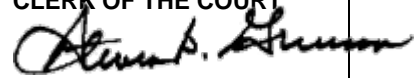


TAB 28

TAB 28



1 **RIS**

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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

**REPLY IN SUPPORT OF DEFENDANT
HARVEST MANAGEMENT SUB LLC'S
MOTION FOR ENTRY OF JUDGMENT;
AND OPPOSITION TO PLAINTIFF'S
COUNTER-MOTION TO TRANSFER
CASE BACK TO CHIEF JUDGE BELL
FOR RESOLUTION OF POST-
VERDICT ISSUES**

Hearing Date: January 25, 2019

Hearing Time: In Chambers

23 Defendant Harvest Management Sub LLC ("Harvest") hereby files this Reply in Support of
24 its Motion for Entry of Judgment, and hereby opposes Plaintiff Aaron M. Morgan's ("Mr. Morgan")
25 Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues.

26 ///

27 ///

28 ///

1 This Reply and Opposition to Counter-Motion is based on the following memorandum of points and
2 authorities, the papers and pleadings on file, and any argument heard by the Court.

3 DATED this 23rd day of January, 2019.

4 BAILEY❖KENNEDY

6 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

JOSHUA P. GILMORE

8 ANDREA M. CHAMPION

9 *Attorneys for Defendant*

10 HARVEST MANAGEMENT SUB LLC

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Mr. Morgan pled one claim against Harvest in his Complaint — a claim for negligent
15 entrustment.¹ (App. of Exs. to Harvest’s Mot. for Entry of J. Vol. I, Ex. 1, at 3:19-4:12.) Mr.
16 Morgan does not oppose Harvest’s Motion for Entry of Judgment (“Motion”) as to this claim for
17 relief. Therefore, Harvest’s Motion should be granted, this claim should be dismissed with
18 prejudice, and Harvest’s proposed judgment, attached as Exhibit A to its Motion, should be entered
19 against Mr. Morgan.

20 Despite Mr. Morgan’s concession that judgment should be entered in favor of Harvest on his
21 claim for negligent entrustment, Mr. Morgan still opposes Harvest’s Motion — as to an unpled claim
22 of vicarious liability — on several grounds which each fail as a matter of fact or law. First, Mr.
23 Morgan contends that this Court lacks jurisdiction to decide Harvest’s Motion, and that Harvest’s

24
25 ¹ While Mr. Morgan may have captioned this claim for relief “Vicarious Liability/Respondeat Superior Against
26 Defendant,” the allegations of the claim clearly relate solely to the elements of a claim for negligent entrustment (i.e.,
27 Harvest “entrust[ed]” control of its vehicle to Mr. Lujan, who was an “incompetent, inexperienced, or reckless driver”;
28 Harvest knew or should have known of Mr. Lujan’s incompetence, inexperience, or recklessness; Mr. Morgan was
injured as a proximate cause of Harvest’s “negligent entrustment” of the vehicle; and Mr. Morgan suffered damages in
excess of \$10,000 as a result of Harvest’s “negligent entrustment”). (App. of Exs. to Harvest’s Mot. for Entry of J., Vol.
I, Ex. 1, at 3:19-4:12.)

1 Motion is procedurally improper, because he has attempted to appeal from this Court's November
2 28, 2018 Order Denying Plaintiff's Motion for Entry of Judgment and the December 17, 2018
3 Judgment Upon the Jury Verdict (which has not yet been entered by this Court). (Pl.'s Opp'n at 8:3-
4 10:10.) However, Mr. Morgan's attempt to appeal is invalid because no final judgment has been
5 entered in this case. Therefore, concurrently with the filing of this Reply, Harvest has filed a motion
6 with the Nevada Supreme Court to dismiss this "improper" appeal. Because this Court retains
7 jurisdiction over this action, Harvest's Motion was properly filed.

8 Second, Mr. Morgan moved for this action to be transferred back to Chief Judge Bell for
9 determination because he believes she is more familiar with the events at the April 2018 trial and is
10 better able to decide this matter. (*Id.* at 10:11-11:17.) Essentially, Mr. Morgan is hoping to
11 improperly obtain reconsideration of this Court's determination on his Motion for Entry of
12 Judgment. If Chief Judge Bell's participation as the trial judge was a necessity to resolving these
13 "post-verdict issues," Mr. Morgan should have moved for a transfer prior to the hearing on his
14 Motion for Entry of Judgment. Alternatively, if Mr. Morgan believes this Court erred in denying his
15 Motion for Entry of Judgment, he should have filed a timely motion for reconsideration. He failed
16 to take either action, and he has failed to demonstrate that a transfer of the case at this late juncture is
17 necessary or proper. This Court has the entire record of this case, including all trial transcripts,
18 available for its review and is more than capable of deciding Harvest's Motion. Moreover, a transfer
19 of judges is not going to change the fact that Mr. Morgan failed to present any evidence against
20 Harvest at trial, failed to instruct the jury on any claim against Harvest, and failed to even present a
21 claim against Harvest to the jury for determination.

22 Third, Mr. Morgan asserts that Harvest's Motion fails because Harvest is judicially estopped
23 from seeking entry of judgment pursuant to Nevada Rule of Civil Procedure 49(a). (*Id.* at 11:18-
24 12:20.) However, Harvest's Motion is not based upon NRCP 49(a). Rather, Harvest has moved for
25 entry of judgment because Mr. Morgan: (1) intentionally abandoned his claim; and/or (2) failed to
26 prove the elements of his claim at trial. This has nothing to do with a post-trial resolution of an issue
27 of fact that was mistakenly omitted from the jury's determination.

28 ///

1 Despite the fact that Mr. Morgan never pled a claim for vicarious liability, his last and final
2 argument in opposition to Harvest's Motion is that this claim was "tried by consent," and the jury
3 found Harvest liable because this unpled claim was "undisputed" at trial. (*Id.* at 5:3-4, 12:21-16:10.)
4 Mr. Morgan's assertions are completely unsupported by the record because: (1) Mr. Morgan never
5 provided notice that he intended to try a claim of vicarious liability to the jury; (2) Harvest never
6 impliedly or expressly consented to trial of an unpled, unnoticed claim for vicarious liability; (3) Mr.
7 Morgan bore the burden of proof on this unpled claim, and he failed to offer any evidence proving
8 that the accident occurred in the course and scope of Defendant David E. Lujan's ("Mr. Lujan")
9 employment with Harvest; (4) the evidence offered by the Defendants at trial demonstrated that Mr.
10 Lujan could not have been acting within the course and scope of his employment, because, at the
11 time of the accident, he was on his lunch break; (5) Mr. Morgan failed to refute the evidence that the
12 accident occurred during Mr. Lujan's lunch break; (6) no jury instructions addressed a claim for
13 vicarious liability, and no claim for vicarious liability was ever presented to the jury for
14 determination; and (7) this Court has already determined that the jury's verdict did not include any
15 claim for relief alleged against Harvest, and that it could not enter judgment against Harvest.

16 As a natural and logical consequence of this Court's denial of Mr. Morgan's Motion for
17 Entry of Judgment, Harvest now respectfully requests that this Court dismiss with prejudice any and
18 all claims which Mr. Morgan alleged (or could have alleged) in this case and enter judgment in favor
19 of Harvest on all such claims.

20 II. ARGUMENT

21 A. Mr. Morgan Has Not Appealed From a Final Judgment; Therefore, This Court 22 Retains Jurisdiction Over This Action.

23 Mr. Morgan contends that this Court has been divested of jurisdiction to decide Harvest's
24 Motion because, on December 18, 2018, he appealed from this Court's Order denying his own
25 Motion for Entry of Judgment and the Judgment Upon Jury Verdict against Mr. Lujan. (*Id.* at 2:27-
26 3:5, 7:4-6, 7:17-19, 8:3-10:10.) However, neither the Order denying Mr. Morgan's Motion for Entry
27 of Judgment nor the Judgment Upon Jury Verdict is a final judgment because the single claim
28 alleged against Harvest remains pending.

1 “[A] final judgment is one that disposes of *all the issues* presented in the case, and *leaves*
2 *nothing for the future consideration of the court*, except for post-judgment issues such as
3 attorney’s fees and costs.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)
4 (emphasis added). The Court’s ruling on Mr. Morgan’s Motion for Entry of Judgment and the
5 Judgment Upon Jury Verdict against Mr. Lujan only dispose of Mr. Morgan’s claims against Mr.
6 Lujan — they do not address Mr. Morgan’s claim for relief against Harvest.

7 At the hearing on Mr. Morgan’s Motion for Entry of Judgment, after the Court denied Mr.
8 Morgan’s Motion, Harvest sought clarification that the judgment against Mr. Lujan would also
9 dismiss all claims alleged against Harvest, and this Court explicitly instructed Harvest that it would
10 need to file a motion seeking such relief. (Ex. 1,² at 9:18-10:8.) Therefore, it was clear that Mr.
11 Morgan’s claim against Harvest had not been resolved as a result of the jury’s verdict in the second
12 trial and had not yet been dismissed by the Court.

13 Mr. Morgan failed to move for certification of his Judgment against Mr. Lujan as a final
14 judgment pursuant to Nevada Rule of Civil Procedure 54(b). Rule 54(b) states that “[w]hen multiple
15 parties are involved, the court may direct the entry of a final judgment as to one or more but fewer
16 than all of the parties only upon an express determination that there is no just reason for delay and
17 upon an express direction for the entry of judgment. *In the absence of such determination and*
18 *direction, any order or other form of decision, however designated, which adjudicates the rights and*
19 *liabilities of fewer than all the parties shall not terminate the action as to any of the parties”*
20 (Emphasis added.)

21 Because the Court has not yet disposed of Mr. Morgan’s claim against Harvest, his appeal is
22 premature. As such, the Supreme Court has no jurisdiction over this action, and Harvest has
23 concurrently filed a Motion to Dismiss in the Nevada Supreme Court. *See Rust v. Clark Cnty. Sch.*
24 *Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1381 (1988) (“Generally, a premature notice of appeal fails
25 to vest jurisdiction in [the Supreme Court].”).³

26 _____
27 ² A true and correct copy of excerpts from the Transcript of Hearing on Plaintiff’s Motion for Entry of Judgment
(Nov. 6, 2018) is attached hereto as Exhibit 1.

28 ³ It is unclear how Mr. Morgan intends to demonstrate that he has appealed from a final judgment. His
Opposition merely makes general, conclusory statements that this Court has already entered a final judgment. (Pl.’s

Moreover, because no final judgment has been entered in this action, Harvest’s Motion is not a procedurally improper motion seeking to “reopen, revisit, or supplement” a final judgment. (Pl.’s Opp’n at 10:5-10.) Mr. Morgan mistakenly contends that “the Order Denying Plaintiff’s Motion for Entry of Judgment involve[s] the exact same issue as the motion currently before the Court — whether the jury’s verdict supported a judgment against both Defendants.” (*Id.* at 9:11-15.) However, Harvest successfully opposed Mr. Morgan’s Motion for Entry of Judgment and has no desire to “reopen” or “revisit” this Court’s decision. Rather, as a logical and natural consequence of the Court’s decision, Harvest’s Motion only seeks to dispose of the sole remaining claim in this case and only relates to the dismissal with prejudice of Mr. Morgan’s abandoned and/or unproven claim against Harvest.

B. Transfer of This Action Back to Chief Judge Bell Is Unnecessary, Improper, and Would Only Serve to Promote Confusion.

Mr. Morgan boldly requests that this action be transferred back to Chief Judge Bell because if it were not for her “error,” Mr. Morgan would not be in the position of defending against entry of judgment in favor of Harvest.⁴ (*Id.* at 2:22-23, 10:13-19.) However, Mr. Morgan fails to explain how Chief Judge Bell is responsible for:

- His failure to inform the jury that he had alleged claims against both Mr. Lujan and Harvest;
- His failure to mention Harvest, his claim against Harvest, or even corporate liability in voir dire;
- His failure to reference Harvest or his claim against Harvest in his opening statement;
- His failure to offer any evidence regarding Harvest’s liability for his damages;

Opp’n at 3:2.) Moreover, Mr. Morgan’s Docketing Statement for his appeal to the Nevada Supreme Court was scheduled to be filed on January 16, 2019, but he requested an automatic two-week extension of time until January 30, 2019.

⁴ Despite Mr. Morgan’s assertions, Chief Judge Bell committed no “error” with regard to the Special Verdict Form. Chief Judge Bell provided the Parties with a sample form from her most recent personal injury action which was “similar, sort of” to this case. (App. of Exs. to Harvest’s Mot. for Entry of J., Vol. IV, Ex. 12, at 5:20-6:1; *see also id.* at Ex. 12, at 116:11-17 (stating that the sample verdict form provided by Chief Judge Bell “was just what [the Court] had laying around”). Chief Judge Bell requested that the parties revise the sample form as necessary — including the caption page — and Mr. Morgan chose only to revise the categories of damages included in the form as opposed to the substantive questions regarding the Defendants’ liability. (*Id.* at Ex. 12, at 116:11-23, Ex. 14.)

- His failure to elicit any testimony from any witness that could have supported his claim against Harvest;
- His failure to mention Harvest or his claim against Harvest in his closing argument or his rebuttal closing argument;
- His failure to instruct the jury on the elements of his claim against Harvest; and
- His failure to include Harvest in the substance of the Special Verdict Form.

