

IN THE SUPREME COURT OF NEVADA

AARON M. MORGAN,

Petitioner,

Electronically Filed
Jan 27 2021 02:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

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

Respondents,

- and -

HARVEST MANAGEMENT SUB LLC; AND DAVID E. LUJAN,
Real Parties in Interest.

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

**REAL PARTY IN INTEREST'S APPENDIX TO ANSWER TO PETITION
FOR EXTRAORDINARY WRIT RELIEF – VOLUME 1 OF 1**

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January 27, 2021

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HARVEST MANAGEMENT SUB LLC

REAL PARTY IN INTEREST’S APPENDIX TO ANSWER TO PETITION
FOR EXTRAORDINARY WRIT RELIEF
VOLUME 1 OF 1

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**REAL PARTY IN INTEREST’S APPENDIX TO ANSWER TO PETITION
FOR EXTRAORDINARY WRIT RELIEF**

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TAB 1

TAB 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON M. MORGAN, an individual,

Appellant,

vs.

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

Respondents.

Electronically Filed
May 15 2019 04:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 77753

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

MOTION FOR REMAND PURSUANT TO NRAP 12A

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MAC:15167-001 3703042_1

I. INTRODUCTION

For over four years, Plaintiff / Appellant Aaron Morgan (“Morgan”) litigated negligence-based claims against David Lujan (“Lujan”) and his employer, Harvest Management Sub LLC (“Harvest Management”). During this time period, all parties understood that Morgan’s claims centered on Lujan’s failure to act with reasonable care while driving a bus in the course of his employment and Harvest Management’s liability as Lujan’s employer. But, because the District Court inadvertently listed only Lujan on the jury verdict form, there are now questions as to whether the jury intended to find *both* Defendants 100% at fault and liable for Morgan’s injuries.

The District Court certified its intention to resolve this issue by recalling the jury.¹ Although Morgan believes NRCP 49(a) is a better option for resolving the issue with the verdict form, there is indisputably more work to be done in the District Court. Accordingly, the instant motion asks this Court for a remand pursuant to NRAP 12A.

¹ See Decision and Order, attached hereto as **Exhibit 1**.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

On April 1, 2014, Morgan sustained serious, life-altering injuries when a Montara Meadows² shuttle bus pulled in front of his moving vehicle. Morgan then filed a complaint in which he asserted three causes of action: (1) negligence against the driver of the shuttle bus, Lujan; (2) negligence per se against Lujan premised on his failure to obey traffic laws; and (3) vicarious liability / respondeat superior against Harvest Management based on its ownership of the shuttle bus and employment of Lujan. The Defendants then jointly answered the complaint and the case progressed in the ordinary course before the Honorable Judge Bell.

Following a Defense-induced mistrial in November 2017, the case proceeded to a second trial in April 2018. On the final day of trial, the District Court sua sponte created a special verdict form that listed Lujan as the only Defendant.³ The District Court noted the error when showing a draft of the form to counsel, and 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.

[Defense counsel]: Yeah. That looks fine.

² Montara Meadows is a senior citizen community in Las Vegas which is under the purview of Harvest Management.

³ A copy of the special verdict form is attached hereto as **Exhibit 2**.

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.

(Emphasis added).⁴

Unfortunately, the verdict form was not corrected before it went to the jury.⁵ So, while the jury received written instructions with a complete, proper caption,⁶ their finding that Defendant[s] were 100% at fault for the accident and the corresponding award of \$2,980,000 was written on an improperly-captioned special verdict form.

On June 29, 2018, the District Court filed a Civil Order to Statistically Close Case in which the box labeled "Jury – Verdict Reached" was checked. The following Monday, when Judge Bell assumed the role of Chief Judge in the Eighth Judicial District Court, the case was reassigned to the Honorable Judge Gonzalez as part of a mass reassignment of cases that came with the new fiscal year. *See* Eighth Judicial District Court Administrative Order 18-05.

