP 60(b) motion or otherwise  
8 indicated that it is seeking to use the *Huneycutt* procedure to revisit the issues that are already  
9 before the Supreme Court of Nevada. As such, this Court should decline to entertain the Motion  
10 for Entry of Judgment because Morgan’s timely notice of appeal divested this Court of  
11 jurisdiction to make non-collateral decisions. And, on a similar note, because the Order Denying  
12 Plaintiff’s Motion for Entry of Judgment involved the exact same issue as the motion currently  
13 before the Court – whether the jury’s verdict supported a judgment against both Defendants –  
14 there is no way this Court can rule upon Harvest Management’s motion without infringing upon  
15 the Appellate Court’s jurisdiction. Thus, the Motion for Entry of Judgment must be denied.

16 **B. THE MOTION FOR ENTRY OF JUDGMENT IS IMPROPER UNDER**  
17 ***SFPP, L.P. V. SECOND JUDICIAL DIST. COURT.***

18 “[O]nce a district court enters a final judgment, that judgment cannot be reopened except  
19 under a timely motion sanctioned by the Nevada Rules of Civil Procedure.” *SFPP, L.P. v.*  
20 *Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007); *see also Greene v.*  
21 *Eighth Judicial Dist. Court*, 115 Nev. 391, 396, 990 P.2d 184, 187 (1999) (“Once a judgment is  
22 final, it should not be reopened except in conformity with the Nevada Rules of Civil  
23 Procedure”). The rationale for this rule centers on the word “final.” After all, multiple “final  
24 judgments” within a single action would be wholly inconsistent with the norm that a final  
25 judgment “puts an end to an action at law.” *Greene*, 115 Nev. at 395, 990 P.2d at 186 (citing  
26 BLACK’S LAW DICTIONARY 843 (6th ed.1990)); *see also Lee v. GNLV Corp.*, 116 Nev. 424, 426,  
27 996 P.2d 416, 417 (a final judgment is one that disposes of all the issues presented in the case).  
28 More importantly, attempts to undermine the finality of judgments without a proper judgment



1 would also cause serious procedural, jurisdictional, and practical difficulties. *Greene*, 115 Nev.  
2 at 395, 990 P.2d at 186 (“Our rules of appellate procedure rely on the existence of a final  
3 judgment as an unequivocal substantive basis for our jurisdiction. . . . Permitting such  
4 amendments would create procedural and jurisdictional difficulties.”).

5 Here, this Court’s Judgment on the Jury Verdict was a “final judgment” which Morgan  
6 properly appealed under NRAP 3A(b)(1). So, under *SFPP, L.P.*, this Court lacks jurisdiction to  
7 reopen, revisit, or supplement the judgment “absent a proper and timely motion” which sets aside  
8 or vacates the judgment. 123 Nev. at 612, 173 P.3d at 717. As such, this Court must reject  
9 Harvest Management’s Motion for Entry of Judgment because doing so would impermissibly  
10 alter the final judgment that is already on appeal.

11 **C. JUDGE BELL IS BETTER EQUIPPED TO ADDRESS THE MOTION**  
12 **BECAUSE SHE PRESIDED OVER THE TRIAL.**

13 Harvest Management’s Motion for Entry of Judgment would not even be before this  
14 Court if it were not for Judge Bell *accidentally*<sup>20</sup> failing to update the caption on the special  
15 verdict form that she recycled. After all, if the special verdict form had been updated to include  
16 a correct caption and the word “Defendants,” Morgan’s request for entry of judgment would  
17 have been a simple administrative matter that required no review of the record.<sup>21</sup> Yet, because of  
18 Judge Bell’s minor error, the parties have essentially re-litigated the entire case in an attempt to  
19 demonstrate what actually happened.