Mr. Morgan has provided no factual or legal basis for transferring this case back to Chief Judge Bell — especially given the fact that Harvest’s Motion and Mr. Morgan’s Motion for Attorney’s Fees are the only issues remaining to be determined in this case. Just as the Supreme Court must rely on the record in an appeal, this Court need look no further than the record to decide Harvest’s Motion.

Mr. Morgan erroneously relies on *Hornwood*, *Wolff*, *Winn*, and *Wittenberg* to support his contention that the trial judge is in a better position to decide Harvest’s Motion, (*Id.* at 10:23-11:13); however, Harvest’s Motion does not require this Court to weigh the credibility of any witnesses, to weigh any conflicting evidence, to review a prior decision for abuse of discretion, or even to make the ultimate determination on any issue of fact. *See Hornwood v. Smith’s Food King No. 1*, 105 Nev. 188, 191-92, 772 P.2d 1284, 1286-87 (1989) (reversing and remanding to district court for assessment of consequential damages, as evidence still needed to be offered on this issue); *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (recognizing that deference should be given to the trial judge’s disposition of community property or an alimony award, because such determinations are reviewed for an abuse of discretion); *Winn v. Winn*, 86 Nev. 18, 20, 467 P.2d 601, 602 (1970) (finding no reason to supplant their determination for that of the trial judge in the absence of an abuse of discretion in the trial judge’s equitable determination of alimony and disposition of community property); *Wittenberg v. Wittenberg*, 56 Nev. 442, 55 P.2d 619 (1936) (giving deference to the trial court’s rulings where issues on appeal concerned the credibility of witnesses and the weight to be given to their testimony). Rather, Harvest’s Motion merely seeks the dismissal with prejudice of all claims Mr. Morgan alleged (or could have alleged) in this action *as a*

///

1 *result of his failure to prove any claim at trial, his failure to present any claim to the jury for*
2 *determination, and his complete abandonment of any such claims.*

3 Mr. Morgan offered no evidence at trial demonstrating that Mr. Lujan was acting within the
4 course and scope of his employment at the time of the car accident — so there is no evidence to
5 weigh on this issue. Mr. Morgan offered no witness testimony on the issue of whether Mr. Lujan
6 was acting within the course and scope of his employment — so there is no need for the court to
7 assess the credibility of witnesses. No party has filed a motion for new trial, so there are no issues to
8 be reviewed for abuse of discretion. In sum, there is no reason that this Court is incapable of or
9 unprepared for deciding Harvest’s Motion.

10 Finally, Judge Bell’s tenure as Chief Judge began on July 1, 2018. The order reassigning this
11 action to this Court was issued on July 2, 2018. Therefore, Chief Judge Bell chose to reassign this
12 action despite knowledge that post-trial motions were possible. Clearly, Chief Judge Bell did not
13 believe that she needed to retain this action merely because she had been the presiding trial judge.

14 Mr. Morgan’s Counter-Motion is nothing more than “judge-shopping” for what he hopes will
15 be an untimely reconsideration of his Motion to Entry of Judgment. (Pl.’s Opp’n at 3:7-12.) There
16 are no grounds for the transfer of this case; therefore, Harvest respectfully requests that Mr.
17 Morgan’s Counter-Motion be denied.

18 **C. Harvest Does Not Seek Entry of Judgment Pursuant to NRCP 49(a).**

19 Mr. Morgan asserts that Harvest is asking the court to reconsider its prior ruling on the
20 inapplicability of Nevada Rule of Civil Procedure 49(a) and is judicially estopped from seeking
21 entry of judgment pursuant to Rule 49(a). (*Id.* at 3:10:11, 11:18-12:20.) However, Harvest has not
22 moved for entry of judgment pursuant to NRCP 49(a). This Court has already determined: (i) that,
23 given the lack of jury instructions pertaining to claims against Harvest, Mr. Morgan’s failure to
24 include Harvest in the Special Verdict form was not a clerical error; and (ii) that Mr. Morgan failed
25 to present his claim against Harvest to the jury for determination. (Ex. 1, at 9:8-20.) In light of this
26 Court’s decision, Harvest respectfully requests that this Court now dismiss with prejudice Mr.
27 Morgan’s abandoned claim against Harvest and that judgment be entered in favor of Harvest. Rule

28 ///

49(a) is not relevant to the relief Harvest seeks, as the Court has the inherent power and discretion to grant such relief.

D. Nothing in the Record Supports Mr. Morgan’s Claim for Vicarious Liability, and Harvest Is Not Liable Merely Because Mr. Lujan Is an Employee Who Has Been Found to Have Been Negligent.

Mr. Morgan asserts that it would be a “mistake” to enter judgment in favor of Harvest Management, because “the jurors received significant evidence regarding the relationship between the Defendants which established the facts necessary to prove vicarious liability.” (*Id.* at 14:13-16.) Notably, Mr. Morgan does not contend that sufficient evidence was presented to the jury to establish the facts necessary to prove negligent entrustment — the only claim actually pled against Harvest in Mr. Morgan’s Complaint. Therefore, it is undisputed that Mr. Morgan either intentionally abandoned his claim for negligent entrustment or failed to prove the elements of this claim at trial. Thus, this claim must be dismissed with prejudice, and judgment should be entered in favor of Harvest on this claim as well as any other claim he could have alleged in this case.

In apparent acknowledgement of the fact that he never pled a claim for vicarious liability/ respondeat superior, Mr. Morgan now asserts that this claim was “tried by consent.” (*Id.* at 15:16-16:2.) However, in order for Harvest to expressly or impliedly consent to trial of an unpled claim for vicarious liability, it must have been clear that Mr. Morgan was attempting to prove such a claim at trial. *See Sprouse v. Wentz*, 105 Nev. 597, 602-03, 781 P.2d 1136, 1139 (1989) (holding that an unpled issue cannot be tried by consent unless a party has taken some action to inform the other parties that he is seeking such relief, and the district court has notified the parties that it intends to consider the unpled issue). The record of the discovery for and trial of this action belies Mr. Morgan’s argument.

First, Mr. Morgan conducted no discovery relevant to a claim for vicarious liability. He never deposed Mr. Lujan or a single employee, officer, or other representative of Harvest. Moreover, Mr. Morgan never conducted any written discovery relating to whether Mr. Lujan was acting within the course and scope of his employment at the time of the accident. Rather, his interrogatories focused on background checks that Harvest performed prior to hiring Mr. Lujan and disciplinary actions Harvest had taken against Mr. Lujan in the five years preceding the accident —

1 information relevant to a claim for negligent entrustment, not vicarious liability. (App. of Exs. to
2 Harvest’s Mot. for Entry of J., Vol. I, Ex. 4, at 6:25-7:2, 7:15-19.)

3 Second, Mr. Morgan failed to take any action at trial which would constitute notice of his
4 intent to pursue a claim for vicarious liability. Specifically, his opening statement did not include
5 any references to his intent to prove: (i) that Harvest was vicariously liable for Mr. Morgan’s
6 damages; and/or (ii) that, at the time of the accident, Mr. Lujan was acting within the course and
7 scope of his employment with Harvest. (*Id.* at Vol. IV, at Ex. 11, at 126:7-145:17.) He never
8 offered any evidence at trial regarding the issue of course and scope of employment. (*Id.* at Vol. I,
9 Ex. 3, at 164:21-177:17, Ex. 6, at 4:2-6:1, 9:23-12:6, 13:16-15:6.) Like his opening statement, his
10 closing argument failed to include any references to vicarious liability or the course and scope of
11 employment. (*Id.* at Vol. IV, at Ex. 12, at 121:5-136:19, 157:13-161:10.) There were no jury
12 instructions regarding the elements of a claim for vicarious liability or pertaining to the course and
13 scope of employment. (*Id.* at Ex. 13.) Finally, in the Special Verdict Form, the jury was not asked
14 to find that Harvest was vicariously liable for Mr. Morgan’s injuries. (*Id.* at Ex. 14.) In sum, Mr.
15 Morgan never provided Harvest, the Court, or the jury with notice that he intended to try a claim for
16 vicarious liability as opposed to, or in addition to, a claim for negligent entrustment. As such,
17 Harvest could not — and did not — expressly or impliedly consent to trial of a claim Mr. Morgan
18 failed to raise in his pleadings.

19 Finally, even if this Court finds that a claim for vicarious liability was pled in the Complaint
20 or tried by consent (which it was not), Mr. Morgan failed to offer any evidence at trial to prove this
21 claim. Mr. Morgan attempts to explain this lack of evidence by erroneously asserting that
22 “[v]icarious liability was not contested during trial.” (Pl.’s Opp’n at 5:3-4.) First, the claim was
23 never pled — Harvest need not dispute an unpled claim for relief. Second, Harvest denied the one
24 and only allegation in Mr. Morgan’s Complaint which referenced the phrase “course and scope of
25 employment” — despite the fact that this allegation actually concerned the negligent entrustment of
26 a vehicle to Mr. Lujan and not Harvest’s alleged vicarious liability.⁵ Moreover, it was Mr. Morgan

27 ⁵ See App. of Exs. to Harvest’s Mot. for Entry of J., Vol. I, Ex. 1, at ¶ 9 (alleging “[o]n or about April 1, 2014,
28 Defendants, [*sic*] were the owners, employers, family members[,] and/or operators of a motor vehicle, while in the
course and scope of employment and/or family purpose and/or other purpose, which was entrusted and/or driven in such

— not Harvest — that bore the burden of proof regarding a claim of vicarious liability. *Porter v. SW Christian Coll.*, 428 S.W. 3d 377, 381 (Tex. App. 2014) (“A plaintiff pleading respondeat superior bears the burden of establishing that the employee acted within the course and scope of his employment.”); *Montague v. AMN Healthcare, Inc.*, 168 Cal. Rptr. 3d 123, 126 (Cal. Ct. App. 2014) (“The plaintiff bears the burden of proving that the employee’s tortious act was committed within the scope of his or her employment.”).

Mr. Morgan’s assertion that he offered “sufficient evidence” to prove his claim for vicarious liability is based on the following:

- “Harvest Management and its corporate representative were identified as Defendants during trial.” (Pl.’s Opp’n at 13:1-2, 13:4-8).⁶
 - However, the fact that Harvest is a defendant in this action is not admissible proof of any claim for relief, much less a claim for vicarious liability.
- Harvest and Mr. Lujan “were represented by the same counsel at both trials.” (*Id.* at 13:2-3).
 - Given the lack of evidence regarding Mr. Lujan’s history of incompetence, inexperience, and/or recklessness in driving motor vehicles, Harvest’s and Mr. Lujan had aligned interests in defending against a claim for negligent entrustment of a vehicle. The fact of joint representation at trial is not admissible evidence offered to prove any element of a claim for vicarious liability.
- Harvest’s “NRCP 30(b)(6) representative, Erica Janssen, sat at counsel’s table throughout the second trial.” (*Id.* at 13:3-4).

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a negligent and careless manner so as to cause a collision with the vehicle occupied by Plaintiff”); *see also* Ex. 2, at 2:8-9 (denying this allegation).

⁶ Harvest’s corporate representative at the second trial, Erica Janssen, was not a named Defendant in this case. Because Mr. Morgan fails to cite to any evidence in support of his assertion that Harvest’s *corporate representative* was identified as a *defendant* in this action, Harvest assumes Mr. Morgan is actually referring to the introductions of counsel and parties to the jury venire, when counsel for the Defendants stated: “my client, Erica, is right back here.” (App. of Exs. to Harvest’s Mot. for Entry of J., at Vol. III, at Ex. 10, at 17:15-18.)

- Mr. Morgan pled a claim for negligent entrustment against Harvest, and Harvest’s representative attended trial to defend against this claim. Her presence at the trial is not admissible evidence offered to prove any element of a claim for vicarious liability.
- Harvest’s trial counsel informed the Court, during a bench conference, that Ms. Janssen was a corporate representative. (*Id.* at 13:9-22.)
 - The bench conference concerned the Court’s confusion as to the identity of Ms. Janssen and clarification that she was not the individual defendant, Mr. Lujan — but, again, the fact that Harvest’s corporate representative attended trial to defend against a claim for negligent entrustment is not admissible evidence offered to prove any element of a claim for vicarious liability.
- Both parties “discussed theories regarding corporate defendants during voir dire, with the members of the jury venire answering three separate questions about liability for corporate defendants, including one posed by Harvest” (*Id.* at 13:23-14:2 & n.27 (citing Tr. of Jury Trial (Apr. 2, 2018), at 47, 213, and 232).)
 - Mr. Morgan’s contention is a complete mischaracterization of the record — and, again, has no bearing on the evidence offered at trial to prove the elements of a claim for vicarious liability. Questions posed to the jury venire are not evidence, nor is the jury’s response to such questions. Regardless, the portions of the record cited by Mr. Morgan do not include any questions posed by counsel for Harvest, and the questions asked by *Mr. Morgan’s counsel* were not even tangentially related to vicarious liability.⁷

⁷ On page 47 of the April 2, 2018 Transcript of Jury Trial, counsel for Mr. Morgan asked a member of the jury venire whether he or she was bothered by having responsibility for evaluating the Plaintiff’s future medical needs, whether he or she was bothered by the fact that the jury’s decision may affect the Defendants, and whether he or she had ever had any setbacks in life which he or she handled differently than expected—there were no questions posed regarding vicarious liability. (App. of Exs. to Harvest’s Mot. for Entry of J., Vol. III, Ex. 10, at 46:25-47:25.)

