**Case No. _____**

IN THE SUPREME COURT OF NEVADA

Electronically Filed
Mar 23 2020 10:16 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

HARVEST MANAGEMENT SUB LLC,
Petitioner,

vs.

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

- and -

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

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

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

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

*Attorneys for Petitioner*
HARVEST MANAGEMENT SUB LLC

**March 20, 2020**

Docket 80837 Document 2020-11101

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

## TABLE OF CONTENTS


| No. | Document Title | Page Nos. |
|---|---|---|
| 29 | Respondent Harvest Management Sub LLC's Motion to Dismiss Appeal as Premature (January 23, 2019) | 2104-2214 |
| 30 | 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 (January 23, 2019) | 2215-2236 |
| 31 | Notice of Entry of Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues (February 7, 2019) | 2237-2244 |
| 32 | Supplement to Harvest Management Sub LLC's Motion for Entry of Judgment (March 5, 2019) | 2245-2280 |
| 33 | Recorder's Transcript of Defendant Harvest Management Sub LLC's Motion for Entry of Judgment (March 5, 2019) | 2281-2297 |
| 34 | Order Denying Motion to Dismiss (March 7, 2019) | 2298 |
| 35 | Minute Order (March 14, 2019) | 2299 |
| 36 | Recorder's Transcript of Status Check: Decision and All Defendant Harvest Management Motions (March 19, 2019) | 2300-2317 |
| 37 | Decision and Order (April 5, 2019) | 2318-2323 |

## APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

## INDEX


| Document Title | Volume No. | Tab No. | Page Nos. |
|---|---|---|---|
| Complaint (May 20, 2015) | 1 | 1 | 0001-0006 |
| Decision and Order (April 5, 2019) | 12 | 37 | 2318-2323 |
| Decision and Order (January 3, 2020) | 14 | 44 | 2608-2618 |
| Defendant Harvest Management Sub LLC's Motion for Entry of Judgment (December 21, 2018) | 11 | 26 | 2027-2053 |
| Defendant Harvest Management Sub LLC's Opposition to Plaintiff's Motion for Entry of Judgment (August 16, 2018) | 11 | 21 | 1923-1948 |
| Defendant Harvest Management Sub, LLC's Responses to Plaintiff's First Set of Interrogatories (October 12, 2016) | 1 | 4 | 0023-0030 |
| Defendants' Answer to Plaintiff's Complaint (June 16, 2015) | 1 | 2 | 0007-0013 |
| Docket Report (July 2, 2018) | 10 | 19 | 1860-1866 |
| Jury Instructions (April 9, 2018) | 10 | 17 | 1818-1857 |
| Minute Order (March 14, 2019) | 12 | 35 | 2299 |
| Minute Order (January 14, 2020) | 14 | 45 | 2619 |
| Notice of Appeal (December 18, 2018) | 11 | 25 | 2018-2026 |
| Notice of Entry of Judgment (January 2, 2019) | 11 | 27 | 2054-2063 |
| Notice of Entry of Order on Plaintiff's Motion for Entry of Judgment (November 28, 2018) | 11 | 24 | 2013-2017 |
| Notice of Entry of Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues (February 7, 2019) | 12 | 31 | 2237-2244 |

| | | | |
|---|---|---|---|
| Notice of Readiness and Request for Setting of Defendant Harvest Management Sub LLC's Motion for Entry of Judgment (September 17, 2019) | 14 | 42 | 2600-2602 |
| Opposition to Defendant Harvest Management Sub LLC's Motion for Entry of Judgment and Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues (January 15, 2019) | 11 | 28 | 2064-2103 |
| Order Denying Motion to Dismiss (March 7, 2019) | 12 | 34 | 2298 |
| Order Denying Petition for Writ of Mandamus (May 15, 2019) | 13 | 39 | 2446-2447 |
| Order Dismissing Appeal (September 17, 2019) | 14 | 41 | 2598-2599 |
| Petition for Extraordinary Writ Relief (April 18, 2019) | 13 | 38 | 2324-2445 |
| Plaintiff Aaron M. Morgan's and Defendants David E. Lujan and Harvest Management Sub LLC's Joint Pre-Trial Memorandum (February 27, 2017) | 1 | 5 | 0031-0043 |
| Plaintiff's First Set of Interrogatories to Defendant Harvest Management Sub LLC (April 14, 2016) | 1 | 3 | 0014-0022 |
| Plaintiff's Motion for Entry of Judgment (July 30, 2018) | 11 | 20 | 1867-1922 |
| Plaintiff's Reply in Support of Motion for Entry of Judgment (September 7, 2018) | 11 | 22 | 1949-2001 |
| Recorder's Transcript of Defendant Harvest Management Sub LLC's Motion for Entry of Judgment (March 5, 2019) | 12 | 33 | 2281-2297 |

| | | | |
|---|---|---|---|
| Recorder's Transcript of Defendant Harvest Management Sub LLC's Motion for Entry of Judgment (October 29, 2019) | 14 | 43 | 2603-2607 |
| Recorder's Transcript of Hearing – Civil Jury Trial – Part 1 (April 2, 2018) | 4 | 10 | 0674-0723 |
| Recorder's Transcript of Hearing – Civil Jury Trial – Part 2 (April 2, 2018) | 5 | 11 | 0724-0950 |
| Recorder's Transcript of Hearing – Civil Jury Trial (April 3, 2018) | 6 | 12 | 0951-1106 |
| Recorder's Transcript of Hearing – Civil Jury Trial (April 4, 2018) | 7 | 13 | 1107-1260 |
| Recorder's Transcript of Hearing – Civil Jury Trial (April 5, 2018) | 8 | 14 | 1261-1440 |
| Recorder's Transcript of Hearing – Civil Jury Trial (April 6, 2018) | 9 | 15 | 1441-1649 |
| Recorder's Transcript of Hearing – Civil Jury Trial (April 9, 2018) | 10 | 16 | 1650-1817 |
| Recorder's Transcript of Hearing: Status Check: Decision and Trial Setting (January 14, 2020) | 14 | 46 | 2620-2625 |
| Recorder's Transcript of Status Check: Decision and All Defendant Harvest Management Motions (March 19, 2019) | 12 | 36 | 2300-2317 |
| 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 (January 23, 2019) | 12 | 30 | 2215-2236 |
| Respondent Harvest Management Sub LLC's Motion to Dismiss Appeal as Premature (January 23, 2019) | 12 | 29 | 2104-2214 |

| | | | |
|---|---|---|---|
| Respondent Harvest Management Sub LLC's Renewed Motion to Dismiss Appeal as Premature (August 19, 2019) | 14 | 40 | 2448-2597 |
| Special Verdict (April 9, 2018) | 10 | 18 | 1858-1859 |
| Supplement to Harvest Management Sub LLC's Motion for Entry of Judgment (March 5, 2019) | 12 | 32 | 2245-2280 |
| Transcript of Hearing on Plaintiff's Motion for Entry of Judgment (November 6, 2018) | 11 | 23 | 2002-2012 |
| Transcript of Jury Trial – Part 1 (November 6, 2017) | 1 | 6 | 0044-0233 |
| Transcript of Jury Trial – Part 2 (November 6, 2017) | 2 | 7 | 0234-0378 |
| Transcript of Jury Trial (November 7, 2017) | 3 | 8 | 0379-0504 |
| Transcript of Jury Trial (November 8, 2017) | 4 | 9 | 0505-0673 |

# TAB 29

TAB 29

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

*Attorneys for Respondent*
HARVEST MANAGEMENT SUB LLC

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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

IN THE SUPREME COURT OF THE STATE OF NEVADA

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Appellant,<br><br>vs.<br><br>DAVID E. LUJAN, individually; and HARVEST MANAGEMENT SUB LLC, a foreign limited-liability company,<br><br>Respondents. | Supreme Court No. 77753<br><br>District Court No. A-15-718679-C<br><br>**RESPONDENT HARVEST MANAGEMENT SUB LLC'S MOTION TO DISMISS APPEAL AS PREMATURE** |

**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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

On December 17, 2018, Mr. Morgan filed a Judgment Upon the Jury Verdict against Mr. Lujan. (Ex. 7.[8]) This judgment has not yet been entered by the district court.

---

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

[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.

[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.

[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.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

On December 18, 2018, Mr. Morgan filed a Notice of Appeal from the November 28, 2018 Notice of Entry of Order Denying Plaintiff's Motion for Entry of Judgment and from the December 17, 2018 Judgment Upon the Jury Verdict. (Ex. 8.[9])

On December 21, 2018, Harvest filed a Motion for Entry of Judgment against Mr. Morgan as to the claim for relief that it seemingly abandoned and/or failed to prove at trial. (Ex. 9.[10]) This motion is fully briefed and scheduled to be heard, in chambers, on January 25, 2019.

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

/ / /

/ / /

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

[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.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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*

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

/ / /

/ / /

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## II. CONCLUSION

For the foregoing reasons, Mr. Morgan's appeal should be dismissed as premature. Mr. Morgan has failed to appeal from a final judgment.

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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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<br>TOM W. STEWART<br>**MARQUIS AURBACH COFFING**<br>1001 Park Run Drive<br>Las Vegas, Nevada 89145 | Email: mechols@maclaw.com<br>tstewart@maclaw.com<br><br>*Attorneys for Appellant*<br>AARON M. MORGAN |
| BENJAMIN P. CLOWARD<br>BRYAN A. BOYACK<br>**RICHARD HARRIS LAW FIRM**<br>801 South Fourth Street<br>Las Vegas, Nevada 89101 | Email:<br>Bbenjamin@richardharrislaw.com<br>bryan@richardharrislaw.com<br><br>*Attorneys for Appellant*<br>AARON M. MORGAN |
| DOUGLAS J. GARDNER<br>DOUGLAS R. RANDS<br>**RANDS, SOUTH & GARDNER**<br>1055 Whitney Ranch Drive, Suite 220<br>Henderson, Nevada 89014 | Email:<br>dgardner@rsglawfirm.com<br>drands@rsgnvlaw.com<br><br>*Attorneys for Respondent*<br>DAVID E. LUJAN |
| ARA H. SHIRINIAN<br>10651 Capesthorne Way<br>Las Vegas, Nevada 89135 | Email: arashirinian@cox.net<br><br>*Settlement Program Mediator* |

*/s/ Josephine Baltazar*
Employee of BAILEY❖KENNEDY



BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

# EXHIBIT 1

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): | Defendant(s) (name/address/phone): |
|---|---|
| Aaron M. Morgan | David E. Lujan; Harvest Management Sub LLC. |
| | |
| | |
| | |
| **Attorney (name/address/phone):** | **Attorney (name/address/phone):** |
| Adam W. Williams | |
| Richard Harris Law Frim | |
| 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 | Torts | |
|---|---|---|
| **Landlord/Tenant** | **Negligence** | **Other Torts** |
| ☐ Unlawful Detainer | ☒ Auto | ☐ Product Liability |
| ☐ Other Landlord/Tenant | ☐ Premises Liability | ☐ Intentional Misconduct |
| **Title to Property** | ☐ Other Negligence | ☐ Employment Tort |
| ☐ Judicial Foreclosure | **Malpractice** | ☐ Insurance Tort |
| ☐ Other Title to Property | ☐ Medical/Dental | ☐ Other Tort |
| **Other Real Property** | ☐ Legal | |
| ☐ Condemnation/Eminent Domain | ☐ Accounting | |
| ☐ Other Real Property | ☐ Other Malpractice | |

| Probate | Construction Defect & Contract | Judicial Review/Appeal |
|---|---|---|
| **Probate** *(select case type and estate value)* | **Construction Defect** | **Judicial Review** |
| ☐ Summary Administration | ☐ Chapter 40 | ☐ Foreclosure Mediation Case |
| ☐ General Administration | ☐ Other Construction Defect | ☐ Petition to Seal Records |
| ☐ Special Administration | **Contract Case** | ☐ Mental Competency |
| ☐ Set Aside | ☐ Uniform Commercial Code | **Nevada State Agency Appeal** |
| ☐ Trust/Conservatorship | ☐ Building and Construction | ☐ Department of Motor Vehicle |
| ☐ Other Probate | ☐ Insurance Carrier | ☐ Worker's Compensation |
| **Estate Value** | ☐ Commercial Instrument | ☐ Other Nevada State Agency |
| ☐ Over $200,000 | ☐ Collection of Accounts | **Appeal Other** |
| ☐ Between $100,000 and $200,000 | ☐ Employment Contract | ☐ Appeal from Lower Court |
| ☐ Under $100,000 or Unknown | ☐ Other Contract | ☐ Other Judicial Review/Appeal |
| ☐ Under $2,500 | | |

| Civil Writ | | Other Civil Filing |
|---|---|---|
| **Civil Writ** | | **Other Civil Filing** |
| ☐ Writ of Habeas Corpus | ☐ Writ of Prohibition | ☐ Compromise of Minor's Claim |
| ☐ Writ of Mandamus | ☐ Other Civil Writ | ☐ Foreign Judgment |
| ☐ Writ of Quo Warrant | | ☐ 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.*

Electronically Filed
05/20/2015 10:29:37 AM

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<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | CASE NO.: A-15-718679-C<br>DEPT. NO.: VII<br><br>**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.

///

///

///

RICHARD HARRIS LAW FIRM

## 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.



RICHARD HARRIS LAW FIRM

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 off 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*



RICHARD HARRIS LAW FIRM

**IAFD**
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<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | CASE NO.:<br>DEPT. NO.:<br><br>**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

# EXHIBIT 2

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
APR - 9 2018
BY, A.J.A.M. BROWN, DEPUTY

*DISTRICT COURT*

*CLARK COUNTY, NEVADA*

CASE NO: A-15-718679-C

DEPT. NO: VII

AARON MORGAN,

Plaintiff,

vs.

DAVID LUJAN,

Defendant.

**SPECIAL VERDICT**

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

**QUESTION NO. 1:** Was Defendant negligent?

**ANSWER:** Yes ✓ No _____

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

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

**QUESTION NO.2:** Was Plaintiff negligent?

**ANSWER:** Yes _____ No ✓

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

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

///

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



2

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

Defendant: 100

Plaintiff: 0

Total: 100%

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

**QUESTION NO. 4:** What amount do you assess as the total amount of Plaintiff's damages? (Please do not reduce damages based on your answer to question 3, if you answered question 3. The Court will perform this task.)

| | |
|---|---|
| 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** | $ 2,980,980.00 |

DATED this 9th day of April, 2018.

Arthur J. St. Laurent
FOREPERSON

ARTHUR J. ST. LAURENT

# EXHIBIT 3

# EXHIBIT 3

Electronically Filed
7/30/2018 5:13 PM
Steven D. Grierson
CLERK OF THE COURT

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

**Marquis Aurbach Coffing**
Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
tstewart@maclaw.com

*Attorneys for Plaintiff, Aaron M. Morgan*

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No.: A-15-718679-C<br>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**.

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

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

## II. FACTUAL BACKGROUND

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

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

## III. PROCEDURAL HISTORY

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

---

[2] *See* proposed Judgment Upon the Jury Verdict, attached as **Exhibit 2**.

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

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

> [Morgan's counsel]: All right. Mr. Lujan, at the time of the accident in April of 2014, were you employed with Montara Meadows?
>
> [Lujan]: Yes.
>
> [Morgan's counsel]: And what was your employment?
>
> [Lujan]: I was the bus driver.
>
> [Morgan's counsel]: Okay. And what is your understanding of the relationship of Montara Meadows to Harvest Management?
>
> [Lujan]: Harvest Management was our corporate office.
>
> [Morgan's counsel]: Okay.
>
> [Lujan]: Montara Meadows is just the local --
>
> [Morgan's counsel]: Okay. All right. And this accident happened April 1, 2014, correct?
>
> [Lujan]: Yes, sir.[3]

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

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

---

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

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

[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).

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

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

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

At the end of the six-day jury trial, jury instructions were provided to the jury with the proper caption.[6] 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.[7] As a result, the jury awarded Plaintiff $2,980,000.[8]

## IV. LEGAL ARGUMENT

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

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

---

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

[7] *See* **Exhibit 1**.

[8] *Id.*

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

thus submitted as may be necessary to enable the jury to make its findings upon each issue." *Id.* However, "[i]f 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." *Id.* (emphasis added).

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

## V. CONCLUSION

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

Dated this 30th day of July, 2018.

MARQUIS AURBACH COFFING

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

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

## 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 | jgilmore@baileykennedy.com |
| Sarah E. Harmon | sharmon@baileykennedy.com |
| Dennis L. Kennedy | dkennedy@baileykennedy.com |
| Bailey Kennedy, LLP | bkfederaldownloads@baileykennedy.com |

*Attorneys for Defendant Harvest Management Sub, LLC*

| | |
|---|---|
| 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 |
| Nicole M. Griffin | ngriffin@richardharrislaw.com |
| E-file ZDOC | zdocteam@richardharrislaw.com |

*Attorneys for Plaintiff, Aaron Morgan*

| | |
|---|---|
| Doug Gardner, Esq. | dgardner@rsglawfirm.com |
| Douglas R. Rands | drands@rsgnvlaw.com |
| Melanie Lewis | mlewis@rsglawfirm.com |
| Pauline Batts | pbatts@rsgnvlaw.com |
| Jennifer Meacham | jmeacham@rsglawfirm.com |
| Lisa Richardson | lrichardson@rsglawfirm.com |

*Attorneys for Defendant David E. Lujan*

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).

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

# EXHIBIT 4

# EXHIBIT 4

Electronically Filed
8/16/2018 1:02 PM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. XI<br><br>**DEFENDANT HARVEST MANAGEMENT SUB LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT**<br><br>Hearing Date: September 14, 2018<br>Hearing Time: In Chambers |

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

///

///

///

///

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

DATED this 16th day of August, 2018.

BAILEY❖KENNEDY

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

*Attorneys for Defendants*
HARVEST MANAGEMENT SUB LLC

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

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

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

---

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

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

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

- He did not elicit any testimony from any witness that could have supported his claim against Harvest;
- He did not reference Harvest or his claim against Harvest in his closing argument or rebuttal closing argument, (Ex. 12,[4] at 121:4-136:19, 157:13-161:10);
- He did not include his claim against Harvest in the jury instructions, (Ex. 13[5]); 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.

Alarmingly, 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.