On July 30, 2018, Morgan filed a Motion for Entry of Judgment in which he asked Judge Gonzalez to enter a written judgment against both Defendants. Given the issue with the verdict form, this motion also included an alternative request for

⁴ The relevant portion of the trial transcript is attached hereto as **Exhibit 3**.

⁵ *See* Exhibit 2.

⁶ *See* Jury Instructions cover page, attached as **Exhibit 4**.

the Court to make an explicit finding in accordance with NRCP 49(a) that the jury's special verdict was rendered against Lujan *and* Harvest Management. In support of the motion, Morgan explained how the issue of vicarious liability / respondeat superior was tried by consent. Further, Morgan highlighted portions of the record which confirmed that Morgan pursued claims against both Defendants. Finally, because NRCP 49(a) is fact-intensive, Morgan also argued that the case should be transferred back to Judge Bell. After briefing and a hearing, Judge Gonzalez denied the motion and entered judgment as to only Lujan.

On December 18, 2018, Morgan filed the notice of appeal which led to this case. As explained in his docketing statement, the issues on appeal center on Judge Gonzalez's determination that the jury's verdict pertained to only one of the Defendants. Morgan's appeal also implicates *Hornwood v. Smith's Food King No. 1*, 105 Nev. 188, 191, 772 P.2d 1284, 1286 (1989), because Judge Gonzalez rejected the argument that Judge Bell, the jurist who presided over every aspect of the case, including both trials, would be better equipped to address irregularities in the verdict form.

After Morgan filed his notice of appeal, Harvest Management filed its own Motion for Entry of Judgment. Morgan timely opposed the motion and counter-

moved to return the case to Judge Bell. Over Harvest Management's objection, the case was reassigned back to Judge Bell.

Following two hearings regarding Harvest's Motion for Entry of Judgment and other post-trial matters, Judge Bell concluded that she lacked jurisdiction to hear non-collateral matters because of Morgan's pending appeal in this Court.⁷ So, while Judge Bell agreed that the flawed verdict form necessitated further action, Judge Bell certified her decision pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), so the parties could request a remand from this Court.⁸

Oddly, Harvest Management filed a Petition for Writ Relief instead of a motion for *Huneycutt* relief.⁹ Because a *Huneycutt* / NRAP 12A remand is the correct procedure to address residual issues, Morgan now requests a remand and, hopefully, this Court's guidance.

III. LEGAL ARGUMENT

"The point at which jurisdiction is transferred must [] be sharply delineated." *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688-89, 747 P.2d 1380, 1382 (1987). To this end, this Court's decisions have repeatedly held that "a

⁷ See Decision and Order filed April 5, 2019, attached hereto as Exhibit 1.

⁸ *Id.* at pages 3-4.

⁹ Harvest Management's Petition was assigned Supreme Court Case No. 78596. Harvest Management's Petition was denied on May 15, 2019.

timely notice of appeal divests the district court of jurisdiction” to “revisit issues that are pending before [the Supreme Court].” *Mack-Manley v. Manley*, 122 Nev. 849, 855-56, 138 P.3d 525, 530 (2006); *see also Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455, 2010 WL 1407139 (2010).¹⁰ Stated inversely, once a notice of appeal has been filed, district courts are limited to entering orders “on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal’s merits.” *Mack-Manley*, 122 Nev. at 855, 138 P.3d at 530.

In this case, the District Court correctly recognized that it lacked jurisdiction to hear or adjudicate “matters related to the Order Denying Mr. Morgan’s Motion for Entry of Judgment, the Jury Verdict, or related substantive issues.”¹¹ There are at least two viable options for resolving this quandary. One, the District Court may follow through on its plan to “recall the jury from the subject trial and instruct them to consider whether their verdict applied to Harvest.”¹² Two, the District Court could make an explicit finding pursuant to NRCP 49(a) that the special

¹⁰ Because the Supreme Court of Nevada issued two opinions in *Foster v. Dingwall*, the Westlaw citation is provided for the sake of clarity and should not be misinterpreted as a citation to an unpublished decision.