On page 213 of the same trial transcript, counsel for Mr. Morgan asked a member of the jury venire whether he or she felt more people abused the legal system versus using it for the way it was intended, whether he or she could ignore worries about how the judgment was going to be paid, and whether thoughts of how the judgment would be paid by the defendant would influence his or her decision. This line of questioning came about because the member of the jury venire pondered how an individual defendant versus a large corporation could afford to pay a large judgment and

- “During opening statements, both parties also addressed the fact that [Mr.] Lujan was acting in the course and scope of his employment at the time of the accident.” (*Id.* at 14:3-4 & n. 28 (citing counsel for Mr. Morgan stating that Mr. Lujan was driving a shuttlebus, worked for a retirement community, was having lunch at a park and got into an accident with Mr. Morgan after getting into his shuttlebus to get back to work; and that “the actions of our driver were not reckless”).)
 - Statements of counsel are not admissible evidence that can be offered to prove the elements of a claim for vicarious liability. Moreover, Harvest does not deny that Mr. Lujan is an employee of Harvest or that Harvest owned the shuttlebus involved in the accident. However, an employment relationship is *only one element* of a claim for vicarious liability, and these facts are just as relevant to a claim for *negligent entrustment* as they are to a claim of vicarious liability.
- Harvest’s “NRCP 30(b)(6) representative also stated that she was testifying on behalf of Harvest [], was authorized to do so, and was aware of the fact that [Mr.] Lujan, the driver, was a Harvest [] employee.” (*Id.* at 14:4-7.)
 - Harvest was a defendant in the action and appeared at trial to defend against a claim for negligent entrustment. The mere fact that Harvest’s NRCP 30(b)(6) representative testified at trial in defense of this claim is not admissible evidence to prove the elements of a claim for vicarious liability. Moreover, Ms. Janssen’s admission that Mr. Lujan was an employee of Harvest only proves *one element* of a claim for vicarious liability — and it is a fact that is equally relevant to a claim for negligent entrustment.

wondered whether the State pays such judgment (leading to increased taxes as a result). Mr. Morgan’s counsel posed no questions regarding vicarious liability. (*Id.* at 212:25-214:3.)

Finally, on page 232 of the same trial transcript, counsel for Mr. Morgan asked a member of the jury venire to explain his or her past experience with lawsuits and how this past experience affected his or her view of lawsuits in general. This line of questioning came about after a juror disclosed that he had been deposed on behalf of Walgreens and CVS as a “corporate spokesperson.” Mr. Morgan’s counsel posed no questions regarding vicarious liability. (*Id.* at 231:23-233:3.)

- 1 • Mr. Morgan “also established the employee-employer relationship between the
2 Defendants by reading [Mr.] Lujan’s testimony from the first trial into the record.”
3 (*Id.* at 14:7-9 & n.30.)
 - 4 ○ Again, Harvest has never denied that Mr. Lujan was an employee of Harvest,
5 but this fact alone does not prove a claim for vicarious liability. The
6 testimony referenced by Mr. Morgan merely states that, at the time of the
7 accident, Mr. Lujan was employed by Montara Meadows; that Harvest is the
8 corporate office for Montara Meadows; that Mr. Lujan was employed as a bus
9 driver; and that the accident happened after Mr. Lujan pulled out of the
10 parking lot at Paradise Park during his lunch break. (App. of Exs. to
11 Harvest’s Mot. for Entry of J., at Vol. I, at Ex. 6, at 195:7-196:10, Ex. 3, at
12 168:6-20.) Rather than proving vicarious liability, such facts actually
13 establish that Mr. Lujan was not acting within the course and scope of his
14 employment at the time of the accident because he was on his lunch break.
- 15 • In their closing arguments, “both parties’ [*sic*] referenced responsibility and agreed
16 that [Mr.] Lujan, Harvest[’s] employee, should not have pulled in front of [Mr.]
17 Morgan when [Mr.] Morgan had the right of way.” (*Id.* at 14:9-11 & n.31.)
 - 18 ○ The transcript cited by Mr. Morgan in footnote 31 does not include the closing
19 arguments of the parties; thus, Harvest assumes that Mr. Morgan meant to cite
20 to the trial transcript for April 9, 2018. While defense counsel admitted,
21 during a discussion of comparative negligence, that Mr. Morgan had the right
22 of way at the time of the accident, counsel for Harvest never admitted that Mr.
23 Lujan was acting in the course and scope of his employment at the time of the
24 accident.

25 It is well recognized that vicarious liability is only imposed upon an employer when: “(1) the
26 actor at issue is an employee[;] and (2) *the action complained of occurred within the course and*
27 *scope of the actor’s employment.*” (*Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223,
28 1225-26, 925 P.2d 1175, 1179, 1180-81 (1996) (holding that an employer is not liable if an

1 employee's tort is an "independent venture of his own" and was "not committed in the course of
2 the very task assigned to him") (quoting *Prell Hotel Corp. v. Antonacci*, 86 Nev. 390, 391, 469 P.2d
3 399, 400 (1970)). While it is undisputed that Mr. Lujan was an employee of Harvest at the time of
4 the accident, and that he was driving a shuttle bus owned by Harvest when the accident occurred,
5 these facts, in and of themselves, are not sufficient to prove that Mr. Lujan was acting within the
6 course and scope of his employment at the time of the accident. This is particularly true in light of
7 the unrefuted evidence offered by the Defendants that Mr. Lujan was on his lunch break when the
8 accident occurred. Mr. Morgan failed to establish any evidence proving that Mr. Lujan was "on the
9 clock" during his lunch break; that Mr. Lujan had returned to work when the accident occurred; that
10 Mr. Lujan was transporting passengers or was on his way to pick up passengers when the accident
11 occurred; that Mr. Lujan had "clocked in" after his lunch break or had no requirement to "clock in"
12 and "clock out" as part of his employment with Harvest; that Harvest knew that Mr. Lujan was using
13 the company shuttle bus during his lunch breaks; and/or that Harvest authorized such use of the
14 shuttlebus.

15 In Nevada, it is well settled that "[t]he tortious conduct of an employee *in transit to or from*
16 *the place of employment* will not expose the employer to liability" *Molino v. Asher*, 96 Nev.
17 814, 817-18, 618 P.2d 878, 879-80 (1980). While the issue of whether an employee was acting
18 within the course and scope of his employment is generally an issue of fact, it may be resolved as a
19 matter of law "where undisputed evidence exists concerning the employee's status at the time of the
20 tortious act." *Rockwell*, 112 Nev. at 1225, 925 P.2d at 1180. Based on the unrefuted and
21 undisputed⁸ evidence that Mr. Lujan was at lunch at the time of the accident, and the lack of any
22 evidence that Mr. Lujan was acting within the course and scope of his employment at the time of the
23 accident, Mr. Morgan has not, as a matter of law, proven his alleged claim of vicarious liability
24 against Harvest. Mr. Lujan's negligence cannot be "imputed" to Harvest based on the mere
25 existence of an employer-employee relationship. (Pl.'s Opp'n at 16:6-8.) Therefore, this claim
26 should be dismissed with prejudice and a judgment should be entered in favor of Harvest.

27 _____
28 ⁸ In his opening statement, counsel for Mr. Morgan acknowledged that Mr. Lujan was at lunch when the accident occurred. (App. of Exs. to Harvest's Mot. for Entry of J., Vol. IV, Ex. 11, at 126:7-145:17.)

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III. CONCLUSION

For the foregoing reasons, Harvest respectfully requests that the Court deny Mr. Morgan's Counter-Motion to transfer this case; dismiss any and all claims that Mr. Morgan has alleged or could have alleged in this action; and enter judgment in favor of Harvest consistent with the proposed Judgment attached as Exhibit A to Harvest's Motion.

DATED this 23rd day of January, 2019.

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

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 23rd day of January, 2019, service of the foregoing **REPLY IN SUPPORT OF DEFENDANT HARVEST MANAGEMENT SUB LLC'S MOTION FOR ENTRY OF JUDGMENT; AND OPPOSITION TO PLAINTIFF'S COUNTER-MOTION TO TRANSFER CASE BACK TO CHIEF JUDGE BELL FOR RESOLUTION OF POST-VERDICT ISSUES** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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Attorneys for Plaintiff
AARON M. MORGAN

/s/ Josephine Baltazar
Employee of BAILEY❖KENNEDY

EXHIBIT 1

EXHIBIT 1

Steven D. Grierson

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

AARON MORGAN

Plaintiff

vs.

DAVID LUJAN, et al.

Defendants
.....

CASE NO. A-15-718679-C

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

TUESDAY, NOVEMBER 6, 2018

APPEARANCES:

FOR THE PLAINTIFF:

BRYAN A. BOYACK, ESQ.
THOMAS W. STEWART, ESQ.

FOR THE DEFENDANTS:

DENNIS L. KENNEDY, ESQ.
SARAH E. HARMON, ESQ.
ANDREA M. CHAMPION, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

2303

1 employee, discusses the facts of the accident. Never does she
2 bring up on cross or direct examination he was on a break, we
3 aren't on the hook here, or any assertion of that. So this is
4 kind of after the fact them trying to escape the clear
5 liability that was presented, although it wasn't stated on the
6 special verdict form, defendant Lujan, defendant Harvest
7 Management. It was the defendant.

8 THE COURT: Is there any instruction on either
9 negligent entrustment or vicarious liability in the pack of
10 jury instructions?

11 MR. BOYACK: I don't believe so, Your Honor.

12 THE COURT: Yeah. Okay. Thanks.

13 The motion's denied. While there is a inconsistency
14 in the caption of the jury instructions and the special
15 verdict form, there does not appear to be any additional
16 instructions that would lend credence to the fact that the
17 claims against defendant Harvest Management Sub LLC were
18 submitted to the jury. So if you would submit the judgment
19 which only includes the one defendant, I will be happy to sign
20 it, and then you all can litigate the next step, if any,
21 related to the other defendant.

22 MR. STEWART: Thank you, Your Honor.

23 MR. BOYACK: Thank you, Your Honor.

24 MR. KENNEDY: And just for purposes of
25 clarification, that judgment will say that the claims against

1 Harvest Management are dismissed?
2 THE COURT: It will not, Mr. Kennedy.
3 MR. KENNEDY: Okay. Well, I'll just have to file a
4 motion.
5 THE COURT: That's why I say we have to do something
6 next.
7 MR. KENNEDY: Okay. I'm happy to do that.
8 THE COURT: I'm going one step at a time.
9 THE PROCEEDINGS CONCLUDED AT 9:13 A.M.
10 * * * * *
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

1/17/19

DATE

From: efilngmail@tylerhost.net
Sent: Tuesday, January 22, 2019 4:14 PM
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Subject: Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Motion for Attorney Fees and Costs - MAFC (CIV), Envelope Number: 3736917

Notification of Service

Case Number: A-15-718679-C
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Envelope Number: 3736917



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Filing Details

Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	1/22/2019 4:13 PM PST
Filing Type	Motion for Attorney Fees and Costs - MAFC (CIV)
Filing Description	Plaintiff's Motion for Attorney's Fees and Costs
Filed By	Peter Floyd

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TAB 29

TAB 29

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 77753

FILED

JAN 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

SETTLEMENT PROGRAM
EARLY CASE ASSESSMENT REPORT

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

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

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

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

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

[Signature]

Settlement Judge

cc: All Counsel

2309

19-03829

Reception

From: efiling@nvcourts.nv.gov
Sent: Thursday, January 24, 2019 3:00 PM
To: BKfederaldownloads
Subject: Notification of Electronic Filing in MORGAN VS. LUJAN, No. 77753

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Jan 24 2019 02:59 p.m.

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

Document Category: Filed ECAR/Appropriate for Settlement Program. This case is appropriate for mediation and a settlement conference is scheduled for February 26, 2019, 10:00 am. (SC).

Submitted by: Issued by Court

Official File Stamp: Jan 24 2019 02:51 p.m.

Filing Status: **Accepted and Filed**

Docket Text: Filed ECAR/Appropriate for Settlement Program. This case is appropriate for mediation and a settlement conference is scheduled for February 26, 2019, 10:00 am. (SC).

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

2310

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:

Ara Shirinian

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 30

TAB 30

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON MORGAN, INDIVIDUALLY,

Appellant,

vs.

DAVID E. LUJAN, INDIVIDUALLY;
AND HARVEST MANAGEMENT
SUB LLC, A FOREIGN LIMITED-
LIABILITY COMPANY,

Respondents.

No. 77753

Electronically Filed
Jan 31 2019 09:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

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

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District Eighth Department XI
County Clark Judge Honorable Elizabeth Gonzalez
District Ct. Case No. A-15-718679-C

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

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Client Aaron M. Morgan

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

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Client David E. Lujan

Attorney Dennis L. Kennedy, Esq.; Sarah E. Harmon, Esq.; Joshua P. Gilmore, Esq.; and Andrea M. Champion, Esq.
Telephone 702-562-8820
Firm Bailey Kennedy
Address 8984 Spanish Ridge Ave., Las Vegas, NV 89148
Client Harvest Management Sub LLC

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify) |
- November 28, 2018 Order on Plaintiffs' Motion for Entry of Judgment (**Exhibit 3**).
 - December 17, 2018 Judgment Upon the Jury Verdict (**Exhibit 4**).

5. **Does this appeal raise issues concerning any of the following:** N/A.

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

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

This case has not been the subject of a prior appeal or writ proceeding before this Court.

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

Morgan v. Lujan and Harvest Management Sub LLC (Eighth Judicial District Court Case No. A-15-718679-C)—the judgment upon the jury verdict was filed on December 17, 2018. This is the underlying case leading to this appeal.