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

### A. <u>The Pleadings.</u>

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

---

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

[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.



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

> On or about April 1, 2014, 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 a negligent and careless manner so as to cause a collision with the vehicle occupied by Plaintiff.

(*Id.* at ¶ 9 (emphasis added).)

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

///

///

///

---

[8] Mr. Morgan's Motion emphasizes that Mr. Lujan and Harvest were represented by the same counsel. (Mot. at 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.

[9] 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 H000014-H000029, at 169:25-170:17.)

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

B. **Discovery.**

On April 14, 2016, Mr. Morgan propounded interrogatories on Harvest.[10] (*See generally* Ex. 4.[11]) The interrogatories included a request regarding the background checks Harvest performed prior to hiring Mr. Lujan, (*id.* at 6:25-7:2), and a request regarding any disciplinary actions Harvest had taken against Mr. Lujan in the five years preceding the accident which related to Mr. Lujan's operation of a Harvest vehicle, (*id.* at 7:15-19). There were no interrogatories propounded upon Harvest which concerned whether Mr. Lujan was acting within the course and scope of his employment at the time of the accident. (*See generally* Ex. 4.)

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

> Mr. Lujan was hired in 2009. As part of the qualification process, *a pre-employment DOT drug test was conducted as well as a criminal background screen and a motor vehicle record.* Also, since he held a CDL, an *inquiry with past/current employers within three years of the date of application was conducted and were* ***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).)[13]

/ / /

---

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

[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.

[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.

[13] 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 H000047-H000068, at 10:22-13:12).

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

### C. **The First Trial.**

This case was first tried to a jury on November 6, 2017 through November 8, 2017. (*See generally* Ex. 7[14]; Ex. 8.[15]) 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 45:25-121:20, 124:13-316:24; Ex. 9,[16] at 6:4-29:1.) In fact, Harvest was not mentioned until the third day of the first trial, while Mr. Lujan was on the witness stand. Mr. Lujan's relevant testimony is as follows:

> BY MR. BOYACK:
> Q: All right. Mr. Lujan, at the time of the accident in April of 2014, were you employed with Montara Meadows?
> A: Yes.
> Q. And what was your employment?
> A: I was the bus driver.
> Q: Okay. And what is your understanding of the relationship of Montara Meadows to Harvest Management?
> A: Harvest Management was our corporate office.
> Q: Okay.
> A: Montara Meadows is just the local--

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

---

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

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

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



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

> Q: Okay. And isn't it true that you said to [Mr. Morgan's] mother you were sorry for this accident?
> A: Yes.
> Q: And that you were actually pretty worked up and crying after the accident?
> A: I don't know that I was crying. I was more concerned than I was crying --
> Q: Okay.
> A: -- ***because I never been in an accident like that.***

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

> Q: Okay. So this was a big accident?
> A: Well, it was for me ***because I've never been in one in a bus***, so it was for me.

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

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

> THE COURT: *Where were you going at the time of the accident?*
> THE WITNESS: ***I was coming back from lunch. I had just ended my lunch break.***
> THE COURT: *Any follow up?* Okay. Sorry. *Any follow up?*
> MR. BOYACK: ***No, Your Honor.***

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

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

### D. <u>The Second Trial.</u>

#### 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:

///



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

> THE COURT: All right. Thank you.
> Did you raise your hand, sir? No. Anyone else? Does anyone know the plaintiff in this case, Aaron Morgan? And there's no response to that question. Does anyone know the plaintiff's attorney in this case, Mr. Cloward? Any of the people he introduced? Any people on [*sic*] his firm? No response to that question.
> ***Do any of you know the defendant in this case, David Lujan?*** There's no response to that question. Do any of you know Mr. Gardner or any of the people he introduced, Mr. Rands? No response to that question.

(*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,

///

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



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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;

/ / /



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

> [MR. CLOWARD:]
> Q: So where it says, on interrogatory number 14, and you can follow along with me:
>
> > "Please provide the full name of the person answering the interrogatories on behalf of the Defendant, Harvest Management Sub, LLC, and state in what capacity your [*sic*] are authorized to respond on behalf of said Defendant.
> > "A. Erica Janssen, Holiday Retirement, Risk Management."
>
> A: Yes.

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

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

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

---

[18] It should be noted that despite the lack of evidence on these issues, Plaintiff's counsel stated, during his closing 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)).

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

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

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

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

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



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

> 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.)

///

///

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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? <u>Defendant</u>, 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. <u>A Judgment Cannot Be Entered Against Harvest Because It Would Be Contrary to the Pleadings, Evidence, and Jury Instructions in This Case.</u>

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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

Mr. Morgan asserts that the issue of vicarious liability was not contested. (Mot. at 4:21-22.) This is not true. Harvest contested liability for the only claim pled in the Complaint — negligent entrustment — and for the attempted claim of vicarious liability, by denying these allegations in its Answer. (Ex. 1, at ¶¶ 9, 19-22; Ex. 2, at 2:8-9, 3:9-10.) Thus, as the plaintiff, Mr. Morgan bore the burden of proving his claims against Harvest at trial. *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. Reptr. 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."); *Willis v. Manning*, 850 So. 2d 983, 987 (La. Ct. App. 2003) (recognizing that the plaintiff bears the burden of proof on a claim for negligent entrustment); *Dukes v. McGimsey*, 500 S.W.2d 448, 451 (Tenn. Ct. App. 1973) ("The plaintiff has the burden of proving negligent entrustment of an automobile.")

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

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

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





BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

(*Id.* at 635).

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

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

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

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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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.)

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

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

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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

Further undermining his current position, the record 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 entrustment, or even corporate liability in his opening statement. (Ex. 11, at 126:7-145:17.) Mr. Morgan never offered a single piece of evidence or elicited any testimony from any witness which would prove the elements of either vicarious liability or negligent entrustment. Mr. Morgan never mentioned Harvest, vicarious liability, negligent entrustment, or corporate liability in his closing argument or rebuttal closing argument. (Ex. 12, at 121:4-136:19, 157:13-161:10.) Mr. Morgan failed to include questions relating to Harvest's liability or the apportionment of fault to Harvest in the Special Verdict form, despite requesting revisions to

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

For Mr. Morgan to claim that the omission of Harvest from the Special Verdict form was a mere oversight or clerical error to be corrected by the Court is completely disingenuous. Mr. Morgan employed the same strategy for litigating his claims in the first trial — he chose to focus solely on Mr. Lujan's liability for negligence. Harvest was not mentioned in the introductory remarks to the jurors, in voir dire, in opening statements, or in the examination of any 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.) Thus, the record clearly demonstrates that Mr. Morgan abandoned his claim against Harvest — likely due to a lack of evidence.

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

In the alternative, Mr. Morgan asks this Court to make an explicit finding, under Nevada Rule of Civil Procedure 49(a), that Harvest is jointly and severally liable for the jury's verdict against Mr. Lujan. (*See* Mot. at 5:18-6:11.) N.R.C.P. 49(a) permits a court to submit a special verdict form, or special interrogatories, to the jury. If a special verdict form is submitted to the jury and a particular "issue of fact raised by the pleadings or by the evidence" is omitted from the special verdict form, "each party waives the right to a trial by jury of the issue omitted unless, before the jury retires[,] the party demands its written submission to the jury." N.R.C.P. 49(a). If there are any omitted issues for which a demand was not made by a party, "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." *Id.* Thus, the Court is permitted to make findings on omitted ***factual issues*** in order to avoid "the hazard of the verdict remaining incomplete and indecisive where the jury did not decide

[19] Mr. Morgan attempts to shift the blame to the Court for the Special Verdict form's omission of Harvest. (Mot. 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 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.



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

[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).

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

> deception, intent, reasonable reliance and damages, each of which could be deemed to have been supplied by the court in accordance with the jury's judgment once the jury's ultimate verdict was known.
>
> ***That procedure of supplying a finding subsidiary to the ultimate verdict is a far cry, however, from a procedure whereby the court in the absence of a jury verdict, determines the ultimate liability of a party, as it did here. We have been directed to no authority which would permit the district court to act as it did here in depriving Kennan of his right to a jury verdict.***

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

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

---

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

> We believe that the jury/clerk colloquy, the verdict, and the entry of judgment set out in Stradley's motion, if anything, supports the defendant's position rather than Stradley's. We cannot at this late stage overturn what appears to be ***a verdict consistent with the evidence presented*** on plaintiff's ***mere allegation that the jury intended to do other than it did*** when it returned a verdict solely against Cortez, Jr. Stradley's claim that the jury never exonerated Senior and never indicated that its findings of liability should relate only to Junior are not borne out by the verdict, the judgment, or the record at trial.
>
> We have ***reviewed the record*** of the 1970 trial and have found ***no evidence that, at the time of the accident, Cortez, Jr. was acting as the agent of or under the control of his father***. While the defendants were not present or represented at trial, ***their answer, specifically denying agency***, was still of record. ***It was incumbent upon plaintiff to offer some evidence to prove the alleged agency relationship.***

*Id.* at 495 (emphasis added).

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



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

---

[23] The jury does not need to find that the plaintiff was comparatively negligent to trigger the application of NRS 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.)

[24] "[B]y abandoning joint and several liability against negligent defendants, the Legislature sought to ensure that a 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)).



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

## IV. CONCLUSION[25]

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

///

///

///

///

///

///

///

///

[25] Given the brevity of Mr. Morgan's Motion, his lack of citations to the record, and his failure to truly analyze the evidence and procedure of this case, Harvest is concerned that Mr. Morgan may intend to file a lengthy reply that raises 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.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

DATED this 16th day of August, 2018.

BAILEY❖KENNEDY

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

*Attorneys for Defendants*
HARVEST MANAGEMENT SUB LLC

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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<br>**RANDS, SOUTH & GARDNER**<br>1055 Whitney Ranch Drive, Suite 220<br>Henderson, Nevada 89014 | Email:<br><br>*Attorney for Defendant*<br>DAVID E. LUJAN |
| BENJAMIN P. CLOWARD<br>BRYAN A. BOYACK<br>**RICHARD HARRIS LAW FIRM**<br>801 South Fourth Street<br>Las Vegas, Nevada 89101 | Email: Benjamin@richardharrislaw.com<br>Bryan@richardharrislaw.com |
| and | |
| MICAH S. ECHOLS<br>TOM W. STEWART<br>**MARQUIS AURBACH COFFING P.C.**<br>1001 Park Run Drive<br>Las Vegas, Nevada 89145 | Email: Mechols@maclaw.com<br>Tstewart@maclaw.com<br><br>*Attorneys for Plaintiff*<br>AARON M. MORGAN |

*/s/ Josephine Baltazar*
Employee of BAILEY❖KENNEDY

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

**Josephine Baltazar**

**From:** efilingmail@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 |
| This link is active for 45 days. | |

# EXHIBIT 5

# EXHIBIT 5

Electronically Filed
11/28/2018 2:46 PM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. XI |

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

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

///

///

///

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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## CERTIFICATE OF SERVICE

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

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

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

and

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

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

*Attorneys for Plaintiff*
AARON M. MORGAN

---

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

Email: dgardner@rsglawfirm.com

*Attorney for Defendant*
DAVID E. LUJAN

*/s/ Josephine Baltazar*
Employee of BAILEY❖KENNEDY

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

Electronically Filed
11/28/2018 11:31 AM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

PLEASE NOTE DEPT. CHANGE

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. [redacted] XI<br><br>**ORDER ON PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT**<br><br>**Date of Hearing: November 6, 2018**<br>**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.

///

11-26-18A10:47 RCVD

The Court, having examined the briefs of the parties, the records and documents on file, and having heard argument of counsel, and for good cause appearing,

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

DATED this 26 day of November, 2018.

DISTRICT COURT JUDGE

Respectfully submitted by:

BAILEY ❖ KENNEDY, LLP

By: _____

DENNIS L. KENNEDY
SARAH E. HARMON
JOSHUA P. GILMORE
ANDREA M. CHAMPION
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendant Harvest Management Sub LLC*

Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By: _____

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

**Josephine Baltazar**

**From:** efilingmail@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:<br><br>Lisa Richardson (lrichardson@rsglawfirm.com)<br><br>Jennifer Meacham (jmeacham@rsglawfirm.com)<br><br>Harvest Management Sub LLC:<br><br>Sarah Harmon (sharmon@baileykennedy.com)<br><br>Dennis Kennedy (dkennedy@baileykennedy.com)<br><br>Joshua Gilmore (jgilmore@baileykennedy.com)<br><br>Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)<br><br>Andrea Champion (achampion@baileykennedy.com) |

| | |
|---|---|
| | Other Service Contacts not associated with a party on the case:<br>"Bryan A. Boyack, Esq." . (bryan@richardharrislaw.com)<br>"Doug Gardner, Esq." . (dgardner@rsglawfirm.com)<br>Benjamin Cloward . (Benjamin@richardharrislaw.com)<br>Douglas R. Rands . (drands@rsgnvlaw.com)<br>Melanie Lewis . (mlewis@rsglawfirm.com)<br>Olivia Bivens . (olivia@richardharrislaw.com)<br>Shannon Truscello . (Shannon@richardharrislaw.com)<br>Tina Jarchow . (tina@richardharrislaw.com)<br>Micah Echols (mechols@maclaw.com)<br>Leah Dell (ldell@maclaw.com)<br>Pauline Batts . (pbatts@rsgnvlaw.com)<br>E-file ZDOC (zdocteam@richardharrislaw.com)<br>Thomas Stewart (tstewart@maclaw.com)<br>Nicole Griffin (ngriffin@richardharrislaw.com)<br>Michelle Monkarsh (mmonkarsh@maclaw.com) |

| Document Details | |
|---|---|
| **Served Document** | Download Document |
| This link is active for 30 days. | |

# EXHIBIT 6

# EXHIBIT 6

Electronically Filed
1/18/2019 12:28 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | |
|---|---|
| AARON MORGAN<br><br>Plaintiff<br><br>vs.<br><br>DAVID LUJAN, et al.<br><br>Defendants | CASE NO. A-15-718679-C<br><br>DEPT. NO. XI<br><br>**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 * * * * *
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**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

FLORENCE M. HOYT, TRANSCRIBER

1/17/19

DATE

# EXHIBIT 7

# EXHIBIT 7

Electronically Filed
12/17/2018 10:00 AM
Steven D. Grierson
CLERK OF THE COURT

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

**Marquis Aurbach Coffing**
Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
tstewart@maclaw.com

*Attorneys for Plaintiff, Aaron M. Morgan*

RICHARD HARRIS LAW FIRM

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | CASE NO.: A-15-718679-C<br>Dept. No.: XI<br><br>**JUDGMENT UPON THE JURY VERDICT** |

12-13-18P01:10 RCVD

## 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**.



RICHARD HARRIS LAW FIRM

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]

RICHARD HARRIS LAW FIRM

# Exhibit 1

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
APR - 9 2018
BY, 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



2

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

Defendant: 100

Plaintiff: 0

Total: 100%

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

**QUESTION NO. 4:** What amount do you assess as the total amount of Plaintiff's damages? (Please do not reduce damages based on your answer to question 3, if you answered question 3. The Court will perform this task.)

| | |
|---|---|
| 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** | $ 2,980,980.00 |

DATED this 9th day of April, 2018.

Arthur J. St. Laurent

FOREPERSON

ARTHUR J. ST. LAURENT

**Reception**

**From:** efilingmail@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:<br><br>Lisa Richardson (lrichardson@rsglawfirm.com)<br><br>Jennifer Meacham (jmeacham@rsglawfirm.com)<br><br>Harvest Management Sub LLC:<br><br>Sarah Harmon (sharmon@baileykennedy.com)<br><br>Dennis Kennedy (dkennedy@baileykennedy.com)<br><br>Joshua Gilmore (jgilmore@baileykennedy.com)<br><br>Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)<br><br>Andrea Champion (achampion@baileykennedy.com) |

| | |
|---|---|
| | Other Service Contacts not associated with a party on the case:<br>"Bryan A. Boyack, Esq." . (bryan@richardharrislaw.com)<br>"Doug Gardner, Esq." . (dgardner@rsglawfirm.com)<br>Benjamin Cloward . (Benjamin@richardharrislaw.com)<br>Douglas R. Rands . (drands@rsgnvlaw.com)<br>Melanie Lewis . (mlewis@rsglawfirm.com)<br>Olivia Bivens . (olivia@richardharrislaw.com)<br>Shannon Truscello . (Shannon@richardharrislaw.com)<br>Tina Jarchow . (tina@richardharrislaw.com)<br>Micah Echols (mechols@maclaw.com)<br>Leah Dell (ldell@maclaw.com)<br>Pauline Batts . (pbatts@rsgnvlaw.com)<br>E-file ZDOC (zdocteam@richardharrislaw.com)<br>Thomas Stewart (tstewart@maclaw.com)<br>Nicole Griffin (ngriffin@richardharrislaw.com)<br>Michelle Monkarsh (mmonkarsh@maclaw.com) |

| Document Details | |
|---|---|
| **Served Document** | Download Document |
| This link is active for 30 days. | |

# EXHIBIT 8

EXHIBIT 8

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

**Marquis Aurbach Coffing**
Micah S. Echols, Esq.
Nevada Bar No. 8437
Tom W. Stewart, Esq.
Nevada Bar No. 14280
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
tstewart@maclaw.com

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

*Attorneys for Plaintiff, Aaron Morgan*

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No.: A-15-718679-C<br>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

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

Dated this 18th day of December, 2018.

MARQUIS AURBACH COFFING

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

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

## 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]

| | |
|---|---|
| Andrea M. Champion | achampion@baileykennedy.com |
| Joshua P. Gilmore | jgilmore@baileykennedy.com |
| Sarah E. Harmon | sharmon@baileykennedy.com |
| Dennis L. Kennedy | dkennedy@baileykennedy.com |
| Bailey Kennedy, LLP | bkfederaldownloads@baileykennedy.com |

*Attorneys for Defendant Harvest Management Sub, LLC*

| | |
|---|---|
| Doug Gardner, Esq. | dgardner@rsglawfirm.com |
| Douglas R. Rands | drands@rsgnvlaw.com |
| Melanie Lewis | mlewis@rsglawfirm.com |
| Pauline Batts | pbatts@rsgnvlaw.com |
| Jennifer Meacham | jmeacham@rsglawfirm.com |
| Lisa Richardson | lrichardson@rsglawfirm.com |

*Attorneys for Defendant David E. Lujan*

/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).