20 Given the circumstances, this Court has done an admirable job getting up to speed.  
21 Nevertheless, and with all due respect, the issues raised in Harvest Management’s Motion for  
22 Entry of Judgment would be better addressed by Judge Bell because of her experience presiding  
23 over this case from the very beginning through the completion of trial. In this regard, the Motion  
24 for Entry of Judgment implicates the *Hornwood v. Smith’s Food King No. 1* decision in which

25 <sup>20</sup> The record confirms the mistake was unintentional since Judge Bell explicitly noted “I know it doesn’t  
26 have the right caption. I know it’s just the one we used the last trial. See if that looks sort of okay.”  
Transcript of Jury Trial, April 9, 2018, at page 5-6

27 <sup>21</sup> Granted, Harvest Management theoretically would have then had an opportunity to file post-trial  
28 motions. But, the entire burden of proof is much different under the relevant Rules.

1 the Supreme Court of Nevada recognized that the District Court that presided over a trial was in  
2 the best position to re-assess the evidence and award consequential damages. *See* 105 Nev. 188,  
3 191, 772 P.2d 1284, 1286 (1989). Similarly, because the motion requires significant  
4 consideration of this case's history and the evidence at trial, other Supreme Court decisions  
5 which note the special knowledge of presiding judges are also pertinent. *See, e.g., Wolff v. Wolff*,  
6 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996) ("This court's rationale for not substituting its  
7 own judgment for that of the district court, absent an abuse of discretion, is that the district court  
8 has a better opportunity to observe parties and evaluate the situation"); *Winn v. Winn*, 86 Nev.  
9 18, 20, 467 P.2d 601, 602 (1970) ("The trial judge's perspective is much better than ours for we  
10 are confined to a cold, printed record."); *Wittenberg v. Wittenberg*, 56 Nev. 442, 55 P.2d 619,  
11 623 (1936) ("[M]uch must be left to the wisdom and experience of the presiding judge, who sees  
12 and hears the parties and their witnesses, scrutinizes their testimony and studies their  
13 demeanor.").

14 Thus, while Morgan appreciates the reasons why Judge Bell's cases were reassigned  
15 upon her becoming Chief Judge, it is more sensible to re-assign this case back to Judge Bell for a  
16 determination from the Presiding Judge regarding the issues that were litigated, the full extent of  
17 the jury's decision, and the meaning (or lack thereof) behind the mistaken special verdict form.

18 **D. HARVEST MANAGEMENT'S MOTION CREATES A POTENTIAL**  
19 **JURISDICTIONAL GAP SINCE THIS COURT ALREADY RULED ON**  
**NRCP 49.**

20 In his July 30, 2018, Motion for Entry of Judgment, Morgan argued that this Court should  
21 make an explicit finding pursuant to NRCP 49(a) that the special verdict was rendered against  
22 both Defendants.

23 NRCP 49(a) provides that courts may require a jury to return a special verdict upon  
24 issues of fact that are susceptible to categorical or brief answers. In doing so, "[t]he court shall  
25 give to the jury such explanation and instruction concerning the matter thus submitted as may be  
26 necessary to enable the jury to make its findings upon each issue." *Id.* But, if the court omits  
27 any issue of fact raised by the pleadings or by the evidence and none of the parties submission of  
28 the omitted issue(s) to the jury," then the Court may make its own finding.

1 In its Opposition, Harvest Management argued that Morgan's reliance upon NRCP 49(a)  
2 was erroneous because Morgan "request[ed] that the Court engage in reversible error by  
3 determining the ultimate liability of party – rather than an issue of fact, as contemplated by [the  
4 Rule."<sup>22</sup> In denying Morgan's Motion for Entry of Judgment in its entirety, this Court apparently  
5 agreed with Harvest Management's argument regarding NRCP 49(a). Indeed, while the Court's  
6 written order is short and to the point, the Court necessarily had to find NRCP 49(a) inapplicable  
7 to the instant case.