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

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/ respondeat superior against Defendant, Harvest Management Sub LLC (“Harvest Management”). (**Exhibit 1**). 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 District 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) witness contested primary liability, but never contested Harvest Management’s vicarious liability.

On the final day of trial, the District Court (Judge Linda Bell) sua sponte created a special verdict form that inadvertently included Lujan as the only Defendant in the caption. The District 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 (Judge Elizabeth Gonzalez) 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. (**Exhibit 2**). The District 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. (**Exhibits 3 and 4**).

Due to the District Court’s interlocutory order on his motion for entry of judgment, Morgan has appealed from the judgment on jury verdict, but seeks review of the interlocutory order denying his motion for entry of judgment.

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

- (1) Whether Judge Elizabeth Gonzalez should have transferred the case back to Judge Linda Bell for purposes of determining what happened at trial.
- (2) Whether the evidence presented at trial demonstrates that the jury's verdict is against both Lujan and Harvest Management.
- (3) Whether the District Court should have, alternatively, made a finding that the jury's verdict is against both Lujan and Harvest Management.

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

Morgan is not aware of any pending case raising the same or similar issues.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain: This case asks the Court to enforce the plain language of NRCP 49(a):

The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable

the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

Morgan is not aware of any Nevada case law construing these provisions.

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

This case should be retained by the Supreme Court. The jury's verdict exceeds the \$250,000 threshold in a tort case, as outlined by NRAP 17(b)(5). As outlined in response to Question 12, this case also presents at least one issue of first impression, which is also of statewide importance. Thus, NRAP 17(a)(10) and (11) also support the Supreme Court retaining this appeal.

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

The initial trial in November 2017 lasted 3 days before being declared a mistrial. The second trial in April 2018 lasted 6 days.

Was it a bench or jury trial? Jury.

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

N/A.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

The Order on Plaintiffs' Motion for Entry of Judgment was filed on November 28, 2018. (**Exhibit 3**).

The Judgment Upon the Jury Verdict was filed on December 17, 2018. (**Exhibit 4**).

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

17. Date written notice of entry of judgment or order was served:

The Notice of Entry of the Order on Plaintiffs' Motion for Entry of Judgment was filed on November 28, 2018. (**Exhibit 3**).

The Notice of Entry of the Judgment Upon the Jury Verdict was filed on January 2, 2018. (**Exhibit 4**).

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

N/A.

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

☐ NRCP 50(b) Date of filing

☐ NRCP 52(b) Date of filing

☐ NRCP 59 Date of filing

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

(b) Date of entry of written order resolving tolling motion.

(c) Date written notice of entry of order resolving tolling motion was served.

Was service by:

☐ Delivery

☐ Mail

19. **Date notice of appeal filed:** December 18, 2018.

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

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify)

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

NRAP 3A(b)(1) provides for an appeal of a final judgment.

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

(a) Parties:

Plaintiff: Aaron Morgan

Defendants: David E. Lujan and Harvest Management Sub LLC

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

N/A.

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

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"). (**Exhibit 1**). 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) witness contested primary liability, but never contested Harvest Management's vicarious liability.

On the final day of trial, the District Court (Judge Linda Bell) sua sponte created a special verdict form that inadvertently included Lujan as the only Defendant in the caption. The District 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 (Judge Elizabeth Gonzalez) 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. (**Exhibit 2**). The District 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. (**Exhibits 3 and 4**).

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

☒ Yes

☐ No

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

N/A.

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

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

Exhibit	Document Description
1	Complaint (05/20/15)
2	Motion for Entry of Judgment Without Exhibits (filed 07/30/18)

Exhibit	Document Description
3	Notice of Entry with Order on Plaintiffs' Motion for Entry of Judgment (filed 11/28/18)
4	Notice of Entry with Judgment Upon the Jury Verdict (filed 01/02/19)

VERIFICATION

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

Aaron Morgan

Name of appellant

Micah S. Echols, Esq.; Thomas W. Stewart, Esq.; Benjamin P. Cloward, Esq.; and Bryan A. Boyack, Esq.

Name of counsel of record

January 30, 2019

Date

/s/ Micah S. Echols

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 30th day of January, 2018, I served a copy of this completed docketing statement upon all counsel of record:

☒ By electronic service according to the Master Service List:

Douglas Gardner
Joshua Gilmore
Andrea Champion
Dennis Kennedy
Sarah Harmon

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

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

Dated this 30th day of January, 2018.

/s/ Leah Dell

Signature

Exhibit 1

DISTRICT COURT CIVIL COVER SHEET

A-15-718679-C

County, Nevada

VII

Case No.

(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**

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <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
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <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 Estate Value <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	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <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	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <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		Other Civil Filing <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.

2326


CLERK OF THE COURT

COMP
ADAM W. WILLIAMS, ESQ.
Nevada Bar No. 13617
RICHARD HARRIS LAW FIRM
801 South Fourth St.
Las Vegas, NV 89101
Tel. (702) 444-4444
Fax (702) 444-4455
Email Adam.Williams@richardharrislaw.com
Attorneys for Plaintiff

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.: VII

COMPLAINT

COMES NOW, Plaintiff AARON M. MORGAN, individually, by and through his attorney of record ADAM W. WILLIAMS, ESQ. of the RICHARD HARRIS LAW FIRM, and complains and alleges as follows:

JURISDICTION

1. That at all times relevant herein, Plaintiff AARON M. MORGAN (hereinafter referred to as "Plaintiff") is, a resident of Clark County, Nevada.
2. That at all times relevant herein, Defendant, DAVID E. LUJAN was, and is, a resident of Clark County, Nevada.

3. That at all times relevant herein, Defendant, HARVEST MANAGEMENT SUB LLC, was, and is, a foreign limited-liability Company licensed and actively conducting business in Clark County, Nevada
4. All the facts and circumstances that gave rise to the subject lawsuit occurred in Clark County, Nevada.
5. The identities of Defendant DOES 1 through 20, and ROE BUSINESS ENTITIES 1 through 20, are unknown at this time and are individuals, corporations, associations, partnerships, subsidiaries, holding companies, owners, predecessor or successor entities, joint venturers, parent corporations or related business entities of Defendants, inclusive, who were acting on behalf of or in concert with, or at the direction of Defendants and are responsible for the injurious activities of the other Defendants.
6. Plaintiff alleges that each named and Doe and Roe Defendant negligently, willfully, intentionally, recklessly, vicariously, or otherwise, caused, directed, allowed or set in motion the injurious events set forth herein.
7. Each named and Doe and Roe Defendant is legally responsible for the events and happenings stated in this Complaint, and thus proximately caused injury and damages to Plaintiff.
8. Plaintiff requests leave of the Court to amend this Complaint to specify the Doe and Roe Defendants when their identities become known.
9. On or about April 1, 2014, Defendants, were the owners, employers, family members and/or operators of a motor vehicle, while in the course and scope of employment and/or family purpose 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.

///

///

///

FIRST CAUSE OF ACTION

Negligence Against Employee Defendant, DAVID E. LUJAN

10. Plaintiff incorporates paragraphs 1 through 9 of the Complaint as though said paragraphs were fully set forth herein.
11. Defendant DAVID E. LUJAN owed Plaintiff a duty of care. Defendant DAVID E. LUJAN breached that duty of care.
12. As a direct and proximate result of the negligence of Defendant, Plaintiff was seriously injured and caused to suffer great pain of body and mind, some of which conditions are permanent and disabling all to her general damage in an amount in excess of \$10,000.00.

SECOND CAUSE OF ACTION

Negligence Per Se Against Employee Defendant, DAVID E. LUJAN

13. Plaintiff incorporates paragraphs 1 through 12 of the Complaint as though said paragraphs were fully set forth herein.
14. The acts of Defendant DAVID E. LUJAN as described herein violated the traffic laws of the State of Nevada and Clark County, constituting negligence per se, and Plaintiff has been damaged as a direct and proximate result thereof in an amount in excess of \$10,000.00.

THIRD CAUSE OF ACTION

**Vicarious Liability/Respondeat Superior Against Defendant
HARVEST MANAGEMENT SUB LLC.**

15. Plaintiff incorporates paragraphs 1 through 14 of the Complaint as though said paragraphs were fully set forth herein.
16. Plaintiff is informed and believes that DAVID E. LUJAN was employed as a driver for Defendant HARVEST MANAGEMENT SUB LLC.
17. At all times mentioned herein, Defendant HARVEST MANAGEMENT SUB LLC. was the owner of, or had custody and control of, the Vehicle.
18. That Defendant HARVEST MANAGEMENT SUB LLC. did entrust the Vehicle to the control of Defendant DAVID E. LUJAN.

- 1 19. That Defendant DAVID E. LUJAN was incompetent, inexperienced, or reckless in
2 the operation of the Vehicle.
- 3 20. That Defendant HARVEST MANAGEMENT SUB LLC. actually knew, or by the
4 exercise of reasonable care should have known, that Defendant DAVID E. LUJAN
5 was incompetent, inexperienced, or reckless in the operation of motor vehicles.
- 6 21. That Plaintiff was injured as a proximate consequence of the negligence and
7 incompetence of Defendant DAVID E. LUJAN, concurring with the negligent
8 entrustment of the Vehicle by Defendant HARVEST MANAGEMENT SUB LLC..
- 9 22. That as a direct and proximate cause of the negligent entrustment of the Vehicle by
10 Defendant HARVEST MANAGEMENT SUB LLC. to Defendant DAVID E.
11 LUJAN, Plaintiff has been damaged in an amount in excess of \$10,000.00.

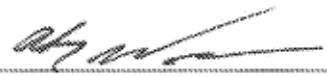
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 14 1. General damages in an amount in excess of \$10,000.00;
- 15 2. Special damages for medical and incidental expenses incurred and to be incurred;
- 16 3. Special damages for lost earnings and earning capacity;
- 17 4. Attorney's fees and costs off suit incurred herein; and
- 18 5. For such other and further relief as the Court may deem just and proper.
- 19

20 DATED this 20 day of May, 2015.

RICHARD HARRIS LAW FIRM

21
22
23 
24 ADAM W. WILLIAMS, ESQ.
25 Nevada Bar No. 13617
26 801 S. Fourth Street
27 Las Vegas, Nevada 89101
28 *Attorneys for Plaintiff*

IAFD
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Attorneys for Plaintiff

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.:
DEPT. NO.:

**INITIAL APPEARANCE FEE
DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

AARON M. MORGAN \$270.00

TOTAL REMITTED: \$270.00

DATED this 20 day of May, 2015.

RICHARD HARRIS LAW FIRM


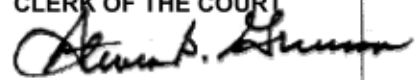

ADAM W. WILLIAMS
Nevada Bar No. 13617
801 S. Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Exhibit 2



Richard Harris Law Firm
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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

PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

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

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

NOTICE OF MOTION

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

Dated this ____ day of July, 2018.

MARQUIS AURBACH COFFING

By _____

Micah S. Echols, Esq.

Nevada Bar No. 8437

Tom W. Stewart, Esq.

Nevada Bar No. 14280

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Plaintiff, Aaron M. Morgan

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

7 **II. FACTUAL BACKGROUND**

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

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

23 **III. PROCEDURAL HISTORY**

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

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

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

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

6 [Lujan]: Yes.

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

8 [Lujan]: I was the bus driver.

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

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

12 [Morgan's counsel]: Okay.

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

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

16 [Lujan]: Yes, sir.³

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

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

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

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

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

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

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

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

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

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

14 IV. LEGAL ARGUMENT

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

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

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

27 ⁷ See **Exhibit 1**.

28 ⁸ *Id.*

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

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

12 **V. CONCLUSION**

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

17 Dated this 30th day of July, 2018.

18 MARQUIS AURBACH COFFING

19
20 By /s/ Micah S. Echols

21 Micah S. Echols, Esq.
22 Nevada Bar No. 8437
23 Tom W. Stewart, Esq.
24 Nevada Bar No. 14280
25 10001 Park Run Drive
26 Las Vegas, Nevada 89145
27 Attorneys for Plaintiff, Aaron M. Morgan
28

CERTIFICATE OF SERVICE

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

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

Bryan A. Boyack, Esq.	bryan@richardharrislaw.com
Benjamin Cloward	Benjamin@richardharrislaw.com
Olivia Bivens	olivia@richardharrislaw.com
Shannon Truscello	Shannon@richardharrislaw.com
Tina Jarchow	tina@richardharrislaw.com
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<i>Attorneys for Plaintiff, Aaron Morgan</i>	

Doug Gardner, Esq.	dgardner@rsglawfirm.com
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Jennifer Meacham	jmeacham@rsglawfirm.com
Lisa Richardson	lrichardson@rsglawfirm.com
<i>Attorneys for Defendant David E. Lujan</i>	

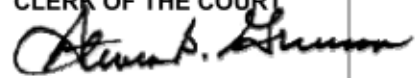
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

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

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

Exhibit 3



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

6 8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

7 Telephone: 702.562.8820

Facsimile: 702.562.8821

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,

Case No. A-15-718679-C

Dept. No. XI

16 vs.

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

20 Defendants.

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.

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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:

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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

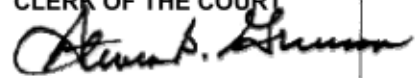
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Attorney for Defendant
DAVID E. LUJAN

/s/ Josephine Baltazar
Employee of BAILEY ♦ KENNEDY



ORDR

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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. ~~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.

///

2344

11-26-18 10:47 RCVD

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.