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

# Exhibit 1

Electronically Filed
11/28/2018 11:31 AM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

PLEASE NOTE DEPT. CHANGE

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. [redacted] XI<br><br>**ORDER ON PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT**<br><br>**Date of Hearing: November 6, 2018**<br>**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.

///

11-26-18A10:41 RCVD

The Court, having examined the briefs of the parties, the records and documents on file, and having heard argument of counsel, and for good cause appearing,

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

DATED this 26 day of November, 2018.

DISTRICT COURT JUDGE

Respectfully submitted by:

BAILEY ❖ KENNEDY, LLP

By: _____
DENNIS L. KENNEDY
SARAH E. HARMON
JOSHUA P. GILMORE
ANDREA M. CHAMPION
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendant Harvest Management Sub LLC*

Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

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

# Exhibit 2

Electronically Filed
11/28/2018 11:31 AM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

PLEASE NOTE DEPT. CHANGE

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. [redacted] XI<br><br>**ORDER ON PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT**<br><br>**Date of Hearing: November 6, 2018**<br>**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.

///

11-25-18A10:41 RCVD

The Court, having examined the briefs of the parties, the records and documents on file, and having heard argument of counsel, and for good cause appearing,

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

DATED this 26 day of November, 2018.

DISTRICT COURT JUDGE

Respectfully submitted by:

BAILEY ❖ KENNEDY, LLP

By: _____

DENNIS L. KENNEDY
SARAH E. HARMON
JOSHUA P. GILMORE
ANDREA M. CHAMPION
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendant Harvest Management Sub LLC*

Approved as to form and content by:

MARQUIS AURBACH COFFING P.C.

By: _____

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

**Josephine Baltazar**

**From:** efilingmail@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

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** | 12/18/2018 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:<br><br>Lisa Richardson (lrichardson@rsglawfirm.com)<br><br>Jennifer Meacham (jmeacham@rsglawfirm.com)<br><br>Harvest Management Sub LLC:<br><br>Sarah Harmon (sharmon@baileykennedy.com)<br><br>Dennis Kennedy (dkennedy@baileykennedy.com)<br><br>Joshua Gilmore (jgilmore@baileykennedy.com)<br><br>Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)<br><br>Andrea Champion (achampion@baileykennedy.com) |

| | |
|---|---|
| | Other Service Contacts not associated with a party on the case:<br>"Bryan A. Boyack, Esq." . (bryan@richardharrislaw.com)<br>"Doug Gardner, Esq." . (dgardner@rsglawfirm.com)<br>Benjamin Cloward . (Benjamin@richardharrislaw.com)<br>Douglas R. Rands . (drands@rsgnvlaw.com)<br>Melanie Lewis . (mlewis@rsglawfirm.com)<br>Olivia Bivens . (olivia@richardharrislaw.com)<br>Shannon Truscello . (Shannon@richardharrislaw.com)<br>Tina Jarchow . (tina@richardharrislaw.com)<br>Micah Echols (mechols@maclaw.com)<br>Leah Dell (ldell@maclaw.com)<br>Pauline Batts . (pbatts@rsgnvlaw.com)<br>E-file ZDOC (zdocteam@richardharrislaw.com)<br>Thomas Stewart (tstewart@maclaw.com)<br>Nicole Griffin (ngriffin@richardharrislaw.com)<br>Michelle Monkarsh (mmonkarsh@maclaw.com) |

| Document Details | |
|---|---|
| **Served Document** | Download Document |
| This link is active for 30 days. | |

# EXHIBIT 9

# EXHIBIT 9

Electronically Filed
12/21/2018 2:29 PM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. XI<br><br>**DEFENDANT HARVEST MANAGEMENT SUB LLC'S MOTION FOR ENTRY OF JUDGMENT**<br><br>Hearing Date:<br>Hearing Time: |

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

///

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

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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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 In Chambers:___ __.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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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. 13[4]); and
- He did not include Harvest in the Special Verdict Form, never asked the jury to assess liability against Harvest, and, in fact, gave the jury no option to find Harvest liable for anything, (Ex. 14[5]).

---

[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.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

### A. The Pleadings.

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

> On or about April 1, 2014, 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 a negligent and careless manner so as to cause a collision with the vehicle occupied by Plaintiff.

(*Id.* at ¶ 9 (emphasis added).)

On June 16, 2015, Mr. Lujan and Harvest filed Defendants' Answer to Plaintiff's Complaint. (*See generally* Ex. 2.[7]) The Defendants denied Paragraph 9 of the Complaint, including the

---

[6] A true and correct copy of the Complaint (May 20, 2015) is attached as Exhibit 1, at Vol. I of App. at H001-H006.

[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.



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

**B. <u>Discovery.</u>**

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

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

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

---

[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.)

[9] 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 H030-H038.

[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.



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

> 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. <u>The First Trial.</u>

This case was first tried to a jury on November 6, 2017 through November 8, 2017. (*See generally* Ex. 7[12]; 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.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

> BY MR. BOYACK:
> Q: All right. Mr. Lujan, at the time of the accident in April of 2014, were you employed with Montara Meadows?
> A: Yes.
> Q. And what was your employment?
> A: I was the bus driver.
> Q: Okay. And what is your understanding of the relationship of Montara Meadows to Harvest Management?
> A: Harvest Management was our corporate office.
> Q: Okay.
> A: Montara Meadows is just the local--

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

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

> Q: Okay. And isn't it true that you said to [Mr. Morgan's] mother you were sorry for this accident?
> A: Yes.
> Q: And that you were actually pretty worked up and crying after the accident?
> A: I don't know that I was crying. I was more concerned than I was crying --
> Q: Okay.
> A: -- ***because I never been in an accident like that.***

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

> Q: Okay. So this was a big accident?
> A: Well, it was for me ***because I've never been in one in a bus***, so it was for me.

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

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

> THE COURT: *Where were you going at the time of the accident?*
> THE WITNESS: ***I was coming back from lunch. I had just ended my lunch break.***
> THE COURT: *Any follow up?* Okay. Sorry. *Any follow up?*
> MR. BOYACK: ***No, Your Honor.***

---

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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

### D. The Second Trial.

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

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

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

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

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

> THE COURT: All right. Thank you.
> Did you raise your hand, sir? No. Anyone else? Does anyone know the plaintiff in this case, Aaron Morgan? And there's no response to that question. Does anyone know the plaintiff's attorney in this case, Mr. Cloward? Any of the people he introduced? Any people on [*sic*] his firm? No response to that question.
> ***Do any of you know the defendant in this case, David Lujan?*** There's no response to that question. Do any of you know Mr. Gardner or any of the people he introduced, Mr. Rands? No response to that question.

///

///

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



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

(*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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

> [MR. CLOWARD:]
> Q: So where it says, on interrogatory number 14, and you can follow along with me:
>
> > "Please provide the full name of the person answering the interrogatories on behalf of the Defendant, Harvest Management Sub, LLC, and state in what capacity your [*sic*] are authorized to respond on behalf of said Defendant.
> > "A. Erica Janssen, Holiday Retirement, Risk Management."
>
> A: Yes.

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

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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

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

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

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

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

---

[16] It should be noted that despite the lack of evidence on these issues, Plaintiff's counsel stated, during his closing 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)).



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

> 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,

///

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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 Note 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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

///

///

///

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

As the plaintiff, Mr. Morgan bore the burden of proving his claims against Harvest at trial. *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."); *Willis v. Manning*, 850 So. 2d 983, 987 (La. Ct. App. 2003) (recognizing that the plaintiff bears the burden of proof on a claim for negligent entrustment); *Dukes v. McGimsey*, 500 S.W.2d 448, 451 (Tenn. Ct. App. 1973) ("The plaintiff has the burden of proving negligent entrustment of an automobile.") However, Mr. Morgan failed to offer any evidence in support of these claims — primarily, evidence that Mr. Lujan was acting in the course and scope of his employment at the time of the accident, or evidence that Harvest knew or reasonably should of known that Mr. Lujan was an inexperienced, incompetent, and/or reckless driver.

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

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

> We reject appellees' contention that the issue of course and scope was not contested. Appellants' answer contained a general denial, which put in issue all of the allegations of appellees' petition, including the allegation that Gonzalez was acting in the course and scope of his employment with J&C. Because appellees had the burden of proof on this issue, it was not necessary for appellants to present evidence negating course and scope in order to contest the issue. In any event, as is discussed below, evidence was presented that Gonzalez was

///



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

> 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.)

///

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

While the Nevada Supreme Court has not specifically addressed whether an employer is vicariously liable for an employee's actions during a lunch break, the express language of and policy behind the "going and coming rule" suggests that an employee is not acting within the course and scope of his employment when he commutes to and from lunch during a break from his employment. Moreover, other jurisdictions have routinely determined that employers ***are not liable for an employee's negligence during a lunch break***. *See e.g., Gant v. Dumas Glass & Mirror, Inc.*, 935 S.W. 2d 202, 212 (Tex. App. 1996) (holding that an employer was not liable under respondeat superior when its employee rear-ended the plaintiff while driving back from his lunch break in a company vehicle because the test is not whether the employee is returning from his personal undertaking to "***possibly*** engage in work" but rather whether the employee ***has*** "returned to the zone of his employment" and engaged in the employer's business); *Richardson v. Glass*, 835 P.2d 835,

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

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

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

/ / /



BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

## IV. CONCLUSION

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

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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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:

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

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

*Attorney for Defendant*
DAVID E. LUJAN

---

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

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

and

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

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

*Attorneys for Plaintiff*
AARON M. MORGAN

*/s/ Josephine Baltazar*
Employee of BAILEY❖KENNEDY

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

# TAB 30

# TAB 30

Electronically Filed
1/23/2019 11:28 AM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. XI<br><br>**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**<br><br>Hearing Date: January 25, 2019<br>Hearing Time: In Chambers |

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

/ / /

/ / /

/ / /

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

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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

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

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

[1] While Mr. Morgan may have captioned this claim for relief "Vicarious Liability/Respondeat Superior Against Defendant," the allegations of the claim clearly relate solely to the elements of a claim for negligent entrustment (i.e, Harvest "entrust[ed]" control of its vehicle to Mr. Lujan, who was an "incompetent, inexperienced, or reckless driver"; 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.)

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

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

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

/ / /

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

## II. ARGUMENT

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

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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

"[A] final judgment is one that disposes of ***all the 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." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (emphasis added). The Court's ruling on Mr. Morgan's Motion for Entry of Judgment and the Judgment Upon Jury Verdict against Mr. Lujan only dispose of Mr. Morgan's claims against Mr. Lujan — they do not address Mr. Morgan's claim for relief against Harvest.

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

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

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

---

[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.

[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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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.)

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

- ***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***

///

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

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

**C. <u>Harvest Does Not Seek Entry of Judgment Pursuant to NRCP 49(a).</u>**

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

/ / /

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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 —

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

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

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

[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, 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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

— 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).

/ / /

---

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.)

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

- 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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

- "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.)

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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

It is well recognized that vicarious liability is only imposed upon an employer when: "(1) the actor at issue is 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

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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)). While it is undisputed that Mr. Lujan was an employee of Harvest at the time of the accident, and that he was driving a shuttle bus owned by Harvest when the accident occurred, these facts, in and of themselves, are not sufficient to prove that Mr. Lujan was acting within the course and scope of his employment at the time of the accident. This is particularly true in light of the unrefuted evidence offered by the Defendants that Mr. Lujan was on his lunch break when the accident occurred. Mr. Morgan failed to establish any evidence proving that Mr. Lujan was "on the clock" during his lunch break; that Mr. Lujan had returned to work when the accident occurred; that Mr. Lujan was transporting passengers or was on his way to pick up passengers when the accident occurred; that Mr. Lujan had "clocked in" after his lunch break or had no requirement to "clock in" and "clock out" as part of his employment with Harvest; that Harvest knew that Mr. Lujan was using the company shuttle bus during his lunch breaks; and/or that Harvest authorized such use of the shuttlebus.

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

---

[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.)

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## 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:

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

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

*Attorneys for Defendant*
DAVID E. LUJAN

---

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

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

and

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

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

*Attorneys for Plaintiff*
AARON M. MORGAN

*/s/ Josephine Baltazar*
Employee of BAILEY❖KENNEDY

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

# EXHIBIT 1

# EXHIBIT 1

Electronically Filed
1/18/2019 12:28 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | |
|---|---|
| AARON MORGAN<br>Plaintiff<br>vs.<br>DAVID LUJAN, et al.<br>Defendants | CASE NO. A-15-718679-C<br>DEPT. NO. XI<br>**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 * * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**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

FLORENCE M. HOYT, TRANSCRIBER

1/17/19

DATE

# TAB 31

TAB 31

Electronically Filed
2/7/2019 3:55 PM
Steven D. Grierson
CLERK OF THE COURT

**Marquis Aurbach Coffing**
Micah S. Echols, Esq.
Nevada Bar No. 8437
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
kwilde@maclaw.com

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

*Attorneys for Plaintiff, Aaron Morgan*

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br>vs.<br><br>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,<br><br>Defendants. | Case No.: A-15-718679-C<br>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**

///

///

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

Please take notice that an Order Regarding Plaintiff's Counter-Motion to Transfer Case Back to Chief Judge Bell for Resolution of Post-Verdict Issues was entered in the above-captioned matter on the 7th day of February, 2019. A copy of the Order is attached hereto.

Dated this 7th day of February, 2019.

MARQUIS AURBACH COFFING

By: Kathleen Wilde

Micah S. Echols, Esq.
Nevada Bar No. 8437
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Plaintiff, Aaron Morgan*

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

## 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]

| | |
|---|---|
| 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 |
| Nicole M. Griffin | ngriffin@richardharrislaw.com |
| E-file ZDOC | zdocteam@richardharrislaw.com |

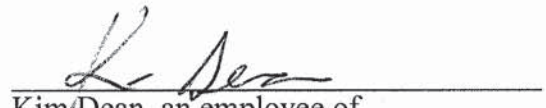
*Attorneys for Plaintiff, Aaron Morgan*

| | |
|---|---|
| Andrea M. Champion | achampion@baileykennedy.com |
| Joshua P. Gilmore | jgilmore@baileykennedy.com |
| Sarah E. Harmon | sharmon@baileykennedy.com |
| Dennis L. Kennedy | dkennedy@baileykennedy.com |
| Bailey Kennedy, LLP | bkfederaldownloads@baileykennedy.com |

*Attorneys for Defendant Harvest Management Sub, LLC*

| | |
|---|---|
| Doug Gardner, Esq. | dgardner@rsglawfirm.com |
| Douglas R. Rands | drands@rsgnvlaw.com |
| Melanie Lewis | mlewis@rsglawfirm.com |
| Pauline Batts | pbatts@rsgnvlaw.com |
| Jennifer Meacham | jmeacham@rsglawfirm.com |
| 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).

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

Electronically Filed
2/7/2019 9:43 AM
Steven D. Grierson
CLERK OF THE COURT

**Marquis Aurbach Coffing**
Micah S. Echols, Esq.
Nevada Bar No. 8437
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
kwilde@maclaw.com

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

*Attorneys for Plaintiff, Aaron Morgan*

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No.: A-15-718679-C<br>Dept. No.: XI<br><br>**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:



02-05-19P01:40 RCVD



Case Number: A-15-718679-C

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

## 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.

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

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

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

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

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

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

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

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

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

16. This Court elected to consider the motion and counter-motion during its January 25, 2019, Chambers' Calendar.

**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.

## II.
## CONCLUSIONS OF LAW

18. In addressing Plaintiff's counter-motion, the Court finds persuasive the Supreme Court of Nevada's decision in *Hornwood v. Smith's Food King No. 1*, 105 Nev. 188, 191, 772 P.2d 1284, 1286 (1989). There, the Supreme Court explained that the District Court that presides over a trial was in the best position to re-assess evidence and award consequential damages.

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.").

20. As relevant here, these precedent decisions support Plaintiff's argument that Judge Bell is in best position to address Defendant Harvest Management's Motion for Entry of Judgment because Judge Bell presided over all aspects of this case, including both trials.

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

## III.
## ORDER

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**.

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

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

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

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

DISTRICT COURT JUDGE

Respectfully submitted by:

MARQUIS AURBACH COFFING

By: Kathleen Wilde

Micah S. Echols, Esq.
Nevada Bar No. 8437
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Plaintiff, Aaron Morgan*

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

BAILEY KENNEDY

By: Sarah Harmon

Dennis L. Kennedy, Esq.
Nevada Bar No. 1462
Sarah E. Harmon, Esq.
Nevada Bar No. 8106
Andrea M. Champion, Esq.
Nevada Bar No. 13461
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendant Harvest Management Sub LLC*

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

# TAB 32

TAB 32

Electronically Filed
3/5/2019 1:30 PM
Steven D. Grierson
CLERK OF THE COURT

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON M. MORGAN, individually,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | Case No. A-15-718679-C<br>Dept. No. VII<br><br>**SUPPLEMENT TO HARVEST MANAGEMENT SUB LLC'S MOTION FOR ENTRY OF JUDGMENT**<br><br>Hearing Date: March 5, 2019<br>Hearing Time: 9:00 a.m. |

During the hearing of Defendant Harvest Management Sub LLC's ("Harvest") Motion for Entry of Judgment, the Court requested transcripts of the settling of the jury instructions from the second trial in April 2018. Attached hereto, and as set forth below, are copies of the relevant transcript excerpts concerning the settling of jury instructions and the finalizing of the special verdict form:

/ / /

/ / /

/ / /



BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

- On April 4, 2018[1], at pages 3:2-4:20, the Court and the Parties discussed a possible jury instruction regarding the first trial. The Court requested that Plaintiff's counsel submit a proposed instruction in writing.
- On April 4, 2018, at pages 45:1-46:7, the Court and the Parties discussed the fact that the jury instructions were settled during the first trial. The Court informed the Parties that it no longer had the instructions settled upon at the first trial and that a new set of proposed instructions should be submitted by the Parties. The Court also instructed the Parties that any objections raised to proposed instructions during the first trial would need to be asserted again.
- On April 4, 2018, at page 152:3-6, the Court informed the Parties that it would provide them with a new set of proposed instructions.
- On April 6, 2018,[2] at pages 56:18-58:25, the Court provided the Parties with a complete set of the proposed jury instructions. Plaintiff's counsel again stated that it wanted to include a proposed instruction relating to the first trial, and the Court instructed Plaintiff's counsel to submit the proposed instruction in writing. Finally, the Court informed the Parties that a reference to past and future vocational loss should be removed from Instruction No. 20, because there was no wage loss claim in the case.
- On April 6, 2018, at page 100:1-108:5, the Court and the Parties settled the jury instructions. The Court went through every proposed instruction, and there were no proposed instructions as to either negligent entrustment or vicarious liability. The Parties revised Instruction No. 13, because there were no Requests for Admission in this case. The Court decided to include Plaintiff's proposed instruction regarding the first trial. There was brief discussion about the instruction concerning the playback or re-reading of a witness's testimony. The Court specifically inquired as to whether the Parties had any other proposed instructions, and both Parties acknowledged that they

[1] A true and correct copy of excerpts from the April 4, 2018 Transcript of Jury Trial are attached as Exhibit 1.