¹¹ Decision and Order, Exhibit 1, at page 3.

¹² Decision and Order, Exhibit 1, at page 4.

verdict was rendered against both Defendants. Although Morgan submits that the second separate option is better,¹³ the fact remains that neither option is available without a remand from this Court.

Under NRAP 12A, remand is available after an indicative ruling in which the District Court states its intent to grant relief on a substantial issue. NRAP 12A thus codifies this Court's established *Huneycutt* procedure.

Here, a remand pursuant to NRAP 12A would allow the District Court to resolve the outstanding uncertainty as to Harvest Management. Accordingly, remand also would prevent piecemeal litigation and save judicial resources. After all, while the post-trial proceedings have been an unmitigated mess, the essential issue remains whether Harvest Management should be liable for Morgan's injuries.¹⁴ There is thus no reason to burden this Court (or the District Court) with multiple cases which stem from the same record. And, on a related note, participation in this Court's NRAP 16 program would be more productive if all the parties knew which Defendant(s) were liable for Morgan's damages.

¹³ The very purpose of NRCP 49(a) is to address unresolved issues of facts which were raised by the pleadings or the evidence. By allowing district courts to make their own findings, the Rule thus allows for an alternative to the drastic step of recalling a jury months or years after a trial.

¹⁴ Because Lujan did not file a timely appeal, his liability is not in dispute.

IV. CONCLUSION

The problems with the jury verdict form are not going away any time soon. Rather than litigating this issue in separate proceedings, the most efficient option is a remand to the District Court, preferably with instructions encouraging the District Court to consider NRCP 49(a). Therefore, Morgan respectfully urges this Court to grant the instant Motion to Remand so the District Court may resolve Harvest Management's Motion for Entry of Judgment and other related, post-trial issues, including Morgan's own Motion for Entry of Judgment, which the District Court has reopened.

Dated this 15th day of May, 2019.

Marquis Aurbach Coffing

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Attorneys for Appellant, Aaron M. Morgan

CERTIFICATE OF SERVICE

I hereby certify that **MOTION TO REMAND PURSUANT TO NRAP 12A** was filed electronically with the Nevada Supreme Court on the 15th day of May, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Douglas Gardner
Joshua Gilmore
Andrea Champion
Dennis Kennedy
Sarah Harmon

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

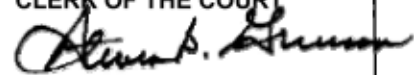
Ara H. Shirinian, Esq.
10651 Capesthorne Way
Las Vegas, NV 89135
Settlement Judge

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

INDEX OF EXHIBITS TO MOTION FOR REMAND PURSUANT TO NRAP 12A

EXHIBIT	DOCUMENT DESCRIPTION
1	Decision and Order (filed 04/05/19)
2	Special Verdict (filed 04/09/18)
3	Excerpted Transcript of April 9, 2018 Jury Trial
4	Jury Instructions Cover Page (filed 04/09/18)

Exhibit 1



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 AARON M. MORGAN, INDIVIDUALLY,

6 Plaintiff,

7 vs.

8 DAVID E. LUJAN, individually, HARVEST
9 MANAGEMENT SUB LLC; a Foreign-Limited Liability
10 Company; DOES 1 THROUGH 20; ROE BUSINESS
11 ENTITIES 1 THROUGH 20, inclusive Jointly and
12 Severally,