20 By: 
21 MICAH S. ECHOLS

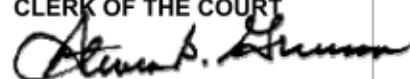
22 TOM W. STEWART

23 1001 Park Run Drive

24 Las Vegas, Nevada 89145

25 *Attorneys for Plaintiff Aaron Morgan*

Exhibit 4

**Marquis Aurbach Coffing**

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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 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.
12 Nevada Bar No. 14280
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:¹

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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>	

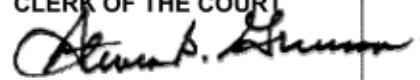
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Pauline Batts	pbatts@rsgnlaw.com
Jennifer Meacham	jmeacham@rsglawfirm.com
Lisa Richardson	lrichardson@rsglawfirm.com
<i>Attorneys for Defendant David E. Lujan</i>	

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

¹ 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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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,¹ and the issues having been duly tried and the jury having duly rendered its verdict.²

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
Total Damages	\$2,980,980.00

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

PRE-JUDGMENT INTEREST ON PAST DAMAGES:

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

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

[Pre-Judgment Interest is approximately \$62.23 per day]

PLAINTIFF'S TOTAL JUDGMENT

Plaintiff's total judgment is as follows:

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

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

² 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 12th 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



2355

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	TOTAL	\$ <u>2,980,980.</u> <u>00</u>

15

16 DATED this 9th day of April, 2018.

17

18 Arthur J. St. Laurent

19 FOREPERSON

20 ARTHUR J. ST. LAURENT

21

22

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27

28

Josephine Baltazar

From: efiling@nvcourts.nv.gov
Sent: Thursday, January 31, 2019 9:15 AM
To: BKfederaldownloads
Subject: Notification of Electronic Filing in MORGAN VS. LUJAN, No. 77753

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Jan 31 2019 09:14 a.m.

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

Document Category: Docketing Statement
Submitted by: Micah S. Echols
Official File Stamp: Jan 31 2019 09:12 a.m.
Filing Status: **Accepted and Filed**

Docket Text: Filed Docketing Statement Docketing Statement

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
Kathleen Wilde

2357

Bryan Boyack
Dennis Kennedy
Andrea Champion
Micah Echols
Sarah Harmon

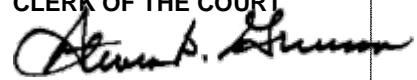
No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

Ara Shirinian

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 31

TAB 31

**Marquis Aurbach Coffing**

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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 ORDER REGARDING
PLAINTIFF'S COUNTER-MOTION TO TRANSFER CASE BACK TO
CHIEF JUDGE BELL FOR RESOLUTION OF POST-VERDICT ISSUES**

///

///

MARQUIS AURBACH COFFING

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By: Kathleen Wilde
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Kathleen A. Wilde, Esq.
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Las Vegas, Nevada 89145
Attorneys for Plaintiff, Aaron Morgan

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFF'S 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 7th day of February, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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Lisa Richardson	lrichardson@rsglawfirm.com

Attorneys for Defendant David E. Lujan



Kim Dean, an employee of
Marquis Aurbach Coffing

¹ 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).

Steven D. Grierson

Marquis Aurbach Coffing

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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.

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

**ORDER REGARDING PLAINTIFF'S
COUNTER-MOTION TO TRANSFER
CASE BACK TO CHIEF JUDGE BELL
FOR RESOLUTION OF POST-VERDICT
ISSUES**

Plaintiff Aaron M. Morgan's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues came before this Court during its Chambers' Calendar on January 25, 2019. The Court, having reviewed the pleadings and papers on file and for good cause appearing, hereby makes the following Findings of Fact, Conclusions of Law, and Order:

I.
FINDINGS OF FACT

1. On April 1, 2014, Plaintiff was injured after his vehicle collided with a Montara Meadows shuttle bus at the intersection of McLeod Drive and Tompkins Avenue.

2. On May 5, 2015, Plaintiff filed a complaint against the driver of the shuttle bus, David Lujan, and Mr. Lujan's employer, Harvest Management Sub LLC ("Harvest Management") in which he asserted three causes of action.

3. The case was randomly assigned to the Honorable Judge Bell, who presides in Department VII.

4. The case proceeded to a trial in November 2017, though Judge Bell declared a mistrial on day three.

5. A second trial took place in April 2018.

6. The parties disagree as to the events surrounding the special verdict form. According to Plaintiff, Judge Bell *sua sponte* prepared a special verdict form on the last day of trial which listed only Mr. Lujan in the caption and used the singular word "Defendant" throughout. In a discussion regarding the special verdict form, Judge Bell noted "I know it doesn't have the right caption," before asking counsel if the form "look[ed] sort of okay." Counsel for the parties voiced no concerns. The form was then inadvertently given to the jury without updating the language to list both Defendants.

7. By contrast, Harvest Management contends that Judge Bell provided the Parties with a sample special verdict form that she had recently used in a another trial involving similar issues, informing the Parties that it was "just what we had laying around" and that "it's just what we used in the last trial which was similar sort of." The only revision that Mr. Morgan requested be made to the special verdict form was for past and future medical expenses and past and future pain and suffering to be separated as different categories of damages. Mr. Morgan did not request any revisions to the caption or the other substantive provisions of the special verdict form that referred to a singular defendant or the sole claim of negligence.

1 8. Regardless of how the special verdict form was prepared, the jury ultimately
2 completed the special verdict form to read that "Defendant" (written in the singular) was 100%
3 at fault and Plaintiff was entitled to \$2,980,980.00 for his damages.

4 9. On July 2, 2018, the case was reassigned to Department XI after Judge Bell
5 assumed the role of Chief Judge for the Eighth Judicial District Court.

6 10. On July 30, 2018, Plaintiff filed a Motion for Entry of Judgment in which he
7 urged this Court to enter a written judgment against both Defendants or, in the alternative, make
8 an explicit finding in accordance with NRCP 49(a).

9 11. After Plaintiff's Motion for Entry of Judgment was fully briefed and argued, this
10 Court denied Plaintiff's Motion and entered a Judgment on the Jury Verdict against only
11 Defendant Lujan which totaled \$3,046,382.72.

12 12. On December 21, 2018, Defendant Harvest Management filed a Motion for Entry
13 of Judgment in which it argued that Plaintiff abandoned his claims against Harvest Management
14 or, at the very least, failed to produce evidence at trial sufficient to prove a claim for vicarious
15 liability / respondeat superior.

16 13. Plaintiff opposed the motion and filed a counter-motion in which he argued that
17 Judge Bell is better equipped to rule upon the request for entry of judgment because Judge Bell
18 presided over the earlier case proceedings, including the jury trial. In addition, Plaintiff argued
19 that transferring the case back to Judge Bell is consistent with precedent which recognizes the
20 special knowledge which presiding judges have regarding trials.

21 14. Defendant Lujan did not file a response to Plaintiff's counter-motion.

22 15. On January 23, 2019, Defendant Harvest Management filed a reply in support of
23 its motion and an opposition to Plaintiff's counter-motion. With respect to the counter-motion,
24 Harvest Management argued that Plaintiff was effectively seeking reconsideration because it was
25 unhappy regarding this Court's previous decision. Further, Harvest Management argued that the
26 transfer was not necessary because this Court has the entire record of the case and is capable of
27 making a fully informed decision.
28

17. On January 29, 2019, this Court issued a Minute Order detailing its decision to transfer Harvest Management's Motion for Entry of Judgment to Chief Judge Bell for resolution.

CONCLUSIONS OF LAW

19. *Hornwood* is thus similar to a number of other Supreme Court decisions which recognize the unique insights and knowledge available to the judge who presides over a trial. *See, e.g., Winn v. Winn*, 86 Nev. 18, 20, 467 P.2d 601, 602 (1970) (“The trial judge’s perspective is much better than ours for we are confined to a cold, printed record.”); *Wittenberg v. Wittenberg*, 56 Nev. 442, 55 P.2d 619, 623 (1936) (“[M]uch must be left to the wisdom and experience of the presiding judge, who sees and hears the parties and their witnesses, scrutinizes their testimony and studies their demeanor.”).

21. Further, this Court finds that transfer of the pending motion to Judge Bell is both efficient and in the interest of justice.

For the reasons set forth above, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Counter-Motion to Transfer Case Back to Judge Bell for Resolution of Post-Verdict Issues is **GRANTED IN PART**.

1 IT IS FURTHER ORDERED that Defendant Harvest Management's Motion for Entry
2 of Judgment shall be referred to Judge Bell for further proceedings and a decision.

3 IT IS FURTHER ORDERED that Plaintiff's remaining request(s) for relief are
4 DENIED, and all other pending motions in this action and the remainder of this case continue to
5 be assigned to Department XI.

6 IT IS SO ORDERED this 5 day of February, 2019.

7 
8 _____
9 DISTRICT COURT JUDGE *gm*

10 Respectfully submitted by:

11 MARQUIS AURBACH COFFING

12 By: Kathleen Wilde
13 Micah S. Echols, Esq.
14 Nevada Bar No. 8437
15 Kathleen A. Wilde, Esq.
16 Nevada Bar No. 12522
17 10001 Park Run Drive
18 Las Vegas, Nevada 89145
19 *Attorneys for Plaintiff, Aaron Morgan*

20 Approved as to form and content this 1st day of February, 2019.

21 BAILEY KENNEDY

22 By: Sarah E. Harmon
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Management Sub LLC*

From: efilingmail@tylerhost.net
Sent: Thursday, February 07, 2019 3:56 PM
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Subject: Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Notice of Entry of Order - NEOJ (CIV), Envelope Number: 3820648

Notification of Service

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

Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	2/7/2019 3:55 PM PST
Filing Type	Notice of Entry of Order - NEOJ (CIV)
Filing Description	Notice of Entry of Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues
Filed By	Peter Floyd
Service Contacts	David E Lujan: Lisa Richardson (lrichardson@rsglawfirm.com) Jennifer Meacham (jmeacham@rsglawfirm.com) Harvest Management Sub LLC: Sarah Harmon (sharmon@baileykennedy.com) Dennis Kennedy (dkennedy@baileykennedy.com) Joshua Gilmore (jgilmore@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

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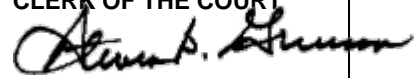
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TAB 32

TAB 32



1 **NOTC**

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9 *Attorneys for Defendant*

HARVEST MANAGEMENT SUB LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

12 AARON M. MORGAN, individually,

13 Plaintiff,

14 vs.

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

19 Defendants.

Case No. A-15-718679-C

Dept. No. XI

Dept. No. VII

**DEFENDANT HARVEST
MANAGEMENT SUB LLC'S NOTICE
OF OBJECTION AND RESERVATION
OF RIGHTS TO ORDER REGARDING
PLAINTIFF'S COUNTER-MOTION TO
TRANSFER CASE BACK TO CHIEF
JUDGE BELL FOR RESOLUTION OF
POST-VERDICT ISSUES**

22 Defendant Harvest Management Sub LLC hereby files this Notice of Objection and
23 Reservation of Rights to the February 7, 2019 Order Regarding Plaintiff's Counter-Motion to
24 Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues. This action was
25 transferred to Department XI on July 2, 2018, and this Court is more than capable of resolving any

26 ///

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and all motions and issues before it. No legal basis or need was demonstrated for the transfer of one pending motion in this action to another judge for determination.

DATED this 7th day of February, 2019.

BAILEY❖KENNEDY

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

Attorneys for Defendant
HARVEST MANAGEMENT SUB LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 7th day of February, 2019, service of the foregoing **DEFENDANT HARVEST MANAGEMENT SUB LLC'S NOTICE OF OBJECTION AND RESERVATION OF RIGHTS TO ORDER REGARDING PLAINTIFF'S COUNTER-MOTION TO TRANSFER CASE BACK TO CHIEF JUDGE BELL FOR RESOLUTION OF POST-VERDICT ISSUES** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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/s/ Josephine Baltazar
Employee of BAILEY❖KENNEDY

Josephine Baltazar

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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: 3818942



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Filing Details

Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	2/7/2019 1:34 PM PST
Filing Type	Notice - NOTC (CIV)
Filing Description	Defendant Harvest Management Sub LLC's Notice of Objection and Reservation of Rights to Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues
Filed By	Josephine Baltazar
Service Contacts	David E Lujan: Lisa Richardson (lrichardson@rsglawfirm.com) Jennifer Meacham (jmeacham@rsglawfirm.com) Harvest Management Sub LLC: Sarah Harmon (sharmon@baileykennedy.com) Dennis Kennedy (dkennedy@baileykennedy.com) Joshua Gilmore (jgilmore@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

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TAB 33

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HARVEST MANAGEMENT SUB LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON M. MORGAN, individually,

Appellant,

vs.

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

Respondents.

Supreme Court No. 77753

District Court No. A-15-718679-C

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

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

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

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

3 DATED this 11th day of February, 2019.

4 BAILEY ❖ KENNEDY

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

10 *Attorneys for Respondent*
11 HARVEST MANAGEMENT SUB
12 LLC
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17

CERTIFICATE OF SERVICE

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

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Settlement Program Mediator

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

EXHIBIT A

EXHIBIT A

RESPONDENT'S RESPONSE TO DOCKETING STATEMENT

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

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

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

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

Josephine Baltazar

From: efiling@nvcourts.nv.gov
Sent: Monday, February 11, 2019 3:12 PM
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Subject: Notification of Electronic Filing in MORGAN VS. LUJAN, No. 77753

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Feb 11 2019 03:11 p.m.

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

Document Category: Response to Docketing Statement
Submitted by: Dennis L Kennedy
Official File Stamp: Feb 11 2019 03:09 p.m.
Filing Status: **Accepted and Filed**

Docket Text: Filed Response to Docketing Statement Respondent Harvest Management Sub LLC's Response to Docketing Statement

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

2379

Kathleen Wilde
Bryan Boyack
Dennis Kennedy
Andrea Champion
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:

Ara Shirinian

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Case No. _____

IN THE SUPREME COURT OF NEVADA

HARVEST MANAGEMENT SUB LLC,
Petitioner,

Electronically Filed
Apr 18 2019 01:47 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 13 OF 14**

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Attorneys for Petitioner
HARVEST MANAGEMENT SUB LLC

April 18, 2019

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 13 OF 14

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29	Settlement Program Early Case Assessment Report (January 24, 2019)	2309-2311
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32	Defendant Harvest Management Sub LLC's Notice of Objection and Reservation of Rights to Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues (February 7, 2019)	2369-2373
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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

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Respondent Harvest Management Sub LLC's Motion to Dismiss Appeal as Premature (January 23, 2019)	13	27	2172-2284
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TAB 27

TAB 27

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HARVEST MANAGEMENT SUB LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON M. MORGAN, individually,

Appellant,

vs.

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

Respondents.

Supreme Court No. 77753

District Court No. A-15-718679-C

**RESPONDENT HARVEST
MANAGEMENT SUB LLC'S
MOTION TO DISMISS APPEAL
AS PREMATURE**

Electronically Filed
Jan 23 2019 03:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT HARVEST MANAGEMENT SUB LLC'S
MOTION TO DISMISS APPEAL AS PREMATURE**

Respondent Harvest Management Sub LLC (“Harvest”), by and through its attorneys, the law firm of Bailey ♦ Kennedy, hereby moves to dismiss the Notice of Appeal filed by Appellant Aaron M. Morgan (“Mr. Morgan”) on December 18, 2018. Mr. Morgan’s Notice of Appeal is premature, as the district court has not yet entered a final judgment in the underlying action. Specifically, Mr. Morgan’s claim against Harvest remains pending, subject to the district court’s resolution of Harvest’s Motion for Entry of Judgment, which is scheduled to be heard in chambers on January 25, 2019. Moreover, Mr. Morgan did not seek Nevada Rule of Civil Procedure 54(b) certification for the order or judgment appealed from. As such, this Court lacks jurisdiction over the appeal.

DATED this 23rd day of January, 2019.

BAILEY ♦ KENNEDY

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

Attorneys for Respondent
HARVEST MANAGEMENT SUB
LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On May 20, 2015, Mr. Morgan filed a Complaint against Harvest and Respondent David E. Lujan (“Mr. Lujan”). (Ex. 1.¹) Mr. Morgan alleged claims for negligence and negligence per se against Mr. Lujan, and a claim for negligent entrustment against Harvest.² (Ex. 1, at 3:1-4:12.) In April 2018, this underlying case was tried to a jury, and the only claims presented to the jury for determination were the claims of negligence and negligence per se alleged against Mr. Lujan. (Ex. 2.³)

On July 30, 2018, Mr. Morgan filed a Motion for Entry of Judgment seeking to have the district court enter the jury’s verdict against Harvest, despite the fact that no claim for relief against Harvest was proven at trial or presented

///

¹ A true and correct copy of the Complaint (May 20, 2015), filed in the underlying action, is attached hereto as Exhibit 1.

² The claim against Harvest is erroneously titled “vicarious liability/ respondeat superior,” but it is clearly a claim for negligent entrustment.

³ A true and correct copy of the Special Verdict (Apr. 9, 2018), filed in the underlying action, is attached hereto as Exhibit 2.

1 to the jury for determination. (Ex. 3⁴; Ex. 4.⁵) On November 28, 2018, the
2 district court denied Mr. Morgan’s Motion, holding that the failure to include
3 the claim against Harvest in the Special Verdict form was not a “clerical error,”
4 that no claim against Harvest had been presented to the jury for determination,
5 and that a judgment could not be entered against Harvest based on the jury’s
6 verdict. (Ex. 5⁶; Ex. 6,⁷ at 9:8-20.) Further, when Harvest sought clarification
7 whether the judgment against Mr. Lujan would also dismiss all claims alleged
8 against Harvest, the district court explicitly instructed Harvest that it would
9 have to file a motion seeking such relief. (Ex. 6, at 9:18-10:8.)

10 On December 17, 2018, Mr. Morgan filed a Judgment Upon the Jury
11 Verdict against Mr. Lujan. (Ex. 7.⁸) This judgment has not yet been entered
12 by the district court.

13 ⁴ A true and correct copy of Plaintiff’s Motion for Entry of Judgment (July 30, 2018), filed in the
14 underlying action, is attached hereto as Exhibit 3. The exhibits to this motion have been omitted in the interest
of judicial economy and efficiency.

15 ⁵ A true and correct copy of Defendant Harvest Management Sub LLC’s Opposition to Plaintiff’s
Motion for Entry of Judgment (Aug. 16, 2018), filed in the underlying action, is attached hereto as Exhibit 4.
The exhibits to this motion have been omitted in the interest of judicial economy and efficiency.

16 ⁶ A true and correct copy of the Notice of Entry of Order on Plaintiff’s Motion for Entry of Judgment
(Nov. 28, 2018), filed in the underlying action, is attached hereto as Exhibit 5.

17 ⁷ A true and correct copy of excerpts from the Transcript of the Hearing on Plaintiff’s Motion for Entry
of Judgment (Jan. 18, 2019), is attached as Exhibit 6.

⁸ A true and correct copy of the Judgment Upon the Jury Verdict (Dec. 17, 2018), filed in the underlying
action, is attached as Exhibit 7.

1 On December 18, 2018, Mr. Morgan filed a Notice of Appeal from the
2 November 28, 2018 Notice of Entry of Order Denying Plaintiff's Motion for
3 Entry of Judgment and from the December 17, 2018 Judgment Upon the Jury
4 Verdict. (Ex. 8.⁹)

5 On December 21, 2018, Harvest filed a Motion for Entry of Judgment
6 against Mr. Morgan as to the claim for relief that it seemingly abandoned
7 and/or failed to prove at trial. (Ex. 9.¹⁰) This motion is fully briefed and
8 scheduled to be heard, in chambers, on January 25, 2019.

9 Mr. Morgan has not yet filed a Docketing Statement establishing this
10 court's jurisdiction for the appeal. The Docketing Statement was originally
11 scheduled to be filed on January 16, 2019, but Mr. Morgan requested and was
12 granted an extension until January 30, 2019.

13 ///

14 ///

16 ⁹ A true and correct copy of the Notice of Appeal (Dec. 18, 2018), filed in the underlying action, is attached as Exhibit 8.

17 ¹⁰ A true and correct copy of Defendant Harvest Management Sub LLC's Motion for Entry of Judgment (Dec. 21, 2018), filed in the underlying action, is attached as Exhibit 9. The exhibits to the motion have been omitted in the interest of judicial economy and efficiency.

II. ARGUMENT

Nevada Rule of Appellate Procedure 3A sets forth the judgments and orders from which a party may appeal. An order denying entry of judgment is not an appealable order under the Rules, and only final judgments (or interlocutory judgments in certain real property actions) are appealable. NRAP 3A(b)(1).

It is well-settled that “when multiple parties are involved in an action, a judgment is not final unless the rights and liabilities of all parties are adjudicated.” *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d 196, 197 (1979); *see also Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (“[A] final judgment is one that disposes of all issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs.”). When a judgment disposes of less than all of the claims against all of the parties, a party must seek certification of the judgment as final pursuant to Nevada Rule of Civil Procedure 54(b) before it can file an appeal from the judgment. “*In the absence of such determination and direction, any order or other form of*

1 *decision, however designated, which adjudicates the rights and liabilities of*
2 *fewer than all the parties shall not terminate the action as to any of the parties*
3 *. . . .” NRCP 54(b) (emphasis added).*

4 Here, neither the Order Denying Plaintiff’s Motion for Entry of
5 Judgment (“Order”) nor the Judgment Upon Jury Verdict (“Judgment”),
6 individually or considered together, constitutes a final judgment. Neither the
7 Order nor the Judgment disposes of all of the claims in the case. Mr. Morgan’s
8 claim against Harvest remains unresolved and is the subject of a pending
9 Motion for Entry of Judgment in the district court. The district court clearly
10 informed the Parties in November 2018, before Mr. Morgan filed his Notice of
11 Appeal, that his claim against Harvest remained unresolved by the jury’s
12 verdict and that additional motions were necessary for its resolution. Mr.
13 Morgan failed to seek Rule 54(b) certification for either the Order or the
14 Judgment prior to filing his Notice of Appeal. Therefore, Mr. Morgan’s appeal
15 is premature and this Court lacks jurisdiction to hear the appeal.

16 ///

17 ///

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 23rd day of January, 2019, service of the foregoing **RESPONDENT HARVEST MANAGEMENT SUB LLC'S MOTION TO DISMISS AS PREMATURE** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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

Email: mechols@maclaw.com
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Attorneys for Respondent
DAVID E. LUJAN

ARA H. SHIRINIAN
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Las Vegas, Nevada 89135

Email: arashirinian@cox.net
Settlement Program Mediator

/s/ Josephine Baltazar
Employee of BAILEY❖KENNEDY

EXHIBIT 1

EXHIBIT 1

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

Attorney (name/address/phone):

Richard Harris Law Firm

801 S. 4th Street

Las Vegas, Nevada 89101

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

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <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
Probate Probate (select case type and estate value) <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 Estate Value <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	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <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	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <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		Other Civil Filing <input type="checkbox"/> Other Civil Filing <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.


CLERK OF THE COURT

COMP
ADAM W. WILLIAMS, ESQ.
Nevada Bar No. 13617
RICHARD HARRIS LAW FIRM
801 South Fourth St.
Las Vegas, NV 89101
Tel. (702) 444-4444
Fax (702) 444-4455
Email Adam.Williams@richardharrislaw.com
Attorneys for Plaintiff

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.: VII

COMPLAINT

COMES NOW, Plaintiff AARON M. MORGAN, individually, by and through his attorney of record ADAM W. WILLIAMS, ESQ. of the RICHARD HARRIS LAW FIRM, and complains and alleges as follows:

JURISDICTION

1. That at all times relevant herein, Plaintiff AARON M. MORGAN (hereinafter referred to as "Plaintiff") is, a resident of Clark County, Nevada.
2. That at all times relevant herein, Defendant, DAVID E. LUJAN was, and is, a resident of Clark County, Nevada.

- 1 3. That at all times relevant herein, Defendant, HARVEST MANAGEMENT SUB
- 2 LLC, was, and is, a foreign limited-liability Company licensed and actively
- 3 conducting business in Clark County, Nevada
- 4 4. All the facts and circumstances that gave rise to the subject lawsuit occurred in Clark
- 5 County, Nevada.
- 6
- 7 5. The identities of Defendant DOES 1 through 20, and ROE BUSINESS ENTITIES 1
- 8 through 20, are unknown at this time and are individuals, corporations, associations,
- 9 partnerships, subsidiaries, holding companies, owners, predecessor or successor
- 10 entities, joint venturers, parent corporations or related business entities of
- 11 Defendants, inclusive, who were acting on behalf of or in concert with, or at the
- 12 direction of Defendants and are responsible for the injurious activities of the other
- 13 Defendants.
- 14 6. Plaintiff alleges that each named and Doe and Roe Defendant negligently, willfully,
- 15 intentionally, recklessly, vicariously, or otherwise, caused, directed, allowed or set in
- 16 motion the injurious events set forth herein.
- 17 7. Each named and Doe and Roe Defendant is legally responsible for the events and
- 18 happenings stated in this Complaint, and thus proximately caused injury and
- 19 damages to Plaintiff.
- 20 8. Plaintiff requests leave of the Court to amend this Complaint to specify the Doe and
- 21 Roe Defendants when their identities become known.
- 22 9. On or about April 1, 2014, Defendants, were the owners, employers, family
- 23 members and/or operators of a motor vehicle, while in the course and scope of
- 24 employment and/or family purpose and/or other purpose, which was entrusted and/or
- 25 driven in such a negligent and careless manner so as to cause a collision with the
- 26 vehicle occupied by Plaintiff.

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

Negligence Against Employee Defendant, DAVID E. LUJAN

10. Plaintiff incorporates paragraphs 1 through 9 of the Complaint as though said paragraphs were fully set forth herein.
11. Defendant DAVID E. LUJAN owed Plaintiff a duty of care. Defendant DAVID E. LUJAN breached that duty of care.
12. As a direct and proximate result of the negligence of Defendant, Plaintiff was seriously injured and caused to suffer great pain of body and mind, some of which conditions are permanent and disabling all to her general damage in an amount in excess of \$10,000.00.

SECOND CAUSE OF ACTION

Negligence Per Se Against Employee Defendant, DAVID E. LUJAN

13. Plaintiff incorporates paragraphs 1 through 12 of the Complaint as though said paragraphs were fully set forth herein.
14. The acts of Defendant DAVID E. LUJAN as described herein violated the traffic laws of the State of Nevada and Clark County, constituting negligence per se, and Plaintiff has been damaged as a direct and proximate result thereof in an amount in excess of \$10,000.00.