[2] A true and correct copy of excerpts from the April 6, 2018 Transcript of Jury Trial are attached as Exhibit 2.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

did not. Both Parties also acknowledged that they had no other objections for the record. Finally, the Court informed the Parties that it had a sample special verdict form from a recent trial that could be used.

- On April 6, 2018, at pages 206:20-207:6, the Court provided the Parties with the final set of jury instructions.
- On April 9, 2018,[3] at pages 3:11-4:2, the Court confirmed that it had provided the Parties with a complete set of the final jury instructions, and it was discovered that the verdict form had been mistakenly omitted from this set.
- On April 9, 2018, at pages 5:20-6:2, the Court provided the Parties with a sample special verdict from another recent trial. The Court informed the Parties that the caption was incorrect and that it may not be correct as to the damages being sought, but asked if the form looked "okay."
- On April 9, 2018, at page 116:7-24, Plaintiff's Counsel informed the Court that it wanted to make one change to the special verdict form. Plaintiff's counsel requested that past and future medical expenses and past and future pain and suffering be split up as separate categories of damages. That was the only revision requested, and the Court approved the revision.
- On April 9, 2018, at page 117:3-24, there was an objection lodged to Jury Instruction No. 26, regarding the Court's prior ruling on a motion for summary judgment.

DATED this 5th day of March, 2019.

BAILEY❖KENNEDY

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

*Attorneys for Defendant*
HARVEST MANAGEMENT SUB LLC

[3] A true and correct copy of excerpts from the April 9, 2018 Transcript of Jury Trial are attached as Exhibit 3.

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

## CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 5th day of March, 2019, service of the foregoing **SUPPLEMENT TO 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 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
DOUGLAS R. RANDS
BRETT SOUTH
**RANDS, SOUTH & GARDNER**
1055 Whitney Ranch Drive, Suite 220
Henderson, Nevada 89014

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

*Attorneys for Defendant*
DAVID E. LUJAN

---

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
KATHLEEN A. WILDE
**MARQUIS AURBACH COFFING P.C.**
1001 Park Run Drive
Las Vegas, Nevada 89145

Email: Mechols@maclaw.com
kwilde@maclaw.com

*Attorneys for Plaintiff*
AARON M. MORGAN

*/s/ Josephine Baltazar*
Employee of BAILEY❖KENNEDY

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

# EXHIBIT 1

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON MORGAN,<br>Plaintiff,<br>vs.<br>DAVID LUJAN<br>Defendant. | CASE#: A-15-718679-C<br>DEPT. VII |

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

WEDNESDAY, APRIL 4, 2018

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

*APPEARANCES:*

For the Plaintiff: DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

For the Defendant: BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER



TheRecordXcha

1 Las Vegas, Nevada, Wednesday, April 4, 2018

2 MR. CLOWARD: The first thing is the prior trial, in the event
3 that that comes up, we feel like there should be some sort of an instruction
4 that you could give the jurors now. Just, hey, there was a prior trial, you
5 know, that something happened and, you know, this is the second time or
6 something. I mean, we don't want to indicate that there was anything
7 negative.

8 THE COURT: Generally, how I have handled that in the past
9 on the few occasions this has come up is to just simply say you previously
10 testified in this matter. I mean, we have got this [indiscernible] testimony as
11 well, and so we treat it really kind of like deposition testimony because
12 obviously you're entitled to impeach someone if they something different
13 than they did in their testimony in the first trial. But if you just say you
14 testified in this matter previously, I don't think that it is necessary to get into
15 any particular detail about that further than that.

16 MR. CLOWARD: Yeah. I guess a concern that we would have
17 is that if the jurors think that, you know, Aaron's already collected on this and
18 that this is just a second lawsuit kind of a thing which, you know, that
19 wouldn't be accurate. And so we'd hoped to get just a simple instruction
20 that, you know, we had a -- there's a reason we give these instructions. In
21 that case, there was an issue -- or in that trial there was an issue and so this
22 is the second trial on this matter, it's still not complete, and that's it.

23 And then, if we get into the whole prior trial thing, there won't be
24 the jurors thinking that there was some sort of conclusion for one side or the
25 other.

1 THE COURT: Well I just don't know why we could into the
2 whole prior trial thing at all, Mr. Cloward. I mean, can't we just --
3 MR. GARDNER: I don't -- yeah. In fact, I don't mean to bring
4 up the prior trial. We could call it sworn testimony if we want to refer to the
5 trial transcript -- just as sworn testimony.
6 THE COURT: It would be very similar to the way that we
7 handle it when somebody makes a sworn statement to an insurance
8 adjuster. We don't say it's a sworn statement to an insurance adjuster, we
9 just say you gave a statement in this case previously.
10 MR. BOYACK: It was brought up yesterday.
11 UNIDENTIFIED SPEAKER: Yeah, twice yesterday, they said --
12 MR. CLOWARD: Yeah, it was brought up, plus --
13 UNIDENTIFIED SPEAKER: -- prior trial.
14 MR. CLOWARD: -- I believe that it's possible --
15 THE COURT: All right. Well if you want to draft an instruction,
16 I'm happy to look at Mr. Cloward.
17 MR. CLOWARD: Okay. Will you do that, Bryan.
18 MR. BOYACK: Yep.
19 MR. CLOWARD: Thanks. And thank you, Your Honor, for that
20 consideration.
21 And a couple of other things. The first trial that we had, there
22 was no discussion of liens or health insurance. I just assumed that that was
23 because the case law, the *Pizarro* case at 133 Nev. Adv. Op., talks about
24 how, you know, if a lien is recourse versus non-recourse, the relevance is
25 really minimal.

1 THE COURT: I have at least an initial draft set of instructions. I
2 still don't have any instructions from the Defense. Mr. Rands?
3 MR. RANDS: Your Honor, in the last trial, I think we settled the
4 instructions.
5 THE COURT: I understand, but I don't have them. I didn't keep
6 them from the last trial.
7 MR. BOYACK: Yeah, we're working on them.
8 THE COURT: And I don't have them. As I mentioned the first
9 day, my assistant retired and so I don't have access to her [indiscernible] so
10 I don't have them.
11 MR. RANDS: Counsel gave me his set. I'm going to compare it
12 with mine. I think we've got it pretty much settled.
13 THE COURT: Well the set you provided me was missing some,
14 like, critical instructions, so.
15 MR. BOYACK: We know. We know, and I understand. The
16 copies that were emailed were incorrect.
17 THE COURT: Okay. Well just get me whatever because I
18 would like to get those finalized.
19 MR. RANDS: I got his set this morning. I'll compare it with
20 ours --
21 THE COURT: That's the draft that I have currently.
22 MR. RANDS: -- and I think we've got them settled.
23 THE COURT: Okay. Well, great.
24 MR. RANDS: So rather than give you ours and then have to
25 deal with --

1 THE COURT: Well, if there's any -- the other thing is if there
2 are any that there were objections to or whatever last time, they're not going
3 to be in the record. So if there's any that you want that you are not agreeing
4 on, I need those, too.
5 MR. RANDS: Okay.
6 THE COURT: So we basically just need to redo it.
7 MR. RANDS: Will do.
8 [Recess at 12:16 p.m.]
9 THE MARSHAL: Please rise for the jury.
10 [Jury in at 1:47 p.m.]
11 THE MARSHAL: Please be seated.
12 THE COURT: We're back on the record in Case number
13 A718679, Morgan versus Lujan. Let the record reflect the presence of all of
14 our jurors, counsel, and parties.
15 Mr. Cloward, I'm sorry, go ahead, please.
16 MR. CLOWARD: No problem. Thank you, Your Honor.
17 BY MR. CLOWARD:
18 Q So, Dr. Muir, if you'll kind of I guess just kind of we'll go through
19 -- I think the last question was kind of the thought process in arriving to the
20 ultimate conclusions that you have today and so forth.
21 A Certainly. On the cervical spine, in summary, based upon the
22 patient's symptoms of a sharp stabbing pain, which is consistent with joint,
23 based upon the hypermobility at C5-C6, based upon the physical
24 examination of extension being more painful than flexion, which is consistent
25 with a joint problem, based upon the symptoms of -- of referred pain in the

1 I'm hoping not to have everybody waiting today -- like they were today.
2 So I did find the --
3 MR. CLOWARD: Instructions?
4 THE COURT: Yeah. I did find those, so I'll go through those
5 again and get you a new -- you can just recycle whatever I gave you. I'll
6 go through and give you a new set.
7 MR. GARDNER: Your Honor, I hope I didn't make a big
8 mistake. I've been telling a couple of my witnesses Monday. Should I
9 not do that?
10 THE COURT: My hope was to finish this by Friday, but I
11 know that we are behind. So I don't know the answer to that. I mean,
12 we'll see. We have Dr. Cash --
13 And how long is Dr. K -- I'm never going to get her name.
14 MR. CLOWARD: Kittusamy.
15 THE COURT: Yeah. Never going to get it.
16 MR. CLOWARD: Well, the concern is, is that we were -- we
17 wanted to get Dr. Coppel yesterday.
18 THE COURT: Right.
19 MR. CLOWARD: So he got pushed 'til tomorrow. We're
20 going to -- it's going to be a heavy, heavy lift, but we're going to try to get
21 all three of those doctors done.
22 THE COURT: Okay.
23 MR. CLOWARD: Which will mean that we'll have to finish
24 Aaron on Friday.
25 THE COURT: Okay.

# EXHIBIT 2

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON MORGAN,<br>Plaintiff,<br>vs.<br>DAVID LUJAN<br>Defendant. | CASE#: A-15-718679-C<br>DEPT. VII |

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

FRIDAY, APRIL 6, 2018

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

*APPEARANCES:*

For the Plaintiff: BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

For the Defendant: DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER



TheRecordXcha

1 Tell me your plan.
2 Oh, there it is.
3 MR. GARDNER: Well, we pushed our experts to Monday. I
4 can call them to see if we can get them here today, but I don't know if we
5 can do that. But I do intend to call the Plaintiff and Erica, and then our
6 accident reconstructionist and our doctor. But --
7 THE COURT: Mr. Gardner, I told you two days ago to have
8 them here today.
9 MR. GARDNER: I'm sorry, I misunderstood.
10 THE COURT: I mean, I --
11 MR. GARDNER: I'll see if I can get them.
12 THE COURT: Because, I mean, we knew that they were going
13 to finish in the morning today.
14 MR. GARDNER: I'll contact them, Your Honor.
15 THE COURT: All right. All right, folks. 10:30.
16 MR. CLOWARD: Okay. Thanks.
17 [Recess at 10:25 a.m.]
18 THE COURT: Did you both get -- I had put them up here but I
19 didn't tell you -- the new set of jury instructions.
20 MR. RANDS: I grabbed those and distributed them yesterday.
21 THE COURT: Right. Thank you, Mr. Rands.
22 MR. RANDS: [Indiscernible].
23 THE COURT: So it is not exactly what we had decided upon
24 before. There was just a couple of additional instructions and they're
25 reordered just a hair. But I incorporated what -- there were a few

1 instructions from the set from --

2 MR. CLOWARD: Than last night?

3 THE COURT: Yeah.

4 MR. CLOWARD: Okay.

5 THE COURT: So -- that I had incorporated. So just if there's

6 any additional instructions that anybody intends to propose, let me know.

7 MR. CLOWARD: I think there's one instruction that we wanted

8 to propose just regarding that -- the trials.

9 THE COURT: That's fine. So just make sure that you get it --

10 you get it emailed to me.

11 MR. RANDS: Yeah, I've gotten a copy of their -- and we've

12 talked a little bit with Bryan before about that. But now you've brought the

13 other one up, so I guess we're going to have to have them both.

14 THE COURT: So just make sure I get -- if you could get them

15 in writing to me, because I would like to go --

16 MR. CLOWARD: Do you have it in writing?

17 MR. RANDS: The only other issue was to --

18 THE COURT: -- through them maybe around lunchtime.

19 MR. CLOWARD: Your Honor, I have a handwritten --

20 THE COURT: That'll work.

21 MR. CLOWARD: -- apparently from Mr. Boyack.

22 MR. BOYACK: Yes.

23 MR. CLOWARD: Because Mr. Boyack's --

24 THE COURT: We'll see how Mr. Boyack's writing is.

25 MR. CLOWARD: Ask him to type it up.

1 MR. BOYACK: Well --
2 MR. RANDS: Instruction Number 20, Your Honor --
3 MR. CLOWARD: I'm throwing you under the bus.
4 MR. RANDS: Instruction Number 20 also has past and future
5 vocational loss --
6 THE COURT: Oh, I thought I fixed that.
7 MR. RANDS: I'm going to go find Mr. Gardner. I'll be right
8 back.
9 THE COURT: Oh, I see. You know what? It's -- it was an
10 editing error on my part. I circled it, but I didn't cross it out so --
11 MR. BOYACK: Oh, okay.
12 THE COURT: So my assistant would have had
13 MR. BOYACK: Number 29?
14 THE COURT: -- no way to figure out what I was trying to do
15 there.
16 MR. BOYACK: On Number 29 that --
17 THE COURT: Yeah.
18 MR. BOYACK: Okay, perfect.
19 THE COURT: I just -- I screwed it up.
20 MR. BOYACK: Well, we're all --
21 THE COURT: I knew I was taking it out, I just --
22 MR. BOYACK: Ben's pointed out my screw-ups, plenty of
23 those.
24 THE COURT: I wasn't very clear on that.
25 Do you want to get them back in?

1 THE MARSHAL: Please rise for the jury.

2 [JURY IN AT 10:35 A.M.]

3 THE MARSHAL: Please be seated.

4 THE COURT: Back on the record in case number A718679,

5 Morgan versus Lujan. [Indiscernible] present, all of our jurors present.

6 All right. Mr. Gardner, please call your first witness.

7 [PAUSE]

8 [COUNSEL CONFER]

9 THE COURT: All right. Sir, come back on up, please. Go

10 ahead and have a seat. Having been previously sworn, I'll remind you that

11 you are still under oath.

12 Mr. Gardner, whenever you are ready.

13 **AARON MORGAN**

14 [having been called as a witness and having been previously sworn, testified

15 further as follows:]

16 **DIRECT EXAMINATION**

17 BY MR. GARDNER:

18 Q Hello, Aaron.

19 A Hello.

20 Q We meet again.

21 A Yes.

22 Q I don't know why you left at -- watching your girlfriend testify.

23 Every man in America would like to see his wife or girlfriend up on the stand

24 like that. You can find out a lot of information.

25 But where are you working now?

1 come back at -- you know what? I'm going to send the jury out to do
2 the instructions right now and then come back at 12:45. Yeah, so
3 that's what I'll do.
4 MR. GARDNER: Okay.
5 MR. CLOWARD: So come back at 12:45?
6 THE COURT: We're going to break for lunch and let's
7 have the jury come back at 12:45, but we're going to do the jury
8 instructions right now --
9 MR. CLOWARD: Oh, yeah.
10 THE COURT: -- so we're going to take five, ten minutes.
11 MR. CLOWARD: Good idea. Thanks.
12 THE COURT: All right.
13 [Bench conference ends at 11:33 A.M.]
14 THE COURT: All right, folks. We're going to go ahead
15 and break for lunch. During this break you are admonished not to talk
16 or converse among yourselves or with anyone else on any subject
17 connected with this trial or read, watch or listen to any report of or
18 commentary on the trial or any person connected with this trial by any
19 medium of information, including without limitation, newspapers,
20 television, the Internet and radio or form or express any opinion on
21 any subject connected with the trial until the case is finally submitted
22 to you. Remind you not to do any independent research. We're going
23 to come back at 12:45.
24 THE MARSHAL: Please rise for the jury.
25 [Jury out at 11:33:30 A.M.]

1 THE COURT: All right, folks. Let's just run through the
2 jury instructions here real quick. So, all right. We have Number 1, it
3 is now my duty as judge. Also, I have probably changed the -- I know
4 we had a set. We've had some different things. There may be just
5 some minor changes to remove pronoun references in the instructions.
6 I don't give that masculine or feminine instruction that was submitted
7 in the second group. So and if you happen to see something that
8 isn't, let me know. Somehow those pronouns sneak their way into the
9 instructions. But I think that they're in pretty good shape in that
10 regard.
11 So 1 is it is now my duty as judge;
12 2, if in these instructions any rule, direction or idea;
13 3, if during this trial I have said or done anything;
14 4 was not submitted at any point in this case, but it's an
15 instruction we generally give, the sympathy --
16 MR. CLOWARD: Yeah, that's fine. Fine with me.
17 THE COURT: Do you want -- is everybody fine with that?
18 MR. CLOWARD: Yeah.
19 MR. GARDNER: Yeah.
20 MR. RANDS: There's a spot that usually has that in there.
21 MR. GARDNER: Yeah, that's fine.
22 THE COURT: Yeah. It just wasn't. For whatever reason,
23 it wasn't.
24 MR. GARDNER: Okay.
25 THE COURT: 5, one of the parties in the case is a

1 corporation.

2 MR. RANDS: Okay. I must have the wrong set.

3 THE COURT: Yeah, I apologize. We've had a few

4 different.