13 Defendants.

Case No. A-15-718679-C

Dept. No. VII

14 DECISION AND ORDER

15 Defendant Harvest Management Sub LLC filed a Motion for Entry of Judgment because
16 Aaron Morgan failed to properly pursue his claim of vicarious liability against them and abandoned
17 his claim. This Motion followed a similar Motion for Entry of Judgment filed by Mr. Morgan that
18 Judge Gonzalez denied. Mr. Morgan filed a Motion for Attorney Fees and Costs, arguing Harvest
19 should pay attorney fees as a result of Harvest causing a mistrial. Upon review of the Motions,
20 Oppositions, and Replies, as well as in consideration of the points made in oral argument, I find that
21 I am without jurisdiction to render a decision on the Motion for Entry of Judgment and will stay
22 proceedings until the appeal pending is resolved. I certify that should the Supreme Court remand the
23 case back to me, I will recall the jury and instruct them to consider whether their verdict applied to
24 Harvest. For the fees, I find that it would be a waste of judicial economy to rule on the fees at this
25 point, and will defer judgment until the Supreme Court makes its decision.

26 **I. Factual and Procedural Background**

27 This case involves a car accident in which David Lujan, a driver for Harvest, struck Mr.
28 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

1 superior against Harvest. Mr. Morgan claimed that Mr. Lujan was acting in the scope of his
2 employment with Harvest when he caused an accident to occur, injuring Mr. Morgan.

3 On June 16, 2015, the Defendants filed an Answer to Mr. Morgan's Complaint. The Answer
4 denied the allegation that Mr. Lujan was acting in the course and scope of his employment at the
5 time of the accident. Harvest further denied that Mr. Lujan was incompetent, inexperience, or
6 reckless in the operation of the vehicle, that Harvest knew or should have known Mr. Lujan was
7 incompetent, inexperienced, or reckless in the operation of the vehicle, that Mr. Morgan was injured
8 as a proximate cause of Harvest's negligent entrustment of the vehicle to Mr. Lujan, and that Mr.
9 Morgan suffered damages as a direct and proximate result of Harvest's negligent entrustment.
10 Defendants were represented by Douglas J. Gardner, Esq. of Rands, South, & Gardner who
11 represented both Defendants throughout the discovery process.

12 On April 24, 2017, the parties appeared for a jury trial. The Defendant advised me that Mr.
13 Lujan had been hospitalized. I continued this jury trial. On November 6, 2017, the parties conducted
14 a second jury trial. This trial ended in a mistrial as a result of the Defendants inquiring about the
15 pending DUI charge against Mr. Morgan. On April 2, 2018, the parties held the second trial. During
16 this trial, the parties failed to provide a verdict form. Instead, the parties agreed to use a verdict form
17 that had been used in a prior trial and was modified by my assistant. I did not catch, nor did any of
18 the four attorneys, that the verdict form inadvertently omitted Harvest from the caption. The form
19 also designated a singular "Defendant" instead of referring to multiple Defendants. Using this
20 flawed form, the jury awarded Mr. Morgan \$2,980,000.00 in damages. I did not make any legal
21 determination regarding Harvest. I also do not recall Harvest contesting vicarious liability during
22 any of the three trials or during the two years proceeding.

23 On July 30, 2018, Mr. Morgan filed a Motion for Entry of Judgment requesting the Court
24 enter a written judgment against both Lujan and Harvest Management. The Court ruled that the
25 inconsistencies in the jury instructions and the special verdict form were not enough to support
26 judgment against Harvest. Mr. Morgan appealed on December 18, 2018. This matter is currently
27 pending before the Nevada Supreme Court.
28

1 On December 21, 2019, Harvest filed a Motion for Entry of Judgment based on the decision
2 made on Mr. Morgan's Motion for Entry of Judgment. Harvest argues that this decision warrants an
3 immediate judgment in its favor. Mr. Morgan filed an opposition and Countermotion on January 15,
4 2019. Harvest filed a Reply on January 23, 2019. I heard oral arguments on March 05, 2019.

5 Mr. Morgan filed a Motion for Attorney's Fees and Costs on January 22, 2019. Harvest filed
6 an Opposition on February 22, 2019. Mr. Morgan filed a Reply on March 08, 2019. I heard oral
7 arguments on March 19, 2019.