8 Having prevailed on this issue, Harvest Management now argues that this Court should  
9 enter "judgment in favor of Harvest on any and all claims for relief alleged by Plaintiff Aaron  
10 Morgan."<sup>23</sup> Aside from the fact that its request is a complete 180 from a previously asserted  
11 position, Harvest Management's motion is problematic because it effectively asks this Court to  
12 revisit a previously decided issue. If this Court already decided that it cannot – or should not –  
13 make its own determination of facts, especially as to ultimate liability, there is no reason to  
14 revisit the issue simply because another party made the request. And, to make matters worse, if  
15 the Court were to revisit a previously decided issue which is also on appeal, a jurisdictional and  
16 procedural nightmare would ensure. Thus, this Court should reject Harvest Management's  
17 motion because it effectively undermines the Court's own previous decision. Indeed, because  
18 Harvest Management prevailed against Morgan on his motion for entry of judgment, Harvest  
19 cannot now offer a different set of rules of its own convenience as a matter of judicial estoppel.  
20 *See Marcuse v. Del Webb, Communities*, 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007).

21 **E. THE MOTION FAILS ON THE MERITS BECAUSE IT IS**  
22 **UNSUPPORTED BY THE RECORD.**

23 Harvest Management would have this Court believe that Morgan "made a conscious  
24 choice and/or strategic decision to abandon his claim against Harvest at trial."<sup>24</sup> In reality, the

25 \_\_\_\_\_  
26 <sup>22</sup> See page 3.

27 <sup>23</sup> Motion for Entry of Judgment at page 1.

28 <sup>24</sup> *Id.* at page 14.

1 record confirms that Harvest Management and its corporate representative were identified as  
2 Defendants during trial. Harvest Management and Lujan were represented by the same counsel  
3 at both trials. Lujan attended the first trial, while Harvest Management's NRCP 30(b)(6)  
4 representative, Erica Janssen, sat at counsel's table throughout the second trial. At the beginning  
5 of the second trial, Harvest Management's counsel introduced her to the jury venire as his client  
6 before jury selection started:

7 [Harvest Management's counsel]: Hello everyone. What a way to start a Monday,  
8 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. . . .<sup>25</sup>

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

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

12 [Harvest Management's counsel]: Yeah.

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

14 [Harvest Management's counsel]: Erica.

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

17 [Harvest Management's counsel]: No, she's the representative of the --

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

19 [Harvest Management's counsel]: -- of the corporation.

20 THE COURT: I thought --

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

22 THE COURT: Got it. Okay. It's a different -- different person.<sup>26</sup>

23 In addition to introducing the corporate representative as a party, both sides discussed theories  
24 regarding corporate defendants during voir dire, with the members of the jury venire answering  
25

26  
27 <sup>25</sup> Transcript of Jury Trial, April 2, 2018, at page 17.

28 <sup>26</sup> *Id.* at pages 94-95.

1 three separate questions about liability for corporate defendants, including one posed by Harvest  
2 Management.<sup>27</sup>

3 During opening statements, both parties also addressed the fact that Lujan was acting in  
4 the course and scope of his employment at the time of the accident.<sup>28</sup> Thereafter, Harvest  
5 Management's NRCP 30(b)(6) representative also stated that she was testifying on behalf of  
6 Harvest Management, was authorized to do so, and was aware of the fact that Lujan, the driver,  
7 was a Harvest Management employee.<sup>29</sup> Similarly, Morgan also established the employee-  
8 employer relationship between the Defendants by reading Lujan's testimony from the first trial  
9 into the record.<sup>30</sup> And, even as the parties wrapped up with closing arguments, both parties'  
10 referenced responsibility and agreed that Lujan, Harvest Management's employee, should not  
11 have pulled in front of Morgan when Morgan had the right of way.<sup>31</sup>

12 Thus, by the conclusion of the trial, the jury was aware of the fact that Morgan pursued  
13 claims again *both* Defendants. Moreover, the jurors received significant evidence regarding the  
14 relationship between the Defendants which established the facts necessary to prove vicarious  
15 liability. It thus would be a mistake to enter judgment in favor of Harvest Management when the  
16 record supports Morgan's claim for vicarious liability.