5 MR. CLOWARD: I had my four exhibit binders that I've

6 been -- so we just reprint them many times, and I have notes in --

7 MR. RANDS: Mine was --

8 THE COURT: One of the parties in this case is a

9 corporation;

10 6 was not included by anyone, but I would like to give it

11 and it's just you can't communicate with anybody by any electronic

12 means until the verdict's returned.

13 MR. CLOWARD: Yeah, we're happy with that. Good.

14 THE COURT: 7, you must decide all questions of fact from

15 this case. The instruction submitted did not have the last line that

16 says "including the Internet or other online services." I assume

17 everybody's fine with that.

18 8, although you are to consider only the evidence in

19 reaching a verdict;

20 9, the evidence which you are to consider. This instruction

21 was submitted with the line "if the parties stipulate to the existence of

22 a fact you must accept that." That's actually a separate instruction so

23 I removed that line.

24 10, there are two kinds of evidence, direct and

25 circumstantial;

1 11, in determining whether any proposition has been
2 proved;
3 12, if the parties -- if Counsel for the parties have
4 stipulated to any fact.
5 And then 13 is the deposition interrogatory request for
6 admission instruction, so I don't -- I can't recall if there's been any
7 reference to an interrogatory request for admission.
8 MR. RANDS: Interrogatory request for admission --
9 MR. CLOWARD: We did the rogs, not the RFAs, though,
10 the rogs.
11 THE COURT: So you want me to strike the last
12 paragraph?
13 MR. RANDS: Yeah.
14 THE COURT: All right.
15 MR. GARDNER: Sure.
16 MR. CLOWARD: Yeah.
17 THE COURT: 14, the credibility or believability of a
18 witness;
19 15, discrepancies in a witness's testimony;
20 16, an attorney Has a right to interview a witness;
21 17, a person who has specialized knowledge, skill,
22 experience;
23 18, a question has been asked;
24 19, an expert witness has testified;
25 20, whenever in these instructions I state that the burden;

1 21, the preponderance or weight of evidence;
2 22, the Plaintiff seeks to establish liability in a claim of
3 negligence;
4 23, the Plaintiff has the burden to prove;
5 24, when I use the word "negligence";
6 25, a proximate cause;
7 26, it has already been determined. All right. You know
8 what? We have this instruction about the prior trials. I would probably
9 put it in -- the next in line just --
10 MR. RANDS: Okay.
11 THE COURT: -- since there's some specific information
12 there. I don't know that there's a great place to put this anywhere,
13 but --
14 MR. BOYACK: Correct. No, I think --
15 THE COURT: All right. So this is the instruction that's
16 proposed by the Plaintiff. There have been two prior trials previously
17 held in this matter. The first trial was set in April 2017 but needed to
18 be rescheduled on the first day for an emergency; the second trial was
19 in November 2017 and lasted for three days but was not completed
20 and no verdict was reached. You should not make any opinions or
21 conclusions based on the fact that prior trials were held -- were held in
22 this case. All right. Any objection from the --
23 MR. RANDS: Well, I kind of objected to it -- not objected
24 to it. We talked beforehand that I didn't think it was necessary to put
25 that first issue in, but then I guess Mr. Cloward did raise that in his --

1 THE COURT: All right. So I'm going to go ahead and give
2 that as -- we'll make that 27.
3 MR. RANDS: Okay.
4 THE COURT: The next is Plaintiff may not recover
5 damages. It's the comparative negligence instruction. I'm going to
6 make that 28.
7 MR. RANDS: Uh-huh.
8 THE COURT: You are not to discuss or even consider,
9 make that 29. Oh, wait. Wait, wait, wait. I might not have gotten to it
10 yet. Let me see. Ah.
11 In determining the amount of losses, I would make that 30,
12 and then I'm going to take out that three.
13 MR. CLOWARD: Okay.
14 THE COURT: That was just my missed error and how I
15 edited it. I circled it instead of crossed it out.
16 31, no definite method or standard of calculation;
17 32, if you find Plaintiff suffered injuries;
18 33, according to the table of mortality;
19 34, whether any of these elements have been proven;
20 35, the Court has given you instructions;
21 36, if during your deliberation --
22 MR. RANDS: Just as a side note, in addition to issues that
23 I don't like with the jury questions, this is another one I don't like
24 because it kind of gives them the idea that they may be able to do it.
25 THE COURT: You know what? Actually, Mr. Rands, that's

1 not my experience. The one time we did not -- the one time that I
2 didn't give this instruction -- we've never had a jury ask for a playback,
3 except for the one time we didn't --
4 MR. RANDS: Didn't do it? Okay.
5 MR. CLOWARD: And then they asked for it?
6 THE COURT: Then they asked for a bunch of stuff. So, I
7 mean, I think telling them, like, we don't encourage that is, at least in
8 my experience, that's been helpful and doesn't give them ideas,
9 because when we didn't tell them they definitely got ideas.
10 MR. RANDS: They did it. Okay. Mine's different, but, you
11 know, I think sometimes when you put it in their mind they think, oh,
12 yeah, we could -- we might get a reading.
13 THE COURT: 37, it is your duty as jurors;
14 38, when you retire to consider your verdict, and;
15 39, now you will listen.
16 Are there any other proposed instructions that the Court
17 has not considered?
18 MR. CLOWARD: No, Your Honor.
19 MR. RANDS: Not from the Defense, Your Honor.
20 THE COURT: Okay. Any objections that have not been
21 placed on the record?
22 MR. RANDS: Nope.
23 THE COURT: Great. So we'll get -- I'll get those couple
24 changes made and then we'll get you, each side, a final set after
25 lunch.

1 MR. RANDS: A clean set. Okay. Thank you.
2 THE COURT: And then I don't know if I have a verdict
3 form or not, but since this is like my sixth car accident trial in a row, I
4 have one from last year that will work great for this, I will just note
5 that.
6 MR. CLOWARD: That would be perfect.
7 THE COURT: We'll put that together and then --
8 MR. RANDS: Will it -- it will include a comparative?
9 THE COURT: Yeah.
10 MR. RANDS: Okay.
11 THE COURT: This is my sixth car accident trial since the
12 beginning of the year, and two of them were two weeks long.
13 MR. RANDS: Really?
14 MR. CLOWARD: Geez.
15 THE COURT: Okay. So --
16 MR. RANDS: Was Mr. Cloward involved in those?
17 THE COURT: You didn't have any of the ones that we had
18 this year, have you --
19 MR. CLOWARD: That was last year.
20 THE COURT: That was last year.
21 MR. CLOWARD: Last year.
22 THE COURT: It's been different lawyers in every single
23 one.
24 MR. RANDS: Really?
25 THE COURT: So I had Mr. Prince and I had -- they really

1 just all blur together. It's awful. I can't remember. But, no, not Mr.
2 Cloward.
3 MR. CLOWARD: All right. Thank you, Your Honor.
4 MR. RANDS: Thanks, Judge.
5 THE COURT: All right.
6 [Recess at 11:44 A.M.]
7 [Outside the presence of the jury]
8 MR. GARDNER: Your Honor, I do have a witness coming. I
9 expected him about 10 minutes ago. Could we -- I know it's asking a lot,
10 but --
11 THE COURT: Well, yeah. Just have them hold off.
12 THE MARSHAL: Okay.
13 THE COURT: Yeah.
14 MR. GARDNER: Thank you. Appreciate that.
15 [Pause]
16 MR. GARDNER: In fact, if it would be all right, I'll go out and
17 wait for him, so he --
18 THE COURT: Yeah.
19 MR. GARDNER: -- comes in the right place. Oh. He's right
20 there.
21 THE COURT: Right.
22 [Pause]
23 MR. GARDNER: Your Honor, he's here.
24 THE COURT: All right.
25 [Pause]

1 THE COURT: All right, folks. So here is our plan. We have a
2 doctor who's scheduled to come at 9:00 on Monday morning. At this point,
3 the parties can obviously change their minds because we're not done with
4 the case, but at this point I anticipate that will be our last witness unless
5 something happens. We'll finish up with the doctor's testimony. I would
6 anticipate that I would then read you the jury instructions. We'll break for
7 lunch, and then have closings immediately after lunch tomorrow and get you
8 the case to deliberate by midafternoon. So we'll reconvene Monday at 9:00
9 a.m.
10 During this break you are admonished not to talk or converse
11 among yourselves or anyone else on any subject connected with this trial, or
12 read, watch, or listen to any report or commentary on the trial or any person
13 connected with this trial by any media information including, without
14 limitation, newspapers, television, internet, and radio or form or express any
15 opinion on any subject connected with the trial until the case is finally
16 submitted to you. I remind you to not do any research. Everybody have a
17 good weekend, we'll see you Monday.
18 THE MARSHAL: Please rise.
19 [Jury out at 4:20 p.m.]
20 THE COURT: Mr. Boyack?
21 MR. BOYACK: Yes.
22 THE COURT: I have final sets of instructions I'm just going to
23 give you. One for Mr. Gardner, one for you.
24 MR. BOYACK: Thank you.
25 THE COURT: This is mine.

1 MR. BOYACK: This is the new set of instructions.
2 THE COURT: That's the final set. So if you have any other
3 ones, get rid of them. All right, anything else we need to take care of this
4 evening?
5 UNIDENTIFIED SPEAKER: No, Your Honor.
6 MR. GARDNER: No, Your Honor.
7 MR. CLOWARD: Thank you, Judge. Well, I think he probably
8 said enough. But I would just say I'm not sure whether Dr. Baker stated his
9 opinions to a reasonable degree of probability. But I don't know. I just, I'm
10 not moving to strike or anything, I'm just --
11 THE COURT: All right. I wasn't entirely clear on that myself,
12 Mr. Cloward. But I mean, I think he --
13 MR. CLOWARD: I would be curious to review the transcript.
14 But I think he kind of --
15 THE COURT: Well, what he said was can you tell me what that
16 means. And then he said that they were -- that he used methods that were
17 generally accepted in his field, which to me is the same thing. Yes, I mean,
18 he didn't use the magic language that, you know, the magic legal language.
19 But I think that what he said afterwards was really the same thing, that it
20 was, you know --
21 MR. CLOWARD: Okay. Can we leave the boards here?
22 THE COURT: Oh yes, you can leave everything. Nothing's
23 going to happen here over the weekend.
24 THE MARSHAL: We're going to [indiscernible] this portion of
25 the courtroom. [Indiscernible] to do this, so just leave your boxes and your

# EXHIBIT 3

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON MORGAN,<br>Plaintiff,<br>vs.<br>DAVID LUJAN<br>Defendant. | CASE#: A-15-718679-C<br>DEPT. VII |

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

MONDAY, APRIL 9, 2018

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

*APPEARANCES:*

For the Plaintiff: BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

For the Defendant: DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER



TheRecordXcha

1 Las Vegas, Nevada, Monday, April 9, 2018

2 THE COURT: Good morning, Mr. Rands. How was your

3 weekend? It's Monday.

4 MR. RANDS: Come on. It's Monday during trial. That's how

5 my weekend was. I apologize, Your Honor. I just got a call from Mr.

6 Gardner. He's almost here, but --

7 THE COURT: All right. Do you have your witness?

8 MR. RANDS: Dr. Sanders is sitting in the --

9 THE COURT: Excellent.

10 MR. RANDS: I apologize I wasn't here Friday afternoon. I had

11 a matter in Reno I had to take care of. But did we get a complete copy of

12 the jury instructions?

13 MR. CLOWARD: Yes.

14 MR. RANDS: The complete set.

15 MR. CLOWARD: Yes.

16 THE COURT: Yes.

17 MR. RANDS: Because there was those couple of additions.

18 MR. CLOWARD: Yeah.

19 THE COURT: Yeah. But we got -- Mr. Gardner should have it,

20 but if you don't, do you need another one?

21 MR. RANDS: Did that include the jury forms, the verdict forms?

22 THE COURT: No. Oh, no. I forgot to ask Sylvia to do that.

23 No. I'll get those right now.

24 MR. RANDS: Okay. Thank you. I was working off the last

25 greatest set, but I'm sure it's not the last one because I didn't have the new

1 one. If Gardner has them, I'll grab them from him.

2 THE COURT: We'll get you a new one.

3 MR. CLOWARD: And then, Your Honor, I was hoping to have

4 Dr. Sanders instructed outside the presence of what he's allowed to talk

5 about and what he's not allowed to talk about. His report handed in 2016.

6 We've never gotten a supplemental report. He also never reviewed the films

7 in the case. He specifically set out in his report, he said, hey, I'd like to see

8 the films. Those were never provided, so we never did a supplement. So

9 anything past 2016, I don't think would be appropriate for him to discuss.

10 Additionally, he never discussed the second car crash and so any mention

11 of that I think would be off limits as well. So I was hoping that --

12 THE COURT: All right. That's fine.

13 MR. CLOWARD: Okay.

14 THE COURT: Can the doctor come in? He doesn't have to

15 come all the way up. Good morning. How are you? So I just wanted to

16 touch base with you before we call you to testify. As I understand it, your

17 last report was sometime in 2016.

18 THE WITNESS: I think so, yes.

19 THE COURT: Okay. And you never addressed -- there was

20 some subsequent accident that was never addressed by you.

21 THE WITNESS: Correct.

22 THE COURT: Okay. So just we just need to make sure that

23 your testimony is limited to the things that you put in your report and not

24 anything that you've learned after that's not in the report.

25 THE WITNESS: Correct. In my report, I think the patient did

1 mention there was a subsequent motor vehicle accident and he said he was
2 fine and I never pursued that.
3 THE COURT: All right. So, anything else, Mr. Cloward?
4 MR. CLOWARD: Okay. No. I just wanted to make sure that
5 the doctor was aware of that.
6 THE COURT: Great. Sir, if you want to just have a seat right
7 here we're going to bring the jury in and then we'll have you come up to the
8 stand once they're in. Just wherever, wherever you like.
9 MR. RANDS: Mr. Gardner just texted me. He's in the elevator,
10 so he'll be here.
11 THE COURT: Good. In 10 or 15 minutes he'll be here.
12 MR. RANDS: Ten or fifteen minutes, exactly, the elevators
13 here.
14 [Pause]
15 MR. GARDNER: Your Honor, I'm sorry.
16 THE COURT: This one's for Mr. Gardner.
17 All right. Can you bring in the jury? All right. Mr. Rands, here's
18 your jury instructions.
19 MR. RANDS: Thank you, Your Honor.
20 THE COURT: Take a look and see if -- will you guys look at
21 that verdict form? I know it doesn't have the right caption. I know it's just
22 the one we used the last trial. See if that looks sort of okay.
23 MR. RANDS: Yeah. That looks fine.
24 THE COURT: I don't know if it's right with what you're asking
25 for for damages, but it's just what we used in the last trial which was similar

1 sort of.

2 THE MARSHAL: Please rise for the jury.

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

4 THE COURT: We're back on the record in case number

5 8718679, Morgan v. Lujan. [indiscernible] Counsel and parties. Good

6 morning, everyone. I hope you had a good weekend.

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

8 witness.

9 MR. GARDNER: Yes, Dr. Sanders.

10 THE MARSHAL: Doctor, up here, please. If you would remain

11 standing, raise your right hand, and face the clerk, please.

12 **STEVEN SANDERS**

13 [having been called as a witness and being first duly sworn testified as

14 follows:]

15 THE COURT: Good morning, sir. Go ahead and have a seat,

16 please. And if you'll please state your name and spell it for the record.

17 THE WITNESS: Steven Sanders, S-T-E-V-E-N, Sanders, S-A-

18 N-D-E-R-S.

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

20 Gardner.

21 **DIRECT EXAMINATION**

22 BY MR. GARDNER:

23 Q Good morning, Doctor.

24 A Good morning.

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

1 MR. GARDNER: Yes.
2 THE COURT: All right.
3 MR. GARDNER: It is.
4 THE COURT: So when we come back we'll be -- do you have
5 any rebuttal witnesses, Mr. Cloward?
6 MR. CLOWARD: No.
7 THE COURT: Great. So when we come back you'll formally
8 rest, we'll read jury instructions, and do closings.
9 MR. BOYACK: We have one thing.
10 THE COURT: All right.
11 MR. BOYACK: On the verdict form we just would like the past
12 and future medical expenses and pain and suffering to be differentiated.
13 THE COURT: Yeah. Let me see.
14 MR. BOYACK: Just instead of the general.
15 THE COURT: That's fine. That's fine.
16 MR. BOYACK: Yeah. That's the only change.
17 THE COURT: That was just what we had laying around, so.
18 MR. BOYACK: Yeah.
19 THE COURT: So you want -- got it. Yeah. That looks great. I
20 actually prefer that as well.
21 MR. BOYACK: Yeah. That was the only modification.
22 THE COURT: That's better if we have some sort of issue.
23 MR. BOYACK: Right.
24 THE COURT: All right. All right, folks.
25 [Recess at 12:31 p.m., recommencing at 1:31 p.m.]

1 THE COURT: We're on the record already?
2 THE CLERK: We're on the record now.
3 THE COURT: Okay. So we're just going to note the Defense
4 objection to instruction number 26, which is an instruction relating to my
5 prior ruling on the motion for summary judgment. And as I understand it, the
6 Defense is not objecting to the accuracy of the instruction, but just the
7 decision that led to the instruction.
8 MR. RANDS: That is correct, Your Honor, and I just wanted to
9 preserve that for the record.
10 THE COURT: All right. Anything you want to say about that,
11 Mr. Cloward or Mr. Boyack?
12 MR. CLOWARD: Just to note that there's been no offer of proof
13 as to what Dr. Sanders would have testified to. He didn't have the
14 opportunity to review those records. He formulated no opinions regarding
15 that, so to the extent that the instruction or the prior ruling is not appropriate,
16 there's been zero evidence submitted to the factfinders that the wrists were
17 not injured, rather the record has indicated that they were. And therefore,
18 you know, we would move -- I mean, if the Court had not already ruled, we
19 would be moving for a directed verdict on that issue right now, but since the
20 Court's already ruled, then we don't need to move for a directed verdict on
21 that issue.
22 THE COURT: All right. Anything else we need to take care of
23 before we bring the jurors in?
24 MR. GARDNER: No, Your Honor. Thank you.
25 MR. CLOWARD: Is there anything you've shown the jurors

# TAB 33

# TAB 33

Electronically Filed
3/28/2019 8:54 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON MORGAN,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID LUJAN, et al.,<br><br>Defendants. | CASE NO. C-15-718679-C<br><br>DEPT. VII |

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE

TUESDAY, MARCH 5, 2019

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

APPEARANCES:

For the Plaintiff: BENJAMIN P. CLOWARD, ESQ.
BRYAN A. BOYACK, ESQ.
MICAH S. ECHOLS, ESQ.
KATHLEEN A. WILDE, ESQ.