8 II. Discussion

9 Harvest makes the following arguments in support of its Motion:

10 (1) Mr. Morgan voluntarily abandoned his claim against Harvest and did not present any
11 claims against Harvest to the jury for determination.

12 (2) Harvest is entitled to judgment in its favor as to Mr. Morgan's claim for either negligent
13 entrustment or vicarious liability.

14 Before I can address these arguments, I must first address whether I have jurisdiction to hear
15 this case. The pending appeal by Mr. Morgan may affect my ability to adjudicate this matter.

16 A. The pending appeal by Mr. Morgan divests this Court of jurisdiction.

17 The Supreme Court of Nevada held that a "timely notice of appeal divests the district court
18 of jurisdiction" to address issues pending before the Nevada Supreme Court. Mack-Manley v.
19 Manley, 122 Nev. 849, 855-56, 138 P.3d 525, 530 (2006). I may only adjudicate "matters that are
20 collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's
21 merits." Id. at 855.

22 Mr. Morgan argues that the pending appeal divests this Court of jurisdiction to hear matters
23 related to the Order Denying Mr. Morgan's Motion for Entry of Judgment, the Jury Verdict, or
24 related substantive issues. Harvest argues that the Order denying the Motion for Entry of Judgment
25 is not a final order because there is an issue remaining against Harvest. Harvest concludes that if the
26 Order denying the motion for Entry of Judgment is not a final order, the Supreme Court does not
27 have jurisdiction.
28

1 The Supreme Court could find that Mr. Morgan's appeal has merit and may reverse the
2 Order granting the Motion for Entry of Judgment. This would grant Mr. Morgan a judgment against
3 Harvest and render Harvest's current Motion moot. Thus, this Motion is not collateral and
4 independent. This Motion directly stems from Judge Gonzalez denying Mr. Morgan's Motion for
5 Entry of Judgment.

6 Substantively, I agree with Harvest that the flawed verdict form used at trial does not support
7 a verdict against Harvest. Pursuant to Huneycutt v. Huneycutt, I certify that if this case was
8 remanded, I would recall the jury from the subject trial and instruct them to consider whether their
9 verdict applied to Harvest. 94 Nev. 79, 575 P.2d 585 (1978).

10 **B. As the pending Supreme Court decision impacts liability, I am deferring judgment**
11 **until the resolution of the appeal on the Motion for attorney fees.**

12 I have jurisdiction to resolve attorney fees. I find that it is against the interest of judicial
13 economy to resolve the issue at this time. Mr. Morgan seeks \$47,250.00 in fees and \$20,371.40 in
14 costs for the mistrial. Mr. Morgan also seeks \$42,070.75 for costs incurred in the completed jury
15 trial. While the pending Supreme Court decision does not directly consider these pending fees and
16 costs, the decision will impact who could be responsible for some of these fees and costs. In
17 addition, the parties seemed to indicate that, depending on the Supreme Court decision, further
18 Motions for Attorney Fees could be warranted. Judicial economy would best be served if all requests
19 for fees and costs were handled at the same time after all variables are accounted for.
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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.

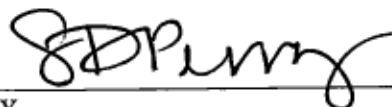
DATED this day of April 2, 2019.


LINDA MARIE BELL
DISTRICT COURT JUDGE

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 Marquis Aurbach Coffing Attn: Micah Echols 10001 Park Run Drive Las Vegas, NV 89145	Counsel for Plaintiff
Dennis L. Kennedy Bailey * Kennedy c/o Dennis L. Kennedy 8984 Spanish Ridge Avenue Las Vegas, NV 89148	Counsel for Harvest Management Sub LLC
Douglas J. Gardner 1055 Whitney Ranch Dr., Suite 220 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: 03/27/2018
4/2/18

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Exhibit 2

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

APR - 9 2018

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO: A-15-718679-C

DEPT. NO: VII

AARON MORGAN,

Plaintiff,

vs.

DAVID LUJAN,

Defendant.

SPECIAL VERDICT

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

QUESTION NO. 1: Was Defendant negligent?

ANSWER: Yes ☒ No ☐

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

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

QUESTION NO.2: Was Plaintiff negligent?

ANSWER: Yes ☐ No ☒

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

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

///

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



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

2 Defendant: 100

3 Plaintiff: 0

4 Total: 100%

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

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

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

8 The Court will perform this task.)

9 Past Medical Expenses \$ 208,480. 00

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

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

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


13 TOTAL \$ 2,980,980. 00

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

17
18
19 Arthur J. St. Laurent
FOREPERSON

20 ARTHUR J. ST. LAURENT
21
22
23
24
25
26
27
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Exhibit 3



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 AARON MORGAN,
8 Plaintiff,
9

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

10 vs.

11 DAVID LUJAN
12 Defendant.

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

15 MONDAY, APRIL 9, 2018
16 RECORDER'S TRANSCRIPT OF HEARING
17 CIVIL JURY TRIAL

18 APPEARANCES:

19 For the Plaintiff:

BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

21 For the Defendant:

DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

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

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

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

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

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

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

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

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

14 [Pause]

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

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

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

19 MR. RANDS: Thank you, Your Honor.

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

23 MR. RANDS: Yeah. That looks fine.

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

1 sort of.

2 THE MARSHAL: Please rise for the jury.

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

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

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

9 MR. GARDNER: Yes, Dr. Sanders.

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

12 **STEVEN SANDERS**

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

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

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

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

21 **DIRECT EXAMINATION**

22 BY MR. GARDNER:

23 Q Good morning, Doctor.

24 A Good morning.

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

Exhibit 4

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

APR -9 2018

BY, *Ajam Brown*
AJAM. BROWN, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

AARON M. MORGAN

Plaintiff,

vs.

DAVID E. LUJAN, HARVEST
MANAGEMENT SUB LLC

Defendants.

CASE NO.: A-15-718679-C

DEPT. NO.: VII

JURY INSTRUCTIONS

A-15-718679-C
JI
Jury Instructions
4738216



From: efiling@nvcourts.nv.gov
Sent: Wednesday, May 15, 2019 4:29 PM
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Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: May 15 2019 04:28 p.m.

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

Document Category: Motion
Submitted by: Micah S. Echols
Official File Stamp: May 15 2019 04:27 p.m.
Filing Status: **Accepted and Filed**

Docket Text: Filed Motion Motion for Remand Pursuant to NRAP 12A

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

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Ara Shirinian

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TAB 2

TAB 2

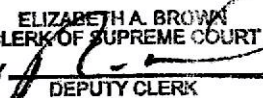
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 77753

FILED

JUL 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING MOTION

This appeal is assigned to the court's settlement program. Appellant has filed a motion for remand pursuant to NRAP 12A, which respondent Harvest Management Sub LLC opposes. The decision to grant or deny a motion for remand pursuant to NRAP 12A is discretionary with this court. *See* NRAP 12A(b). The court is not persuaded that a remand is warranted. Accordingly, the motion is denied. *See Sierra Foods v. Williams*, 107 Nev. 574, 576, 816 P.2d 466, 467 (1991); *NRCP 49(a)*; *Kinnel v. Mid-Atlantic Mausoleums, Inc.*, 850 F.2d 958 (3rd Cir. 1988).

It is so ORDERED.

 C.J.

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

Reception

From: efiling@nvcourts.nv.gov
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Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Jul 31 2019 04:14 p.m.

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

Document Category: Filed Order Denying Motion. Appellant has filed a motion for remand pursuant to NRAP 12A. The motion is denied. (SC).
Submitted by: Issued by Court
Official File Stamp: Jul 31 2019 03:38 p.m.
Filing Status: **Accepted and Filed**

Docket Text: Filed Order Denying Motion. Appellant has filed a motion for remand pursuant to NRAP 12A. The motion is denied. (SC).

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