THIRD CAUSE OF ACTION

**Vicarious Liability/Respondeat Superior Against Defendant
HARVEST MANAGEMENT SUB LLC.**

15. Plaintiff incorporates paragraphs 1 through 14 of the Complaint as though said paragraphs were fully set forth herein.
16. Plaintiff is informed and believes that DAVID E. LUJAN was employed as a driver for Defendant HARVEST MANAGEMENT SUB LLC.
17. At all times mentioned herein, Defendant HARVEST MANAGEMENT SUB LLC. was the owner of, or had custody and control of, the Vehicle.
18. That Defendant HARVEST MANAGEMENT SUB LLC. did entrust the Vehicle to the control of Defendant DAVID E. LUJAN.

19. That Defendant DAVID E. LUJAN was incompetent, inexperienced, or reckless in the operation of the Vehicle.
20. That Defendant HARVEST MANAGEMENT SUB LLC. actually knew, or by the exercise of reasonable care should have known, that Defendant DAVID E. LUJAN was incompetent, inexperienced, or reckless in the operation of motor vehicles.
21. That Plaintiff was injured as a proximate consequence of the negligence and incompetence of Defendant DAVID E. LUJAN, concurring with the negligent entrustment of the Vehicle by Defendant HARVEST MANAGEMENT SUB LLC..
22. That as a direct and proximate cause of the negligent entrustment of the Vehicle by Defendant HARVEST MANAGEMENT SUB LLC. to Defendant DAVID E. LUJAN, Plaintiff has been damaged in an amount in excess of \$10,000.00.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

1. General damages in an amount in excess of \$10,000.00;
2. Special damages for medical and incidental expenses incurred and to be incurred;
3. Special damages for lost earnings and earning capacity;
4. Attorney's fees and costs of suit incurred herein; and
5. For such other and further relief as the Court may deem just and proper.

DATED this 20 day of May, 2015.

RICHARD HARRIS LAW FIRM



ADAM W. WILLIAMS, ESQ.
Nevada Bar No. 13617
801 S. Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

1 **IAFD**

2 ADAM W. WILLIAMS, ESQ.

3 Nevada Bar No. 13617

4 RICHARD HARRIS LAW FIRM

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6 Las Vegas, NV 89101

7 Tel. (702) 444-4444

8 Fax (702) 444-4455

9 Email Adam.Williams@richardharrislaw.com

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 AARON M. MORGAN, individually

14 Plaintiff,

15 vs.

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

21 Defendants.

CASE NO.:

DEPT. NO.:

**INITIAL APPEARANCE FEE
DISCLOSURE**

22 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
23 parties appearing in the above entitled action as indicated below:

24 AARON M. MORGAN


\$270.00

25 **TOTAL REMITTED:**

\$270.00

26 DATED this 20 day of May, 2015.

RICHARD HARRIS LAW FIRM

27 
ADAM W. WILLIAMS

Nevada Bar No. 13617

801 S. Fourth Street

Las Vegas, Nevada 89101

Attorneys for Plaintiff

EXHIBIT 2

EXHIBIT 2

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



2189

H000815

2

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

2 Defendant: 100

3 Plaintiff: 0

4 Total: 100%

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

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

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

8 The Court will perform this task.)

9 Past Medical Expenses \$ 208,480. 00

10 Future Medical Expenses \$ 1,156,500. 00

11 Past Pain and Suffering \$ 116,000. 00

12 Future Pain and Suffering \$ 1,500,000. 00

13 TOTAL \$ 2,980,980. 00

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

17
18
19 Arthur J. St. Laurent
FOREPERSON

20 ARTHUR J. ST. LAURENT

21

22

23

24

25

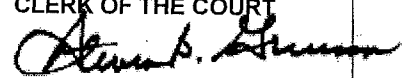
26

27

28

EXHIBIT 3

EXHIBIT 3

**Richard Harris Law Firm**

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

AARON M. MORGAN, individually,

Plaintiff,

vs.

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

Defendants.

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

PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

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

Page 1 of 7.

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

3 **NOTICE OF MOTION**

4 You and each of you, will please take notice that **PLAINTIFF'S MOTION FOR**
5 **ENTRY OF JUDGMENT** will come on regularly for hearing on the
6 04 day of Sept., 2018 at the hour of 9:00 A .m. or as soon thereafter as
7 counsel may be heard, in Department 11 in the above-referenced Court.

8 Dated this ____ day of July, 2018.

9
10 MARQUIS AURBACH COFFING

11 By _____
12 Micah S. Echols, Esq.
13 Nevada Bar No. 8437
14 Tom W. Stewart, Esq.
15 Nevada Bar No. 14280
16 10001 Park Run Drive
17 Las Vegas, Nevada 89145
18 *Attorneys for Plaintiff, Aaron M. Morgan*

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

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

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

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

7 **II. FACTUAL BACKGROUND**

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

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

23 **III. PROCEDURAL HISTORY**

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

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

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

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

6 [Lujan]: Yes.

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

8 [Lujan]: I was the bus driver.

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

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

11 [Morgan's counsel]: Okay.

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

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

15 [Lujan]: Yes, sir.³

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

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

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

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

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

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

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

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

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

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

14 IV. LEGAL ARGUMENT

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

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

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

27 ⁷ See **Exhibit 1**.

28 ⁸ *Id.*

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

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

12 **V. CONCLUSION**

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

17 Dated this 30th day of July, 2018.

18 MARQUIS AURBACH COFFING

19
20 By /s/ Micah S. Echols

21 Micah S. Echols, Esq.

22 Nevada Bar No. 8437

23 Tom W. Stewart, Esq.

24 Nevada Bar No. 14280

25 10001 Park Run Drive

26 Las Vegas, Nevada 89145

27 Attorneys for Plaintiff, Aaron M. Morgan

CERTIFICATE OF SERVICE

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

Andrea M. Champion	achampion@baileykennedy.com
Joshua P. Gilmore	kgilmore@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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Leah Dell, an employee of
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⁹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT 4

EXHIBIT 4



1 **OPPS**

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21
22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24 AARON M. MORGAN, individually,

25 Plaintiff,

26 vs.

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

Defendants.

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

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

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

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

25 ///

26 ///

27 ///

28 ///

1 This Opposition 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.¹

3 DATED this 16th day of August, 2018.

4 BAILEY ♦ KENNEDY

5
6 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

JOSHUA P. GILMORE

7 ANDREA M. CHAMPION

8
9 *Attorneys for Defendants*

HARVEST MANAGEMENT SUB LLC

10
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

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

- 17 • He did not reference Harvest in his introductory remarks to the jury regarding the
18 identity of the Parties and expected witnesses, (Ex. 10,² 17:2-24, 25:7-26:3);
- 19 • He did not mention Harvest or his claim against Harvest during jury voir dire, (*id.* at
20 33:2-93:22, 97:6-188:21, 191:7-268:12; Ex. 11,³ at 3:24-65:7, 67:4-110:22);
- 21 • He did not reference Harvest or his claim against Harvest in his opening statement,
22 (Ex. 11, at 126:7-145:17);
- 23 • He offered no evidence regarding any liability of Harvest for his damages;

24
25 ¹ The Motion is currently scheduled to be heard in chambers by the Court on September 14, 2018. Harvest
26 respectfully requests that, if the Court finds it appropriate, the Motion be set for hearing so that the parties can be heard
27 on this important issue.

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

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

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

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

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

///

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

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

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

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

18 II. RELEVANT FACTS AND PROCEDURAL HISTORY

19 A. The Pleadings.

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

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

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

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

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

8 (*Id.* at ¶ 9 (emphasis added).)

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

22 ///

23 ///

24 ///

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

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

1 **B. Discovery.**

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

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

12 Mr. Lujan was hired in 2009. As part of the qualification process, *a*
13 *pre-employment DOT drug test was conducted as well as a criminal*
14 *background screen and a motor vehicle record.* Also, since he held a
15 CDL, an *inquiry with past/current employers within three years of the*
16 *date of application was conducted and were **satisfactory.*** A DOT
17 *physical medical certification was obtained and monitored for renewal*
18 *as required. MVR was ordered yearly to monitor activity of personal*
 *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.

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

22 ///

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

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

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

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

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

5 **C. The First Trial.**

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

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

19 BY MR. BOYACK:

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

21 A: Yes.

22 Q: And what was your employment?

A: I was the bus driver.

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

A: Harvest Management was our corporate office.

24 Q: Okay.

A: Montara Meadows is just the local--

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

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

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

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

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

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

5 A: Yes.

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

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

10 Q: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

27 **D. The Second Trial.**

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

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

///
28

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

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

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

9 THE COURT: All right. Thank you.

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

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

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

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

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

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

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

///

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

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

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

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

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

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

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

[MR. CLOWARD:]

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

[MS. JANSSEN:]

A: Yes.

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

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

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

A: Yes.

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

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

///

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

3 [MR. CLOWARD:]

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

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

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

9 A: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. RANDS: Yeah. That looks fine.

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

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

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

THE COURT: Yeah. Let me see.

MR. BOYACK: Just instead of the general.

THE COURT: That’s fine. That’s fine.

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

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

MR. BOYACK: Yeah.

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

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

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

MR. BOYACK: Right.

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

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

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

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

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

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

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

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

III. LEGAL ARGUMENT

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

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

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

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

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

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

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

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

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

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

10 (*Id.* at 635).

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

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

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

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

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

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

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

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

1 superior when its employee rear-ended the plaintiff while driving back from his lunch break in a
2 company vehicle because the test is not whether the employee is returning from his personal
3 undertaking to “*possibly* engage in work” but rather whether the employee *has* “returned to the zone
4 of his employment” and engaged in the employer’s business); *Richardson v. Glass*, 835 P.2d 835,
5 838 (N.M. 1992) (finding the employer was not vicariously liable for the employee’s accident during
6 his lunch break because there was no evidence of the employer’s control over the employee at the
7 time of the accident); *Gordon v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 411 So. 2d 1094, 1098
8 (La. Ct. App. 1982) (“Ordinarily, an employee who leaves his employer’s premises and takes his
9 noon hour meal at home or some other place of his own choosing is outside the course of his
10 employment from the time he leaves the work premises until he returns.”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 495 (emphasis added).

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

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

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

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

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

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

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

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

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

13 IV. CONCLUSION²⁵

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

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

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

3 DATED this 16th day of August, 2018.

4 BAILEY ♦ KENNEDY

5
6 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

JOSHUA P. GILMORE

7 ANDREA M. CHAMPION

8
9 *Attorneys for Defendants*

HARVEST MANAGEMENT SUB LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of August, 2018, service of the foregoing **DEFENDANT HARVEST MANAGEMENT SUB LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

DOUGLAS J. GARDNER	Email:
RANDS, SOUTH & GARDNER	
1055 Whitney Ranch Drive, Suite 220	<i>Attorney for Defendant</i>
Henderson, Nevada 89014	DAVID E. LUJAN

BENJAMIN P. CLOWARD	Email: Benjamin@richardharrislaw.com
BRYAN A. BOYACK	Bryan@richardharrislaw.com
RICHARD HARRIS LAW FIRM	
801 South Fourth Street	
Las Vegas, Nevada 89101	

and

MICAH S. ECHOLS	Email: Mechols@maclaw.com
TOM W. STEWART	Tstewart@maclaw.com
MARQUIS AURBACH	
COFFING P.C.	
1001 Park Run Drive	<i>Attorneys for Plaintiff</i>
Las Vegas, Nevada 89145	AARON M. MORGAN

/s/ Josephine Baltazar
Employee of BAILEY ♦ KENNEDY

Josephine Baltazar

From: efilngmail@tylerhost.net
Sent: Thursday, August 16, 2018 2:40 PM
To: Josephine Baltazar
Subject: Courtesy Notification for Case: A-15-718679-C; Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s); Envelope Number: 3011415



Courtesy Notification

Envelope Number: 3011415
Case Number: A-15-718679-C
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)


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

Filing Details	
Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	8/16/2018 1:02 PM PST
Filing Type	EFileAndServe
Filing Description	Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment
Activity Requested	Opposition - OPPS (CIV)
Filed By	Josephine Baltazar
Filing Attorney	Dennis Kennedy

Document Details	
Lead Document	18.08.16 Opp to Mot for Entry of Judgment.pdf
Lead Document Page Count	26
File Stamped Copy	View Stamped Document
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EXHIBIT 5

EXHIBIT 5



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

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7 Telephone: 702.562.8820

Facsimile: 702.562.8821

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-
19 Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

20 Defendants.

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

21
22 **NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S**
23 **MOTION FOR ENTRY OF JUDGMENT**

24 PLEASE TAKE NOTICE that an Order on Plaintiff's Motion for Entry of Judgment was
25 entered on November 28, 2018.

26 ///

27 ///

28 ///

1 A true and correct copy is attached hereto.

2 DATED this 28th day of November, 2018.

3 BAILEY ♦ KENNEDY

4
5 By: /s/ Sarah E. Harmon

6 DENNIS L. KENNEDY

7 SARAH E. HARMON

8 JOSHUA P. GILMORE

9 ANDREA M. CHAMPION

10 *Attorneys for Defendants*

11 HARVEST MANAGEMENT SUB LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 28th day of November, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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
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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

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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,

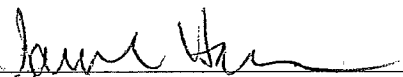
3 HEREBY ORDERS that the Motion for Entry of Judgment shall be, and hereby is,
4 **DENIED.**

5 DATED this 26 day of November, 2018.

6
7 
8 DISTRICT COURT JUDGE

9 Respectfully submitted by:

10 BAILEY ♦ KENNEDY, LLP

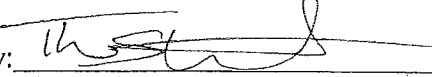
11 By: 

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*

Josephine Baltazar

From: efilmail@tylerhost.net
Sent: Wednesday, November 28, 2018 2:48 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Notice of Entry of Order - NEOJ (CIV), Envelope Number: 3496877

Notification of Service

Case Number: A-15-718679-C

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

Lujan, Defendant(s)

Envelope Number: 3496877



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

Filing Details	
Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	11/28/2018 2:46 PM PST
Filing Type	Notice of Entry of Order - NEOJ (CIV)
Filing Description	Notice of Entry of Order on Plaintiff's Motion for Entry of Judgment
Filed By	Josephine Baltazar
Service Contacts	David E Lujan: Lisa Richardson (lrichardson@rsglawfirm.com) Jennifer Meacham (jmeacham@rsglawfirm.com) Harvest Management Sub LLC: Sarah Harmon (sharmon@baileykennedy.com) Dennis Kennedy (dkennedy@baileykennedy.com) Joshua Gilmore (jgilmore@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Andrea Champion (achampion@baileykennedy.com)

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

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EXHIBIT 6

EXHIBIT 6



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

AARON MORGAN

Plaintiff

vs.

DAVID LUJAN, et al.

Defendants
.....

CASE NO. A-15-718679-C

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

TUESDAY, NOVEMBER 6, 2018

APPEARANCES:

FOR THE PLAINTIFF:

BRYAN A. BOYACK, ESQ.
THOMAS W. STEWART, ESQ.

FOR THE DEFENDANTS:

DENNIS L. KENNEDY, ESQ.
SARAH E. HARMON, ESQ.
ANDREA M. CHAMPION, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 employee, discusses the facts of the accident. Never does she
2 bring up on cross or direct examination he was on a break, we
3 aren't on the hook here, or any assertion of that. So this is
4 kind of after the fact them trying to escape the clear
5 liability that was presented, although it wasn't stated on the
6 special verdict form, defendant Lujan, defendant Harvest
7 Management. It was the defendant.

8 THE COURT: Is there any instruction on either
9 negligent entrustment or vicarious liability in the pack of
10 jury instructions?

11 MR. BOYACK: I don't believe so, Your Honor.

12 THE COURT: Yeah. Okay. Thanks.

13 The motion's denied. While there is a inconsistency
14 in the caption of the jury instructions and the special
15 verdict form, there does not appear to be any additional
16 instructions that would lend credence to the fact that the
17 claims against defendant Harvest Management Sub LLC were
18 submitted to the jury. So if you would submit the judgment
19 which only includes the one defendant, I will be happy to sign
20 it, and then you all can litigate the next step, if any,
21 related to the other defendant.

22 MR. STEWART: Thank you, Your Honor.

23 MR. BOYACK: Thank you, Your Honor.

24 MR. KENNEDY: And just for purposes of
25 clarification, that judgment will say that the claims against

1 Harvest Management are dismissed?

2 THE COURT: It will not, Mr. Kennedy.

3 MR. KENNEDY: Okay. Well, I'll just have to file a
4 motion.

5 THE COURT: That's why I say we have to do something
6 next.

7 MR. KENNEDY: Okay. I'm happy to do that.

8 THE COURT: I'm going one step at a time.

9 THE PROCEEDINGS CONCLUDED AT 9:13 A.M.

10 * * * * *

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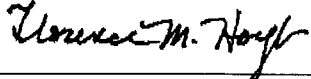
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

1/17/19

DATE

EXHIBIT 7

EXHIBIT 7

Steven D. Grierson

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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,¹ and the issues having been duly tried and the jury having duly rendered its verdict.²

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
Total Damages	\$2,980,980.00

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

PRE-JUDGMENT INTEREST ON PAST DAMAGES:

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

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

[Pre-Judgment Interest is approximately \$62.23 per day]

PLAINTIFF'S TOTAL JUDGMENT

Plaintiff's total judgment is as follows:

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

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

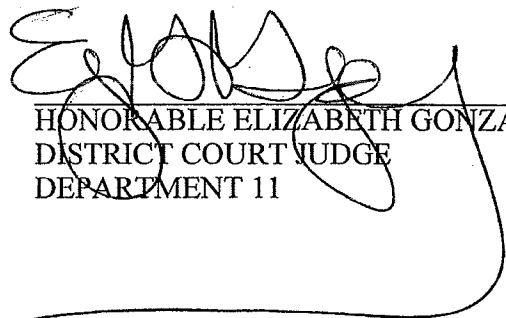
² See Special Verdict filed on April 9, 2018, attached as ~~Exhibit 1~~.

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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 12TH 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: *AJM Brown*
AJA 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



2245

2

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

2 Defendant: 100

3 Plaintiff: 0

4 Total: 100%

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

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

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

8 The Court will perform this task.)

9 Past Medical Expenses \$ 208,480. 00

10 Future Medical Expenses \$ 1,156,500. 00

11 Past Pain and Suffering \$ 116,000. 00

12 Future Pain and Suffering \$ 1,500,000. 00

13 TOTAL \$ 2,980,980. 00

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

17
18
19 Arthur J. St. Laurent
FOREPERSON

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

Reception

From: efilimgmail@tylerhost.net
Sent: Monday, December 17, 2018 10:02 AM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Judgment on Jury Verdict - JGJV (CIV), Envelope Number: 3581119

Notification of Service

Case Number: A-15-718679-C

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

Lujan, Defendant(s)

Envelope Number: 3581119



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

Filing Details	
Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	12/17/2018 10:00 AM PST
Filing Type	Judgment on Jury Verdict - JGJV (CIV)
Filing Description	Judgment Upon the Jury Verdict
Filed By	Peter Floyd
Service Contacts	David E Lujan: Lisa Richardson (lrichardson@rsglawfirm.com) Jennifer Meacham (jmeacham@rsglawfirm.com) Harvest Management Sub LLC: Sarah Harmon (sharmon@baileykennedy.com) Dennis Kennedy (dkennedy@baileykennedy.com) Joshua Gilmore (jgilmore@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Andrea Champion (achampion@baileykennedy.com)

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

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Benjamin Cloward . (Benjamin@richardharrislaw.com)

Douglas R. Rands . (drands@rsgnlaw.com)

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Olivia Bivens . (olivia@richardharrislaw.com)

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Michelle Monkarsh (mmonkarsh@maclaw.com)

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EXHIBIT 8

EXHIBIT 8



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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

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 MARQUIS AURBACH COFFING

5
6 By /s/ Micah S. Echols
7 Micah S. Echols, Esq.
8 Nevada Bar No. 8437
9 Tom W. Stewart, Esq.
10 Nevada Bar No. 14280
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 *Attorneys for Plaintiff, Aaron Morgan*
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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:¹

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/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

¹ 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

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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

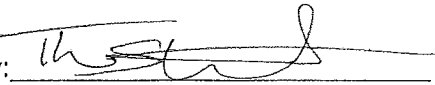
11 By: 

12 DENNIS L. KENNEDY
13 SARAH E. HARMON
14 JOSHUA P. GILMORE
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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:

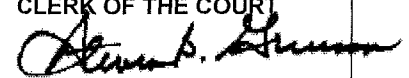
MARQUIS AURBACH COFFING P.C.

By: 

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21 TOM W. STEWART
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Attorneys for Plaintiff Aaron Morgan

Exhibit 2



ORDER

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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

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DEPT. CHANGE

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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

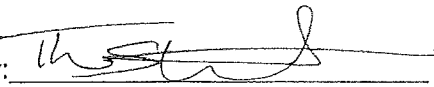
11 By: 

12 DENNIS L. KENNEDY
13 SARAH E. HARMON
14 JOSHUA P. GILMORE
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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
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Attorneys for Plaintiff Aaron Morgan

From: efilimgmail@tylerhost.net
Sent: Tuesday, December 18, 2018 4:59 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Notice of Appeal - NOAS (CIV), Envelope Number: 3593124

Notification of Service

Case Number: A-15-718679-C

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

Envelope Number: 3593124



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Filing Details	
Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	12/18/2018 4:58 PM PST
Filing Type	Notice of Appeal - NOAS (CIV)
Filing Description	Notice of Appeal
Filed By	Peter Floyd
Service Contacts	David E Lujan: Lisa Richardson (lrichardson@rsglawfirm.com) Jennifer Meacham (jmeacham@rsglawfirm.com) Harvest Management Sub LLC: Sarah Harmon (sharmon@baileykennedy.com) Dennis Kennedy (dkennedy@baileykennedy.com) Joshua Gilmore (jgilmore@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Andrea Champion (achampion@baileykennedy.com)

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

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EXHIBIT 9

EXHIBIT 9



1 **MEJD**

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3 Nevada Bar No. 1462

4 SARAH E. HARMON

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8 ANDREA M. CHAMPION

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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. XI

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

Hearing Date:
Hearing Time:

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

28 ///

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

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. 10,¹ 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. 11,² 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. 12,³ at 121:4-136:19, 157:13-161:10);
- He did not include his claim against Harvest in the jury instructions, (Ex. 13⁴); 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. 14⁵).

¹ 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.

² 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.

³ 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.

⁴ 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.

⁵ 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. 1⁶.) 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. 2.⁷) The Defendants denied Paragraph 9 of the Complaint, including the

26 ⁶ 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 ⁷ A true and correct copy of Defs.’ Answer to Pl.’s Compl. (June 16, 2015) is attached as Exhibit 2, at Vol. I of
App. at 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.)⁸

11 **B. Discovery.**

12 On April 14, 2016, Mr. Morgan propounded interrogatories on Harvest. (*See generally* Ex.
13 4.⁹) 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. 5.¹⁰) 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 ⁸ 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 ⁹ 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 ¹⁰ 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).)¹¹

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. 7¹²; Ex. 8.¹³) 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-

¹¹ 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).

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

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

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

4 BY MR. BOYACK:

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

6 A: Yes.

7 Q: And what was your employment?

8 A: I was the bus driver.

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

10 A: Harvest Management was our corporate office.

11 Q: Okay.

12 A: Montara Meadows is just the local--

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

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

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

17 A: Yes.

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

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

20 Q: Okay.

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

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

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

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

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

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

28 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.*

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

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

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

4 **D. The Second Trial.**

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

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

12 MR. GARDNER: Hello everyone. What a way to start a Monday,
13 right? In my firm we've got myself, Doug Gardner and then Brett
14 South, who is not here, but this is Doug Rands, and then my client,
Erica¹⁵ is right back here. Let's see, I think that's it for me.

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

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

19 THE COURT: All right. Thank you.

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

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

24 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
25 to that question.

26 ///

27 ///

28 ¹⁵ 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.¹⁶

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*
26 *the one we used the last trial.* See if that looks sort of okay.

27 ¹⁶ 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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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,

1 838 (N.M. 1992) (finding the employer was not vicariously liable for the employee's accident during
2 his lunch break because there was no evidence of the employer's control over the employee at the
3 time of the accident); *Gordon v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 411 So. 2d 1094, 1098
4 (La. Ct. App. 1982) ("Ordinarily, an employee who leaves his employer's premises and takes his
5 noon hour meal at home or some other place of his own choosing is outside the course of his
6 employment from the time he leaves the work premises until he returns.").

7 Because Mr. Morgan failed to offer any evidence proving that Mr. Lujan was acting within
8 the course and scope of his employment at the time of the accident — and the only evidence
9 regarding Mr. Lujan's actions at the time of the accident demonstrate that he was on a lunch break
10 — as a matter of law, Mr. Morgan's implicit claim for vicarious liability should be dismissed with
11 prejudice and judgment should be entered in favor of Harvest.

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

14 In Nevada, "a person who knowingly entrusts a vehicle to an inexperienced or incompetent
15 person" may be found liable for damages resulting therefrom. *Zugel by Zugel v. Miller*, 100 Nev.
16 525, 527, 688 P.2d 310, 312 (1984). To establish negligent entrustment, a plaintiff must
17 demonstrate: (1) that an entrustment actually occurred; and (2) that the entrustment was negligent.
18 *Id.* at 528, 688 P.2d at 313.

19 Harvest conceded that Mr. Lujan was its employee and that it entrusted him with a vehicle —
20 satisfying the first element of a negligent entrustment claim; however, the second element was
21 contested and never proven to a jury. (Ex. 2, at 3:9-10.) Mr. Morgan offered no evidence of
22 Harvest's negligence in entrusting Mr. Lujan with a company vehicle. He adduced no evidence that
23 Mr. Lujan was an inexperienced or incompetent driver. In fact, the only evidence in the record
24 relating to Mr. Lujan's driving history demonstrates that *he has never been in an accident before*.
25 (See Ex. 6, at 196:19-24; 197:8-10).

26 Mr. Morgan also failed to offer any evidence regarding Harvest's knowledge of Mr. Lujan's
27 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
14 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

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15
16
17 *Attorneys for Defendant*

HARVEST MANAGEMENT SUB LLC

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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Supreme Court of Nevada

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Date and Time of Notice: Jan 23 2019 03:09 p.m.

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

Document Category: Motion to Dismiss Appeal
Submitted by: Dennis L Kennedy
Official File Stamp: Jan 23 2019 03:08 p.m.
Filing Status: **Accepted and Filed**

Docket Text: Filed Motion to Dismiss Appeal Respondent Harvest Management Sub LLC's Motion to Dismiss Appeal as Premature

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