For the Defendant Harvest: DENNIS L. KENNEDY, ESQ.
SARAH E. HARMON, ESQ.
MICHELLE STONE, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

Tuesday, March 5, 2019 - 9:53 a.m.

THE COURT: Morgan versus Lujan.

MR. KENNEDY: Thank Your Honor.

THE COURT: Could I get everybody's appearance for the record, please.

MR. CLOWARD: Your Honor, Benjamin Cloward on behalf of Aaron Morgan.

MR. ECHOLS: Micah Echols here for Plaintiff Aaron Morgan.

MR. BOYACK: Bryan Boyack for Plaintiff Aaron Morgan.

MS. WILDE: Kathleen Wilde for Mr. Morgan.

MR. KENNEDY: Dennis Kennedy and Sarah Harmon on behalf of Defendant Harvest Management, sub LLC. Also present is Michelle Stone, who is general counsel.

THE COURT: All right. Good morning. So before we get into this motion, I have a question for all of you. Would it be easier if I -- I know Judge Gonzalez sent it back for this purpose, but I can -- I mean, I can take the case back for all purposes if that's easier for everyone.

MR. CLOWARD: We would actually ask that.

MR. KENNEDY: Your Honor, we filed an objection to the case coming back for any reason.

THE COURT: Right.

MR. KENNEDY: So we can't consent to that.

THE COURT: Okay. All right. All right.

MR. CLOWARD: And, Your Honor, I mean, on that issue, you know, the case law supports that you would be the best person given that you presided over

two jury trials, almost a third jury trial.

THE COURT: There is a long history with this case.

MR. CLOWARD: True.

THE COURT: Well, let's -- we'll just start with the motion, and I'll give that some thought. So -- I'm sorry. So, Mr. Kennedy, your motion.

MR. KENNEDY: Thank you, Your Honor.

THE COURT: Let me start by asking you, so the case is currently in front of the Nevada Supreme Court. I know that you filed a motion with them. Do you think it would be more appropriate to wait until they determine the case is not properly in front of them?

MR. KENNEDY: I don't think we have to do that. We talked about doing that, but this is an issue that we can decide now because the motion to dismiss in front of the Nevada Supreme Court is on the ground that there's no final judgment, and the motion that's in front of the Court today is a step on the road to getting a final judgment.

THE COURT: Right.

MR. KENNEDY: So I think we would just -- we'd just be, in essence, wasting time. I think the Court's going to dismiss and say there's no final judgment, so we would just be back again on the same issue.

THE COURT: I have another question for you. Do you know if the settling of jury instructions was transcribed? Because if it was, I could not find it and I could not --

MS. WILDE: With the doors closing, I couldn't hear.

THE COURT: I was looking for the transcript of the settling of jury instructions, and I could not find that. I don't know if they were ever -- I just couldn't

find it. I couldn't find it in what was filed. I believe it was done on the day April -- I want to say that was April 6.

MS. HARMON: I don't know if I have a full transcript for that day, but let me look for the appendix.

THE COURT: So what was filed that's not in your appendix was -- the original transcripts filed didn't appear to include that, and then I couldn't -- I did not find it in your paperwork.

MR. KENNEDY: Yeah. I don't think we included it in --

MS. HARMON: No.

MR. KENNEDY: -- the standings here.

THE COURT: No.

MR. KENNEDY: We just included copies of the instructions themselves.

THE COURT: Right. Okay.

MS. HARMON: And we only attached excerpts in our appendix, so I don't believe we'd have the settling of the jury instructions.

THE COURT: I didn't see that. I just saw the instructions themselves. I just wanted to make sure that I didn't find --

MR. KENNEDY: Yeah, that's all we attached as an exhibit were the instructions.

THE COURT: All right.

MR. KENNEDY: The matter before the Court today is really a pretty narrow one, and that's Harvest's -- we call them Harvest Management or Harvest --

THE COURT: Right.

MR. KENNEDY: -- our motion for the entry of judgment in favor of Harvest and dismissing the claim or claims that were made by the Plaintiff against Harvest.

1 What happened was, that following the jury's verdict, a period of time elapsed, and
2 the Plaintiff then filed a motion with Judge Gonzalez --
3 THE COURT: Right.
4 MR. KENNEDY: -- asking that judgment be entered in favor of the Plaintiff
5 as to the individual Defendant and as to Harvest Management. We opposed that
6 on --
7 MS. HARMON: And she denied their motion.
8 MR. KENNEDY: And she denied that motion. And then you see from the
9 transcript, from that hearing that we attached, I said, well, will that judgment also
10 include a judgment in favor of Harvest dismissing the claims? And she said, no,
11 you have to file another motion, to which I said, sure, okay, we will do that. We
12 filed that motion, and somewhat to our surprise, the opposition to our motion --
13 because we said, look, if you're not going to enter judgment in favor of the Plaintiff
14 against Harvest, then, of course, you ought to enter a judgment in favor of Harvest
15 dismissing the Plaintiff's claims. Makes sense.
16 The response we got from the Plaintiff was, oh, no, this is all Judge
17 Bell's fault because Judge Bell was responsible for the verdict form not making any
18 sense. That came as somewhat of a surprise to us because when you go back
19 through the transcript and you look at the parts of the transcripts and the
20 documents -- and we set this out in excruciating detail in our motion and our
21 reply -- what happened, and then there's no question about it. When -- on the last
22 day the Court said, hey, I have a verdict form that I used in another case, and it
23 might be helpful to you --
24 THE COURT: My recollection is just one of the reasons that I get the
25 transcript of the settling of jury instructions that either no one provided a verdict

form or what was provided was just not agreeable to everyone in some way, and I can't recall which of the two that was. I mean, typically, my JEA does the final of the jury instructions and verdict form, so if there are any issues, we certainly can make those corrections. I have never used a verdict form without having all of the lawyers review it.

MR. KENNEDY: Well, of course, and that's what you did in this case. And in the motion at page 12, starting at line 21, we quote the transcript where you say, "Will you guys take a look at this verdict form. I know it doesn't have the right caption. I know it's just the one we used in the last trial. See if it looks sort of okay."

THE COURT: Right.

MR. KENNEDY: And then Mr. Rands says, "Yes, looks fine." And then later on that day, Mr. Boyack says, "Yeah, that's the only change." He suggested a change, and he said, "Yeah, that's the only change." The Court says, "That's just what we had laying around, so." Mr. Boyack says yeah. And then he says again, "Well, that was the only modification," and that was to separate out past and future medicals. So that is the genesis of the verdict form. And then -- of course, now we're hearing the argument, well, this was Judge Bell's fault. They say it twice in their opposition. If Judge Bell hadn't made this mistake -- well, okay.

You have lawyers who look at the verdict form, approve it and actually the complaining party now made a change in it, but now they're saying they were shocked and surprised that the verdict form only named the individual Defendant. But if you look, and we set all of this out in detail in the memorandum, at page 14, when the argument -- the final argument, the closing argument is made to the jury, and this is page 14 of our motion, Mr. Boyack says, "Here's the verdict form." And

1 as good lawyers do, he said to the jury, "When you fill this out, here's what you
2 should do. First thing that you will find out is, was the Defendant" -- singular --
3 negligent. The clear answer is yes, Mr. Lujan in his testimony that was read from
4 the stand said that Mr. Morgan had the right-of-way." And then he says at the
5 conclusion of that paragraph, "And then from there, you will fill out this other
6 section, what percentage of fault do you assign each party? Defendant, 100
7 percent. Plaintiff, zero percent." And that's exactly what the jury did.
8 And now they're saying, well, that judgment should also apply against
9 the other Defendant. Well, the other Defendant is nowhere on the jury form. And
10 Judge Gonzalez said, I can't -- and there are no jury instructions that pertain to
11 Harvest, the other Defendant, and there is nothing on the form. In fact, the jury
12 form itself says the individual was 100 percent at fault.
13 Now, the narrow question presented to this Court is after Judge
14 Gonzalez said, look, there's not going to be a judgment entered against Harvest
15 based on everything that occurred. We ask that the Court say in that event, the
16 claims against Harvest should be dismissed, and there should be a judgment
17 entered in Harvest's favor.
18 The only argument that is new here that wasn't made to Judge Gonzalez
19 when she denied their motion is, now it is somehow Judge Bell's fault that the
20 verdict form got messed up, and the provisions from the transcript that I just read to
21 you show that that just isn’t the case. The Court said, Here's a form I've used. I
22 know the parties aren't the same. You got to change that. Do you approve this?
23 Yes, with one change, it's all approved. And that being the case, there is no
24 reason that this Court should not enter a judgment in Harvest's favor dismissing the
25 Plaintiff's claims against it. And if the Court has no questions --

THE COURT: I don't. Thank you.

MR. CLOWARD: Good morning, Your Honor.

THE COURT: Good morning, Mr. Cloward.

MR. CLOWARD: So the tone and tenor has never been to blame the Court.

THE COURT: I understand, Mr. Cloward. I mean, I will say I do think-- I was just trying to pull up the jury instructions. I mean, typically, it is the custom of the Court when we do a caption on a verdict form that it matches identically the caption on the jury instructions.

MR. CLOWARD: Correct, and --

THE COURT: So I do think there was an error in that regard.

MR. CLOWARD: Certainly. And the jury instructions contain the correct caption, so if you look at this matter and if you simply put the first page of the verdict form with the correct caption, then the judgment is against both Defendants. But they want to come in here and take advantage of a clerical, ministerial error.

At no point was there ever any attempt to modify the caption, to modify the parties in the case, to suggest that the corporate Defendant should not be included. This was simply Your Honor trying to do everybody -- take one thing off of everybody's plates and say, hey -- and it's on page 107 of the transcript of Friday, April 6th, where the Court says, "Hey, I haven't seen the verdict form. I've had like six car crashes this year. I've got one for your guys." And everybody was grateful for that. Everybody was grateful that the Court took that issue off of our plates along with the other issues that we have. Now they come in here and try and pass on this to try and create this issue.

And throughout the brief, I counted on ten different times they claim that

he was on break, he was on break, he was on lunch break, on lunch break, ten different times. Well, that's not what the testimony was. The testimony was specifically that he, quote, had just ended his lunch break. So he ended his lunch break and now he's back on the clock.

And they try and say, well, you know, there's never this issue of -- you know, there's never this issue of the corporation, and there's no instructions for respondeat superior. The reasons the jurors weren't instructed on that is because that was never a contested issue. This was not a contested issue until appellate counsel gets involved in the case. Never at any point was there ever any argument in the claims notes, in the discovery, during the first trial, during the second trial that he was on some sort of a frolic and detour or on some sort of a lunch break during the time of the collision. The testimony was crystal clear in the first case and the second case, he had finished his lunch; he was back on the clock.

Counsel cites to the *Rockwell v. Sun Harbor Budget Suites* case, which is 112 Nev. 1217, and it says, "To prevail on vicarious liability, it must be shown that, one, the actor at issue was an employee; and, two, that the actions complained off occurred when the course -- within the course and scope of the actor's employment."

The testimony was crystal clear. We have a bus driver driving a bus at the time of the crash who was employed with the Defendants. In order for them to prevail that this is -- that this is some sort of a frolic and detour, that it was outside the scope, they specifically cited to that case.

They say that they -- they have to show or that we -- they're citing to the *Rockwell* case, which is quoting *Prell Hotel,* which says, "That it must be shown

that it is independent venture of his own and that it was not committed within the course of the very task assigned to him." Well, I guess what? He is a bus driver driving a bus for this company at the time. This -- I mean, we were shocked. We tried to just stipulate saying to counsel, hey, look, this is a ministerial error. It's clear -- you know, it's clear that this is what happened. They won't agree, so that's why we filed the motion.

And all of a sudden, we get this big, giant opposition saying, oh, no, no, no. you know, this was -- he's outside the course and scope. And we're like, are you -- huh? Kind of shocked, like are you really making this argument? You're really going to make this argument.

And, you know, the fact of matter is, is pursuant to *Evans v. Southwest Gas* -- and this is a direct quote -- "Where undisputed evidence exists concern the employee's status at the time of the tortious act, the issue may be resolved as a matter of law." That is citing to *Molino v. Asher* -- that's 96 Nev. 814 -- and *Connell v. Carl's Air-Conditioning* at 97 Nev. 436. This has never been an issue that he was outside the course and scope of his employment.

And they cite to the *Rockwell* case. We met the burden that he was in the course and scope, the very act that he's driving the bus. I mean, I don't know what else to say, I mean, Your Honor, the fact that we give the jury instruction on the corporations.

And the Court was correct, I didn't see any settling of the instructions that I read, but I did read the settling of the instructions in the first case. And, specifically, the Defense points out, the Court says, "You know, the corporations" -- and it was referring to Instruction 17 at the time; they were renumbered. But the Court says, "I don't know how this snuck in here," and all of the parties -- I jump up,

1 Mr. Boyack jumps up, Mr. Rands jumps up. Everybody says, no, there's two
2 Defendants. There's a -- and then the Court says, oh, yeah, I'm mistaken, I'm sorry
3 about that. We're going to give that instruction.
4 That instruction is carried over to the next case. It's given as Instruction
5 Number 5. Well, if this guy is not on the job, if this guy is not in the course and
6 scope of his employ, why isn't there a directed -- a motion for directed verdict after
7 the close of our evidence? You know. Why is it that they lie and wait for this
8 ministerial action?
9 And, again, all the Court has to do is take the first page of the caption
10 from the jury instructions and supplant that for the -- for the verdict form because
11 there's no text on the verdict form. It's just a caption. Swap those two, and guess
12 what, the judgment is against both Defendants, but they're trying to take advantage
13 of this.
14 And, additionally, Your Honor, the singular versus plural argument
15 saying, hey, look, you know, it's only against one Defendant, well, there are also
16 instructions that talk about both Defendants, specifically the insurance instruction.
17 The insurance instruction says you can't consider whether either Defendants,
18 plural, have insurance. Again, this is just a tactical maneuver to try and avoid
19 responsibility in this case. It was never a bona fide issue that was ever, ever
20 raised by anyone during the course of this, and that's why there was not a specific
21 instruction on respondeat superior because it was not an issue. Everyone agreed.
22 Even Ms. Jansen, when she took the stand, the 30(b)(6) for Harvest,
23 and she gives her testimony, never once did she say, well, you know what, the guy
24 wasn't on the job. We asked her, you know, who's at fault for this, and why are
25 they at fault? Well, your driver was at fault because he should've seen the bus.

1 That was the singular thing that she said, is that your driver, Mr. Morgan, was at
2 fault for causing this crash because he wasn't -- he didn't avoid the crash. Yet now
3 they want to come in and reinvent the wheel and say, well, you didn't present this
4 and you didn't present -- we didn't have to present that because it wasn't disputed.
5 Thank you, Your Honor. Do you have any specific questions?
6 THE COURT: No, I don't. Thank you.
7 MR. CLOWARD: Thanks.
8 THE COURT: Mr. Kennedy?
9 MR. KENNEDY: I just have a couple points, Your Honor.
10 THE COURT: Sure.
11 MR. KENNEDY: First, the argument is made, well, if you just change the
12 caption on the verdict form, the problem's solved. That doesn't do it.
13 THE COURT: Right.
14 MR. KENNEDY: Okay? The verdict form itself pertains to one Defendant,
15 and it pertains to a Defendant who is negligent, and those are the jury instructions.
16 There are no -- there's nothing on the jury -- on the verdict form that pertains to
17 another Defendant. And if they did intend to put two Defendants on the verdict
18 form, you have to apportion fault between those two Defendants, and that's not on
19 here, so -- I mean, changing the caption doesn't do it The argument that --
20 THE COURT: Well, I mean, it's true, vicarious liability typically don't find
21 fault between defendants, right? I mean, I understand what you're saying and I
22 understand that there's an issue with the verdict, but the way this case was
23 presented by both sides, there was really never any dispute that this was an
24 employee in the course and scope of employment. It was never an issue in the
25 case.

MR. KENNEDY: Actually, there was no evidence substantively presented by the Plaintiff. What the employee -- what the evidence on the employee was was he was returning from his lunch break. He had just eaten lunch and was returning. And, of course, Nevada has the coming and going rule. Okay. He had no passengers in the bus. He'd gone to eat lunch on his lunch break. That's why we will -- so he's not in course and scope of his employment at that point. That is why --

THE COURT: I mean, that wasn't an affirmative defense raised in the answer that -- I mean, I don't recall that issue.

MR. KENNEDY: And there is no claim in the complaint for vicarious liability. It's negligent entrustment.

THE COURT: It's like vicarious liability and negligent entrustment is the third one?

MR. BOYACK: Yeah, that's --

MR. KENNEDY: But this is -- this is all -- every one of these arguments, Your Honor, was made to Judge Gonzalez, and she says, if you want to make these claims, you have to have some jury instructions. You have to have a verdict form that has a jury's finding of liability in it. We don't have any of that.

THE COURT: I understand, Mr. Kennedy. I'm just telling you my recollection, having dealt with this case -- and this was -- I mean, for whatever reason, one of those cases that is extraordinarily full of holes. We had, you know, a mistrial. We had a failed start of the trial. We had a number of motions.

There were a number of issues with this case that made it complicated and one that sticks out in my memory a bit more than others, and I do -- I mean, I just don't recall that there was ever any -- anything raised as a concern. It wasn't

1 an issue.

2 MR. KENNEDY: Because the Plaintiff didn't present enough evidence on it
3 to really merit any defense other than the driver saying, I was on my lunch break
4 and returning, and that's the coming and going rule. He wasn't driving passengers.
5 He had nobody in the bus. He said, I had gone to this park, was eating lunch and I
6 was returning.

7 And then what we do is we get to the closing argument. There is no part
8 of the closing argument whatsoever on any liability for Harvest. Nobody says
9 anything in the closing argument. In fact, in the closing argument, it is obvious that
10 the focus is on the individual Defendant because the Plaintiff's lawyer stands up
11 with the verdict form and says, "The Defendant is 100 percent negligent." That's
12 Mr. Lujan. And that's what they say to the jury, and the jury comes back and finds
13 that.