17 **F. VICARIOUS LIABILITY / RESPONDEAT SUPERIOR IS A**  
18 **DERIVATIVE CLAIM THAT WAS ALREADY TRIED BY CONSENT.**

19 The doctrine of respondeat superior subjects an employer to vicarious liability for torts  
20 that its employee committed within the scope of his or her employment. *See, e.g., McCrosky v.*  
21 *Carson Tahoe Reg'l Med. Ctr.*, 133 Nev. Adv. Op. 115, 408 P.3d 149, 152 (2017) (Vicarious

22 \_\_\_\_\_  
23 <sup>27</sup> *Id.* at pages 47, 213, 232.

24 <sup>28</sup> Transcript of Jury Trial, April 3, 2018, at page 126; *see also id.* at page 147 (statement from Harvest  
Management's counsel: "[W]e're going to show you the actions of our driver were not reckless.").

25 <sup>29</sup> Transcript of Jury Trial, April 5, 2018, at pages 165, 171; *see also* Transcript of Jury Trial, April 6,  
26 2018, at pages 6-14.

27 <sup>30</sup> Transcript of Jury Trial, April 6, 2018, at pages 191-96.

28 <sup>31</sup> Transcript of Jury Trial, April 6, 2018, at pages 122-23, 143.

1 liability simply describes the burden “a supervisory party . . . bears for the actionable conduct of  
2 a subordinate”). Although the employer’s liability is separate from the employee’s *direct*  
3 *liability*, vicarious liability claims are nevertheless derivated in that the employee’s negligence is  
4 imputed to his or her employer. *Id.*; *see also* BLACK’S LAW DICTIONARY 934 (8th ed. 2004)  
5 (defining “vicarious liability” as “[I]liability that a supervisory party (such as an employer) bears  
6 for the actionable conduct of a subordinate or associate (such as an employee) based on the  
7 relationship between the two parties.” And, because of that imputation of negligence, vicarious  
8 liability subjects an employer to liability “for employee torts committed within the scope of  
9 employment, distinct from whether the employer is subject to direct liability.” RESTATEMENT  
10 (THIRD) OF AGENCY, § 7.07, cmt. b, ¶ 4 (2006); *see also* RESTATEMENT (SECOND) OF JUDGMENTS  
11 § 51, cmt. a (1982) (noting that “the [employer] may be held liable even though an action cannot  
12 be maintained against the [employee].”); NRS 41.130 (“[W]here the person causing the injury is  
13 employed by another person or corporation responsible for the conduct of the person causing the  
14 injury, that other person or corporation so responsible is liable to the person injured for  
15 damages.”).

16 In this case, the issue of vicarious liability / respondeat superior was tried by consent.  
17 Indeed, while Harvest Management tries to argue that Morgan’s claim was actually for negligent  
18 entrustment or that his claim failed for lack of a specific allegation that Lujan was driving in the  
19 course and scope of his employment, any such failings are beside the point under NRCP 15(b).  
20 NRCP 15(b) provides, “[w]hen issues not raised by the pleadings are tried by express or implied  
21 consent of the parties, they shall be treated in all respects as if they had been raised in the  
22 pleadings.” So, because Harvest Management did not object – and, in fact, contributed to – the  
23 evidence and discussions regarding the employee-employer relationship and its role as a  
24 corporate defendant, Harvest Management cannot now argue that it is entitled to judgment in its  
25 favor. *See, e.g., Schmidt v. Sadri*, 95 Nev. 702, 705, 601 P.2d 713, 715 (1979) (“[I]t is  
26 rudimentary that when an issue not raised by the pleadings is tried by express or implied consent  
27 of the parties, those issues shall be treated as if they were raised in the pleadings.”); *Whiteman v.*  
28 *Brandis*, 78 Nev. 320, 322, 372 P.2d 468, 469 (1962) (“[T]he result of the trial must be upheld

1 because evidence supporting a [specific claim] recovery was received without objection and the  
2 issues thereby raised were tried with the implied consent of the parties.”).

3 Likewise, the distinction between primary liability and an employer’s separate, vicarious  
4 liability also defeats Harvest Management’s argument. After all, Lujan was acting in the course  
5 and scope of his employment as a bus driver when he collided with Morgan.<sup>32</sup> Given the jury’s  
6 verdict, it is also established that Lujan was negligent and 100% at fault for the accident. So,  
7 regardless of what role Harvest Management played (or did not play) in the trial, Lujan’s  
8 negligence is imputed to Harvest Management because of the employee-employer relationship.  
9 It would thus be erroneous to enter judgment in favor of Harvest Management because such a  
10 judgment would be inconsistent with the jury’s verdict.

#### 11 **IV. CONCLUSION**

12 For the foregoing reasons, this Court should deny Harvest Management’s Motion for  
13 Entry of Judgment outright, without even considering the merits of the motion. Alternatively,  
14 even if this Court believes it is proper to rule upon the motion despite the pending appeal, this  
15 Court should transfer the case back to Judge Bell for a ruling because Judge Bell lived through  
16 the entirety of this case, including the trial. Yet, even if this Court is inclined to review the  
17 motion itself and make a ruling on the merits, it should nevertheless deny the Motion for Entry of  
18 Judgment because Harvest Management cannot flip its position regarding NRCP 49, the record

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 \_\_\_\_\_  
26 <sup>32</sup> See, e.g., Transcript of Jury Trial, April 3, 2018, at page 147 ([W]e’re going to show you the actions of  
27 our driver were not reckless. They weren’t wild.”); Transcript of Jury Trial, April 6, 2018, at page 14  
28 (stating “our driver” completed the “Accident Information Card, Other Vehicle.”); Transcript of Jury  
Trial, April 6, 2018, at pages 191-94 (testimony of Lujan that he was the bus driver for Montera  
Meadows, a local entity under the control of Harvest Management’s corporate office).

1 does not support a judgment in favor of Harvest Management, and vicarious liability / respondeat  
2 superior was tried by consent.

3 Dated this 15th day of January, 2019.

4 MARQUIS AURBACH COFFING

5  
6 By: Kathleen Wilde  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSITION TO DEFENDANT HARVEST MANAGEMENT SUB LLC'S MOTION FOR ENTRY OF JUDGMENT AND COUNTER-MOTION TO TRANSFER CASE BACK TO CHIEF JUDGE BELL FOR RESOLUTION OF POST-VERDICT ISSUES** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of January, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>33</sup>

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<sup>33</sup> 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**

Special Verdict Form  
Filed April 9, 2018

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

APR - 9 2018

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

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 9<sup>th</sup> day of April, 2018.

17  
18  
19 Arthur J. St. Laurent  
FOREPERSON

20 ARTHUR J. ST. LAURENT  
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# **Exhibit 2**

Transcript of Jury Trial,  
April 9, 2018, at pages 5-6



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 AARON MORGAN,  
8 Plaintiff,  
9

10 vs.

11 DAVID LUJAN  
12 Defendant.

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

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

15 MONDAY, APRIL 9, 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 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 sort of.

2 THE MARSHAL: Please rise for the jury.

3 [Jury in at 9:13 a.m.]

4 THE COURT: We're back on the record in case number  
5 8718679, Morgan v. Lujan. [indiscernible] Counsel and parties. Good  
6 morning, everyone. I hope you had a good weekend.

7 Mr. Gardner and Mr. Rands, if you'll please call your next  
8 witness.

9 MR. GARDNER: Yes, Dr. Sanders.

10 THE MARSHAL: Doctor, up here, please. If you would remain  
11 standing, raise your right hand, and face the clerk, please.

12 **STEVEN SANDERS**

13 [having been called as a witness and being first duly sworn testified as  
14 follows:]

15 THE COURT: Good morning, sir. Go ahead and have a seat,  
16 please. And if you'll please state your name and spell it for the record.

17 THE WITNESS: Steven Sanders, S-T-E-V-E-N, Sanders, S-A-  
18 N-D-E-R-S.

19 THE COURT: Thank you. Whenever you're ready, Mr.  
20 Gardner.

21 **DIRECT EXAMINATION**

22 BY MR. GARDNER:

23 Q Good morning, Doctor.

24 A Good morning.

25 Q Thank you for being here sincerely. Why don't you tell the jury



# **Exhibit 3**

## Jury Instructions Cover Page

1

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



# **Exhibit 4**

Notice of Appeal  
Filed 12/18/18

**MARQUIS AURBACH COFFING**

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

Electronically Filed  
12/18/2018 4:58 PM  
Steven D. Grierson  
CLERK OF THE COURT



**Marquis Aurbach Coffing**  
Micah S. Echols, Esq.  
Nevada Bar No. 8437  
Tom W. Stewart, Esq.  
Nevada Bar No. 14280  
10001 Park Run Drive  
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Telephone: (702) 382-0711  
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mechols@maclaw.com  
tstewart@maclaw.com

**Richard Harris Law Firm**  
Benjamin P. Cloward, Esq.  
Nevada Bar No. 11087  
Bryan A. Boyack, Esq.  
Nevada Bar No. 9980  
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Las Vegas, Nevada 89101  
Telephone: (702) 444-4444  
Facsimile: (702) 444-4455  
Benjamin@RichardHarrisLaw.com  
Bryan@RichardHarrisLaw.com

*Attorneys for Plaintiff, Aaron 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

**NOTICE OF APPEAL**

Plaintiff, Aaron M. Morgan, by and through his attorneys of record, Marquis Aurbach  
Coffing and the Richard Harris Law Firm, hereby appeals to the Supreme Court of Nevada from:  
(1) the Order Denying Plaintiff's Motion for Entry of Judgment, which was filed on

**MARQUIS AURBACH COFFING**

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

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November 28, 2018 and is attached as **Exhibit 1**; and (2) the Judgment Upon the Jury Verdict, which was filed on December 17, 2018 and is attached as **Exhibit 2**.

Dated this 18th day of December, 2018.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols  
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 Morgan*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 18th day of December, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Andrea M. Champion	achampion@baileykennedy.com
Joshua P. Gilmore	jgilmore@baileykennedy.com
Sarah E. Harmon	sharmon@baileykennedy.com
Dennis L. Kennedy	dkennedy@baileykennedy.com
Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
<i>Attorneys for Defendant Harvest Management Sub, LLC</i>	

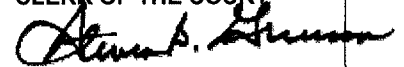
Doug Gardner, Esq.	dgardner@rsglawfirm.com
Douglas R. Rands	drands@rsgnlaw.com
Melanie Lewis	mlewis@rsglawfirm.com
Pauline Batts	pbatts@rsgnlaw.com
Jennifer Meacham	jmeacham@rsglawfirm.com
Lisa Richardson	lrichardson@rsglawfirm.com
<i>Attorneys for Defendant David E. Lujan</i>	

/s/ Leah Dell

Leah Dell, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> 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



**ORDR**

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
SARAH E. HARMON  
Nevada Bar No. 8106  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
ANDREA M. CHAMPION  
Nevada Bar No. 13461  
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SHarmon@BaileyKennedy.com  
JGilmore@BaileyKennedy.com  
AChampion@BaileyKennedy.com

*Attorneys for Defendant*

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. ~~XX~~ XI

PLEASE NOTE  
DEPT. CHANGE

**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,

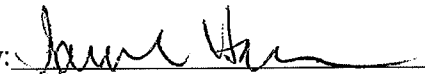
3 HEREBY ORDERS that the Motion for Entry of Judgment shall be, and hereby is,  
4 **DENIED.**

5 DATED this 26 day of November, 2018.

6  
7   
8 DISTRICT COURT JUDGE

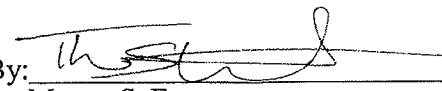
9 Respectfully submitted by:

10 BAILEY ♦ KENNEDY, LLP

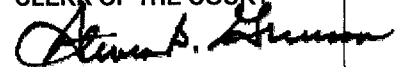
11 By:   
12 DENNIS L. KENNEDY  
13 SARAH E. HARMON  
14 JOSHUA P. GILMORE  
15 ANDREA M. CHAMPION  
16 8984 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148  
18 *Attorneys for Defendant Harvest Management*  
19 *Sub LLC*

Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By:   
MICAH S. ECHOLS  
TOM W. STEWART  
1001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiff Aaron Morgan*

## Exhibit 2



1 **ORDR**

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19 *Attorneys for Defendant*

20 HARVEST MANAGEMENT SUB LLC

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

23 AARON M. MORGAN, individually,

24 Plaintiff,

25 vs.

26 DAVID E. LUJAN, individually; HARVEST  
27 MANAGEMENT SUB LLC; a Foreign-Limited-  
28 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. ~~XX~~ XI

PLEASE NOTE  
DEPT. CHANGE

**ORDER ON PLAINTIFFS' MOTION FOR  
ENTRY OF JUDGMENT**

**Date of Hearing: November 6, 2018**

**Time of Hearing: 9:00 A.M.**

29 On November 6, 2018, at 9:00 a.m., the Motion for Entry of Judgment came before the  
30 Court. Tom W. Stewart of Marquis Aurbach Coffing P.C. and Bryan A. Boyack of Richard Harris  
31 Law Firm appeared on behalf of Plaintiff Aaron Morgan and Dennis L. Kennedy, Sarah E. Harmon,  
32 and Andrea M. Champion of Bailey❖Kennedy appeared on behalf of Defendant Harvest  
33 Management Sub LLC.

34 ///

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,

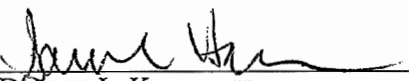
3 HEREBY ORDERS that the Motion for Entry of Judgment shall be, and hereby is,  
4 **DENIED.**

5 DATED this 26 day of November, 2018.

6  
7   
8 DISTRICT COURT JUDGE

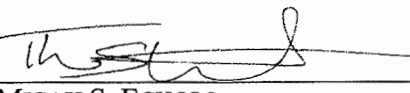
9 Respectfully submitted by:

10 BAILEY ♦ KENNEDY, LLP

11 By:   
12 DENNIS L. KENNEDY  
13 SARAH E. HARMON  
14 JOSHUA P. GILMORE  
15 ANDREA M. CHAMPION  
16 8984 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148  
18 *Attorneys for Defendant Harvest Management*  
19 *Sub LLC*

Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By:   
MICAH S. ECHOLS  
TOM W. STEWART  
1001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiff Aaron Morgan*

# **Exhibit 5**

Supreme Court Register

**Nevada**  
**Appellate Courts**

Find Case...

## Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

<b>Cases</b>
<div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;"><b>Case Search</b></div> <div style="border: 1px solid black; padding: 2px;"><b>Participant Search</b></div>

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Only filed documents can be viewed. Some documents received in a case may not be available for viewing.

Some documents originating from a lower court, including records and appendices, may not be available for viewing.

For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.

### Case Information: 77753

<b>Short Caption:</b>	MORGAN VS. LUJAN	<b>Court:</b>	Supreme Court
<b>Lower Court Case(s):</b>	Clark Co. - Eighth Judicial District - A718679	<b>Classification:</b>	Civil Appeal - General - Other
<b>Disqualifications:</b>		<b>Case Status:</b>	Settlement Notice Issued/Briefing Suspended
<b>Replacement:</b>		<b>Panel Assigned:</b>	Panel
<b>To SP/Judge:</b>	12/31/2018 / Shirinian, Ara	<b>SP Status:</b>	Pending
<b>Oral Argument:</b>		<b>Oral Argument Location:</b>	
<b>Submission Date:</b>		<b>How Submitted:</b>	

### + Party Information

### + Due Items

### Docket Entries

Date	Type	Description	Pending?	Document
12/27/2018	Filing Fee	Filing Fee due for Appeal. Filing fee will be forwarded by the District Court. (SC)		
12/27/2018	Notice of Appeal Documents	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel for appellant.) (SC)		18-910662
12/27/2018	Notice/Outgoing	Issued Notice of Referral to Settlement		18-910664

# 2168

		Program. This appeal may be assigned to the settlement program. Timelines for requesting transcripts and filing briefs are stayed. (SC)	
12/28/2018	Filing Fee	Filing Fee Paid. \$250.00 from Marquis Aurbach Coffing. Check no. 125755. (SC)	
12/31/2018	Settlement Notice	Issued Notice: Assignment to Settlement Program. Issued Assignment Notice to NRAP 16 Settlement Program. Settlement Judge: Ara H. Shirinian. (SC).	18-910922
01/15/2019	Order/Clerk's	Filed Order Granting Extension Per Telephonic Request. Appellant's Docketing Statement due: January 30, 2019. (SC).	19-02106

Combined Case View

## Reception

**From:** efilngmail@tylerhost.net  
**Sent:** Tuesday, January 15, 2019 3:33 PM  
**To:** BKfederaldownloads  
**Subject:** Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Opposition and Countermotion - OPPC (CIV), Envelope Number: 3705446

## Notification of Service

Case Number: A-15-718679-C  
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)  
Envelope Number: 3705446



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

### Filing Details

<b>Case Number</b>	A-15-718679-C
<b>Case Style</b>	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
<b>Date/Time Submitted</b>	1/15/2019 3:31 PM PST
<b>Filing Type</b>	Opposition and Countermotion - OPPC (CIV)
<b>Filing Description</b>	Opposition to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment and Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues
<b>Filed By</b>	Peter Floyd
<b>Service Contacts</b>	David E Lujan:  Lisa Richardson ( <a href="mailto:lrichardson@rsglawfirm.com">lrichardson@rsglawfirm.com</a> )  Jennifer Meacham ( <a href="mailto:jmeacham@rsglawfirm.com">jmeacham@rsglawfirm.com</a> )  Harvest Management Sub LLC:  Sarah Harmon ( <a href="mailto:sharmon@baileykennedy.com">sharmon@baileykennedy.com</a> )  Dennis Kennedy ( <a href="mailto:dkennedy@baileykennedy.com">dkennedy@baileykennedy.com</a> )  Joshua Gilmore ( <a href="mailto:jgilmore@baileykennedy.com">jgilmore@baileykennedy.com</a> )  Bailey Kennedy, LLP ( <a href="mailto:bkfederaldownloads@baileykennedy.com">bkfederaldownloads@baileykennedy.com</a> )



Andrea Champion ([achampion@baileykenedy.com](mailto:achampion@baileykenedy.com))

Other Service Contacts not associated with a party on the case:

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"Doug Gardner, Esq." . ([dgardner@rsglawfirm.com](mailto:dgardner@rsglawfirm.com))

Benjamin Cloward . ([Benjamin@richardharrislaw.com](mailto:Benjamin@richardharrislaw.com))

Douglas R. Rands . ([drands@rsgnvlaw.com](mailto:drands@rsgnvlaw.com))

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Olivia Bivens . ([olivia@richardharrislaw.com](mailto:olivia@richardharrislaw.com))

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Tina Jarchow . ([tina@richardharrislaw.com](mailto:tina@richardharrislaw.com))

Micah Echols ([mechols@maclaw.com](mailto:mechols@maclaw.com))

Leah Dell ([ldell@maclaw.com](mailto:ldell@maclaw.com))

Pauline Batts . ([pbatts@rsgnvlaw.com](mailto:pbatts@rsgnvlaw.com))

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