14 Now they're saying, well, you know, we think there was another
15 defendant who should've been filed liable to some degree, and we think that the
16 jury would've done that had we proved it, had we argued it, had we had a verdict
17 form that was proper. All of those arguments were rejected by Judge Gonzalez.
18 She said, "I am denying the motion for entry of judgment against Harvest." There's
19 no evidence, there's no argument, there's no jury instructions on any kind of
20 derivative liability at all. It's just not there.

21 And to say, well, it wasn't contested, so the jury must have found that,
22 even though they didn't find it, is absurd, and I don't -- I don't think the Court really
23 at this point can go behind the evidence and the verdict form and say that the jury
24 probably would have found something other than it did if things had been done
25 properly.

Because the focus and the closing argument -- in fact, the focus of the whole case was on the individual, and the verdict form was examined and prepared, and it focused only on the individual. There is no mention in that verdict form of the other Defendant, and there are no jury instructions on liability for the other Defendant. To say we have a stock instruction that says treat corporations like individuals, that doesn't get you anywhere at all.

And so based on what Judge Gonzalez did and the narrow issue that's presented to Your Honor, I think it's clear that Your Honor should enter a judgment in favor of the Harvest Defendant, dismissing the Plaintiff's claim or claims against it. And I'm done if the Court has no questions.

THE COURT: No, I don't. Mr. Cloward, anything else?

MR. CLOWARD: Yes. Your Honor, Rule 54(b) indicates that this Court does not have to consider anything that Judge Gonzalez did, and I think Judge Gonzalez recognized after this second motion was filed, but you know what, it's probably appropriate to send this back to Judge Bell who presided over two jury trials and a failed third start and let her address these issues.

So we're asking that the Court either deny Harvest's motion and enter judgment against our client. If the Court wants us to file a different motion, a separate motion for reconsideration so the Court can apply 42, NRCP 42, we're happy to do that. But at the end of the day, the Court is correct in the recollection; this was never a contested issue until appellate counsel got involved. It is -- it is plain and simple.

Further, the *Price v. Sennott* case, 85 Nev. 600, "A party cannot gamble on the jury verdict and then later, when displeased with the verdict, challenge the sufficiency of the evidence to support it." Mr. Kennedy is saying, well, Plaintiff

didn't do this and Plaintiff didn't do that and Plaintiff didn't do all these things. Well, the reason we didn't do these things is because this was never a bona fide issue. It never was. Yet they're trying to seize on this ministerial clerical error, which was done as a courtesy to the parties, and it's really unfair. Thank you, Your Honor.

THE COURT: All right. So I want to look at -- I want to look at the transcripts related to the settling of the jury instructions. I found the old one, and I just need to find -- I can't remember if we just used the same ones or if there was additional discussion of the settling of the instructions after, but I wasn't able to find that.

MR. KENNEDY: Your Honor, we have the full transcript, so we'll look for it, too, and file them.

THE COURT: Yeah. I just -- the transcripts are filed. I just -- I couldn't -- I went through them and I couldn't find that part, you know, that -- Mr. Cloward jogged my memory, that we had both of the settling of instructions in the first trial. He at least remembered, but I didn't see that either. I just want to go through those before I make any decision here because I want to see what the discussions were relative to what the instructions were or were not included.

And so I'm going to set a status check. I'll set it two weeks just to give me an opportunity to go through them. Don't -- you don't need to come back to court. I'm just doing that for my own benefit. And then I will issue a written decision once I've had the opportunity to review them. If I have additional questions after that, then I will let you know.

MR. KENNEDY: Okay.

THE COURT: All right. Thank you.

MR. KENNEDY: Sounds good.

MR. CLOWARD: Thank you, Your Honor.

[Proceeding concluded at 10:29 a.m.]

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

Renee Vincent

Renee Vincent, Court Recorder/Transcriber

# TAB 34

TAB 34

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

MAR 07 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

*ORDER DENYING MOTION TO DISMISS*

Respondent Harvest Management Sub, LLC (Harvest), has filed a motion requesting this court to dismiss this appeal for lack of jurisdiction. Appellant opposes the motion, and Harvest has filed a reply. We deny the motion. This denial is without prejudice to respondent Harvest's right to renew the motion, if necessary, upon completion of settlement proceedings.

It is so ORDERED.[1]

_____, C.J.

cc: Ara H. Shirinian, Settlement Judge
Richard Harris Law Firm
Marquis Aurbach Coffing
Bailey Kennedy
Rands, South & Gardner/Henderson

[1]Appellant's conditional counter-motion to postpone or extend time for consideration of motion to dismiss, which Harvest opposes, is denied as moot.

# TAB 35

TAB 35

# DISTRICT COURT
# CLARK COUNTY, NEVADA

**Negligence - Auto** | **COURT MINUTES** | **March 14, 2019**

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

**March 14, 2019** **2:00 PM** **Minute Order**

**HEARD BY:** Bell, Linda Marie **COURTROOM:** No Location

**COURT CLERK:** Kimberly Estala

**RECORDER:**

**REPORTER:**

**PARTIES PRESENT:**

## JOURNAL ENTRIES

- For convenience, case A-15-718679-C shall be transferred to Department 7 effective immediately pursuant to EDCR 1.30(b)(15).

CLERK'S NOTE: A copy of this Mintue Order was electronically served to all registered for Odyssey File and Serve. //ke 03/14/19

# TAB 36

TAB 36

Electronically Filed
2/12/2020 11:20 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| AARON MORGAN,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID LUJAN, et al.,<br><br>Defendants. | CASE NO. A-15-718679-C<br><br>DEPT. VII |

BEFORE THE HONORABLE LINDA MARIE BELL,

CHIEF JUDGE OF THE DISTRICT COURT

TUESDAY, MARCH 19, 2019

**RECORDER'S TRANSCRIPT OF**
**STATUS CHECK: DECISION**
**AND ALL DEFENDANT HARVEST MANAGEMENT MOTIONS**

APPEARANCES:

For the Plaintiff: KATHLEEN A. WILDE, ESQ.
BENJAMIN P. CLOWARD, ESQ.
MICAH S. ECHOLS, ESQ.

For Defendant Harvest Management: DENNIS L. KENNEDY, ESQ.
SARAH E. HARMON, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

Tuesday, March 19, 2019 - Las Vegas, Nevada

[Proceedings begin at 9:10 a.m.]

MR. CLOWARD: Hi, Judge. Good morning. Ben Cloward for Plaintiffs -- or for Plaintiff.

THE COURT: So with respect to the -- I'm sorry, can I get everybody's appearance.

MS. WILDE: Good morning, Your Honor. Kathleen Wilde, Bar Number 12522, for Mr. Morgan.

MR. ECHOLS: Good morning, Your Honor. Micah Echols for Plaintiff.

MR. CLOWARD: Ben Cloward for Plaintiff.

MR. KENNEDY: And Dennis Kennedy and Sarah Harmon for Defendant Harvest.

THE COURT: All right. So with respect to the motions that I heard recently, I'm still just concerned a little bit about the language. I don't believe I have jurisdiction at this point, but I am going to certify under *Honeycutt,* that if the case is returned to me, I would recall the jury to see if we can correct the error with respect to the verdict form. So I'm going to send that to the Supreme Court and we'll see what they do. We have today the motion for fees, so --

MR. KENNEDY: Your Honor, if --

THE COURT: Oh. And I'm also reassigning the case to myself. I think that given the long history I had with the case -- frankly, I didn't really anticipate any significant issue in the case or I would have kept it in the first place. I spoke with Judge Gonzalez, and we both felt it was [indiscernible] for it to stay here.

MR. KENNEDY: Just a couple points of clarification --

THE COURT: Sure.

MR. KENNEDY: -- the first one being, you said that you don't know that you have jurisdiction and you're going to --

THE COURT: I don't believe I have jurisdiction, so I'm going to -- I'm issuing an order saying that I don't have jurisdiction to make -- to consider the motion that was in front of me but to do the Honeycutt certification regarding what I would do if the case was returned to me.

MR. KENNEDY: Okay. And that, just so the record is clear, is Harvest's motion for the entry of judgment?

THE COURT: Yes.

MR. KENNEDY: Okay. The second -- that being so, I guess my question is, would it make more sense not to proceed with the costs motion, et cetera, et cetera, until that matter is resolved? Because it's kind of -- the costs are in a number of ways dependent on what happens in that motion. Just from Harvest's point of view, I think --

THE COURT: Right.

MR. KENNEDY : -- it would make more sense. I don't know what the -- what the plan of things, but we could get a decision, but then that decision is just going to be hanging there --

THE COURT: Right.

MR. KENNEDY: -- until the Supreme Court makes a decision.

THE COURT: I mean, I can certainly make a decision with respect to costs, with respect to Mr. Lujan as a defendant.

MR. KENNEDY: Yeah, that --

THE COURT: The Harvest issue, I think, is just unresolved right now, so --

MR. KENNEDY: Okay. And just before we start, if I could get clarification. I saw the minute order on the case being transferred back to Your Honor. Could -- just so that the record is clear, could Your Honor give some explanation of how that -- how that occurred and the reasons for it? I know the Court cited the rule --

THE COURT: Right. I mean --

MR. KENNEDY: -- but the rule asks for a little bit more.

THE COURT: Well --

MR. KENNEDY: Necessity and convenience. I'm just curious.

THE COURT: Right. As I just explained, because I have familiarity with the case, I had this case for --

MR. CLOWARD: Long time.

THE COURT: -- you know, two years. We did three trials, two of which didn't go -- go to plan. I completed the third trial. By the time that it was reassigned to Judge Gonzalez, there really was -- I would not have anticipated there to be any -- anything but simple post-trial matters.

And given the complexity of this particular issue, my familiarity with the case, I would have had this case in the first place if I had -- if I had known that there was going to be this kind of issue. I don't typically --you know, in every case reassignment I've ever been through in my ten years in the court, I have kept any case where there was a complicated issue where I have had the case for -- for trial.

MR. KENNEDY: Okay. Thanks. I appreciate the explanation. Just that I wanted to make sure we have a clear record in case --

THE COURT: All right.

MR. KENNEDY: -- that issue comes up.

THE COURT: Well, I thought I had just done that, Mr. Kennedy.

MR. KENNEDY: Okay.

THE COURT: Okay. So, folks, what do you want to do on the case? Do you want to wait?

MS. WILDE: We believe we should go ahead with that issue, Your Honor, because it's collateral. There's no reason that we can't discuss especially the attorney fees and costs that were incurred because of the mistrial. This is just a continuation of the motion from way back in March 2018.

To the extent that there's any different fees, for example, a 68(f) or things like that, we would address that after the judgment issue is addressed. But the pending motion, we believe is collateral and could be addressed today regardless of the *Honeycutt* issue.

THE COURT: Okay.

MS. WILDE: All right. So as I stated, Your Honor, this is a renewal or just kind of reinvigorating the motion that had occurred in March 2018. It is my understanding -- I wasn't there, but it was my understanding from Mr. Cloward that what had happened was that the motion had been filed following the mistrial in November 2017, and then there were various continuances. And eventually it was taken off calendar really for the convenience of everybody and the practicality at that time because there was going to be -- and there ultimately was -- a jury trial then in April 2018.

So the fees and costs that were sought with this motion are specifically related to -- at least in the first part -- the fees and costs that were incurred because of the mistrial. And the mistrial was a result of -- whether we call it complete, deliberate misconduct or whether we call it, at best, complete negligence and ineptitude, it was a result of Defense counsel's misconduct. So our

position is that Mr. Morgan should not bear the expense of a mistrial that was wholly not his fault.

Now, we understand that Defendants have said, well, you know, there was no motion in limine in place, but we don't need a motion in limine in place saying follow the Rules of Evidence. That should be obvious to anyone who practices law. So we submitted that attorney fee specific to the mistrial in the amount of $47,250, are available under a number of sources. They're available under NRS 7.085. They're available under 18.010. As (indiscernible) mentioned, they're available 18.070.

And, of course, the Court also has inherent authority to do what is equitable and to make the parties in fair positions and essentially grant a sanction because Mr. Morgan should not bear the costs of this wrongdoing. For that part of our motion, we believe that both Defendants and also that counsel for the Defendants have the ability to split that in the Court's discretion because it's really attributable to them, and it was done for their own benefit.

We also added in, because of the judgment for Lujan, costs just as a prevailing party, and that's a much cleaner, much simpler issue, especially because Mr. Lujan did not file a timely motion to retax. So for that portion, we also maintain that we're entitled to costs as a prevailing party in the amount of $97,225.13. The documentation was provided both in March, around the same time that they had briefed this mistrial issue, and then more recently was resubmitted in December after the judgment was entered as to Mr. Lujan. And so that's a different issue, but that still is clean, basic collateral issue that could be addressed at this time.

THE COURT: All right. Thank you.

MS. WILDE: Thank you.

THE COURT: Mr. Kennedy.

MR. KENNEDY: Again, Dennis Kennedy for Defendant Harvest Management. Again, I would suggest to the Court that ruling on the costs and fees issue with respect to Harvest should be deferred until after the Supreme Court does whatever it's going to do, but because we're arguing those, let's go to the motion itself. Yeah, usually I talk loud enough, but --

The motion itself, 97,225.13 is not sought against Harvest in the motion. So as we said in the motion, we won't even address that because the motion says on page three, the costs are sought against the other Defendant and counsel, so we don’t address that in the motion. And the motion's not ambiguous. It's very clear. It says costs are being sought against these two.

The attorney's fees are sought against all three parties, Harvest, Lujan and counsel. And so what we did was we looked at the motion and we said there is a specific statute, 18.070, that governs costs and fees in the event of a mistrial. That statute is completely missing from the motion. That is a specific and particular statute that governs costs and fees in the event of a mistrial, and as we point out in our opposition, the rule is, it's against a party or an attorney who purposely causes the mistrial.

We go back to the motion and we look to see if the motion addresses that point. It does not. The motion relies on two other statutes, NRS 7.085. That applies to lawyers only. That's a frivolous claim's statute and only applies to lawyers. 18.010(2)(b) applies to prevailing parties, and it applies to prevailing parties if there is a claim brought in bad faith without substantial justification, et cetera, et cetera.

We don't have that here because, number one, there is no -- the Plaintiff is not a prevailing party against Harvest when a mistrial is granted. There's no prevailing party in that situation, which leads us back to the reason that 18.070 exists, which says in the event of a mistrial, here's what governs.

Let's assume, though, that somehow the Court is going to consider the motion and is going to assume that the standard under 18.070 is applied even though it's not cited in the motion. Well, what we look at is, it says, costs and fees against the attorney or the party who purposely caused the mistrial.

Now I won't speak for the Gardner and the Gardner law firm. I will only speak for Harvest. The Gardner law firm did file an opposition. Harvest cannot possibly be held to have purposely caused a mistrial. This was a question on cross-examination asked by a lawyer of a witness in what is charitably called a difficult area of cross-examination and -- and at least I think so.

And there was some argument about it with the Court. The Court declared a mistrial. If that's the case, then the Court has to say, did Mr. Gardner purposely cause the mistrial? That's the question. It seems pretty clear from the transcript he didn't. He had a pretty good faith basis that he articulated for asking that question. Secondly, 18.010, which I mentioned earlier --

THE COURT: So, Mr. Kennedy, let me ask you a question about that. Because where does the point come when a lawyer's complete disregard for a rule is -- I mean, I suppose anybody could say, right, I didn't do it on purpose, but we're also expected to know the rules. Do you have any thoughts on that issue? Do you understand what I'm asking?

MR. KENNEDY: Yeah. Correct. The mistrial situation, the statute specifically says, purposefully did it. Okay? I'm speaking for Harvest, and I say,

no, Harvest didn't purposefully do it.

THE COURT: I understand.

MR. KENNEDY: Yeah. I mean, it had nothing to do with it.

THE COURT: That's not what I asked you.

MR. KENNEDY: Okay. As to Mr. Gardner --

THE COURT: There has to be some --

MR. KENNEDY: Yeah. In a typical mistrial, there's a motion in limine or order in limine saying you will not ask the following question or will not touch the following topic. The lawyer gets right up and does it. Well, that's purposefully. Okay? This, though, is an evidentiary question involving how can a character witness be impeached?

My own personal view is, I think Mr. Gardner was correct in the impeachment that he did. The Court ruled otherwise. He felt very strongly that he was correct, and I think that he was, but it's a gray area where the Court has to exercise some judgment. The Court did and declared the mistrial.

The question is, did Mr. Gardner do it intentionally? It certainly does not seem as though he did because I read the transcript where there's an argument over this, and he certainly had a good faith belief in what he was doing. He was not impeaching a party with an arrest that doesn't go to a conviction. He was -- he was impeaching a character witness with other conduct of the person whose character was at issue. And I think he had a pretty argument that he was right. The Court said he was not, and we moved on from there.

It certainly does not appear that he did that intentionally in order to cause a mistrial. Now, that just doesn't appear anywhere, and I don't -- I think it's a great leap for the Court to reach that conclusion. But, again, I don’t speak for

Gardner. I speak for Harvest. Harvest certainly didn't do anything to cause the mistrial, and parties can do things.

THE COURT: I don't think you answered my question. I mean, my question is, is there a point where an attorney's blatant disregard of the rules becomes purposeful conduct?

MR. KENNEDY: Oh, yeah, absolutely. Sure, it can --

THE COURT: Okay. And it's just by the motion in limine, right, that we expect lawyers to know the rules and comply with them?

MR. KENNEDY: That's right.

THE COURT: Okay.

MR. KENNEDY: And as I said -- yeah, we do expect that, and in this case, I think, there was room for debate over whether they're --

THE COURT: And I appreciate that. That's your opinion.

MR. KENNEDY: Yeah. But there does come a point where a lawyer clearly violates a rule and the court says, look, I know you did that intentionally.

THE COURT: Well -- okay. That wasn't my question. I mean, is there a point where, you know, right, ignorance of the law is not a defense; yeah? So if the lawyer doesn't -- if the lawyer doesn't know the rule, they violate the rule because they don’t know the rule -- I mean, they can say, well, I didn't know the rule, right? So then under that circumstance, it would never be purposeful. I guess it would be good if the lawyers -- none of the lawyers knew the rules and me either.

MR. KENNEDY: Well, yeah, but, of course, that's not going to get you very far. The question is, a lawyer can violate the rule and the court can say, man, you do not know the rule --

THE COURT: Right.

MR. KENNEDY: -- on this. The next question, though, is, did the lawyer purposely and intend to cause the mistrial? Now, as I said, I'm not speaking for -- for Gardner.

THE COURT: No. I'm talking hypothetically.

MR. KENNEDY: Yeah.

THE COURT: I understand -- I understand your position here. I just -- what I'm saying is that at some point with them not knowing the rules, right, the lawyer purpose -- that purposeful conduct cannot be purposeful.

MR. KENNEDY: The Court could conclude that. The Court -- the Court could say ignorance is such a basic rule. Yeah. I don't think that's the case here, but the Court surely could say that. And so the sum and substance of this is, as to Harvest --

THE COURT: I'm sorry, could you do me a favor? Could you take that lamp and just turn it a little bit towards you?

MR. KENNEDY: Sure.

THE COURT: Keep going.

MR. KENNEDY: How's that?

THE COURT: There you go. Thank you.

MR. KENNEDY: Because it's a little dark up here.

THE COURT: Right. Yeah, this court is horrible. There's -- both sides are in my eyes. The light is in my eyes.

MR. KENNEDY: Okay. Sum and substance, I think it probably is a good idea, if the Court's going to do a *Honeycutt* submission, that the Court defer ruling on the costs and fees as to Harvest because depending on what the Supreme

Court does, it could have a big impact on it.

THE COURT: Okay.

MR. KENNEDY: But the motion itself ought to be denied. Now, we also have a motion to strike the reply because the reply comes back and says, oh, well, yeah, we -- we think the Court should award these under 18.070. Well, the motion wasn't based on 18.070. That was what we said the motion failed because of that.

And then the Plaintiff also says, well, you know, the Court also had the inherent authority to do this if it feels like it. Our response is, well, where there is a specific statute governing this, saying here is the rule and here is the burden of proof on that, that the Court's probably obligated to apply that statute and not say, well, the statute hasn't been met, but I'll exercise my inherent authority. I think it's pretty clear the Court should not -- should not do that. That's not the proper use of inherent authority.

So that's Harvest's position. We think -- Harvest thinks the Court ought to defer, but if the Court does not, then the Court has to deny the motion as to the fees and the costs for Harvest at this time. But the safer course is for the Court to defer.

THE COURT: Okay, Mr. Kennedy.

MS. WILDE: I think at the outset it's useful to clarify how the costs breakdown works here. The total 97 and change costs are as a prevailing party, and that would include the costs incurred as part of the mistrial. Specifically with respect to both the Defendants and their defense counsel, about 20,000 and some change were costs attributable to that mistrial. So that's a separate issue, and that could be divided out depending on how the Court rules.

With respect to striking the entire reply, that's obviously a very

extreme response when, at most, we have an agreement to disagree as to whether statutes work in tandem.

THE COURT: I hate to interrupt you. I have a question for Mr. Kennedy --

MS. WILDE: Of course, Your Honor.

THE COURT: -- that maybe I should've clarified before, and it just sort of came to me. So at this point you are just representing Harvest and not Mr. Lujan?

MR. KENNEDY: That is correct, Harvest only.

THE COURT: That is at some point on the record. And so Mr. Gardner is still counsel for Mr. Lujan?

MR. KENNEDY: Not me.

MS. HARMON: Mr. Rands, we believe is representing Mr. Lujan, but we don’t know for sure, Your Honor.

MR. KENNEDY: We've made attempts to ascertain who's representing Mr. Lujan. They have not been altogether successful. But we are not. We have Harvest only.

THE COURT: Okay.

MR. KENNEDY: But as Ms. Harmon said, we've tried and not been successful in really determining who has taken over that representation.

THE COURT: All right. Thank you. Sorry.

MS. WILDE: No problem. And it is a good point because during the entirety of the trial, both Defendants were represented by Mr. Rands and Mr. Gardner, and the separation is actually a fairly new thing that happened after the fact when Mr. Kennedy's office came in. And, actually, there is even a little bit of confusion that at first, it kind of appeared like they were representing both Defendants, but now it's now been clarified that they're only representing Harvest.

And communication's been a bit dicey with Mr. Rands, I think is probably the best way to put it. But it appears that he is representing at least Mr. Lujan in this matter and at least through the appeal. So as for that issue, that clarification.

Now, with respect to which statutes apply, we believe it goes back to the *Watson Rounds* case that we cited in our reply and we've discussed at other occasions, that really all these statutes work in tandem. The language in 18.010 really specifies that in saying, in addition to other relief that's available. But the idea that the court conveys in *Watson Rounds* is that each of these statutes has a different role, but they can work in tandem. Sometimes one applies better than others. And, of course, inherent authority always comes in.

Now, courts are restricted with inherent authority and for good reason, but when there are situations where there has been an inequitable situation or where counsel are just completely out of line, of course the Court has the ability to sanction that conduct.

And in this case, while there's an argument that there's a gray area in evidence, we know what Mr. Rands and Mr. Gardner -- well, actually Mr. Gardner. Mr. Rands had stand down, stop it, we don't want this, but Mr. Gardner sent out that he wanted to prove that Mr. Morgan was not the next superhero, which was what was said in the opposition for both Defendants. So the intent was that they wanted to show he's a video game playing loser who stays home and has a drinking problem. That was the intent, at least according to what they said in their opposition.

THE COURT: But, you know, the whole purpose of cross-examination by opposing counsel is to paint the person on the other side in a less than favorable

light, right, and that's --

MS. WILDE: Absolutely. Absolutely. And that's always the difficult --

THE COURT: That's not a -- that's not a legitimate position.

MS. WILDE: Right. It's definitely the difficulty with cross-examination and really with evidence in general, said good evidence and good argument by definition is prejudicial. The question is whether it's unfairly so or it does so in the way that crosses the line into a rule that's not okay, which here arguing about an arrest for a misdemeanor offense of which Mr. Morgan had not been convicted and ultimately was not an appropriate use of a cross-examination, period, and that's why we had a mistrial.

It's my understanding, as in all cases, nobody wants a mistrial. That's always something that's unfortunate for everybody, but in this particular case, the mistrial was necessary. Even as Mr. Rands stated in the trial transcript on page 163, this was definitely a mess-up. This was definitely a big deal, and whether it was done with the intent of, I'm going to court today to cause a mistrial or the intent of, I'm going to discredit and maybe I don't know the Rules of Evidence or I'm going to try and push the Rules of Evidence, the fact remains that it happened.

And really who should bear that cost? It shouldn't be Mr. Morgan because he was innocent in all of this. Everybody was just trying to have a clean trial, and we wouldn't have had all this wasted time, all these wasted resources were it not for a veteran attorney who should've known better and who actually even had his co-counsel say, okay, we're moving on, what are we doing here? And I'm getting that, obviously, secondhand from Mr. Cloward, I wasn't there, but it's my understanding that this really was counsel making an egregious error, and it

really cost everybody a lot of time and resources, and we believe that Mr. Morgan shouldn't have to pay for that.

THE COURT: So let me ask you a question. 18.070 was not included in any of your motions that err to the Defense for me to consider that.

MS. WILDE: I believe it's fair for the Defense because they raised it specifically in their opposition. So by bringing that up, they were trying to argue, okay, it's only under this statute. So they're trying to argue essentially if there's an exclusive remedy, so it was on their radar. They made an argument in their opposition about the issue. So from them raising the position, I don't think it's unfair to assess that particular statute. Oh, that also works in tandem with all of the others.

THE COURT: All right. But a party can't raise an argument in their reply for the first time, right, and then -- defense counsel also has an ethical obligation to raise any authority that may be contrary to their position, so I feel almost like it penalizes them for appropriately raising some authority that wasn’t necessarily helpful to their side.

MS. WILDE: I think that's a fair point, that they're obviously trying to cover all the different bases, but they also did file a sur reply. So any of the concerns of this being raised for the first time, I think, are also eliminated because they had the sur reply and the opportunity to address that point.

THE COURT: Okay.

MS. WILDE: It's really a question of were there -- was there any prejudice in how the way that this went down, and, ultimately, because they've had the chance to argue it in their opposition, in their sur reply and now verbally, I think their prejudice is minimal at best, especially because this is still a question of

statutory interpretation and impressions of really law, which one of these statutes is most applicable. I don't see that that's type of prejudice that would prohibit granting the motion, especially because it's one of many alternative bases.

THE COURT: Okay.

MS. WILDE: And also, I had just noted with regard to the *Honeycutt* issue, and, obviously, that's something that is helpful to clarify a record and clean things up going into the appeal, but in the event that the Supreme Court ultimately does not want to have the jury reconvene, I think that this also something that we could revisit, the NRCP 49(a) issue that had been addressed way back in our initial motion for entry of judgment as to both Defendants.

So to the extent that we get there -- you know, hopefully, that's something that's also on everybody's radar and just something that we had wanted to mention because, you know, it can get a little -- a little bit messy with the way that this whole case went after the fact, and what should've been a basic administrative matter, it's kind of gotten messy. So we just wanted also to put that on everyone's radar going forward.

THE COURT: I'll agree on that last one.

MS. WILDE: Thank you, Your Honor.

THE COURT: All right. Anything else, Mr. Kennedy?

MR. KENNEDY: No, Your Honor. We'll submit it.

THE COURT: All right. Great. So I'm going to get a written decision to on that.

[Court and Clerk confer]

THE COURT: I should have that order out to you today. I just -- there were just a couple things I was editing, and then we'll see what happens.

MR. KENNEDY: Okay. Thank Your Honor.

MR. CLOWARD: Thank you, Judge Bell.

MS. WILDE: Thank you.

MR. ECHOLS: Have a nice day.

THE COURT: You, too.

[Proceeding concluded at 9:38 a.m.]

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

Renee Vincent

Renee Vincent, Court Recorder/Transcriber

# TAB 37

TAB 37

Electronically Filed
4/5/2019 3:46 PM
Steven D. Grierson
CLERK OF THE COURT

DAO

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| AARON M. MORGAN, INDIVIDUALLY,<br>Plaintiff,<br>*vs.*<br>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,<br>Defendants. | Case No. A-15-718679-C<br>Dept. No. VII |

**DECISION AND ORDER**

Defendant Harvest Management Sub LLC filed a Motion for Entry of Judgment because Aaron Morgan failed to properly pursue his claim of vicarious liability against them and abandoned his claim. This Motion followed a similar Motion for Entry of Judgment filed by Mr. Morgan that Judge Gonzalez denied. Mr. Morgan filed a Motion for Attorney Fees and Costs, arguing Harvest should pay attorney fees as a result of Harvest causing a mistrial. Upon review of the Motions, Oppositions, and Replies, as well as in consideration of the points made in oral argument, I find that I am without jurisdiction to render a decision on the Motion for Entry of Judgment and will stay proceedings until the appeal pending is resolved. I certify that should the Supreme Court remand the case back to me, I will recall the jury and instruct them to consider whether their verdict applied to Harvest. For the fees, I find that it would be a waste of judicial economy to rule on the fees at this point, and will defer judgment until the Supreme Court makes its decision.

## I. Factual and Procedural Background

This case involves a car accident in which David Lujan, a driver for Harvest, struck Mr. Morgan. Mr. Morgan sustained injuries as a result of this accident. Mr. Morgan filed a Complaint on May 05, 2015. Mr. Morgan levied several causes of action against the Defendants. Mr. Morgan claimed negligence and negligence per se against David Lujan and vicarious liability/respondeat

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

RECEIVED
APR 05 2019
CLERK OF THE COURT

superior against Harvest. Mr. Morgan claimed that Mr. Lujan was acting in the scope of his employment with Harvest when he caused an accident to occur, injuring Mr. Morgan.

On June 16, 2015, the Defendants filed an Answer to Mr. Morgan's Complaint. The Answer denied the allegation that Mr. Lujan was acting in the course and scope of his employment at the time of the accident. Harvest further denied that Mr. Lujan was incompetent, inexperience, or reckless in the operation of the vehicle, that Harvest knew or should have known Mr. Lujan was incompetent, inexperienced, or reckless in the operation of the vehicle, that Mr. Morgan was injured as a proximate cause of Harvest's negligent entrustment of the vehicle to Mr. Lujan, and that Mr. Morgan suffered damages as a direct and proximate result of Harvest's negligent entrustment. Defendants were represented by Douglas J. Gardner, Esq. of Rands, South, & Gardner who represented both Defendants throughout the discovery process.

On April 24, 2017, the parties appeared for a jury trial. The Defendant advised me that Mr. Lujan had been hospitalized. I continued this jury trial. On November 6, 2017, the parties conducted a second jury trial. This trial ended in a mistrial as a result of the Defendants inquiring about the pending DUI charge against Mr. Morgan. On April 2, 2018, the parties held the second trial. During this trial, the parties failed to provide a verdict form. Instead, the parties agreed to use a verdict form that had been used in a prior trial and was modified by my assistant. I did not catch, nor did any of the four attorneys, that the verdict form inadvertently omitted Harvest from the caption. The form also designated a singular "Defendant" instead of referring to multiple Defendants. Using this flawed form, the jury awarded Mr. Morgan $2,980,000.00 in damages. I did not make any legal determination regarding Harvest. I also do not recall Harvest contesting vicarious liability during any of the three trials or during the two years proceeding.

On July 30, 2018, Mr. Morgan filed a Motion for Entry of Judgment requesting the Court enter a written judgment against both Lujan and Harvest Management. The Court ruled that the inconsistencies in the jury instructions and the special verdict form were not enough to support judgment against Harvest. Mr. Morgan appealed on December 18, 2018. This matter is currently pending before the Nevada Supreme Court.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

On December 21, 2019, Harvest filed a Motion for Entry of Judgment based on the decision made on Mr. Morgan's Motion for Entry of Judgment. Harvest argues that this decision warrants an immediate judgment in its favor. Mr. Morgan filed an opposition and Countermotion on January 15, 2019. Harvest filed a Reply on January 23, 2019. I heard oral arguments on March 05, 2019.

Mr. Morgan filed a Motion for Attorney's Fees and Costs on January 22, 2019. Harvest filed an Opposition on February 22, 2019. Mr. Morgan filed a Reply on March 08, 2019. I heard oral arguments on March 19, 2019.

## II. Discussion

Harvest makes the following arguments in support of its Motion:

(1) Mr. Morgan voluntarily abandoned his claim against Harvest and did not present any claims against Harvest to the jury for determination.

(2) Harvest is entitled to judgment in its favor as to Mr. Morgan's claim for either negligent entrustment or vicarious liability.

Before I can address these arguments, I must first address whether I have jurisdiction to hear this case. The pending appeal by Mr. Morgan may affect my ability to adjudicate this matter.

### A. The pending appeal by Mr. Morgan divests this Court of jurisdiction.

The Supreme Court of Nevada held that a "timely notice of appeal divests the district court of jurisdiction" to address issues pending before the Nevada Supreme Court. Mack-Manley v. Manley, 122 Nev. 849, 855-56, 138 P.3d 525, 530 (2006). I may only adjudicate "matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits." Id. at 855.

Mr. Morgan argues that the pending appeal divests this Court of jurisdiction to hear matters related to the Order Denying Mr. Morgan's Motion for Entry of Judgment, the Jury Verdict, or related substantive issues. Harvest argues that the Order denying the Motion for Entry of Judgment is not a final order because there is an issue remaining against Harvest. Harvest concludes that if the Order denying the motion for Entry of Judgment is not a final order, the Supreme Court does not have jurisdiction.

The Supreme Court could find that Mr. Morgan's appeal has merit and may reverse the Order granting the Motion for Entry of Judgment. This would grant Mr. Morgan a judgment against Harvest and render Harvest's current Motion moot. Thus, this Motion is not collateral and independent. This Motion directly stems from Judge Gonzalez denying Mr. Morgan's Motion for Entry of Judgment.

Substantively, I agree with Harvest that the flawed verdict form used at trial does not support a verdict against Harvest. Pursuant to Huneycutt v. Huneycutt, I certify that if this case was remanded, I would recall the jury from the subject trial and instruct them to consider whether their verdict applied to Harvest. 94 Nev. 79, 575 P.2d 585 (1978).

**B. As the pending Supreme Court decision impacts liability, I am deferring judgment until the resolution of the appeal on the Motion for attorney fees.**

I have jurisdiction to resolve attorney fees. I find that it is against the interest of judicial economy to resolve the issue at this time. Mr. Morgan seeks $47,250.00 in fees and $20,371.40 in costs for the mistrial. Mr. Morgan also seeks $42,070.75 for costs incurred in the completed jury trial. While the pending Supreme Court decision does not directly consider these pending fees and costs, the decision will impact who could be responsible for some of these fees and costs. In addition, the parties seemed to indicate that, depending on the Supreme Court decision, further Motions for Attorney Fees could be warranted. Judicial economy would best be served if all requests for fees and costs were handled at the same time after all variables are accounted for.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

## III. Conclusion

The current Motion in front of me directly relates to the appeal pending before the Supreme Court. I am without jurisdiction to adjudicate this matter. I am staying proceedings until the appeal is resolved and certify that if this were remanded back to me, I would recall the jury and instruct them to consider whether Harvest is liable. I am also deferring judgment on attorney fees and costs. The parties may place this back on calendar when the Nevada Supreme Court renders its opinion.

DATED this day of April 2, 2019.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

| Name | Party |
|---|---|
| Micah S. Echols<br>Marquis Aurbach Coffing<br>Attn: Micah Echols<br>10001 Park Run Drive<br>Las Vegas, NV 89145 | Counsel for Plaintiff |
| Dennis L. Kennedy<br>Bailey * Kennedy<br>c/o Dennis L. Kennedy<br>8984 Spanish Ridge Avenue<br>Las Vegas, NV 89148 | Counsel for Harvest Management Sub LLC |
| Douglas J. Gardner<br>1055 Whitney Ranch Dr., Suite 220<br>Henderson, NV 89014 | Counsel for David Lujan |

SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

**AFFIRMATION**

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A718679 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: ~~03/29/2018~~ 4/2/19

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII