IN THE SUPREME COURT OF THE STATE OF NEVADA

CARA DRIGGERS, an Individual, Petitioner, vs. The EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and the Honorable Joanna S. Kishner, District Judge, Respondents, and RAMPARTS, INC., a Nevada Corporation d/b/a Luxor Hotel & Casino; and TERRENCE DAVID AUSTIN, an Individual, Real Parties in Interest.	No. 66271 District Court No. A–13–678269–C

Original Proceeding

Petition for Writ of Mandamus or Prohibition

Petitioner's Appendix Vol. 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS,

Plaintiff,

v.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive,

Defendants.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO,

Cross Claimant,

v.

TERRENCE DAVID AUSTIN,

Cross Defendant.

Case No. A-13-678269-C

Dept. No. XXXI

Hearing Date: March 6, 2014

Hearing Time: 9:30 a.m.

DEFENDANT RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino, (hereinafter "Luxor") by and through its counsel of record, the law firm of Kravitz, Schnitzer & Johnson,

Chtd., and hereby files this Reply to Plaintiff's Opposition to Motion for Summary Judgment. Despite Plaintiff's contentions, summary judgment is still appropriate because Nevada law clearly holds that Luxor cannot be held liable for Austin's independent act that: 1) was not in the scope of his employment; and 2) only motivated his own interests.

This Reply is made and based upon all the pleadings and papers on file herein, the following Memorandum of Points and Authorities, the attached exhibits, and any oral argument of counsel as may be permitted at the hearing on this matter.

DATED this 27th day of February, 2014.

KRAVITZ, SCHNITZER
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Contrary to the unsupported assertions, Luxor has met all of the elements to defeat vicarious liability. Further, it is clear that the Plaintiff is dismissing or abandoning her negligent hiring claims along with her punitive damages claims. No further analysis will be provided regarding those claims and an Order dismissing the negligent hiring and punitive damages claims is appropriate. With regarding to training and supervision claims, to the extent the Court requires additional briefing or a separate motion, Luxor has no problem with doing so. But as discussed more fully below and reality, it will be futile.

This is a case involving a security officer who crossed the line literally and figuratively to enter a guest's room without authority and against policy to commit a repugnant crime – sexual assault. This act was not, and could never be, in the course and scope of his employment. Considering Austin was investigated upon hire and two days before this incident and nothing revealed a propensity on his part to commit a sexual assault making this isolated incident "legally unforeseeable". Not to mention he was terminated immediately after this incident for violating company policy. Summary judgment is still appropriate in this case!

II.

PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS

While Plaintiff provided several undisputed facts, missing was a challenge to any of the Luxor's statement of undisputed facts as they appeared in the motion for summary judgment. Those facts should be deemed undisputed. *See, generally, E.D.C.R.* 2.20(e); *Bird v. Casa Royale W.,* 97 Nev. 67, 624 P.2d 17 (1981). Addressing Plaintiff's undisputed facts, the Luxor

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does not necessarily dispute Nos. 1-7; however, with respect to Nos. 8-9 regarding security officer Zachary Ford's role in this, **there is absolutely no evidence that Austin told Mr. Ford that he would be escorting the plaintiff and her companion up to a hotel guest room**. In fact, the very deposition testimony Plaintiff cites to from **Mr. Ford confirms that Austin did not tell him he was escorting the Plaintiff and her companion up to a hotel guest room**. (*See*, Plaintiff's OPP. at Exhibit 2, 35:5-16). Austin could have simply been walking them through the Casino to show them where the elevators were. His failure to contact dispatch and/or request a second officer for the escort was a violation of policy and resulted in his termination.

III.

STATEMENT OF LAW

Both parties agree that NRS 41.745 absolves Luxor of liability for the intentional conduct of its employee provided the conduct: (1) was a truly independent venture of the employee; (2) was not committed in the course of the very task assigned to the employee; and (3) was not reasonably foreseeable under the facts and circumstances considering the nature and scope of his employment. In this matter, it is unconceivable that a rape or sexual assault of a guest would not be a truly independent venture of Austin. Similarly, there is no admissible evidence to dispute Defendant's assertion that Austin's act was (1) outside the course of his employment; and (2) unforeseeable.

A. Austin Was Not In The Course And Scope Of His Employment And There Are No Genuine Issues Of Material Fact With Respect To This Element.

Clearly when "there's undisputed evidence concerning the employee's status at the time of the tortious act. . . the issue [may] be resolved as a matter of law." *Rockwell v. Sun Harbor Budget Suites,* 112 Nev. 1217, 1225 (1996); *Moleno v. Asher,* 96 Nev. 814, 818, 618 P.2d 880 (1980). In fact, the *Doe v. Green* case cited by Plaintiffs held that when "there is no material

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dispute as when and where the . . . appropriate contact occurred . . . [a] case is ripe for . . . determination." *Jane Doe A v. Jeremy Green,* 298 F. Supp. 2d 1025, 1041 (D. Nev. 2004).

Here, there are absolutely no questions of fact as to when and where this incident occurred. Therefore, this Court must determine, as a matter of law, whether Austin was in the course and scope of his employment. The case law is clear that Austin could not have been considered in course and scope of his employment at the time of the incident.

Although Plaintiff's Opposition cites to a number of cases, along with a summary of those cases, Plaintiff fails to provide any actual analysis showing that the facts before this Court are remotely similar to the cases Plaintiff attempts to rely upon. Specifically, Plaintiff seemingly alleges that *Wood v. Safeway*, is the exception, not the rule, when addressing an employer's liability for the intentional acts of its employee and that Luxor's position is contrary to the cases cited by Plaintiff. This is simply untrue, as the cases cited by Plaintiff are distinguishable, while *Wood* is directly on all fours with this matter.

In fact, Plaintiff cites to, *Prell Hotel Corp. v. Antonacci*, 86 Nev. 390, 469 P.2d 399 (1970) which was distinguished by the Nevada Supreme Court in *Wood* with respect to cases involving sexual assault by janitorial employees. *See Wood,* 121 Nev. at 724, 738-739 (2005). The Court noted that the blackjack dealer in Prell struck a customer "without leaving his position behind the blackjack table." Id. at 738.

In this matter, Plaintiff made no allegation that it was Austin's job duty to proceed all the way into Plaintiffs guest room and to force Plaintiff to do anything to her while she was lying on the bed. Plaintiffs only allegation is that Austin was authorized to assist a guest to a guest room, that he did so as a security officer. There is absolutely no testimony that he was allowed to go into the room. In fact, Joseph Mullen testified that Austin violated a company policy by entering

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the room and assaulting the Plaintiff. (*See*, Excerpts of the Deposition of Joseph Mullen attached hereto as Exhibit M, Page 70, Lines 8-24.) Since Austin had to leave the location where he was authorized to be, i.e., the hallway or entryway of the door to the room to assault Plaintiff, there can be no dispute that Austin was outside the course and scope of his employment when he assaulted Plaintiff. Moreover, when asked about how Austin gained access to her room, Plaintiff testified as follows:

Question: *What happens next?*

Answer: *To the best of my remembering, she swiped the card. And I went in first. She followed me. I went to the master bedroom, which I saw lit up. And went into the master bedroom. And I laid down on the bed.*

Question: *And so it was Angela who used the key - -*

Answer: *I believe so.*

Question: *- - to get in?*

Answer: *I - -*

Question: *Did Austin kick the door? Did you hear anybody kick the door? Did he force his way in?*

Answer: *No. She swiped the card. I mean, I - - somebody - - she swiped the card. I don't remember exactly that. She swiped the card. I went in. It was, like, Good-bye. Thank you. I remember saying, Bye. Thanks. Walked in.*

Question: *She's - - I heard her saying, Good-bye. Thank you.*

(*See*, Excerpts of the Deposition of Cara Driggers attached hereto as Exhibit N at Page 44, Lines 2-22.)

Basically this ended the escort. Anything that transpired after this was no longer an escort but an independent venture of Austin. Therefore, this matter is distinguishable from *Prell* and directly on point with *Wood.*

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The Court in *Wood* similarly distinguished the holding in *Rockwell v. Sun Harbor Budget Suites* because "the evidence and affidavits produced by the parties conflicted in that case, and therefore, there was a genuine issue of fact concerning whether the employee was acting within the course and scope of his employment." *Wood*, 121 Nev. at 738. That case is distinguishable because there was a dispute as to whether an off-duty security guard was actively guarding his employer's premises at the time he shot and killed a woman. There was an issue of fact because it was possible that a security guard would need to shoot another person in the course of his work.

There can be no argument, however, that sexual assaulting a customer is anywhere near the realm of the course and scope of Austin's employment. As a result, the *Rockwell* case is distinguishable here, just as it was distinguishable in the *Wood* matter.

Similarly, both cases from the United States District Court for the District of Nevada cited by Plaintiff, *Ray v. Value Behavioral Health Inc*, 967 F. Supp. 417 (D. Nev. 1997) and *Doe v. Green*, 298 F.Supp. 2d 1025, 1042 (D.Nev. 2004), are distinguishable as both decisions were issued prior to the Nevada Supreme Court's ruling in *Wood*. Both of these cases focused their analysis on the Nevada Supreme Court's ruling in *Prell Hotel Corp.* As stated above, the Nevada Supreme Court distinguished *Prell Hotel Corp.* from a situation where a janitorial employee rapes somebody.

These two cases are also distinguishable because both cases involved sexual assault against children by teachers and counselors (a "special relationship"). This is an extremely important distinction because the California Supreme Court, which the Nevada Supreme Court

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cited with approval on identical issues in *Wood*,[1] noted that an employee **only** could be liable for a sexual assault by an employee if the employment creates an emotional involvement between the parties, such as between a psychiatrist and patient, or perhaps, a teacher and student. See, *Lisa M. v. Henry Mayo Newhall Memorial Hosp.*, 907 P.2d 358, 364 (Cal. 1995). These are "special relationship" cases which create a higher duty of care. Plaintiffs have made no argument that Austin's job as a security office created some emotional bond between him and Plaintiff. Considering the escort to the room only took a few minutes and certainly not long enough to establish a "relationship" along the lines of a psychiatrist and patient or teacher student, a special relationship simply did not exist. Plaintiff suggests that because Austin was a security officer with duties that included assisting guests, this created an emotional bond between him and the Plaintiff. First this is unsupported and second, it's ridiculous. As a result, the cases cited by Plaintiff where there was a potential emotional bond between the parties are distinguishable.[2]

Indeed, Plaintiff is unable to cite to a single case where an employee assaults a victim to whom he has no emotional attachment or special relationship. Conversely, Luxor has cited several cases that Plaintiff fails to acknowledge or attempt to distinguish. See, *Burnett*

[1] Copies of the *Wood v. Safeway,* 121 Nev. 724, 121 P.3d 1026 (2005), and *Lisa M. v. Henry Mayo Newhall Memorial Hosp.*, 907 P.2d 358, 364 (Cal. 1995) cases are attached for the Court's convenience as Exhibits O and P respectively.

[2] Plaintiff also cited to *Switzer v. Rivera,* 174 F. Supp. 2d 1097 (D.Nev. 2001). However, that case is distinguishable. It involved a plaintiff working as a fry-cook with several male co-workers. She claimed she was subjected to sexual harassment and unwanted physical conduct and sued under a theory of respondeat superior. *Id.* at 1102-03. In denying summary judgment on Plaintiff's intentional torts, the Court opined that the co-workers were allegedly flipping grease on the Plaintiff, hitting her buttocks with a bag of fries and making inappropriate gestures with sausages **while they were working.** *Id.* The court determined this was within the scope of the tasks assigned to the co-workers. *Switzer* is distinguishable because the assaults and batteries happened simultaneously with the co-workers performing their job duties. Here, Austin did not follow procedures to alert dispatch to an escort, did not request assistance of another guest and escorted the Plaintiff and her Companion to their room. However, the sexual assault occurred after Austin violated further policy by entering the room. Once he crossed the threshold of the Plaintiff's hotel room, he was no longer performing **any** task he may have been assigned to up until that point!

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v. CVA Security Serv., 107 Nev. 787, 798, 820 P.2d 750 (1991); *Doe v. Purely Supreme, Inc.,* 3 Mass. L. Rpt. 193 (Mass. Super. 1994), aff'd, 664 N.E.2d 815, 820 (Mass. 1996); *Lisa M. v. Henry Newhall Memorial Hosp., supra,* 907 P.2d 358, 363 (Cal. 1995); *Maria G. v. Westec Residential Security,* 85 Cal. App. 4th 125 (Cal. App. 2000); *Alma W. v. Oakland Unified School Dist.,* 123 Cal. App. 3d 133, (Cal. App. 1981) as fully analyzed in Luxor's Motion at pp. 18.

See also, *Ex Parte South Baldwin Reg'l Med. Ctr.,* 785 So.2d 368 (Ala. 2001) (Plaintiffs sued a defendant hospital after a nurse employed by the hospital sexually abused their minor child, a patient. On appeal from a summary judgment, the Supreme Court held there was no evidence indicating the nurse had engaged in sexual misconduct before the incident and, as such, plaintiffs failed to establish the hospital should have foreseen the nurse would probably assault a child.); (*Doe v. Swift,* 570 So.2d 1209 (Ala. 1990)) (Involved an action against the State to recover a judgment against a State psychologist for damages sustained by a patient sexually assaulted by the psychologist. The Supreme Court held that the psychologist's actions were not taken for the benefit of his employer (the State) or in performance of his duties, such that the State was not responsible. In reaching the decision, the Court noted that there are numerous other cases holding that sexual misconduct by an employee is purely personal and outside the course and scope of his employment.); (*Hoover v. Univ. of Chicago Hosp.,* 366 N.E.2d 925 (Ill. App. Ct. 1977)) (Intentional sexual assault by the doctor could not be interpreted as an act in furtherance of the hospital's business so that it would not give rise to a cause of action against the hospital.); (*Cosgrove v. Lawrence,* 522 A.2d 483 (N. J. Super. Ct. App. 1987)) (Holding that sexual relations with a patient were not the kind of conduct the social worker therapist was employed to perform within the scope of his employment such that the therapist's employer was immune from vicarious liability.)

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The bottom line is that *Wood* is the controlling case in this matter. Plaintiff's Opposition conclusory states that the facts of *Wood* are not similar to those in this matter without citing a single fact, except to generally state that the janitor's action in *Wood* was an independent venture outside the course and scope of his employment.

Specifically, in *Wood*, it was undisputed that the assailant was employed as a janitor and assaulted the victim at his place of employment. 121 Nev. at 739. The court determined that the assailant was not acting on behalf of his employer when he committed the assault, or out of any sense of duty owed to his employer. The record also indicated that the assault was not committed in the course of the tasks assigned to the assailant as a janitor. *Id.* Similarly here, there is no dispute that Austin was an employee of Luxor and was on duty at the time of the sexual assault. **Plaintiff has similarly not argued that Austin was acting on behalf of Luxor when he assaulted Driggers, or that he assaulted Driggers out of some sense of duty he believed he owed Luxor.**

Indeed, Plaintiff possesses no evidence that Austin was in the course and scope of his employment. The only item that Plaintiff points to in support of her conclusion that Austin was in the course and scope of his employment is that because he was escorting the Plaintiff to her room that in the course of those activities he gained access and sexually assaulted her. (*See*, Opp. at 10:21-25.) Plaintiff, however, possesses absolutely no admissible evidence regarding how Austin gained entry into Plaintiff's guest room. In fact, her testimony is that "goodbyes" were said at the door before he entered the room. (Exhibit N.) Moreover, Joseph Mullen testified that Austin violated a company policy by entering the room and assaulting the Plaintiff. (Exhibit M.) It is well-settled that this Court can only rely on **admissible** evidence in determining whether a genuine issue of material fact exists. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322

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(1996).

As a result, the only admissible evidence before this Court is the fact that Austin crossed a literal and figurative line when he entered the Plaintiff's room to commit the assault and it is undisputed that this was against Luxor's policies. This is not sufficient to show that Austin was in the course and scope of his employment at the time he committed the assault.

Most importantly, there is no evidence that Austin's job duties required him to do anything more than escort guests to their rooms. Austin was not required, nor authorized, to proceed into Plaintiff's room and assault Plaintiff. In fact, Plaintiff agreed that Luxor did not have a policy that would have allowed Terrence Austin to sexually assault her. (*See*, MSJ - Exhibit G at Page 147, Lines 10 - 17.) Plaintiff also testified that she sued Terrence Austin because he committed an intentional criminal act (sexual assault) against her. (MSJ - Exhibit G, Page 145, Line 13 - Page 146, Line 2.) Therefore, just as in *Wood*, the evidence is clear that Austin was not within the course and scope of his employment when he assaulted Plaintiff, but instead was on independent venture.

B. Austin's Acts Were Unforeseeable.

Wood makes it clear that Austin's acts were not foreseeable in this matter. The Court in *Wood* determined that the standard for foreseeability in the context of respondeat superior is far different from the standard for negligence:

> *'[F]oreseeability' in this context must be distinguished from 'foreseeability' as a test for negligence. In the latter sense 'foreseeable' means a level of probability which would lead a prudent person to take effective precautions whereas 'foreseeability' as a test for respondeat superior* ***merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business.*** *In other words, where the question is one of vicarious liability, the inquiry should be whether* ***the risk was one 'that may fairly be regarded as typical of or broadly incidental' to the enterprise undertaken by the employer.***

(Emphasis added.)

Id. at 740 citing *Rodgers v. Kemper Constr. Co.,* 50 Cal. App. 3d 608, 124 Cal.Rptr. 143, 148-49 (Cal. App. 1975) (citations omitted).

The Court, in applying the above definition of foreseeability, determined the janitor's actions were not reasonably foreseeable as matter of law. *Id.* The Court reasoned the employer required proof of identification, checked employee references, **the employee had no prior criminal history and there were no prior sexual harassment complaints against the employee.** *Id.*

The undisputed facts before this Court likewise show Austin's actions were not reasonably foreseeable as a matter of law. While it is true that policies prohibiting officers from walking guests to their room along existed at the Luxor and that the concern was to protect both the officers and guests from criminal allegations, just as in *Wood*, Luxor had no reason to believe Austin would commit a sexual assault! Austin received the General Rules of Conduct, which outlines conduct employees should or should not engage in, including not committing sexual assaults. In addition, Luxor required proof of identification, checked employee references, conducted drug testing and determined Austin had no prior criminal history. Not to mention another background check was **conducted two days before this incident and Austin had no criminal history**. There was absolutely no reason for Luxor to believe Austin would commit a sexual assault.

There can also be no argument that Austin's repugnant actions are "unusual and startling". The risk that Austin would sexually assault a customer is not one that is "typical" or "broadly incidental" to Luxor's business. *Id.* Therefore, Luxor's respectfully submits Austin's actions were not foreseeable as a matter of law and summary judgment in Luxor's favor is

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appropriate.

California, like Nevada, imposes respondeat superior liability if Plaintiff can show the tortious conduct was legally foreseeable. *Lisa M. v. Henry Mayo Newhall Memorial Hospital,* 907 P.2d 358, 363 (Cal. 1995). Despite this less stringent standard compared to the "motivation to serve" test, the Court in *Lisa M.* held that summary judgment in favor of a hospital was appropriate where an employee technician sexually assaulted a patient during an exam. *Id.* at 367; (See also, Full analysis set forth in Luxor's Motion for Summary Judgment at pp. 15-17.)

The Court, in noting the standard for imputing vicarious liability, acknowledged the fact that the technician's employment "provided the opportunity for him to meet plaintiff and to be alone with her in circumstances making the assault possible." *Id.* at 363. The Court held that the employment must not only present the opportunity for the crime, but must also be a foreseeable consequence of the employer's business. In other words, the crime must be "engendered by" or an "outgrowth" of his employment. The ***Lisa M.*** Court noted the motivation-to-serve test used in other jurisdictions "bar[s] vicarious liability for virtually all sexual misconduct." ***Id.*** Regardless, the less stringent foreseeability test leads to the same result in situations such as the one in ***Lisa M.*** where the employment creates no emotional involvement between the parties: no respondeat superior liability. ***Id.*** **Specifically, "a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions."** ***Id.*** at 364.

In determining the technician's acts were not engendered by work-related events or conditions, the Court noted the technician:

> *[S]imply took advantage of solitude with...[plaintiff] to commit an assault for reasons unrelated to his work... The task provided no occasion for a... work-related emotional involvement with the patient.* ***The technician's decision to engage in conscious exploitation of the patient did not arise out of the***

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> ***performance of the examination, although the circumstances of the examination made it possible. 'If... the assault was not motivated or triggered off by anything in the employment activity but was the result of only propinquity and lust, there should be no liability.'*** *(Emphasis added.)*

Id. citing *Lyon v. Carey,* 533. F.2d 649, 655 (D.C. Cir. 1976). The Court further found there was no evidence of any "intense" emotional involvement from either party despite the fact the ordered procedure involved physical contact. *Id.* at 365. Indeed, the technician "simply took advantage of solitude, access and superior knowledge to commit a sexual assault." *Id.* at 365. Therefore, there the technician's sexual assault was not foreseeable but, rather, was "the independent product of [the technician's] aberrant decision to engage in conduct unrelated to his duties." *Id.*

In that instant matter, there is no evidence before this Court, nor can any inferences be drawn from the evidence, that Austin's actions **were motivated by emotions attributable to work related events or conditions.** Austin's job duties as a security officer did not lend itself to any type of emotional involvement between Austin and Driggers. In fact, the only interaction between Austin and Plaintiff prior to the sexual tort was the escort. This is far less of a personal interaction than the one in *Lisa M.*, where the technician needed to make physical contact, including in private areas, with the Plaintiff as part of his job duties.

Simply put, Austin's decision to commit the sexual tort on Plaintiff did not arise out of the performance of his job duties. Austin "simply took advantage of solitude, access and superior knowledge to commit a sexual assault" on Plaintiff. *Id.* at 365. Although the circumstances of his job made it possible, Austin's actions were "entirely of his own, independent invention.[3] For this reason it would be unfair and inconsistent with the basic

[3] Plaintiff suggests that she was in a vulnerable position and that it is not unusual nor startling that someone in Austin's position would exploit this vulnerability. This is exactly what happened in *Lisa M.* and the Court did not find respondeat superior liability.

rationale of respondeat superior to impose liability." *Id.* at 367.

Finally, Plaintiff alleged that Luxor somehow ratified Austin's conduct. (See Opp. pp 17, Lines18-19). This is absolutely absurd. It is undisputed that Austin was suspended pending investigation and terminated following this incident for his blatant disregarding of company policy. (*See* Termination Notice MSJ Exhibit I and Excerpts of the Deposition of Dede Aspero, MSJ-Exhibit J, Page 47, Lines 4-22.) Any argument that Austin's conduct was ratified should be disregarded.

C. Austin's Criminal Act is a Superceding, Unforeseeable Cause That Precludes Liability Against Luxor.

Plaintiffs agreed to dismiss their claim for negligent hiring and suggest that because the Luxor did not address the negligent training and/or negligence supervision claims that those claims should be allowed to go forward. To the extent this Court agrees with Plaintiff and would require additional briefing or a separate Motion on this issue, Luxor has no problem doing so. Regardless, these claims are futile.

Just as Luxor is not liable for Austin's acts based on respondeat superior liability, Luxor is also not liable for any alleged negligence committed by Luxor because Austin's act was an intervening and superseding cause of Plaintiff's alleged injuries. "A negligence action will not stand when there is an intervening cause that in and of itself is the natural and logical cause of the harm." *Wood, supra,* 121 Nev. 724, 741 (citation omitted). His independent criminal acts – sexual assault – were the proximate cause of Plaintiff's injuries and broke the liability chain as to Luxor. Not to mention, even if Austin received perfect training and supervision, how would that have changed anything considering Luxor had no knowledge of his proclivity to commit a sexual assault? The answer is this was legally unforeseeable!

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In order for an intervening act to be superseding, and relieve a negligent actor of liability, the act must not be reasonably foreseeable. *Bower v. Harrah's Laughlin, Inc.*, 215 P.3d 709, 725, 125 Nev. Adv. Rep. 37 (2009). The Court in *Bower* set forth several factors to consider in determining whether an intervening cause is foreseeable:

> *(1) the intervention causes the kind of harm expected to result from the actor's negligence, (2) the intervening event is normal or extraordinary in the circumstances, (3) the intervening source is independent or a normal result of the actor's negligence, (4) the intervening act or omission is that of a third party, (5) the intervening act is a wrongful act of a third party that would subject him to liability, and (6) the culpability of the third person's intervening act. Id. citing Restatement (Second) of Torts § 442 (1965).*

The Court cautioned, however, that "[w]hen a third party commits an intentional tort or a crime, the act is a superseding cause, even when the negligent party created a situation affording the third party an opportunity to commit the tort or crime." *Id.* (citation omitted). Under such circumstances, **the negligent actor would only be liable if it knew or should have known, at the time of the conduct, that it was creating the opportunity for the crime and that the actor might use the opportunity to commit the crime**. *Id.* (citation omitted).

As discussed above, *Wood*, involved a janitor working for a cleaning company who sexually assaulted an employee of Safeway. The district court in that case also granted summary judgment in the employer's favor on every cause of action based on any negligence of the cleaning company. The Nevada Supreme Court affirmed the district court's decision on this issue as well. *Wood, Supra*, at 741.

The Supreme Court reasoned that the decision turned on whether "the specific crime of sexual assault by one of its employees was reasonably foreseeable to the employer under the circumstances." *Id.* The Court noted it previously determined the sexual assault was not reasonably foreseeable in determining the employer's respondeat superior liability. *Id.* The

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decision was based on the fact that the employer required proof of identification, checked employee references, the employee had no prior criminal history and there were no prior sexual harassment complaints against the employee. *Id.* at 740. Since the sexual assault was not reasonably foreseeable, the employee's criminal act constituted an intervening superseding act that relieved the employer of liability as a matter of law. *Id.* at 741

Applying Nevada precedent to this matter, it is clear Austin's sexual assault was unforeseeable. The assault was a superseding intervening cause of any harm to Plaintiff and, therefore, the act precludes liability against Luxor. There is simply no evidence before this Court that would suggest Luxor acted in any way that would lead one would expect Austin to commit the extraordinary, independent act of sexual assault. Austin's act is a wrongful act that surely subjects him to liability. Further, Austin clearly possesses the utmost level of culpability for his intentional torts. As a result, just as in *Wood*, Luxor is not liable for Austin's "the sexual assault of [Plaintiff] because his intervening criminal actions were a superseding cause that relieves" Luxor of liability. *Id.* at 742.

Nowhere in any of Plaintiffs' briefs do they dispute Luxor's assertion that Austin's act is a superseding cause of Plaintiff's alleged injuries. As a result, Luxor's Motion for Summary Judgment should be granted.[4]

D. Plaintiffs' Possess No Evidence To Support Punitive Damages Claims Against Luxor.

As noted above the Plaintiff abandoned the punitive damages claims by failing to object to Luxor's position regarding those damages. When a motion for summary judgment is made

[4] Luxor notes that Plaintiff submitted a "liability expert" report as an exhibit to her Opposition. While Luxor recognizes this Court may not even consider it for the purpose of this Motion, to the extent it does, please see report from Robert Gardner attached hereto as Exhibit Q. Mr. Gardner's opinions emphasize Austin's departure from procedure and policy and confirming his conduct was not done on behalf of Luxor or to further Luxor's interests.

and supported, an adversary party who does not set forth specific facts showing a genuine issue to be resolved at trial may have summary judgment entered against him. *Collins v. Union Fed. Sav. & Loan* Ass'n, 99 Nev. Nev. 284, 662 P.2d 610 (1983). As a result summary judgment dismissing Plaintiff's punitive damages claim is appropriate.

IV.

CONCLUSION

Based upon the above and foregoing, there can be no doubt Austin, and Austin alone, is responsible for his independent, intentional tort on Cara Driggers that was outside the scope of his employment. Further, there is no evidence before the Court to suggest Luxor should have foreseen Austin would commit a sexual assault. Therefore, regardless of Plaintiff's contentions, summary judgment is appropriate.

DATED this 27th day of February, 2014.

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

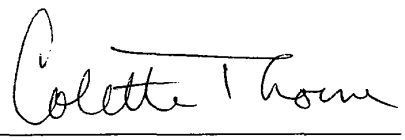
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 27th day of February, 2014, I served a true and correct copy of DEFENDANT RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT by placing same in the U.S. Mail, postage prepaid, addressed to the following:

Alex De Castroverde, Esq.
Orlando De Castroverde, Esq.
Kimberly Valentin, Esq.
DE CASTROVERDE LAW GROUP
1149 South Maryland Parkway
Las Vegas, Nevada 89104
Attorneys for Plaintiff



An Employee of Kravitz, Schnitzer & Johnson, Chtd.

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EXHIBIT M

DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS, Plaintiff, vs. MGM RESORTS INTERNATIONAL d/b/a LUXOR LAS VEGAS, TERRENCE DAVID AUSTIN, DOES I-X and ROE CORPORATIONS XI-XX, inclusive, Defendants.	)	Case No.: A-12-670031-C Dept. No.: XXVIII

VIDEOTAPED DEPOSITION OF JOSEPH MULLEN

Taken at the Offices of

Sousa Court Reporters

1013 Garces Avenue

Las Vegas, Nevada 89101

On Wednesday, September 11, 2013

At 9:05 a.m.

Reported by: Sarah M. Winn-Boddie, CCR No. 868

A. No. If the -- if the guest -- if -- if we bring them up and they cannot get into a room, then we have a -- a master key that allows us to enter the room and at that point, we can get identification for the guest and whatever -- guests are not allowed in the room unless they have identification.

Q. In this case, a master key wasn't used, correct?

A. Correct.

Q. Okay. So in this case, was it a rule violation for Terrence to enter the room?

A. Yes.

Q. And you would be critical of Terrence for violating that rule, that company rule?

A. Yes.

Q. He's violating company policy by entering a room with two intoxicated females?

A. Yes.

THE WITNESS: That's me. Sorry.

MS. MUSHMECHE: Okay. I can hear it. I'm sorry.

BY MR. DE CASTROVERDE:

Q. And if Terrence pulled out his private part in the closed room and directed it at one of the females, that would be a company -- he would be violating the company's rule as well because that's not permissible, is it?

A. No. It's not permissible.

Q. And it's your understanding that's what Cara and her

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Sarah M. Winn-Boddie, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the deposition of JOSEPH MULLEN, commencing on Wednesday, September 11, 2013 at 9:05 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes, and that a request has been made to review the transcript.

I further certify that I am not a relative, employee or independent contractor of counsel, of any of the parties, nor a relative, employee or independent contractor of the parties involved in said action, nor a person financially interested in the action, nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 14th day of September, 2013.

Sarah M. Winn-Boddie, CCR No. 868

EXHIBIT N

DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS,

Plaintiff,

vs. No. A-13-678269-C

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI -XX, inclusive,

Defendants.
_____/

VIDEOTAPED DEPOSITION OF CARA DRIGGERS

July 31, 2013

2:22 p.m.

8985 South Eastern Avenue, Suite 200

Las Vegas, Nevada

Linda Horton Sprague, C.C.R. No. 466

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guy coming in the elevator with us. I know where it is. I want to just go -- just us. Like, she said it 50 times.
Q. Okay.
A. I mean, over the course, between there and the room. So it was, like, Bye. And she initiated the first thing, I believe. I don't know who initiated it. All I saw was them and a pat on the back. And then -- so I was, like -- and then he turned to me. And I was, like, Bye. Thank you. Thanks for getting us here safe. We'll see you later.
And then we walked in the elevator when it dinged. And he followed us in.
Q. And -- okay. So you get off on your floor.
A. Uh-huh.
Q. Tell me what happens next.
A. She was in the hallway, saying, I don't want him to come with us. Don't let him come with us. She's, like, don't -- he's following us. I don't want him coming to the room.
And she's saying it loud enough for him to hear.
And I'm, like, thinking this guy is going to get pissed or, like, offended or something. You know, like, she's kind of being rude, like, why doesn't she

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just tell him, you know. And so I was, like, why do I have to say it?
And I was, like -- so I turn around -- she stopped. When we got out, she did not go directly for the room. Like, we got out of the elevator and kind of stood there because she was not -- she did not want him following us.
And she's, like -- and I said, Dude, we know where we're going. She doesn't want you following us. She doesn't want you coming to the room. You know, she's, like, freaked out. Could you just, like -- you know, we're good.
And I was being kind of firm about it. And then he was, like, no. I -- you asked me for help. And I have to make sure you get to your room. I want to make sure she has the right room. What if she has the wrong room? I need to make sure her key works.
I mean, it was just -- he would not stop. And he would not stop coming. It was definitely scary at that point, you know, a little bit more.
Q. Did either Angela or you think about just getting back in the elevator and going back down to the --
A. Ah --
MS. VALENTIN: Objection. Calls for

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speculation.
Go ahead.
MS. MUSHMECHE: Well, let me ask -- well, that's fine.
THE WITNESS: I -- I mean, I don't -- I don't remember having that thought. I just remember wanting to just -- him to leave and us to go to the room. But I wasn't -- it was, like, he's a fricking security guard. Like, he works there. Like, Go. Like, Bye. Like, I just figured he would fricking leave.
BY MS. MUSHMECHE:
Q. So you get down the hallway.
Did he say anything to you in the hallway?
A. Not that I remember, except for we -- when we had stopped and he said, I need to -- you asked me for help. So, basically, that's his -- he's, like, that's my job now. You've asked me for help. So it's my job to make sure you get to the room safely. Like, insisting.
Q. Did you see any other people in the hallway?
A. No.
Q. Housekeepers?
A. No.
Q. So you get down to the room.

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Tell me -- to your door.
What happens next?
A. To the best of my remembering, she swiped the card. And I went in first. She followed me. I went to the master bedroom, which I saw lit up. And went into the master bedroom. And I laid down on the bed.
Q. And so it was Angela who used the key --
A. I believe so.
Q. -- to get in?
A. I --
Q. Did Austin kick the door?
Did you hear anybody kick the door?
Did he force his way in?
A. No.
She swiped the card. I mean, I -- somebody -- she swiped the card. I don't remember exactly that. She swiped the card. I went in. It was, like, Good-bye. Thank you. I remember saying, Bye. Thanks. Walked in.
She's -- I heard her saying, Good-bye. Thank you.
And then she walked in behind me, as far as I know.
Q. So you're in a suite.

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Linda Horton Sprague, a Certified Court Reporter, licensed by the State of Nevada, do hereby certify: That I reported the deposition of CARA DRIGGERS, on Wednesday, July 31, 2013, at 2:22 p.m.;

That prior to being deposed, the witness was duly sworn by me to testify to the truth; that I thereafter transcribed my said stenographic notes via computer-aided transcription into written form, and that the typewritten transcript is a complete, true and accurate transcription of my said stenographic notes; that review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel or of any of the parties involved in the proceeding; nor a person financially interested in the proceeding; nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 4th day of August, 2013.

Linda Horton Sprague

Linda Horton Sprague, CCR NO. 466

EXHIBIT O

LexisNexis®

PAUL ALAN WOOD, INDIVIDUALLY, AND JUDY WOOD, INDIVIDUALLY, AND AS GUARDIAN AD LITEM FOR JANE DOE AND AS GUARDIAN AD LITEM FOR BABY DOE, Appellants, vs. SAFEWAY, INC.; ACTION CLEANING, INC.; AND VOGA INCORPORATED, D/B/A ACTION CLEANING, INC., Respondents.

No. 40048

SUPREME COURT OF NEVADA

121 Nev. 724*; *121 P.3d 1026*; *2005 Nev. LEXIS 91*; *121 Nev. Adv. Rep. 73

October 20, 2005, Decided

PRIOR HISTORY: [***1] Appeal from district court orders granting summary judgment in a negligence-based tort case. First Judicial District Court, Carson City; William A. Maddox, Judge.

DISPOSITION: Affirmed.

COUNSEL: Bradley Drendel & Jeanney and William C. Jeanney and Mark C. Wenzel, Reno, for Appellants.

Beesley, Peck, Matteoni & Cossitt, Ltd., and Paul A. Matteoni, Reno; Erickson Thorpe & Swainston, Ltd., and Thomas P. Beko, Reno; Littler Mendelson and Brent H. Harsh and Susan Heaney Hilden, Reno, for Respondent Safeway.

Watson Rounds and Kelly G. Watson, Reno, for Respondents Action Cleaning and Voga, Inc.

JUDGES: MAUPIN, J., concurring in part and dissenting in part.

OPINION

[*727] [**1028] BEFORE THE COURT EN BANC.

PER CURIAM:

Jane Doe, a mentally handicapped female, was working for Safeway Stores, Inc., when she was sexually assaulted by Emilio Ronquillo-Nino, who was employed by a company that provided janitorial services at the Safeway where Doe worked. Doe, through her guardian ad litem, filed a complaint against Safeway and Ronquillo-Nino's employer, Action Cleaning, alleging five causes of action as a result of the sexual assault. The district court granted summary judgment in favor of Safeway, determining that [***2] it was immune from suit because of coverage provided by the Nevada Industrial Insurance Act (NIIA). The district court also granted summary judgment in favor of Action Cleaning pursuant to *NRS 41.745* because it was not liable for intentional torts committed by its employee and because Ronquillo-Nino's intervening criminal acts were a superseding cause that relieved Action Cleaning of responsibility.

We conclude that the district court properly granted summary judgment in favor of Safeway and Action Cleaning. We also take this opportunity to clarify that the "slightest doubt" standard in our summary judgment jurisprudence is an incorrect statement of the law and should no longer be used when analyzing motions for summary judgment.

FACTS

Safeway hired Doe through the store's special hiring program to work as a part-time courtesy clerk. Doe's I.Q. score is in the range of 68-70, qualifying her as mildly mentally retarded. A program offered at Carson High School provided job coaches to assist Doe with the hiring and orientation process, to transport her to and from work, and to provide her with on-the-job training. Doe also received assistance from a job coach at Easter Seals

and [***3] a vocational rehabilitation counselor provided by the state. Doe was a minor when Safeway initially hired her, but she turned 18 before the events that are the subject of this case.

As a courtesy clerk, Doe bagged groceries, cleaned and replenished supplies at the check stands, cleaned the break room and various public areas of the store, and collected shopping carts from the parking lot. Safeway paid Doe $ 5.45 an hour, and she received regular paychecks made out in her name. Doe's employment duties required her to be in many areas of the store, including the [*728] outside areas, at various times. She was working the swing shift (4 p.m. to midnight) at the time of the assaults.

Before beginning her employment, Doe attended a daylong orientation session for new employees where she received training specific to her job duties. The orientation also covered information on Safeway's employment policies, including its policies on sexual harassment in the workplace. One of Doe's job coaches attended the orientation session with her and helped her to understand the materials and information presented. Doe worked at Safeway part-time during high [**1029] school and then full-time following her graduation [***4] in June 1998.

Doe met Ronquillo-Nino through her employment at Safeway. Ronquillo-Nino worked as a nighttime janitor for Action Cleaning, a cleaning subcontractor hired by Building One Service Solutions (Building One) to provide on-site cleaning services at the Safeway store where Doe worked. Under its contract with Safeway, Building One is an independent contractor.

On three separate occasions Ronquillo-Nino sexually assaulted Doe while she was at work on the Safeway premises. The first assault occurred in a cleaning supply room, and the second and third assaults occurred behind a dumpster while Doe was outside collecting shopping carts from the parking lot. Ronquillo-Nino pleaded guilty to one count of attempted sexual assault.

As a result of the sexual assaults, Doe became pregnant and gave birth to a healthy child, who is now under the care of Doe and Alan and Judy Wood. The Woods and Doe, through her guardian ad litem, (collectively Doe) filed a complaint alleging five causes of action against Safeway and Action Cleaning: (1) negligent failure to train employees and maintain a safe work environment; (2) negligent selection, appointment, training, supervision, and retention [***5] of Emilio Ronquillo-Nino; (3) sexual harassment; (4) negligent infliction of emotional distress; and (5) due to the above negligent acts, the Woods are now responsible for the care and maintenance of Jane Doe and her child, Baby Doe.

Safeway and Action Cleaning filed separate motions for summary judgment. The district court granted Safeway's motion for summary judgment, concluding that Doe's tort claims against Safeway allege injuries that arose out of and during the course of her employment and therefore her claims are barred by the NIIA, under *NRS 616A.020(1)-(2)* and *NRS 616B.612(4)*. The district court subsequently granted Action Cleaning's motion for summary judgment, concluding that Doe's claims were barred because Ronquillo-Nino's intervening criminal acts were a superseding cause precluding liability and because, under *NRS 41.745*, Action Cleaning is not liable for the intentional torts committed by one of its employees. Doe filed a motion for reconsideration, which [*729] the district court denied. Doe now appeals the district court's orders granting summary judgment in favor of Safeway and Action Cleaning.

DISCUSSION

Standard of review

This court reviews a district [***6] court's grant of summary judgment de novo, without deference to the findings of the lower court. [1] Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." [2] This court has noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party. [3]

1 *GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001)* (citing *Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993))*.
2 *NRCP 56(c)*; *Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997)*.
3 *Lipps v. Southern Nevada Paving, 116 Nev. 497, 498, 998 P.2d 1183, 1184 (2000)* (citing *Butler v. Bogdanovich, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985))*.

[***7] *The "slightest doubt" standard*

Doe argues on appeal, however, that summary judgment is precluded in the trial court when there is the "slightest doubt as to the operative facts." The "slightest doubt" standard became part of Nevada's summary judgment analysis in 1954, when this court quoted language from a federal circuit court's decision in *Doehler Metal Furniture Co. v. United States*. [4] Although we have continued to use that standard, courts and [**1030]

commentators have criticized it as unduly limiting the use of summary judgment. [5]

> 4 *149 F.2d 130 (2d Cir. 1945), quoted in Parman v. Petricciani, 70 Nev. 427, 436, 272 P.2d 492, 496 (1954).*
> 5 *See, e.g., Chubbs v. City of New York, 324 F. Supp. 1183, 1189 (E.D.N.Y. 1971)* ("Since courts are composed of mere mortals they can decide matters only on the basis of probability, never on certainty. The 'slightest doubt' test, if it is taken seriously, means that summary judgment is almost never to be used-a pity in this critical time of overstrained legal resources." (citing Frank, *American Law: The Case for Radical Reform* 146-52 (1969)); *Goodman v. Brock, 83 N.M. 789, 498 P.2d 676, 679 (N.M. 1972)* (noting that application of the "slightest doubt" standard "has resulted in a disregard of the clear language and a departure from the meaning and purpose of *Rule 56(c)*"); Hon. Charles E. Clark, *Special Problems in Drafting and Interpreting Procedural Codes and Rules*, 3 Vand. L. Rev. 493, 504 (1950) ("If this [standard] is to be applied as it is stated, there can hardly be a summary judgment ever, for at least a slight doubt can be developed as to practically all things human."); Charles A. Wright & Mary K. Kane, *Law of Federal Courts* 711 (6th ed. 2002) (characterizing the slightest doubt standard as "a rather misleading gloss" on the rule).

[***8] [*730] In 1986, the United States Supreme Court decided two cases that undermine the "slightest doubt" standard: *Celotex Corp. v. Catrett* [6] and *Anderson v. Liberty Lobby, Inc.* [7] While not addressing the "slightest doubt" standard directly, the Supreme Court in *Celotex* noted that *Rule 56* should not be regarded as a "disfavored procedural shortcut" but instead "as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" [8] In *Liberty Lobby*, the Supreme Court went further in abrogating the slightest doubt standard when it focused on the rule's requirement that there be no "genuine" issues of "material" fact:

> By its very terms [the summary judgment standard] provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.
>
> . . . The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the [***9] entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. [9]

Liberty Lobby is incompatible with the slightest doubt standard because colorable evidence may, in any given case, raise doubts as to a factual dispute between the parties while, at the same time, not being probative on the operative facts that are significant to the outcome under the controlling law. [10]

> 6 *477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).*
> 7 *477 U.S. 242, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).*
> 8 *Celotex, 477 U.S. at 327* (quoting *Fed. R. Civ. P. 1*).
> 9 *Liberty Lobby, 477 U.S. at 247-48.*
> 10 *Cf. Schier v. Hertz Corp., 99 Nev. 474, 476, 663 P.2d 1185, 1186 (1983)* (reversing summary judgment in favor of a car rental company because the issue in the case was not whether rental company qualified as an insurer under Nevada law but instead whether, under plaintiff's breach of contract claim, rental company was obligated by the terms of lease agreement to provide liability coverage, which under Nevada law must also include uninsured motorist coverage).

[***10] A number of this court's summary judgment cases employ language that seemingly rejects the slightest doubt standard. This [*731] court has often stated that the nonmoving party may not defeat a motion for summary judgment by relying """on the gossamer threads of whimsy, speculation and conjecture."""" [11] As this court has made abundantly clear, "when a motion for summary judgment is made and supported as required by *NRCP 56*, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating [**1031] the existence of a genuine factual issue." [12] The United States Supreme Court employed similar language in *Matsushita Electric Industrial Co. v. Zenith Radio.* [13]

> 11 *Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002)* (quoting *Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993)* (quoting *Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d*

610, 621 (1983))); *Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)* (quoting *Collins, 99 Nev. at 302, 662 P.2d at 621*).

[***11]

12 *Pegasus, 118 Nev. at 713, 57 P.3d at 87*; *see Collins, 99 Nev. at 294, 662 P.2d at 618-19*.

13 *475 U.S. 574, 586, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986)*. The Court stated:

> When the moving party has carried its burden under *Rule 56(c)*, its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. In the language of the Rule, the nonmoving party must come forward with "specific facts showing that there is a *genuine issue for trial*." Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial."

Id. (citations and footnote omitted).

We take this opportunity to put to rest any questions regarding the continued viability of the "slightest doubt" standard. We now adopt the standard employed in *Liberty Lobby*, [14] *Celotex*, [15] and *Matsushita*. [16] Summary judgment is appropriate under *NRCP 56* when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court [***12] demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. [17] The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. [18] A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. [19]

14 *477 U.S. 242, 91 L. Ed. 2d 202, 106 S. Ct. 2505*.

15 *477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548*.

16 *475 U.S. 574, 89 L. Ed. 2d 538, 106 S. Ct. 1348*.

17 *Pegasus, 118 Nev. at 713, 57 P.3d at 87*.

18 *Liberty Lobby, 477 U.S. at 248*.

19 *E.g., Matsushita, 475 U.S. at 586*; *Posadas, 109 Nev. at 452, 851 P.2d at 441-42*. We use the term trier of fact here to refer to both the jury and, in a bench trial, the judge.

[*732] While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to "do more than simply show that [***13] there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. [20] The nonmoving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." [21] The nonmoving party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" [22]

20 *Matsushita, 475 U.S. at 586*.

21 *Bulbman, 108 Nev. at 110, 825 P.2d at 591*.

22 *Id.* (quoting *Collins, 99 Nev. at 302, 662 P.2d at 621*).

To the extent that Doe relies on the "slightest doubt" standard, our discussion above abrogates that standard from Nevada's summary judgment law and renders her arguments irrelevant.

Summary judgment in favor of Safeway

Applying the summary judgment standard to the case at bar, the relevant inquiry is whether the evidence, when taken in a light most favorable [***14] to Doe, the nonmoving party, demonstrates that no genuine issue of material fact remains.

The district court granted summary judgment in favor of Safeway based on its determination that Safeway is immune from suit under the NIIA, *NRS Chapters 616Ato 616D* . The NIIA provides the exclusive remedy for employees injured on the job, and an employer is immune from suit by an employee for injuries "arising out of and in the course of the employment." [23] This provision not only bars a suit brought by the employee, but also those by his or her legal representative [**1032] and dependents. [24] The district court concluded that Doe's tort claims against Safeway alleged injuries that arose out of and during the course of her employment and her [*733] claims were therefore barred under *NRS 616A.020(1), (2)* and *NRS 616B.612(4)*. [25]

23 *NRS 616A.020(1), (2)*; *Conway v. Circus Circus Casinos, Inc., 116 Nev. 870, 874, 8 P.3d 837, 839 (2000)* (quoting *NRS 616A.020(1)*); *see also NRS 616B.609(1)(a), (b)* (noting that the remedies provided under the NIIA cannot be modified by a contract of employment, insurance, relief benefit, indemnity, or any other device, and any attempt to do so is void).

[***15]

24 *NRS 616A.020(1)* provides:

> The rights and remedies provided in [the NIIA] for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive . . . of all other rights and remedies of the employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise, on account of such injury.

25 *NRS 616B.612(4)* provides that any employer within the provisions of the act "or any insurer of the employer is relieved from other liability for recovery of damages or other compensation for those personal injuries unless otherwise provided by the terms of [the NIIA]."

Arising out of and in the course of the employment

Initially, Doe argues that the district court erred in granting summary judgment because it sometimes used the disjunctive "or" as opposed to the conjunctive "and" when construing Safeway's liability for injuries to employees. While Doe is correct that an employer is relieved of liability only "for personal injuries to employees which arise out of *and* in the course of [***16] employment," her argument is without merit. First, the district court concluded both that "Doe's injuries were sustained at work" in the course of employment and that Doe's injuries also arose out of her employment. Second, Doe's argument ignores the fact that this court reviews an appeal of summary judgment de novo, without deference to the district court's decision. [26]

26 *GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001).*

We have recognized that the NIIA does not make an employer absolutely liable and, therefore, absolutely immune from suit for any and all on-the-job injuries suffered by its employees. [27] Instead, injuries that fall within the ambit of the NIIA's coverage are those that both arise out of the employment and occur within the course of that employment. [28] An injury is said to arise out of one's employment when there is a causal connection between the employee's injury and the nature of the work or workplace. [29] In contrast, whether an injury occurs within the [***17] course of the employment refers merely to the time and place of employment, *i.e.*, whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties. [30]

27 *Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605, 939 P.2d 1043, 1046 (1997).*

28 *NRS 616A.020(1).*

29 *Gorsky, 113 Nev. at 604, 939 P.2d at 1046* (citing *Murphy v. Industrial Com'n of Arizona, 160 Ariz. 482, 774 P.2d 221, 224 (Ariz. 1989)).*

30 *Murphy, 774 P.2d at 225* (noting that when the injury occurs at work, during work hours, and while the employee is engaged in a reasonable activity of his employment, then the injury is said to occur within the course of the employment); *see also Doe v. South Carolina State Hosp., 285 S.C. 183, 328 S.E.2d 652, 655 (S.C. Ct. App. 1985).*

[*734] Here, Doe does not challenge whether her injury occurred in the course of her employment. The record sufficiently establishes [***18] that Ronquillo-Nino sexually assaulted Doe while she was at work, during her regular working hours, and while she was performing the duties of her job. In fact, the very basis of Doe's claim is that Safeway and Action Cleaning are liable because her injury occurred in the course of her employment. The district court properly concluded that Doe's injuries occurred within the course of her employment.

However, Doe challenges the conclusion that the assault arose out of her employment. To resolve this issue, we must determine whether there is a causal link between Doe's working at Safeway and the sexual assault by Ronquillo-Nino. [31] Whether a sexual assault results in an injury that arises out of the victim's employment is an issue of first impression in Nevada. Generally, courts holding that a sexual assault upon an employee arises out of the employment use an incidental or increased risk test that looks to whether the risk of harm is related to the [**1033] conditions of employment or whether the employment increased the risk to the employee. [32] This test is analogous to the reasoning employed by this court in *Cummings v. United Resort Hotels, Inc.* [33] and *McColl v. Scherer*. [34] However, [***19] workers' compensation statutes do not apply "when the animosity or dispute which culminates in the assault is imported into the place of employment from the injured employee's private or domestic life, . . . at least where the animosity is not exacerbated by the employment." [35] We affirm the use of this test.

31 *Cf. Gorsky, 113 Nev. at 604, 939 P.2d at 1046.*

32 *E.g., South Carolina State Hosp., 328 S.E.2d at 655* (holding the risk of assault and rape of a female nurse by an escaped mental patient was increased because of the nature or setting of

her work); *Orr v. Holiday Inns, Inc., 6 Kan. App. 2d 335, 627 P.2d 1193, 1196-97 (Kan. Ct. App. 1981)*; *Commercial Standard Insurance Company v. Marin, 488 S.W.2d 861, 869 (Tex. Civ. Ct. App. 1972)*; *Employers Insurance Company of Alabama v. Wright, 108 Ga. App. 380, 133 S.E.2d 39, 41 (Ga. Ct. App. 1963)* (holding the assault and rape of a female clerk at a laundry company arose out of her employment because her employment, which required her to go into a secluded part of the premises and pick up parcels of laundry from customers, created an increased risk of attack). *But see Tolbert v. Martin Marietta Corp., 621 F. Supp. 1099 (D. Colo. 1985)* (holding the rape of an employee does not arise out of the employment when the assault is neither distinctly associated with the employment nor personal to the employee but rather is directed at the employee because she is a woman).

[***20]

33 *85 Nev. 23, 27, 449 P.2d 245, 248 (1969)* (noting that when the employment increases the risk of assault beyond that of the general public, an ensuing injury is a compensable workplace injury).

34 *73 Nev. 226, 315 P.2d 807 (1957).*

35 *Marin, 488 S.W.2d at 863*; *see also McColl, 73 Nev. at 230, 315 P.2d at 809.*

[*735] Doe argues that sexual gratification is a personal and private motive and that her rape occurred because of Ronquillo-Nino's individual attraction to her or because he preyed upon her because of her mental disability. [36] Doe argues that Ronquillo-Nino acted out of personal animosity because his assault was "solely to gratify his own sexual desires" and urges this court to adopt the rule from *Villanueva v. Astroworld, Inc.* [37]

36 Doe argues that statements in Ronquillo-Nino's deposition suggest that he preyed upon Doe because he believed that she lacked intelligence and was highly vulnerable. When asked about his interactions with Doe, Ronquillo-Nino stated that Doe would ask him to have sex in inappropriate public places where they would likely be seen and that he had heard that she was having sex with other men at work, including his brother. He stated, "I thought that maybe some of the screws needed some tightening" and "what is it with her, is she nuts?" From this, Doe argues that a reasonable juror could conclude that Ronquillo-Nino's motivations were personal to Doe and unrelated to her employment. Ronquillo-Nino's statements taken as a whole do not imply what Doe avers, that Ronquillo-Nino preyed upon Doe because of her mental infirmities.

[***21]

37 *866 S.W.2d 690 (Tex. Ct. App. 1993)*; *cf. Heitman v. Bank of Las Vegas, 87 Nev. 201, 203, 484 P.2d 572, 573 (1971)* (holding that when an employee is shot because of a personal grudge, animosity or other personal motivation having nothing to do with her employment, the NIIA does not bar the suit, but when an employee is injured merely because she happened to be at work when the incident occurred, the NIIA covers the circumstances (citing *McColl v. Scherer, 73 Nev. 226, 315 P.2d 807 (1957))).*

In *Villanueva*, the Texas Court of Appeals held that the rape of an amusement park employee by a co-employee raised genuine issues of fact as to whether the victim's injuries arose out of her employment. [38] The Texas court noted that "'surely it would be going too far to say that every assault arises out of the employment if it can be proved that the acquaintance of the parties came about through the employment.'" [39] Then, the court noted that the general rule is that "an injury does not arise out of one's employment if the assault is not connected with [***22] the employment, or is for reasons personal to the victim as well as the assailant." [40]

38 *866 S.W.2d at 695.*

39 *Id.* (quoting A. Larson, *The Law of Workmen's Compensation* § 11.22 (1992)).

40 *Id.* (citing *Highlands Underwriters Insurance Co. v. McGrath, 485 S.W.2d 593, 595 (Tex. Civ. Ct. App. 1972)).*

Under this formulation of the rule, the exception would swallow the rule. It would be irrelevant whether there is a causal link between the employment and the assault because every sexual assault could be said to [**1034] arise from privately held motivations. Thus, every sexual assault would fall outside the purview of the NIIA, leaving workplace-related sexual assaults uncovered under the NIIA. This [*736] court is reluctant to accept such a broad formulation of the rule. Instead, we adopt the rule that the sexual assault of an employee falls within the NIIA if the nature of the employment contributed to or otherwise increased the risk of assault beyond that of the general [***23] public. [41] That same assault is not within the NIIA, however, when "the animosity or dispute which culminates in the assault is imported into the place of employment from the injured employee's private or domestic life, . . . at least where the animosity is not exacerbated by the employment." [42]

41 *E.g., South Carolina State Hosp., 328 S.E.2d at 655; Wright, 133 S.E.2d at 41; cf. Cummings, 85 Nev. at 27, 449 P.2d at 248.*

42 *Marin, 488 S.W.2d at 863; cf. Heitman, 87 Nev. at 203-04, 484 P.2d at 573; McColl, 73 Nev. at 230, 315 P.2d at 809.*

It is uncontroverted that Doe's employment with Safeway brought her into contact with the assailant. While the nature of her work required her to interact with employees and the public, her specific job duties included cleaning various areas of the store and collecting shopping carts from the parking lot. Two of the sexual assaults occurred while she was collecting [***24] carts from a lot that was behind or next to the store, and the other in a cleaning supply room that was presumably in an area off limits to the public. As a result, we conclude that Doe's employment contributed to and increased the risk of assault beyond that of the general public. Her only contact with Ronquillo-Nino was through her employment. Because he worked as a janitor there, he was aware of the store layout and which areas of the store provided vulnerable locations. The sexual assault in this instance was not imported into the workplace or otherwise the result of motivations peculiar to the assailant and the victim that are unrelated to the employment. Therefore, under the contributed to or increased the risk test, Doe's injury falls within the coverage of the NIIA, and her claims are barred by *NRS 616A.020*. [43] As such, no genuine issues of material fact remain, and summary judgment was appropriate in this case. [44]

43 In light of Safeway's argument that it is immune from suit under the NIIA for Ronquillo-Nino's workplace sexual assault, it will be estopped from arguing that her injuries are not covered under a workers' compensation claim. In holding that the sexual assault and any injuries therefrom fall within the NIIA, we necessarily conclude that ongoing injuries that are the direct result of Ronquillo-Nino's sexual assault may be covered under the NIIA.

[***25]

44 Doe argues that the district court erred by finding that she was only "mildly mentally retarded"; however, that statement is supported by Judy Wood's own testimony. In addition, Doe notes that the district court emphasized that Safeway provided Doe with training and materials concerning sexual assault and disregarded evidence that Doe likely could not have read or understood those materials on her own. Doe points out that the district court concluded that she failed to adequately inform anyone of the assaults even though deposition testimony suggests that she approached three different Safeway employees and attempted to discuss the issue with them. From these facts, Doe argues that genuine issues remain and summary judgment was inappropriate. We conclude, however, that the facts and inferences, even when taken in a light most favorable to Doe, are irrelevant to the dispositive issue in this case; which is the NIIA's coverage and whether it bars recovery because her injuries arose out of and in the course of her employment. Having concluded that no genuine dispute remains on facts related to the NIIA's coverage, we conclude that summary judgment is appropriate in this instance.

[*737] [***26] *Summary judgment in favor of Action Cleaning*

The district court granted summary judgment in favor of Action Cleaning based on dual grounds that (a) under *NRS 41.745* an employer is not liable for harm caused by the intentional torts of an employee, and (b) Ronquillo-Nino's intervening criminal act was a superseding cause that relieved Action Cleaning of liability. Doe challenges both conclusions on the basis that Ronquillo-Nino's acts were foreseeable given that Action Cleaning's workforce is highly transient, untrained, largely unsupervised, and "comprised almost entirely of" illegal aliens.

NRS 41.745 as a bar to recovery

NRS 41.745 addresses specific circumstances in which an employer is not liable for [**1035] harm or injury caused by an employee's intentional conduct:

> 1. An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:
>
> (a) Was a truly independent venture of the employee;
>
> (b) Was not committed in the course of the very task assigned to the employee; and
>
> (c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his employment.
>
> For [***27] the purposes of this subsection, *conduct of an employee is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.*

(Emphasis added).

Before *NRS 41.745* was enacted, this court had stated that an employee's intentional conduct relieves an employer of liability when "the employee's tort is truly an independent venture of his own and not committed in the course of the very task assigned to him." [45] This court had also acknowledged that if "the willful tort [*738] is committed in the course of the very task assigned to the employee," then it is appropriate to extend liability to the employer. [46] These two observations are essentially codified in *NRS 41.745(1)(a)* and *(b)*.

45 *Prell Hotel Corp. v. Antonacci, 86 Nev. 390, 391, 469 P.2d 399, 400 (1970)* (citing *Chapman v. City of Reno, 85 Nev. 365, 455 P.2d 618 (1969)*; *J. C. Penney Co. v. Gravelle, 62 Nev. 439, 449-50, 155 P.2d 477, 481-82 (1945))*.

46 *Id.*

[***28] In *Prell Hotel Corp. v. Antonacci*, [47] this court held an employer vicariously liable when its employee, a blackjack dealer, hit a customer in the face while dealing. The altercation occurred when the customer, who had apparently consumed a number of free drinks, became belligerent and insulted the dealer. The dealer proceeded to deal the next round of cards and then hit the customer without leaving his position behind the blackjack table. This court affirmed a judgment holding the casino liable because the altercation occurred within the scope of the very tasks assigned to the employee, in that particular case dealing blackjack. [48]

47 *86 Nev. at 390, 469 P.2d at 399.*

48 *Id. at 392, 469 P.2d at 400.*

In contrast, this court held that the employer was not vicariously liable in *J. C. Penney Co. v. Gravelle*, [49] when a store clerk assaulted a third-party bystander because the bystander attempted to prevent the clerk from catching a shoplifter whom the clerk had pursued [***29] outside of the store. The bystander followed the employee back to the store, and the two continued to argue, resulting in an ensuing altercation where the bystander was injured. This court held that the employer was not responsible because after the clerk had returned to the store and turned over the merchandise, his actions in assaulting the bystander no longer concerned his employment. This court reasoned that based on the circumstances, the assault was "an independent adventure" for the employee's own purposes and was not taken on the employer's behalf or arising from a sense of duty to the employer. [50] The distinguishing fact in *Gravelle* is that the altercation occurred after the clerk returned to the store and returned the stolen merchandise to the manager.

49 *62 Nev. 439, 155 P.2d 477.*

50 *Id. at 447-49, 155 P.2d at 481-82.*

In *Rockwell v. Sun Harbor Budget Suites*, this court, citing *Prell* and *Gravelle*, reversed the district court's order granting summary [***30] judgment in favor of the employer when an off-duty security guard shot and killed a woman on the employer's premises. [51] We reversed in that case because conflicting evidence raised a genuine issue of material fact concerning whether the off-duty guard was acting within the scope of his employment when the shooting occurred. Specifically, the evidence and affidavits produced by the [**1036] parties [*739] conflicted over whether security guards were required to remain in radio contact with the employer and respond to emergency calls when they were off-duty. [52]

51 *112 Nev. 1217, 1225-26, 925 P.2d 1175, 1180-81 (1996).*

52 *Id.*

Doe argues that Action Cleaning failed to produce any evidence to meet the first two statutory elements, that the sexual assault was a truly independent venture and was not committed in the course of a task assigned to Ronquillo-Nino. Our review of the record, however, reveals that Doe is wrong. Action Cleaning produced an affidavit stating that it provided janitorial services to [***31] Safeway, and it is undisputed that Ronquillo-Nino was employed as a janitor at the Carson City Safeway store. He was not acting on behalf of Action Cleaning when he assaulted Doe, or out of any sense of duty owed to Action Cleaning. The sexual assault was also not committed in the course of the tasks assigned to Ronquillo-Nino as a janitor. Ronquillo-Nino's sexual assault of Doe was an independent venture outside the course and scope of his employment. Therefore, we conclude that Doe's argument must fail and Action Cleaning has met the first two requirements under *NRS 41.745*.

NRS 41.745 also requires an element of foreseeability, in effect raising the standard and making employers liable only when an employee's intentional conduct is reasonably foreseeable under the circumstances. Doe asserts that the district court erred by focusing its foreseeability inquiry on Ronquillo-Nino's lack of a prior criminal record in the United States or Mexico. According to Doe, Ronquillo-Nino's actions were foreseeable because Action Cleaning's workforce is highly transient and not adequately trained or supervised, and because much of Action Cleaning's workforce, including Ronquillo-Nino, are illegal [***32] aliens. Doe argues that Ronquillo-Nino's actions were foreseeable because a reasonable person would not have regarded it as "highly extraordinary" that, given the composition of Action

Cleaning's workforce, its employees would sexually harass "vulnerable females" with whom they come into contact. We conclude that this argument is without merit.

We note first that the "highly extraordinary" standard is an incorrect statement of the law. According to *NRS 41.745(1)*, an employee's conduct "is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury." We have noted that whether an intentional act is reasonably foreseeable depends on whether [*740] one has "'reasonable cause to anticipate such act and the probability of injury resulting therefrom.'" [53]

> ployer is vicariously liable for the tortious conduct of his employee is closely related to the test applied in workers' compensation cases for determining whether an injury arose out of or in the course of employment.

Rodgers v. Kemper Construction Co., 50 Cal. App. 3d 608, 124 Cal.Rptr. 143, 148-49 (Ct. App. 1975) (citations omitted). This court quoted a portion of the above language with approval in *State, Department Human Resources v. Jimenez, 113 Nev. 356, 365, 935 P.2d 274, 279-80 (1997)*. However, that opinion was later withdrawn based on a voluntary stipulation to dismiss the case. *State, Dep't Hum. Res. v. Jimenez, 113 Nev. 735, 941 P.2d 969 (1997)*.

53 *Rockwell, 112 Nev. at 1228-29, 925 P.2d at 1182* (quoting *Thomas v. Bokelman, 86 Nev. 10, 13, 462 P.2d 1020, 1022 (1970)*, and discussing foreseeability for the intentional acts of a third party in the context of premises liability). The California Court of Appeal has explained "foreseeability" in the context of respondeat superior as follows:

> One way to determine whether a risk is inherent in, or created by, an enterprise is to ask whether the actual occurrence was a generally foreseeable consequence of the activity. However, "foreseeability" in this context must be distinguished from "foreseeability" as a test for negligence. In the latter sense "foreseeable" means a level of probability which would lead a prudent person to take effective precautions whereas "foreseeability" as a test for *respondeat superior* merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business. In other words, where the question is one of vicarious liability, the inquiry should be whether the risk was one "that may fairly be regarded as typical of or broadly incidental" to the enterprise undertaken by the employer.
>
> Under the modern rationale for *respondeat superior*, the test for determining whether an em-

[***33] The record reveals no genuine issue of material fact as to the foreseeability of Ronquillo-Nino's [**1037] conduct. Ronquillo-Nino had no prior criminal history in the United States or Mexico. Action Cleaning requires applicants to show proof of identification, checks employment references, and completes the proper Immigration and Naturalization forms for every employee. Action Cleaning's district manager further stated that he had not received complaints of sexual harassment regarding Ronquillo-Nino or any other employee in the past ten years. Under the circumstances of this case, it was not reasonably foreseeable that Ronquillo-Nino would sexually assault a Safeway employee. Moreover, as noted, the assault resulted from Ronquillo-Nino's independent acts and was not within the course and scope of his employment. Consequently, under *NRS 41.745*, Action Cleaning is not liable for the intentional conduct of its employee, Ronquillo-Nino, in this case.

The intervening and superseding criminal acts of an employee

For the same reasons, Doe argues that the district court incorrectly found that Ronquillo-Nino's actions were an intervening [*741] cause that relieves Action Cleaning of liability. This [***34] court has noted that a negligence action will not stand when there is an intervening cause that in and of itself is "the natural and logical cause of the harm." [54] An intervening act is a superseding cause only if it is unforeseeable. [55]

54 *Thomas v. Bokelman, 86 Nev. 10, 13, 462 P.2d 1020, 1022 (1970)*.

55 *Id.*; *see also Vallery v. State, 118 Nev. 357, 375, 46 P.3d 66, 78 (2002)* (relying on *Thomas* in addressing criminal causation).

The district court cited *Kane v. Hartford Accident and Indemnity Co.*, [56] for the proposition that a third party's criminal act is a superseding cause unless it involves a foreseeable hazard to a member of a foreseeable class of victims. In that case, a nurse filed suit after a janitor at the hospital where she worked raped her. The nurse sued the insurance company of the subcontracted janitorial firm that bonded the employees who worked at the hospital. Her suit was based on the insurance company's failure to properly investigate [***35] the janitorial employee who, in that case, had a criminal record involving various property crimes. [57] The California Court of Appeals held that the janitor's intervening criminal actions were unforeseeable because he had no history of violent crimes. [58]

56 *98 Cal. App. 3d 350, 159 Cal.Rptr. 446, 451 (Ct. App. 1979).*
57 *Id. at 446-48.*
58 *Id. at 451.*

Doe attempts to distinguish *Kane* on the ground that the case involved a negligence claim based on a failure to investigate the employee's background, whereas her claims involve a broader set of actions including negligent hiring, failure to train, and failure to supervise. We conclude that this argument is unpersuasive. The rule that an employee's superseding actions relieve an employer of liability applies equally to each of the negligence claims alleged in this case. The issue is not what claims were alleged but instead whether the specific crime of sexual assault by one of its employees was reasonably foreseeable to [***36] the employer under the circumstances. Having already concluded that Ronquillo-Nino's criminal actions were not reasonably foreseeable under the circumstances, we similarly conclude that his actions were an intervening superseding act that relieves Action Cleaning of liability in this case. Accordingly, no genuine issues of material fact are present, and the district court properly granted summary judgment in favor of Action Cleaning.

CONCLUSION

We take this opportunity to reject the "slightest doubt" standard previously used in Nevada's summary judgment law. We conclude [*742] that the district court did not err in awarding summary judgment in favor of Safeway and Action Cleaning because there was no genuine issue of material fact. Doe's injuries from Ronquillo-Nino's sexual assault arose out of and in the course of her employment, and therefore, the NIIA provides the exclusive remedy for Doe's injuries. Action Cleaning is not responsible for an employee's actions when those actions were independent of employment, were not committed within [**1038] the course and scope of employment, and were not reasonably foreseeable under the circumstances. Action Cleaning is also not liable for Ronquillo-Nino's [***37] sexual assault of Doe because his intervening criminal actions were a superseding cause that relieves Action Cleaning of liability.

Accordingly, we affirm the district court's orders granting summary judgment in this case.

CONCUR BY: MAUPIN (In Part)

DISSENT BY: MAUPIN (In Part)

DISSENT

MAUPIN, J., concurring in part and dissenting in part:

I concur in the result reached by the majority. Under either standard for reviewing summary judgments previously used by this court, appellants developed no material issues of fact that would negate immunity under the Nevada Industrial Insurance Act.

I also agree that a reconciliation of our prior case decisions applying inconsistent standards for awards of summary judgment is long overdue. Certainly, one line of Nevada cases holds that summary judgment is inappropriate when there is the "slightest doubt as to the operative facts." [1] Other of our decisions have embraced [*743] the modern federal standard for summary judgments utilized in *Anderson v. Liberty Lobby, Inc.*, [2] *Celotex Corp. v. Catrett*, [3] and *Matsushita Electric Industrial Co. v. Zenith Radio*, [4] *i.e.*, that "[a] genuine issue of material fact exists [precluding summary judgment] [***38] where the evidence is such that a reasonable jury could return a verdict for the non-moving party." [5] We have been the rightful subject of criticism within the bench and bar for shaping results by variant applications of the two standards.

1 *Perez v. Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589, 590 (1991)*; *accord Nevada Contract Servs. v. Squirrel Cos., 119 Nev. 157, 119 Nev. 157, 68 P.3d 896 (2003)*; *Pressler v. City of Reno, 118 Nev. 506, 50 P.3d 1096 (2002)*; *SIIS v. Ortega Concrete Pumping, Inc., 113 Nev. 1359, 951 P.2d 1033 (1997)*; *NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 946 P.2d 163 (1997)*; *Coblentz v. Union Welfare Fund, 112 Nev. 1161, 925 P.2d 496 (1996)*; *Russ v. General Motors Corp., 111 Nev. 1431, 906 P.2d 718 (1995)*; *Dakis v. Scheffer, 111 Nev. 817, 898 P.2d 116 (1995)*; *Basile v. Union Plaza Hotel & Casi-*

no, 110 Nev. 1382, 887 P.2d 273 (1994); *Schneider v. Continental Assurance Co., 110 Nev. 1270, 885 P.2d 572 (1994)*; *Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 871 P.2d 288 (1994)*; *Doud v. Las Vegas Hilton Corp., 109 Nev. 1096, 864 P.2d 796 (1993)*; *Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438 (1993)*; *Sprague v. Lucky Stores, Inc., 109 Nev. 247, 849 P.2d 320 (1993)*; *Charleson v. Hardesty, 108 Nev. 878, 839 P.2d 1303 (1992)*; *Walker v. American Bankers Ins., 108 Nev. 533, 836 P.2d 59 (1992)*; *Washoe Medical Center v. Churchill County, 108 Nev. 622, 836 P.2d 624 (1992)*; *Nye County v. Washoe Medical Center, 108 Nev. 490, 835 P.2d 780 (1992)*; *Joynt v. California Hotel & Casino, 108 Nev. 539, 835 P.2d 799 (1992)*; *Roy v. Lancaster, 107 Nev. 460, 814 P.2d 75 (1991)*; *Nevada State Bank v. Jamison Partnership, 106 Nev. 792, 801 P.2d 1377 (1990)*; *City of Boulder City v. State of Nevada, 106 Nev. 390, 793 P.2d 845 (1990)*; *Sawyer v. Sugarless Shops, 106 Nev. 265, 792 P.2d 14 (1990)*; *Carr-Bricken v. First Interstate Bank, 105 Nev. 570, 779 P.2d 967 (1989)*; *Charles v. Lemons & Associates, 104 Nev. 388, 760 P.2d 118 (1988)*; *Shapro v. Forsythe, 103 Nev. 666, 747 P.2d 241 (1987)*; *Pacific Pools Constr. v. McClain's Concrete, 101 Nev. 557, 706 P.2d 849 (1985)*; *Hubert v. Werner, 101 Nev. 193, 698 P.2d 426 (1985)*; *Whalen v. State of Nevada, 100 Nev. 192, 679 P.2d 248 (1984)*; *Shepard v. Harrison, 100 Nev. 178, 678 P.2d 670 (1984)*; *Stone v. Mission Bay Mortgage Co., 99 Nev. 802, 672 P.2d 629 (1983)*; *Oak Grove Inv. v. Bell & Gossett Co., 99 Nev. 616, 668 P.2d 1075 (1983)*; *Servaites v. Lowden, 99 Nev. 240, 660 P.2d 1008 (1983)*; *Mullis v. Nevada National Bank, 98 Nev. 510, 654 P.2d 533 (1982)*; *Nehls v. Leonard, 97 Nev. 325, 630 P.2d 258 (1981)*; *Davenport v. Republic Insurance Co., 97 Nev. 152, 625 P.2d 574 (1981)*; *McDermond v. Siemens, 96 Nev. 226, 607 P.2d 108 (1980)*; *Golden Nugget, Inc. v. Ham, 95 Nev. 45, 589 P.2d 173 (1979)*; *Cardinal v. C. H. Masland & Sons, 87 Nev. 224, 484 P.2d 1075 (1971)*; *Zuni Construction Co. v. Great Am. Ins. Co., 86 Nev. 364, 468 P.2d 980 (1970)*; *Pine v. Leavitt, 84 Nev. 507, 445 P.2d 942 (1968)*; *Short v. Hotel Riviera, Inc., 79 Nev. 94, 378 P.2d 979 (1963)*; *McColl v. Scherer, 73 Nev. 226, 315 P.2d 807 (1957)*; *Parman v. Petricciani, 70 Nev. 427, 272 P.2d 492 (1954)*.

[***39]

2 *477 U.S. 242, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)*.

3 *477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)*

4 *475 U.S. 574, 586, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986)*.

5 *Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)*; *see also Oehler v. Humana, Inc., 105 Nev. 348, 350, 775 P.2d 1271, 1272 (1989)*; *Valley Bank v. Marble, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989)*.

While the federal approach to summary judgments embraced in *Liberty Lobby* and [**1039] *Celotex* provides greater certainty for use by district courts and may conserve judicial resources, the approach represented in *Parman v. Petricciani* [6] and *Posadas v. City of Reno* [7] ensures that cases are tried on their merits and that essential factual issues are determined by a jury when requested. Thus, I would stay with the approach taken in *Parman* and its progeny.

6 *70 Nev. 427, 272 P.2d 492 (1954)*.

7 *109 Nev. 448, 851 P.2d 438 (1993)*.

[***40]

EXHIBIT P



LISA M., Plaintiff and Appellant, v. HENRY MAYO NEWHALL MEMORIAL HOSPITAL, Defendant and Respondent.

No. S043581.

SUPREME COURT OF CALIFORNIA

12 Cal. 4th 291*; *907 P.2d 358*; *48 Cal. Rptr. 2d 510*; *1995 Cal. LEXIS 7349*; *95 Cal. Daily Op. Service 9879*; *95 Daily Journal DAR 17103

December 26, 1995, Decided

PRIOR HISTORY:

Superior Court of Los Angeles County, No. 023309, David M. Schachter, Judge.

DISPOSITION: The judgment of the Court of Appeal is reversed and the matter is remanded to that court for further proceedings consistent with this opinion.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

A patient brought an action for professional negligence, battery, and intentional and negligent infliction of emotional harm against an ultrasound technician, a hospital, and others. Plaintiff alleged that the technician sexually molested her during the course of an ultrasound examination. In opposition to the hospital's motion for summary judgment, plaintiff asserted triable issues of fact existed as to whether the hospital was vicariously liable for the battery as a tort committed within the scope of the technician's employment, or was directly liable for its own negligence. The trial court granted the summary judgment motion, rejecting both arguments. (Superior Court of Los Angeles County, No. 023309, David M. Schachter, Judge.) The Court of Appeal, Second Dist., Div. Four, No. B074774, reversed, relying only on the theory of respondeat superior, and expressly declining to reach the question of the hospital's negligence.

The Supreme Court reversed the judgment of the Court of Appeal, and remanded the matter to that court for a decision on plaintiff's negligence cause of action. The Supreme Court held that the hospital was entitled to summary judgment on the ground that the technician's conduct was beyond the scope of his employment as a matter of law, and that, therefore, the hospital could not be vicariously liable under the doctrine of respondeat superior. The examination provided no occasion for a work-related dispute or any other work-related emotional involvement with plaintiff. As with nonsexual assaults, a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions. A foreseeability analysis led to the same conclusion. Although the examination involved physical contact with plaintiff, the assault on her did not originate with, and was not a generally foreseeable consequence of, that contact. Moreover, the battery did not arise from any abuse of job-created authority. The technician was not vested with any coercive authority, and the trust plaintiff was asked to place in him was limited to conduct of the examination. Also, public policy behind the doctrine of respondeat superior--preventing future injuries, assuring compensation to victims, and spreading the losses equitably--did not alter the conclusion that the assault was not a risk predictably created by or fairly attributed to the nature of the employment. (Opinion by Werdegar, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate concurring opinion by George, J., with Lucas, C. J., concurring. Separate dissenting opinions by Mosk and Kennard, JJ.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

(1) Employer and Employee § 28--Liability to Third Persons--Scope of Employment. --An employer is vicariously liable for the torts of its employees committed within the scope of the employment. An employee's willful, malicious, and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts. While the employee need not have intended to further the employer's interests, the employer will not be held liable for an assault or other intentional tort that did not have a causal nexus to the employee's work. Since an intentional tort gives rise to respondeat superior liability only if it was engendered by the employment, the disavowal of motive as a singular test of respondeat superior liability does not mean the employee's motive is irrelevant. An act serving only the employee's personal interest is less likely to arise from or be engendered by the employment than an act that, even if misguided, was intended to serve the employer in some way.

(2) Employer and Employee § 28--Liability to Third Persons--Scope of Employment--Required Nexus Between Employment and Employee's Act--Foreseeability Test. --The nexus required for respondeat superior liability--that the tort be engendered by or arise from the work--is to be distinguished from "but for" causation. The fact that the employment brought the tortfeasor and victim together in time and place is not enough. The incident leading to injury must be an outgrowth of the employment; the risk of tortious injury must be inherent in the working environment, or typical of or broadly incidental to the enterprise the employer has undertaken. Respondeat superior liability should apply only to the types of injuries that are, as a practical matter, sure to occur in the conduct of the employer's enterprise. The employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought. A foreseeability test is useful because it reflects the central justification for respondeat superior liability: that losses fairly attributable to an enterprise--those that foreseeably result from the conduct of the enterprise--should be allocated to the enterprise as a cost of doing business. Under that test, the tortious occurrence must be a generally foreseeable consequence of the activity. Foreseeability merely means that, in the context of the particular enterprise, an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business.

(3) Employer and Employee § 28--Liability to Third Persons--Scope of Employment--Question of Law or Fact. --The determination whether an employee has acted within the scope of employment ordinarily presents a question of fact. It becomes a question of law, however, when the facts are undisputed and no conflicting inferences are possible.

(4) Employer and Employee § 28--Liability to Third Persons--Scope of Employment--Sexual Molestation During Ultrasound Examination: Healing Arts and Institutions § 11--Hospitals--Duties and Liabilities--Respondeat Superior. --In an action by a patient against an ultrasound technician, a hospital, and others, alleging the technician sexually molested plaintiff during an ultrasound examination, the hospital was entitled to summary judgment on the ground that the technician's conduct was beyond the scope of his employment as a matter of law, and that, therefore, the hospital could not be vicariously liable under the doctrine of respondeat superior. The examination provided no occasion for a work-related dispute or any other work-related emotional involvement with plaintiff. As with nonsexual assaults, a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions. A foreseeability analysis led to the same conclusion. Although the examination involved physical contact with plaintiff, the assault on her did not originate with, and was not a generally foreseeable consequence of, that contact. Moreover, the battery did not arise from any abuse of job-created authority. The technician was not vested with any coercive authority, and the trust plaintiff was asked to place in him was limited to conduct of the examination. Also, public policy behind the doctrine of respondeat superior--preventing future injuries, assuring compensation to victims, and spreading the losses equitably-- did not alter the conclusion that the assault was not a risk predictably created by or fairly attributed to the nature of the employment.

[See 2 **Witkin,** Summary of Cal. Law (9th ed. 1987) Agency and Employment, § 126 et seq.]

COUNSEL: R. Rex Parris and Michael R. Smith for Plaintiff and Appellant.

Ian Herzog, Douglas Devries, Roland Wrinkle, Harvey R. Levine, Robert Steinberg, Thomas G. Stolpman, William D. Turley, Mary E. Alexander, Bruce Broillet, Wayne McClean, Leonard Sacks, Tony Tanke, Leonard Esquina, David Rosen, Gordon, Edelstein, Krepack, Grant, Felton & Goldstein and Steven J. Kleifield as Amici Curiae on behalf of Plaintiff and Appellant.

Veatch, Carlson, Grogan & Nelson, John B. Loomis, C. Snyder Patin, Horvitz & Levy, Barry R. Levy and David S. Ettinger for Defendant and Respondent.

Beach, Procter, McCarthy & Slaughter, Thomas E. Beach, Sean D. Cowdry, Greines, Martin, Stein & Richland, Martin Stein, Marc J. Poster, Priscilla F. Slocum, Thelen, Marrin, Johnson & Bridges, Curtis A. Cole and Jason G. Wilson as Amici Curiae on behalf of Defendant and Respondent.

JUDGES: Opinion by Werdegar, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate concurring opinion by George, J., with Lucas, C. J., concurring. Separate dissenting opinions by Mosk and Kennard, JJ.

OPINION BY: WERDEGAR, J.

OPINION

[*294] [**359] [***511] **WERDEGAR, J.**

Plaintiff Lisa M. was injured in a fall and sought treatment at defendant Henry Mayo Newhall Memorial Hospital (Hospital). Under the pretense of conducting an ultrasound imaging examination, a technician sexually molested her. In plaintiff's action against Hospital and others, the trial court granted summary judgment in favor of Hospital; the Court of Appeal reversed. The question presented is whether Hospital, even if not negligent in employing or supervising the technician, may be held vicariously liable for his misconduct under the doctrine of respondeat superior. We conclude the undisputed facts show Hospital is not vicariously liable.

FACTS AND PROCEDURAL BACKGROUND

The facts are taken largely from the declarations and depositions submitted in support of and opposition to Hospital's motion for summary judgment. Some undisputed facts are taken from the parties' separate statements of undisputed facts. (*Code Civ. Proc., § 437c, subd. (b).*)

On July 9, 1989, plaintiff, 19 years old and pregnant, was injured in a fall at a movie theater and sought treatment at Hospital's emergency room. At [*295] the direction of the examining physicians, ultrasound technician Bruce Wayne Tripoli performed obstetrical and upper-right-quadrant ultrasonic imaging examinations.

Tripoli took plaintiff to the ultrasound room on a gurney. She remained in her street clothes, shorts and a maternity top. No one else was present during the examination; plaintiff had asked that her boyfriend accompany her, but Tripoli refused the request, as was his practice in conducting emergency obstetrical examinations. Tripoli turned out the room lights but left the adjacent bathroom door ajar to admit dim light. [1]

1 Tripoli's deposition testimony was inconsistent as to whether the door to the ultrasound room was open or closed; although he testified he usually left the door slightly open, and did so on this occasion, he also testified the room door's magnetic latch was not working properly, and the door closed instead of remaining ajar.

[**360] [***512] Tripoli first conducted the prescribed examinations. Plaintiff pulled up her shirt and pushed her shorts down to expose the area to be examined. The obstetrical or "general pelvic" examination requires passing an ultrasound-generating wand across the patient's lower abdomen. The sound waves must be mediated by a gel, which Tripoli testified must be worked into the skin somewhat to displace all the air. The exact placement and movement of the wand varies with the patient's body type, and on some patients the best images are obtained by passing the wand as much as an inch below the pubic hairline. Tripoli found it necessary to do so in plaintiff's case. In performing the upper right quadrant examination (to see the liver), Tripoli had to lift plaintiff's right breast, which he did through a towel with the back of his hand.

After conducting the ordered examinations, Tripoli left the room for about 10 minutes to develop the photographic results. On his return, Tripoli asked plaintiff if she wanted to know the sex of the baby, and she said she did. He told her, falsely, that to determine the sex he would need to scan "much further down," and it would be uncomfortable. With plaintiff's cooperation, Tripoli pulled plaintiff's shorts down and began to scan in her pubic hair. According to plaintiff, he also inserted the wand in her vagina. After a while he put down the wand and fondled plaintiff with his fingers. Plaintiff testified he moved his fingers "around everywhere down there." While fondling plaintiff, Tripoli said he needed to excite her to get a good view of the baby. Plaintiff found the touching uncomfortable, but Tripoli testified he thought she was getting pleasure from it because she said it tickled. Tripoli eventually stopped molesting plaintiff and returned her to the emergency room.

At the time of the misconduct, plaintiff thought it was part of a "regular procedure," albeit "kind of weird." Later that day, however, she began to [*296] suspect Tripoli's actions were improper, a suspicion confirmed the next morning when she talked to her regular obstetrician. Tripoli was criminally prosecuted and pleaded no contest to a felony charge arising out of his molestation of plaintiff.

Plaintiff's suit named Tripoli, Hospital and others as defendants, and contained causes of action for professional negligence, battery and intentional and negligent infliction of emotional harm. In opposition to Hospital's motion for summary judgment, plaintiff maintained triable issues of fact existed as to whether Hospital was vi-

cariously liable for the battery as a tort committed within the scope of Tripoli's employment, or was directly liable for its own negligence in failing to have a third person present during the examination. The superior court granted the summary judgment motion, rejecting both arguments.

The Court of Appeal reversed. The court relied only on the theory of respondeat superior and expressly declined to reach the question of Hospital's negligence. We granted Hospital's petition for review in order to decide the vicarious liability question.

DISCUSSION

I. *Review of Pertinent Law on Respondeat Superior*

(1) The rule of respondeat superior is familiar and simply stated: an employer is vicariously liable for the torts of its employees committed within the scope of the employment. (*Perez v. Van Groningen & Sons, Inc. (1986) 41 Cal. 3d 962, 967 [227 Cal. Rptr. 106, 719 P.2d 676].*) [2] Equally well established, [**361] [***513] if somewhat surprising on first encounter, is the principle that an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even [*297] though the employer has not authorized the employee to commit crimes or intentional torts. (*Mary M. v. City of Los Angeles (1991) 54 Cal. 3d 202, 209 [285 Cal. Rptr. 99, 814 P.2d 1341]*; *John R. v. Oakland Unified School Dist. (1989) 48 Cal. 3d 438, 447 [256 Cal. Rptr. 766, 769 P.2d 948]*; *Carr v. Wm. C. Crowell Co. (1946) 28 Cal. 2d 652, 654 [171 P.2d 5].*) What, then, is the connection required between an employee's intentional tort and his or her work so that the employer may be held vicariously liable?

2 *Civil Code section 2338*, which has been termed a codification of the respondeat superior doctrine (*Rodgers v. Kemper Constr. Co. (1975) 50 Cal. App. 3d 608, 618, fn. 2 [124 Cal. Rptr. 143]*), is not limited to employer and employee but speaks more broadly of agent and principal; it makes the principal liable for negligent and "wrongful" acts committed by the agent "in and as part of the transaction of such [agency] business."

Tripoli was not formally employed by Hospital, but by Mediq Imaging Services, Inc., with which Hospital contracted for his services. Hospital, however, concedes it did not seek summary judgment on the ground Tripoli was not its employee, did not argue that issue in the Court of Appeal, and does not rely on it in this court. For purposes of reviewing the ruling on summary judgment, therefore, we will treat Tripoli as Hospital's employee, without considering or deciding whether Tripoli was Hospital's nonemployee agent or ostensible agent (see *Quintal v. Laurel Grove Hospital (1964) 62 Cal. 2d 154, 167-168 [41 Cal. Rptr. 577, 397 P.2d 161]*) or a special employee for whose torts Hospital is liable under the "borrowed servant" rule (see *Societa per Azioni de Navigazione Italia v. City of Los Angeles (1982) 31 Cal. 3d 446, 455-456 [183 Cal. Rptr. 51, 645 P.2d 102]*).

It is clear, first of all, that California no longer follows the traditional rule that an employee's actions are within the scope of employment only if motivated, in whole or part, by a desire to serve the employer's interests. (See Rest.2d Agency, § 228, subd. 1(c) [conduct must be "actuated, at least in part, by a purpose to serve the master"].) Our departure from that limiting rule dates at least from the leading case of *Carr v. Wm. C. Crowell Co., supra, 28 Cal. 2d 652.*

In *Carr*, this court held a building contractor liable for injuries caused when an employee, angry at a subcontractor's employee for interfering in his work, threw a hammer at the other worker's head. We rejected the defendant's claim its employee was not acting within the scope of employment because he "could not have intended by his conduct to further" the employer's interests: "*It is sufficient, however, if the injury resulted from a dispute arising out of the employment. . . . 'It is not necessary that the assault should have been made "as a means, or for the purpose of performing the work he (the employee) was employed to do."* ' " (*28 Cal. 2d at p. 654*, quoting *Hiroshima v. Pacific Gas & Elec. Co. (1936) 18 Cal. App. 2d 24, 28 [63 P.2d 340]*, italics added; accord, *Fields v. Sanders (1947) 29 Cal. 2d 834, 839 [180 P.2d 684, 172 A.L.R. 525]* [that tortious act "was not committed in order to further the interests of the principal" does not preclude vicarious liability]; *Perez v. Van Groningen & Sons, Inc., supra, 41 Cal. 3d at p. 969* ["The plaintiff need not demonstrate that the assault was committed for the purpose of accomplishing the employee's assigned tasks."]; *Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d at p. 621* ["[T]he 'motive test,' though still the 'majority rule,' has been abandoned in California."].) [3]

3 See also *Ira S. Bushey & Sons, Inc. v. United States (2d Cir. 1968) 398 F.2d 167, 171* (discussing "inadequacy" of the motivation-to-serve test generally); LeGrand & Leonard, *Civil Suits for Sexual Assault: Compensating Rape Victims* (1979) 8 Golden Gate L.Rev. 479, 507 (the "motive-benefit" test, which would preclude respondeat superior liability for most sexual assaults, has been "abandoned" in California).

While the employee thus need not have intended to further the employer's interests, the employer will not be held liable for an assault or other intentional tort that did not have a causal nexus to the employee's work. This [*298] rule, too, can be traced to *Carr v. Wm. C. Crowell Co., supra, 28 Cal. 2d 652*. There the court acknowledged that "[i]f an employee inflicts an injury out of personal malice, *not engendered by the employment*, the employer is not liable." (*Id. at p. 656*, italics added.) We further explained that in the case under consideration the attack was, indeed, "an outgrowth" of the employee's work: "Not only did the altercation leading to the injury arise solely over the performance of [the employee's] duties, but his entire association with plaintiff arose out of his employment on the building under construction." (*Id. at p. 657*.)

In *Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d 608, 614-616*, off-duty employees, who had been drinking beer at the jobsite, assaulted workers for [**362] [***514] another contractor after requesting and being refused a ride on a bulldozer driven by one of the victims. Applying the analysis developed in *Carr v. Wm. C. Crowell Co., supra*, the Court of Appeal found substantial evidence the attack--in which the victims were seriously injured and permanently disabled--was within the scope of the assailants' employment. The assailants and victims, the court noted, were "complete strangers" until their work brought them together; thus the dispute could not have derived from "personal malice unrelated to the employment." (*50 Cal. App. 3d at p. 621*.) Rather, a work-related dispute was the "proximate cause" of the attack. (*Ibid.*)

Because an intentional tort gives rise to respondeat superior liability only if it was engendered by the employment, our disavowal of motive as a singular test of respondeat superior liability does not mean the employee's motive is irrelevant. An act serving only the employee's personal interest is less likely to arise from or be engendered by the employment than an act that, even if misguided, was intended to serve the employer in some way.

(2) The nexus required for respondeat superior liability--that the tort be engendered by or arise from the work--is to be distinguished from "but for" causation. [4] That the employment brought tortfeasor and victim together in time and place is not enough. We have used varied language to describe the nature of the required additional link (which, in theory, is the same for intentional and negligent torts): the incident leading to injury must be an "outgrowth" of the employment (*Carr v. Wm. C. Crowell Co., supra, 28 Cal. 2d 652, 657)*; the risk of tortious injury must be " 'inherent in the working environment' " (*id. at p. 656*) or " 'typical of or broadly incidental to the enterprise [the employer] has undertaken' " (*Hinman v. Westinghouse Elec. Co. (1970) 2 Cal. 3d 956, 960 [88 Cal. Rptr. 188, 471 P.2d 988]*).

4 The distinction is reflected in the common meaning of "engender": "to bring into being." (Webster's New World Dict. (3d college ed. 1991) p. 450.)

[*299] Looking at the matter with a slightly different focus, California courts have also asked whether the tort was, in a general way, foreseeable from the employee's duties. Respondeat superior liability should apply only to the types of injuries that " 'as a practical matter are sure to occur in the conduct of the employer's enterprise.' " (*Hinman v. Westinghouse Elec. Co., supra, 2 Cal. 3d at p. 959*.) The employment, in other words, must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought.

In what has proved an influential formulation, the court in *Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d at page 618*, held the tortious occurrence must be "a generally foreseeable consequence of the activity." In this usage, the court further explained, foreseeability "merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Id. at p. 619*; accord, *John R. v. Oakland Unified School Dist., supra, 48 Cal. 3d at p. 450, fn. 9*; *Perez v. Van Groningen & Sons, Inc., supra, 41 Cal. 3d at p. 968*; *Martinez v. Hagopian (1986) 182 Cal. App. 3d 1223, 1228 [227 Cal. Rptr. 763]*; *Alma W. v. Oakland Unified School Dist. (1981) 123 Cal. App. 3d 133, 141-142 [176 Cal. Rptr. 287]*.) The *Rodgers* foreseeability test is useful "because it reflects the central justification for respondeat superior [liability]: that losses fairly attributable to an enterprise--those which foreseeably result from the conduct of the enterprise--should be allocated to the enterprise as a cost of doing business." (*Farmers Ins. Group v. County of Santa Clara (1995) 11 Cal. 4th 992, 1004 [47 Cal. Rptr. 2d 478, 906 P.2d 440]*.)

(3) "Ordinarily, the determination whether an employee has acted within the scope of employment presents a question of fact; it becomes a question of law, however, when 'the facts are undisputed and no conflicting inferences are possible.' " (*Mary M. v. City* [***515] [**363] *of Los Angeles, supra, 54 Cal. 3d at p. 213*.) Neither plaintiff nor Hospital has pointed to factual disputes that would prevent us in this case from deciding the applicability of respondeat superior as a matter of law.

II. *Application to This Case*

(4) Was Tripoli's sexual battery of Lisa M. within the scope of his employment? The injurious events were causally related to Tripoli's employment as an ultrasound technician in the sense they would not have occurred had he not been so employed. Tripoli's employment as an ultrasound technician provided the opportunity for him to meet plaintiff and to be alone with her in circumstances making the assault possible. The employment was [*300] thus one necessary cause of the ensuing tort. But, as previously discussed, in addition to such "but for" causation, respondeat superior liability requires the risk of the tort to have been engendered by, "typical of or broadly incidental to," or, viewed from a somewhat different perspective, "a generally foreseeable consequence of," Hospital's enterprise. (*Hinman v. Westinghouse Elec. Co., supra, 2 Cal. 3d at p. 960*; *Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d at p. 618.*)

At the broadest level, Hospital argues sex crimes are never foreseeable outgrowths of employment because they, unlike instances of nonsexual violence, are not the product of "normal human traits." Hospital urges us not to "legitimize" sexual misconduct by treating it on a par with mere fights. These generalized distinctions are not, however, compelling. Neither physical violence nor sexual exploitation is legitimate, excusable or routinely expected in the workplace. In *Carr v. Wm. C. Crowell Co., supra, 28 Cal. 2d 652*, this court did not "legitimize" the act of the construction worker who, on trivial provocation, threw a carpenter's hammer at the plaintiff, "striking him on the head and seriously injuring him" (*id. at p. 653*), any more than we excused, condoned or otherwise "legitimized" a police officer's forcible rape of a detainee in *Mary M. v. City of Los Angeles, supra, 54 Cal. 3d 202.* Nor did the Court of Appeal in *Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d 608, 615-616*, indicate any inclination to approve of or excuse the intoxicated off-duty workers' brutal attack on two other workers--kicking and beating them with fists, rocks and a hardhat, rendering one unconscious and permanently injuring the other's eyesight. The references in certain cases to " 'the faults and derelictions of human beings' " (*Carr v. Wm. C. Crowell Co., supra, 28 Cal. 2d at p. 656*) and "normal human traits" (*Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d at p. 622*) thus must be taken in context to include not only minor character flaws, but also the human tendency toward malice and viciousness. We are not persuaded that the roots of sexual violence and exploitation are in all cases so fundamentally different from those other abhorrent human traits as to allow a conclusion sexual misconduct is per se unforeseeable in the workplace.

Focusing more specifically on the type of sexual assault occurring here, we ask first whether the technician's acts were "engendered by" or an "outgrowth" of his employment. (*Carr v. Wm. C. Crowell Co., supra, 28 Cal. 2d at pp. 656-657.*) They were not.

Nonsexual assaults that were not committed to further the employer's interests have been considered outgrowths of employment if they originated in a work-related dispute. (E.g., *Fields v. Sanders, supra, 29 Cal. 2d at pp. 839-840* [employee truck driver's assault on another motorist following [*301] dispute over employee's driving]; see, generally, *Farmers Ins. Group v. County of Santa Clara, supra, 11 Cal. 4th 992, 1006.*) "Conversely, vicarious liability [has been] deemed inappropriate where the misconduct does not arise from the conduct of the employer's enterprise but instead arises out of a personal dispute (e.g., *Monty v. Orlandi (1959) 169 Cal. App. 2d 620, 624 [337 P.2d 861]* [bar owner not vicariously liable where on-duty bartender assaulted plaintiff in the course of a personal dispute with his common law wife]), or [**364] [***516] is the result of a personal compulsion (e.g., *Thorn v. City of Glendale (1994) 28 Cal. App. 4th 1379, 1383 [35 Cal. Rptr. 2d 1]* [city not vicariously liable where fire marshal set business premises on fire during an inspection].)" (*Farmers Ins. Group v. County of Santa Clara, supra, 11 Cal. 4th 992, 1006.*)

As with these nonsexual assaults, a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions. Here the opposite was true: a technician simply took advantage of solitude with a naive patient to commit an assault for reasons unrelated to his work. Tripoli's job was to perform a diagnostic examination and record the results. The task provided no occasion for a work-related dispute or any other work-related emotional involvement with the patient. The technician's decision to engage in conscious exploitation of the patient did not *arise out of* the performance of the examination, although the circumstances of the examination made it possible. "If . . . the assault was not motivated or triggered off by anything in the employment activity but was the result of only propinquity and lust, there should be no liability." (*Lyon v. Carey (D.C. Cir. 1976) 533 F.2d 649, 655 [174 App.D.C. 422].*)

Our conclusion does not rest on mechanical application of a motivation-to-serve test for intentional torts, which would bar vicarious liability for virtually all sexual misconduct. (See *ante*, p. 297.) [5] Tripoli's criminal actions were, of course, unauthorized by Hospital and were not motivated by any desire to serve Hospital's interests. Beyond that, however, his motivating emotions were not causally attributable to his employment. The flaw in [*302] plaintiff's case for Hospital's respondeat superior liability is not so much that Tripoli's actions were personally motivated, but that those person-

al motivations were not generated by or an outgrowth of workplace responsibilities, conditions or events.

> 5 Because we do not apply a motivation-to-serve test as the sole standard of vicarious liability, our rationale differs from that of most other courts that have considered factually similar cases, although several courts have reached the same result as we do: sexual assault by a medical technician is not within the scope of employment. (Compare *Hendley v. Springhill Memorial Hosp. (Ala. 1990) 575 So.2d 547, 551* [technician " 'acted from wholly personal motives' "], *Mataxas v. North Shore University Hosp. (1995) 211 A.D.2d 762 [621 N.Y.S.2d 683, 684]* [radiology technician's molestation of patient "committed . . . for purely personal motives"], and *Taylor v. Doctors Hosp. (West) (1985) 21 Ohio App.3d 154 [486 N.E.2d 1249, 1251]* [radiology orderly's sexual assault on patient committed "from intensely personal motives" and "in no way served to further or promote the business of the employer-hospital"], with *Samuels v. Southern Baptist Hosp. (La.Ct.App. 1992) 594 So.2d 571, 574* [vicarious liability imposed for rape of patient by nursing assistant] and *Stropes v. Heritage House Childrens Ctr. (Ind. 1989) 547 N.E.2d 244, 249-250* [same for molestation of disabled child by nurse's aide].)

Analysis in terms of foreseeability leads to the same conclusion. An intentional tort is foreseeable, for purposes of respondeat superior, only if "*in the context of the particular enterprise* an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d at p. 619*, italics added.) The question is not one of statistical frequency, but of a relationship between the nature of the work involved and the type of tort committed. The employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought.

In arguing Tripoli's misconduct was generally foreseeable, plaintiff emphasizes the physically intimate nature of the work Tripoli was employed to perform. In our view, that a job involves physical contact is, by itself, an insufficient basis on which to impose vicarious liability for a sexual assault. (Accord, *Boykin v. District of Columbia (App.D.C. 1984) 484 A.2d 560, 562* "[[T]hat physical touching was necessarily a part of the teacher-student relationship" held insufficient to impose liability on employer for teacher's molestation of deaf and blind student, who could be taught only through [**365] [***517] touch.].) To hold medical care providers strictly liable for deliberate sexual assaults by every employee whose duties include examining or touching patients' otherwise private areas would be virtually to remove scope of employment as a limitation on providers' vicarious liability. In cases like the present one, a deliberate sexual assault is fairly attributed not to any peculiar aspect of the health care enterprise, but only to "propinquity and lust" (*Lyon v. Carey, supra, 533 F.2d 649, 655).* [6]

> 6 We part company at this point with the dissenting justices, who would hold summary judgment improper because either the patient's vulnerability or the intimate physical contact inherent in the examination might have encouraged or incited Tripoli to assault her. On the present record, such inferences would be wholly speculative. Lacking evidence the assault was a product of the therapeutic relationship, to impose vicarious liability on a hospital for a technician's deliberate sexual assault on a patient would stretch the rationale of respondeat superior too far. To do so would make the hospital potentially liable, irrespective of its actual fault, whenever an employee used force, coercion or trickery to exploit criminally a patient's physical or psychological vulnerability, vulnerability that is characteristic of hospitalized patients generally. An analysis that, in the field of health care, deems a conscious sexual assault to have arisen from the employment *simply because* the patient involved was vulnerable, surrendered his or her privacy or submitted to physical contact unusual for strangers in a nonmedical context, would, in effect, expose health care providers to potential liability without fault for sexual assault by virtually any employee on any patient.

Here, there is no evidence of emotional involvement, either mutual or unilateral, arising from the medical relationship. Although the procedure [*303] ordered involved physical contact, it was not of a type that would be expected to, or actually did, give rise to intense emotions on either side. We deal here not with a physician or therapist who becomes sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship (see, e.g., *Simmons v. United States (9th Cir. 1986) 805 F.2d 1363, 1369-1370*; *Doe v. Samaritan Counseling Center (Alaska 1990) 791 P.2d 344, 348-349)*, but with an ultrasound technician who simply took advantage of solitude, access and superior knowledge to commit a sexual assault. [7]

7

> The American Medical Association has described and distinguished two broad types of sexual misconduct by physicians: first, misconduct arising from the physician's inability properly to contain and control his or her emotional involvement with the patient; and second, conscious exploitation of the physician's status, knowledge and power to coerce or trick the patient into allowing sexual contact. (American Medical Association, Council on Ethical and Judicial Affairs, Council Rep., *Sexual Misconduct in the Practice of Medicine* (1991) 266 JAMA 2741-2742.) Tripoli, of course, was a technician rather than a physician. In any event, his conduct belongs in the second category--conscious exploitation--and we need not decide here whether sexual misconduct of the first type might, under some circumstances, create respondeat superior liability on the employer's part.

Although the routine examination Tripoli was authorized to conduct involved physical contact with Lisa M., Tripoli's assault on plaintiff did not originate with, and was not a generally foreseeable consequence of, that contact. Nothing happened during the course of the prescribed examinations to provoke or encourage Tripoli's improper touching of plaintiff. (See *Alma W. v. Oakland Unified School Dist., supra, 123 Cal. App. 3d at p. 141* [contrasting assault cases, in which a work-related quarrel preceded the assault, with school custodian's rape of student, which was held unrelated to custodian's duties]; *Wiersma v. City of Long Beach (1940) 41 Cal. App. 2d 8, 11, 15 [106 P.2d 45]* [producer of wrestling exhibition not vicariously liable for injuries caused by wrestler who "suddenly and, apparently without provocation," attacked spectator].) The assault, rather, was the independent product of Tripoli's aberrant decision to engage in conduct unrelated to his duties. In the pertinent sense, therefore, Tripoli's actions were not foreseeable from the nature of the work he was employed to perform.

Plaintiff contends the battery in this case, like the police officer's rape of a detainee in *Mary M. v. City of Los Angeles, supra, 54 Cal. 3d 202*, "arose from an abuse of job-created authority." More accurately, Tripoli abused his position of *trust*, since he had no legal or coercive authority over plaintiff. Assuming an analogy can be fully maintained between [**366] [***518] authority and trust, [*304] *Mary M.* still provides less than compelling precedent for liability here. In *Mary M.*, we held a police officer's assault was a generally foreseeable consequence of his position. "In view of the considerable power and authority that police officers possess, it is neither startling nor unexpected that on occasion an officer will misuse that authority by engaging in assaultive conduct." (*Mary M. v. City of Los Angeles, supra, 54 Cal. 3d at p. 217.*) We expressly limited our holding: "We stress that our conclusion in this case flows from the unique authority vested in police officers. Employees who do not have this authority and who commit sexual assaults may be acting outside the scope of their employment as a matter of law." (*Id. at p. 218, fn. 11.*)

While a police officer's assault may be foreseeable from the scope of his unique authority over detainees, we are unable to say the same of an ultrasound technician's assault on a patient. Hospital did not give Tripoli any power to exercise general control over plaintiff's liberty. He was not vested with any coercive authority, and the trust plaintiff was asked to place in him was limited to conduct of an ultrasound examination. His subsequent battery of the patient was independent of the narrow purpose for which plaintiff was asked to trust him. Whatever costs may be fairly attributable to a police officer's public employer in light of the extraordinary scope of authority the community, for its own benefit, confers on the officer, we believe it would not be fair to attribute to Hospital, which employed Tripoli simply to conduct ultrasound examinations, the costs of a deliberate, independently motivated sexual battery unconnected to the prescribed examination.

In reaching our conclusion we have consulted the three identified policy goals of the respondeat superior doctrine--preventing future injuries, assuring compensation to victims, and spreading the losses caused by an enterprise equitably--for additional guidance as to whether the doctrine *should* be applied in these circumstances. (See *Mary M. v. City of Los Angeles, supra, 54 Cal. 3d at pp. 209, 214-217*; *John R. v. Oakland Unified School Dist., supra, 48 Cal. 3d at pp. 451-452.*) In this case, however, we have drawn no firm direction from consideration of the first two policy goals. Although imposition of vicarious liability would likely lead to adoption of some further precautionary measures, we are unable to say whether the overall impact would be beneficial to or destructive of the quality of medical care. Hospital and its amici curiae predict imposition of respondeat superior liability would lead health care providers to overreact by monitoring, for possible sexual misconduct, every interaction between patient and health care worker. Published research, on the other hand, indicates providers have [*305] available several other approaches to preventing sexual misconduct by employees. [8]

> 8 See Jorgenson, *Employer / Supervisor Liability and Risk Management*, in Breach of Trust: Sexual Exploitation by Health Care Professionals and Clergy (Gonsiorek edit. 1995) pages 296-297; Schoener, *Liability and Risk: An Administrator's View*, in *id. at pages 305-315*;

American Medical Association, Council on Ethical and Judicial Affairs, *supra*, 266 JAMA at pages 2744-2745; Plaut et al., *Roles of the Health Professional in Cases Involving Sexual Exploitation of Patients*, in Sexual Exploitation of Patients by Health Professionals (Burgess et al. edit. 1986) pages 20-23.

As for ensuring compensation, the briefing does not enable us to say with confidence whether or not insurance is actually available to medical providers for sexual torts of employees and, if so, whether coverage for such liability would drastically increase the insurance costs--or, if not, the uninsured liability costs--of nonprofit providers such as Hospital. [9] The second policy consideration is [**367] [***519] therefore also of uncertain import here; imposing vicarious liability is likely to provide additional compensation to some victims, but the consequential costs of ensuring compensation in this manner are unclear.

9 Whether a health care professional's sexual misconduct is covered under the professional's malpractice policy is "a much litigated issue," depending in part on the exact factual relationship between the misconduct and the professional services for which the professional was engaged. (*Louisell & Williams, 4 Medical Malpractice (1994) § 20.03[1]*, p. 20-36.) But even where the misconduct is not sufficiently related to the provision of professional services to be covered under malpractice insurance, the hospital or other institutional provider may be covered for its vicarious liability under a commercial general liability policy. (*Id.*, § 20.01, p. 20-11.) Neither *Insurance Code section 533* nor related policy exclusions for intentionally caused injury or damage preclude a California insurer from indemnifying an employer held vicariously liable for an employee's willful acts. (*Arenson v. Nat. Automobile & Cas. Ins. Co. (1955) 45 Cal. 2d 81, 83-84 [286 P.2d 816]*; *Fireman's Fund Ins. Co. v. City of Turlock (1985) 170 Cal. App. 3d 988, 1000-1001 [216 Cal. Rptr. 796]*.)

Third and finally, we attempt to assess the propriety of spreading the risk of losses among the beneficiaries of the enterprise upon which liability would be imposed. As Hospital points out, this assessment is another way of asking whether the employee's conduct was "so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Rodgers v. Kemper Constr. Co., supra, 50 Cal. App. 3d at p. 619.*) For reasons already discussed, we conclude the connection between Tripoli's employment duties--to conduct a diagnostic examination--and his independent commission of a deliberate sexual assault was too attenuated, without proof of Hospital's negligence, to support allocation of plaintiff's losses to Hospital as a cost of doing business. Consideration of the respondeat superior doctrine's basis in public policy, therefore, does not alter our conviction that an ultrasound technician's sexual assault on a patient is not a risk predictably created by or fairly attributed to the nature of the technician's employment.

[*306] Although, as we have concluded, Tripoli's criminal acts were not engendered by or broadly incidental to his work so as to render Hospital vicariously liable, Hospital's duty of due care to its patient obliged it to take all measures dictated by ordinary prudence to protect against even such unusual sources of injury. The Court of Appeal declined to decide whether plaintiff's cause of action for negligence could survive summary judgment. The court therefore did not decide whether Hospital fulfilled its duty of care under the circumstances nor did it resolve any issue as to the adequacy of, or necessity for, plaintiff's expert declaration. Consequently, we consider it appropriate to remand the matter to the Court of Appeal for decision in the first instance on plaintiff's negligence cause of action.

CONCLUSION

Hospital employed a technician to conduct ultrasound examinations. The technician, after completing such an examination of plaintiff, took advantage of plaintiff's trust and his own superior knowledge to commit on her a deliberate sexual battery. His reasons for doing so did not derive from any events or conditions of his employment, nor were his actions provoked by anything that occurred during the prescribed examination. Hospital, by employing the technician and providing the ultrasound room, may have set the stage for his misconduct, but the script was entirely of his own, independent invention. For this reason it would be unfair and inconsistent with the basic rationale of respondeat superior to impose liability on Hospital irrespective of its own negligence.

The judgment of the Court of Appeal is reversed and the matter is remanded to that court for further proceedings consistent with this opinion.

Lucas, C. J., Arabian, J., Baxter, J., and George, J., concurred.

CONCUR BY: GEORGE, J.

CONCUR

GEORGE, J.,

Concurring.--I concur in the result and reasoning of the majority, and I have signed the majority opinion. I

write separately because, for the reasons expressed in my concurring opinion in *Farmers Ins. Group v. County of Santa Clara (1995) 11 Cal. 4th 992 [47 Cal. Rptr. 2d 478, 906 P.2d 440]*, I would go further and overrule the decision in *Mary M. v. City of Los Angeles (1991) 54 Cal. 3d 202 [285 Cal. Rptr. 99, 814 P.2d 1341]*.

Lucas, C. J., concurred.

DISSENT BY: MOSK, J.; KENNARD

DISSENT

[**368] **MOSK, J.**

I dissent. Justice Kennard demonstrates that the Court of Appeal's decision is without error and hence that its judgment should be affirmed. I join in her opinion.

[***520] I write separately to emphasize the unsoundness of the majority's reasoning and the incorrectness of their result.

[*307] In its narrowest scope, the doctrine of respondeat superior declares that "the employer's responsibility for the torts of his employee extends beyond his actual or possible control of the servant to injuries which are 'risks of the enterprise.' " (*Hinman v. Westinghouse Elec. Co. (1970) 2 Cal. 3d 956, 960 [88 Cal. Rptr. 188, 471 P.2d 988]*.) For its firmest basis, the doctrine rests on the premise that such injuries are costs that the employer's business imposes on the community--costs that the employer may equitably be required to avoid if he can or to cover if he cannot: " 'We are not here looking for the master's fault but rather for risks that may fairly be regarded as typical of or broadly incidental to the enterprise he has undertaken. . . . Further, we are not looking for that which can and should reasonably be avoided, but with the more or less inevitable toll of a lawful enterprise.' " (*Ibid.*, quoting 2 Harper & James, The Law of Torts (1956) pp. 1376-1377.)

The majority recognize, as they must, that "[n]onsexual assaults" come within the doctrine of respondeat superior "if they originate[] in a work-related dispute," as when an "employee truck driver[] assault[s] . . . another motorist following [a] dispute over [the] employee's driving." (Maj. opn., *ante*, at p. 300.) Such an attack, of course, falls beyond the doctrine's bounds if " 'the misconduct . . . arises out of a personal dispute,' " as when an " 'on-duty bartender assault[s] [a bystander] in the course of a personal dispute [between the bartender and] his common law wife . . . .' " (Maj. opn., *ante*, at p. 301, quoting *Farmers Ins. Group v. County of Santa Clara (1995) 11 Cal. 4th 992, 1006 [47 Cal. Rptr. 2d 478, 906 P.2d 440]*.)

It follows that sexual assaults are within the doctrine of respondeat superior if they originate in work-related concupiscence, as when "a physician or therapist . . . becomes sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship . . . ." (Maj. opn., *ante*, at p. 303.) Similarly, an attack of this sort is outside the doctrine's limits if the impropriety springs from a particularized lust, as when a meat cutter makes a sexual advance on a customer as he fills an order. (*Great Atlantic & Pacific Tea Co. v. Lantrip (1934) 26 Ala.App. 79 [153 So. 296, 298]* [applying Alabama law].)

In my view, it is at least a question for the trier of fact whether the sexual assault in this cause comes within the doctrine of respondeat superior. The facts are undisputed that, in the course of his employment at Henry Mayo Newhall Memorial Hospital, Bruce Wayne Tripoli, an ultrasound technician, was required to have intimate physical contact with female patients, like Lisa M., which involved the touching of their breasts and the rubbing of their pubic areas--all without a chaperon. The facts are also undisputed that Tripoli had no acquaintance whatever with Lisa apart from the event with [*308] which we are here concerned. In a word, it is certainly arguable that the itch that Tripoli improperly scratched arose from intimate physical contact that was altogether proper to his work. The majority claim to discern a particularized lust rather than work-related concupiscence. They blink reality. Worse still, they ignore the undisputed facts. The "[h]ospital," they admit, "may have set the stage for [Tripoli's] misconduct . . . ." (Maj. opn., *ante*, at p. 19.) "[B]ut the script," they assert "was entirely of his own, independent invention." (*Ibid.*) On that point, perhaps they are right. They are wrong, however, in refusing to acknowledge that his inspiration arose from the mise-en-scene established by the hospital. [1]

1 The unfortunate but inevitable result of the majority's analysis is to exempt the health care employer, at least in part, from the doctrine of respondeat superior. I merely note that what they call the "three identified policy goals of the respondeat superior doctrine--preventing future injuries, assuring compensation to victims, and spreading the losses caused by an enterprise equitably" (maj. opn., *ante*, at p. 304)--do not justify exemption. Even if application of the doctrine furthers none of these objects, it nevertheless compels the health care employer to avoid or cover the costs his business imposes on the community. "Fairness is served thereby," and the "efficient use of limited resources is furthered." (*Smiley v. Citibank (1995) 11 Cal. 4th 138, 161 [44 Cal. Rptr. 2d 441, 900 P.2d 690]*.)

[**369] In conclusion, having found no error in the Court of Appeal's decision, I would affirm its judgment.

[***521] **KENNARD, J.**

I dissent.

The majority holds that, *as a matter of law*, a hospital employee was not acting within the scope of his employment when he sexually molested a pregnant woman while purportedly conducting an ultrasound examination necessitating that he have physical contact with intimate areas of the woman's body. I disagree. Scope of employment in this case, as in most cases, is a question of fact to be resolved by the trier of fact.

The scope-of-employment question presented here is very similar to one this court addressed just a few weeks ago in *Farmers Ins. Group v. County of Santa Clara (1995) 11 Cal. 4th 992 [47 Cal. Rptr. 2d 478, 906 P.2d 440]*. In that case, an employee had sexually harassed coemployees, whereas here an employee sexually assaulted a nonemployee, but both cases pose the question whether an employee's on-the-job sexual misconduct arises in the scope of employment. In *Farmers*, as here, the majority concluded, as a matter of law, that the sexual misconduct was outside the scope of employment. In *Farmers* , as here, I have concluded that because reasonable minds may differ as to the proper resolution of the issue, it should not be resolved as a matter of law.

[*309] I

Plaintiff Lisa M., injured in a fall, went to defendant Henry Mayo Newhall Memorial Hospital for treatment. Because plaintiff was pregnant, the emergency room physician ordered an obstetrical ultrasound examination to determine whether the fetus had been injured. The ultrasound technician, Bruce Tripoli, rejected plaintiff's request that her mother and boyfriend be present during the procedure. Plaintiff was wearing shorts and a maternity top (the hospital did not provide a gown), and she raised her top and pulled down her shorts so that Tripoli could perform the examination. Tripoli rubbed a gel on plaintiff's abdomen, going as low as one inch below the pubic hairline; he then pressed the ultrasound wand against her abdomen. He also raised plaintiff's right breast to place the wand in the area below it; he did this with the back of his hand, through a towel.

After the examination, Tripoli left the room. Moments later, he returned and asked plaintiff if she would like to know the sex of her baby. Plaintiff said she would; with plaintiff's cooperation, Tripoli pulled down plaintiff's shorts to perform the examination. Tripoli coated the ultrasound wand with gel, and rubbed it around and inside plaintiff's vagina. Tripoli then fondled her with his fingers, telling her that he needed to sexually excite her to stop the baby from moving. An ultrasound procedure to determine the sex of a fetus does not, however, require touching of the vagina, vaginal insertion of the ultrasound wand, or sexual excitation of the patient. Plaintiff did not object to Tripoli's improper touching because she was unsure whether or not his acts were a necessary part of the examination. The next day, after discussing the matter with her sister and her obstetrician, plaintiff concluded that she had been molested. Tripoli was arrested, and was later convicted of a felony arising from his sexual assault on plaintiff.

Plaintiff sued Tripoli and his employer, defendant hospital; [1] as to the latter she asserted that (1) defendant was vicariously liable for Tripoli's tortious conduct, and (2) defendant was negligent in not providing her [**370] with a hospital gown and a female observer during the ultrasound examination. Defendant hospital moved for summary judgment, contending that it was not vicariously liable because Tripoli had not acted in the course of his employment when he molested plaintiff, that plaintiff had failed to produce evidence that it had acted negligently, and that it was not negligent as a matter [*310] of law. The trial court granted defendant's motion. The [***522] Court of Appeal reversed, holding that whether Tripoli had acted in the scope of employment was a triable issue of fact, and that therefore the trial court should not have granted defendant hospital's motion for summary judgment. [2]

1 In this case, ultrasound technician Tripoli was not directly employed by defendant; he worked for Mediq Imaging Services, Inc. (a codefendant in this case), with which defendant contracted for Tripoli's services. Defendant, however, does not rely on the absence of a direct employment relationship between it and Tripoli as a basis to avoid vicarious liability in this case, and both parties have litigated the issue on the assumption that defendant is, for all intents and purposes, Tripoli's employer. Accordingly, like the majority (see maj. opn., *ante*, at p. 296, fn. 2), I have treated defendant as Tripoli's employer.

2 Because the Court of Appeal held that the trial court erred in finding that, as a matter of law, plaintiff was not entitled to recover on her cause of action for vicarious liability, it did not address plaintiff's claim that the trial court also erred in finding, as a matter of law, that plaintiff was not entitled to recover on her cause of action for negligence. As a result of the majority's conclusion today that plaintiff may not recover on her claim of vicarious liability, the Court of Appeal must now, on remand, consider the merits of plaintiff's cause of action for negligence. Because I agree with the Court of Appeal that whether ultrasound

technician Tripoli had acted within the scope of his employment presents a triable issue of fact, I do not address the merits of plaintiff's cause of action for negligence.

II

Under the doctrine of respondeat superior, an employer may be held vicariously liable for acts committed by an employee in the scope of employment. (*Mary M. v. City of Los Angeles (1991) 54 Cal. 3d 202, 208 [285 Cal. Rptr. 99, 814 P.2d 1341].*) In *Farmers Ins. Group v. County of Santa Clara, supra, 11 Cal. 4th 992* (hereafter *Farmers*), I summarized the principles governing scope of employment as follows: " ' "A risk arises out of the scope of employment when 'in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business. [Citations.] In other words, where the question is one of vicarious liability, the inquiry should be whether the risk was one "that may fairly be regarded as typical of or broadly incidental" to the enterprise undertaken by the employer. [Citation.]' " ' (*Mary M. v. City of Los Angeles, supra, 54 Cal. 3d at p. 209*, citing *Perez* v. *Van Groningen & Sons, Inc.* [(1986)] *41 Cal. 3d 962, 968 [227 Cal. Rptr. 106, 719 P.2d 676]*, and *Rodgers v. Kemper Constr. Co. (1975) 50 Cal. App. 3d 608, 619 [124 Cal. Rptr. 143]*, brackets in *Mary M.*) [P] Acts that do not benefit the employer may nonetheless fall within the scope of employment; so may acts that are willful or malicious, and those that violate the employer's express orders or policies. (*Mary M. v. City of Los Angeles, supra, 54 Cal. 3d at p. 209.*)" (*Farmers, supra, 11 Cal. 4th 992, 1042* (dis. opn. of Kennard, J.).)

Elaborating upon these principles of respondeat superior, the majority notes that an employee's tortious conduct is within the scope of employment when there is a "causal nexus" between an employee's tortious conduct and the employee's job. (Maj. opn., *ante*, at p. 297.) As the majority explains: "The question is not one of statistical frequency, but of a relationship between the nature of the work involved and the type of tort committed. The [*311] employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought." (*Id. at p. 302.*) I have no quarrel with this observation. My disagreement stems from the manner in which the majority applies these general principles of respondeat superior to the facts of this case.

III

The issue in this case is whether the trial court erred when it granted a defendant's motion for summary judgment, concluding as a *matter of law* that ultrasound technician Tripoli's sexual misconduct occurred outside the scope of his employment, and that therefore defendant hospital could not be held vicariously liable for Tripoli's actions. A motion for summary judgment may be granted [**371] only when "there is no triable issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." (*Code Civ. Proc., § 437c, subd. (c).*)

As the majority concedes (maj. opn., *ante*, at p. 299), whether an employee's tortious acts are within the scope of employment is in general a question of *fact*. (*John R. v. Oakland Unified School Dist. (1989) 48 Cal. 3d 438, 447* [***523] *[256 Cal. Rptr. 766, 769 P.2d 948]*; *Ducey v. Argo Sales Co. (1979) 25 Cal. 3d 707, 722 [159 Cal. Rptr. 835, 602 P.2d 755]*; *Loper v. Morrison (1944) 23 Cal. 2d 600, 605 [145 P.2d 1]*; *Westberg v. Willde (1939) 14 Cal. 2d 360, 373 [94 P.2d 590].*) The majority, however, treats scope of employment in this case as a question of *law*, reasoning that it may do so because the parties have not "pointed to factual disputes that would prevent us in this case from deciding the applicability of respondeat superior as a matter of law." (Maj. opn., *ante*, at p. 299.) Not so.

True, there is no dispute as to the *predicate* facts underlying the question whether ultrasound technician Tripoli acted in the scope of his employment; that is, the parties agree on where, when, and how Tripoli molested plaintiff, and they agree that defendant was Tripoli's employer. (See fn. 2, *ante*.) But the absence of a dispute regarding the *predicate* facts does not necessarily mean that the *ultimate* question--that is, whether Tripoli's conduct fell within the scope of employment--is one of law, to be decided on summary judgment. As I shall explain, whether Tripoli's acts arose within the scope of his employment is itself a disputed factual question, notwithstanding the parties' agreement on the predicate facts.

This court has long held that whether an employee's tortious conduct falls outside of the scope of employment is generally a question of fact, even when the facts underlying that determination are not in dispute. In *Westberg* [*312] *v. Willde, supra, 14 Cal. 2d 360*, a truck driver making deliveries for the Reliable Delivery Service stopped at his home for lunch, then left to deliver a letter to his father's place of employment before returning to his office. On the way, he negligently collided with another car, killing the driver. The decedent's heirs sued the owner of the delivery service, contending that the accident occurred in the scope of employment, and that the owner was therefore liable for the damages arising from his employee's negligence. This court affirmed a jury verdict for the plaintiffs, rejecting the defendant's contention that the accident occurred, as a matter of law, outside the scope of employment. The court explained: " 'Whether there has been a deviation so material or substantial as to constitute a complete departure is usually a

question of fact. In some cases the deviation may be so marked, and in others so slight relatively, that the court can say that no conclusion other than that the act was or was not a departure could reasonably be supported; while in still others the deviation may be so uncertain in extent and degree in view of the facts and circumstances as to make the question of what inferences should be drawn from the evidence properly one for the jury . . . .' " (*Id. at p. 373.*)

More recent cases, expressing the same principle in shorthand form, have said that scope of employment is a question of fact unless " 'the facts are undisputed and *no conflicting inferences are possible.*' " (*Mary M. v. City of Los Angeles, supra, 54 Cal. 3d at p. 213*, italics added, quoting *Perez v. Van Groningen & Sons, Inc. (1986) 41 Cal. 3d 962, 968 [227 Cal. Rptr. 106, 719 P.2d 676].*) In other words, if the parties agree as to the underlying facts, but dispute the inferences as to scope of employment that may reasonably be drawn from those facts, scope of employment is a question of fact. Or, as the court more clearly stated in *Alma W. v. Oakland Unified School Dist. (1981) 123 Cal. App. 3d 133, 138 [176 Cal. Rptr. 287]*: "Where the facts of the case make it arguable whether the employee has acted within the scope of his employment, then the scope of employment issue is one properly decided by the trier of fact." (See also Rest.2d Agency, § 228, com. d, p. 505 ["The question whether or not the act done is so different from the act authorized that it is not within the scope of the employment is decided by the court if the [**372] answer is clearly indicated; otherwise, it is decided by the jury."]; *O'Leary v. Brown-Pacific-Maxon (1950) 340 U.S. 504, 506-508 [95 L. Ed. 483, 486-487, 71 S. Ct. 470]* [Whether employee committed an act " 'arising out of and in the course of employment' " is a question of fact under federal workers' compensation law.].)

In this case, as shown below, the parties dispute the inferences that may reasonably [***524] be drawn from ultrasound technician Tripoli's conduct when he sexually molested plaintiff; that is, they dispute whether that conduct was so [*313] closely related to the performance of his duties that it may reasonably be inferred that the conduct occurred in the scope of his employment.

The majority asserts that ultrasound technician Tripoli's conduct fell outside the scope of employment because Tripoli molested plaintiff, a patient, for personal reasons unrelated to Tripoli's employment at defendant hospital. In the words of the majority: "[T]here is no evidence [here] of emotional involvement, either mutual or unilateral, arising from the medical relationship" (maj. opn., *ante*, at p. 302), and "[n]othing happened during the course of the prescribed examinations to provoke or encourage Tripoli's improper touching of plaintiff" (*id. at p. 303*). Thus, the majority concludes, Tripoli's sexual assault on plaintiff "is fairly attributed not to any peculiar aspect of the health care enterprise, but only to 'propinquity and lust' [citation]." (*Id. at p. 302.*)

Perhaps. But a trier of fact might also reasonably conclude that Tripoli's employment as an ultrasound technician did have certain "peculiar aspects" that played a not insignificant role in the sexual assault. To perform an ultrasound examination on a pregnant woman, a technician rubs a gel on the woman's exposed lower abdomen. This intimate contact, inherent in the job, put plaintiff in a vulnerable position and permitted Tripoli to dupe plaintiff into believing that his sexual assault was actually part of a standard medical procedure, thereby giving Tripoli a basis to hope that his misconduct would remain undetected. Moreover, it is not unreasonable to infer that the intimate contact inherent in the job contributed to Tripoli's sexual arousal and incited him to engage in the misconduct. In short, a reasonable trier of fact could conclude that this sexual assault would never have occurred had Tripoli been employed by defendant in a capacity other than ultrasound technician, and that therefore the misconduct may fairly be attributed to risks arising from, and inherent in, the "peculiar aspects" of Tripoli's employment. (See *Stropes v. Heritage House Childrens Ctr. (Ind. 1989) 547 N.E.2d 244* [question of fact whether nurse's aide acted in the scope of employment when he sexually molested severely retarded patient]; *Marston v. Minneapolis Clinic of Psychiatry (Minn. 1982) 329 N.W.2d 306* [question of fact whether sexual acts by licensed psychologist during "biofeedback" sessions were within scope of employment]; *Samuels v. Southern Baptist Hosp. (La.Ct.App. 1992) 594 So.2d 571, 574* [upholding as "not clearly wrong" determination that nursing assistant was acting in the scope of his employment when he raped psychiatric patient].)

When an employee's personal motivations are so enmeshed with the employee's performance of occupational duties that reasonable minds can differ as to whether the employee's tortious act is incidental to those duties, [*314] the issue of whether the act arose in the scope of employment should be resolved by the trier of fact, rather than a trial court acting on a motion to dismiss. (Note, *A Matter of Trust: Institutional Employer Liability for Acts of Child Abuse by Employees* (1992) *33 Wm. & Mary L.Rev. 1295, 1316.*) Reasonable minds can differ with regard to whether the nexus between Tripoli's tortious conduct and the scope of employment is sufficiently close to conclude that the conduct arose in the scope of employment; therefore, that issue is a question of *fact* to be resolved at trial.

Conclusion

I do not suggest, by the foregoing comments, that the question whether an employee's tortious conduct is within the scope of employment may *never* be resolved on [**373] summary judgment. Although scope of employment is ordinarily a question of fact, it becomes a question of law "where the undisputed facts would not support an inference that the employee was acting within the scope of his employment." (*John R. v. Oakland Unified School Dist., supra, 48 Cal. 3d at p. 447.*) Thus, this court held in *John R.* that, as a matter of law, a junior high school teacher [***525] acted outside the scope of his employment when he molested one of his students, and that therefore no liability could be imposed on the school district that employed him. But the converse is also true: when an employee's tortious acts, although personally motivated, are so integrally entwined with his or her employment that reasonable minds can differ as to whether the acts arose in the scope of employment, then scope of employment is a question of fact, rather than one of law, and may not be decided on a motion for summary judgment. This is the case here.

I would affirm the judgment of the Court of Appeal, which held that the trial court erred when it granted plaintiff's motion for summary judgment.

EXHIBIT Q

District Court
Clark County, Nevada

Case A-13-678269-C

CARA DRIGGERS,

PLAINTIFF,

vs.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I-X AND ROE CORPORATIONS XI-XX, INCLUSIVE,

DEFENDANTS

Report of Defense Security Expert's Opinions

Prepared By:

Robert A. Gardner, CPP
2620 Regatta Drive, Suite 102
Las Vegas, NV 89128
(702) 733-8711

Retention

I have been retained by **Kravitz, Schnitzer & Johnson, Chtd.** on behalf of Defendant **Rampart, Inc., d/b/a Luxor Hotel & Casino** to conduct an evaluation of this matter and offer opinions within my areas of expertise. Based on my knowledge, training, and experience, in conjunction with my review of the evidence available to me, I am qualified to provide expert opinions about the security issues relating to this matter. If called upon to testify to the opinions stated herein, I could and would competently do so.

Content

This report contains my expert opinions along with analysis in support of those opinions. The report also provides a summary of my professional qualifications to render opinions; a list of my publications over the past ten years; my fees for serving as an expert witness; and a list of my trials and depositions in the past four years.

Qualifications

My qualifications to render opinions in this matter include more than forty (40) years of combined security management and law enforcement experience. I am a Board Certified Security Manager with designation as a Certified Protection Professional (CPP) by ASIS International and as a Certified Security Professional (CSP) by the California Association of Licensed Investigators.

I am a licensed Security Consultant, Private Investigator, and Private Patrol Operator in the State of Nevada. I am certified as both an Advanced and Supervisory Peace Officer.

In order to qualify for my professional licenses in the State of Nevada, I am required to know and understand the laws of the State as they apply to the authority, limitations and operations of security personnel. I was required to successfully pass several written

examinations administered by Nevada State Licensing Authorities demonstrating my knowledge and understanding of those laws.

I have attended numerous classes, seminars, and other formal and informal training and have extensive on-the-job experience with regard to:

1. Security management practices in Hospitality and Gaming environments
2. Criminal Investigation
3. Use of Closed Circuit Television in Security
4. Security Officer Selection and Training
5. Security Officer Deployment, Supervision, and Management
6. Security Standard of Care and Best Practices in Hospitality and Gaming environments
7. Security Standard of Care and Best Practices in the Security Industry

I have been deposed as an expert in security matters on Sixty (60) occasions and have qualified and testified at trial in Federal and State Courts on Seventeen (17) occasions, including one Federal Court and six State Court trials in Nevada.

A complete description of my qualifications can be found in my Curriculum Vita.

Forensic Methodology

To the extent applicable, I use the *International Association of Professional Security Consultants (IAPSC)* Best Practices #2: Forensic Methodology[1] as a guide to assist me in formulating my opinions. The *IAPSC* Forensic Methodology has been found to be reliable[2] and complies with the standard for expert testimony under the Federal Rules of Evidence.

[1] International Association of Professional Security Consultants Best Practice No. 2: Forensic Methodology – Revised November 2011

[2] Childress v. Kentucky Oaks Mall, 2007 WL 2772299 (W.D. KY) 2007

Analysis and Opinions

See Appendix I

Basis for Opinions

See Appendix II

Publications / Trials / Fees

See Appendix III

All opinions expressed here are based on information available to me at the time of this report. Should further information become available in the future, additional opinions may be rendered and opinions expressed here may be subject to modification.

Respectfully Submitted By:

Robert A. Gardner

Robert A. Gardner, CPP
Independent Security Consultant
Nevada State License 852
February 24, 2014

Driggers vs. Ramparts, Inc., et al.

Appendix I

Undisputed Facts

1. Plaintiff was a visitor to the Luxor Hotel & Casino property at the time of the incident;
2. Defendant Security Officer Terrence David Austin (hereafter: "Austin") was on duty as a Luxor Hotel & Casino security officer at the time of the incident;
3. Plaintiff (accompanied by a friend) solicited the assistance of Austin for the purpose of finding the correct elevator in order to go to the friend's guest room;
4. Austin, who had been standing with another security officer, left that officer and alone escorted Plaintiff and her friend to the correct elevator;
5. An escort by a single officer on the casino/hotel main floor is within Luxor Hotel & Casino policy;
6. Austin entered the elevator with Plaintiff and her friend and accompanied them to their guest room;
7. Austin failed to notify Security Dispatch that he was escorting Plaintiff and her friend to their guest room;
8. By escorting female guests beyond the main floor elevator lobby and failing to notify Security Dispatch of the escort, Austin violated multiple Luxor Hotel & Casino policies.
9. Austin entered Plaintiff's guest room;
10. Sexual contact occurred between Austin and Plaintiff;
11. By entering Plaintiff's guest room and engaging in sexual contact with her, Austin violated multiple Luxor Hotel & Casino policies;
12. Immediately upon learning of Austin's conduct, the Luxor Hotel & Casino Security Department in conjunction with the Human Resources Department began an

investigation, placed him on suspension, and notified the Las Vegas Metropolitan Police Department; and

13. Once Austin's violation of company policy (by his own admission) was confirmed, his employment with Luxor Hotel & Casino was terminated.

The applicable Standard of Care requires that employers act reasonably with regard to the selection, training, and supervision of security personnel. With regard to Austin, the evidence shows:

1. Luxor Hotel & Casino hiring protocols for security personnel is substantially similar to other comparable Las Vegas area hotels and casinos. Security Officer Candidates are subject to in-person interviews, a background investigation, and registration with the Nevada Gaming Control Board. Also, because he was being considered for promotion, a second background investigation was completed on him just two days prior to this incident. There has been no evidence produced for my review to show that the Luxor Hotel & Casino failed to adequately screen Austin or that anything in his background should have reasonably put Luxor Hotel & Casino Management on notice that subsequent to being hired he would ignore his training and violate company policy by failing to follow established escort procedures and engaging in improper and prohibited sexual conduct with a guest.
2. As with hiring, Luxor Hotel & Casino training protocol for security personnel is substantially similar to other comparable Las Vegas area hotels and casinos. Available evidence shows that:
    a. Austin successfully completed the Luxor Hotel & Casino Security Training Academy and Field Training Program for new officers;

b. Luxor Hotel & Casino has developed and published various policies and rules specifying standards of conduct and personal behavior expected of security personnel;

c. Security personnel are required to read and be familiar with all applicable policies, rules, and standards of conduct, and are required to sign statements to that effect. Austin signed those statements;

d. During training, security officers are observed, evaluated, and tested to ensure that they are exposed to and comprehend Luxor Hotel & Casino policies and procedures;

e. Luxor Hotel & Casino maintains an ongoing program to ensure that security officer training is kept current;

f. Luxor Hotel & Casino has a published Sexual Harassment policy. This policy specifically instructs personnel that sexual conduct in the workplace is prohibited. Austin acknowledgment that he read and agreed with the policy; and

g. The Luxor Hotel & Casino instructs employees that they are prohibited from engaging in sexual and other improper conduct with guests.

Analysis

Because it is impossible to continually observe the actions and conduct of every employee throughout their workday, employers such as Luxor Hotel & Casino must carefully select and properly train their personnel. Available evidence indicates that Austin was subjected to a comprehensive selection and training process.

They must also put in place policies and procedures for the handling of situations that present special risks. The escort of intoxicated guests is one such special risk. To address the risk,

Luxor Hotel & Casino required security officers to notify Security Dispatch before commencing an escort. This enables Dispatch to monitor and track the progress of the escort thus providing a layer of supervision and safety during the escort. This policy is consistent with the standard practices of other comparable Las Vegas area hotels and casinos. Evidence indicates that Austin was aware of the notification requirement but chose to ignore it.

Luxor Hotel & Casino also had in place a policy and procedure that required escorts of intoxicated guests to their room to be handled by multiple officers, including where possible, officers of the same sex as the person being escorted. This multi-officer requirement creates a self-supervision situation that serves to protect officers and escorted alike. This policy is consistent with the standard practices of other comparable Las Vegas area hotels and casinos. Evidence indicates that Austin was aware of the escort requirement but chose to ignore it.

There is evidence that during the initial contact with Plaintiff, another security officer (Zachary Ford) was present with Austin. When Austin began assisting Plaintiff and her friend to their elevator by himself (an authorized activity), Ford returned to his duties. There is no evidence that he was aware that Austin would escort Plaintiff and her friend into the elevator and up to their guest room in violation of Luxor Hotel & Casino policy.

Luxor Hotel & Casino has in place a policy and procedure that prohibits security personnel from entering guest rooms alone. This requirement mandates that security officers be accompanied by additional officers or other hotel employees and creates a self-supervision situation that serves to protect officers and guests alike. Evidence indicates that Austin was aware of the guest room entry requirement but chose to ignore it.

Evidence indicates that Luxor Hotel & Casino required employees who observe violations of company policy to report their observations to a supervisor. With regard to Austin's interaction

with Plaintiff, there has been no evidence produced to show that any other Luxor Hotel & Casino employee was aware of his improper actions. This policy is consistent with the standard practices of other comparable Las Vegas area hotels and casinos.

Luxor Hotel & Casino deploys security supervisors and managers to oversee the operation of the security department and the job performance and conduct of security staff. This is consistent with the standard practices of other comparable Las Vegas area hotels and casinos.

Summary

There is no reasonable and commonly accepted policy, procedure, training program, level of supervision, or surveillance system that can prevent a determined employee from knowingly and intentionally committing a crime or violating any employer imposed rule, regulation, or standard of conduct.

All available evidence indicates that Luxor Hotel & Casino had in place employee selection, training, and supervision protocols consistent with industry best practices and substantially similar to protocols in place at other comparable Las Vegas area hotels and casinos.

All available evidence indicates that Luxor Hotel & Casino had in place policies and procedures designed to provide guidance and performance standards to security personnel during the execution of their duties. Specific to this incident, these policies and procedures provided guidance to security officers engaged in guest escorts and imposed a standard for conduct by security personnel. These policies and procedures are substantially similar to policies and procedures in place at other comparable Las Vegas area hotels and casinos.

Austin was selected, screened, hired, and trained in compliance with Luxor Hotel & Casino policies. He was a knowledgeable, experienced, and trusted security officer who occupied a senior

position on his shift and was under consideration for promotion to a supervisory position within the security department.

Despite his clean record and favorable standing in the Luxor Hotel & Casino Security Department, on the night of this incident Austin made a decision to ignore his training and Luxor Hotel & Casino policy. His actions were a direct violation of operational procedures and the standard of conduct prescribed by Luxor Hotel & Casino. His actions were neither done on behalf of, nor furthered the interests of, Luxor Hotel & Casino.

Opinions

1. Austin voluntarily violated Luxor Hotel & Casino policy by escorting Plaintiff and her friend to their guest room without other security personnel present. This conduct was contrary to the training he received from Luxor Hotel & Casino and in violation of written company policy. Luxor Hotel & Casino did not request or sanction the conduct. Austin's conduct with Plaintiff was outside the course and scope of his employment.
2. Austin voluntarily violated Luxor Hotel & Casino policy by failing to notify Security Dispatch that he was escorting Plaintiff and her friend to their guest room. This conduct was contrary to the training he received from Luxor Hotel & Casino and in violation of written company policy. Luxor Hotel & Casino did not request or sanction the conduct. Austin's conduct with Plaintiff was outside the course and scope of his employment.
3. Austin voluntarily violated Luxor Hotel & Casino policy by entering Plaintiff's guest room without another security officer present. This conduct was contrary to the training he received from Luxor Hotel & Casino and in violation of written company policy. Luxor Hotel & Casino did not request or sanction the conduct. Austin's conduct with Plaintiff was outside the course and scope of his employment.

4. Austin voluntarily engaged in prohibited sexual conduct with Plaintiff. This conduct was contrary to the training he received from Luxor Hotel & Casino and in violation of written company policy. Luxor Hotel & Casino did not request or sanction the conduct and it was not part of Austin's regular duties. Austin's conduct with Plaintiff was outside the course and scope of his employment.
5. The policies and procedures of Luxor Hotel & Casino with regard to the hiring, training, and supervision of Austin are consistent with the guideline recommendations for security personnel selection published by the International Association of Chiefs of Police (IACP)[1]. They are also consistent with the ASIS International Preemployment Background Screening Guideline[2] and the ASIS International Private Security Officer (PSO) Selection and Training Guideline[3]. They are also substantially similar to the policies and procedures of other comparable Las Vegas area hotels and casinos.
6. Based on the evidence available for my review, it is my opinion that Luxor Hotel & Casino personnel practices and guest protection policies meet or exceeded the required Standard of Care.

All opinions expressed here are based on information available to me at the time of this report. Should more information become available in the future, additional opinions may be rendered and opinions expressed here may be subject to modification. Nothing in this report is offered as a legal opinion.

[1] Private Security Officer Selection, Training and Licensing Guidelines – IAPSC, no publication date.
[2] ASIS GDL PBS-2009
[3] ASIS GDL PSO 11 2004

Driggers vs. Ramparts, Inc., et al.

Appendix II

I have been provided with the following for consideration in forming my opinions:

1. Surveillance video
2. Luxor's Incident report;
3. Las Vegas Metropolitan Police Department Report;,
4. Employee File of Terrence David Austin;
5. Suspension Pending Investigation Notice and Termination Notice for Terrence David Austin;
6. Training File of Terrence David Austin;
7. Human Resource Investigation File;
8. Deposition Transcript of Cara Driggers;
9. Deposition Transcript of Alvin Beigel;
10. Deposition Transcript of Dede Aspero;
11. Deposition Transcript of Matisse Lee;
12. Deposition Transcript of Officer Robert Hoffman;
13. Deposition Transcript of Steven Peterson;
14. Deposition Transcript of Zachary Ford;
15. Summons and Complaint;
16. First Amended Complaint;
17. Defendant Ramparts, Inc., d/b/a Luxor Hotel & Casino's Motion for Summary Judgment
18. Answers to First Amended Complaint; and
19. Answers to First Amended Complaint and Cross Claim.

Publications

The following is a list of my professional publications during the past ten years:

Articles:

"General Aviation Security Guide"
National Air Transportation Association – November 2003
Contributing Author – Crime Prevention Theory

"Private Investigators As Bodyguards"
CALI Journal – February 2006

"Security Experts: Litigation And Beyond"
Ask the Expert Column
Maricopa County (AZ) Bar Association – February 2006

"Obfirmo Ianua"
Advocate: Journal of the Nevada Justice Association – September/October 2011

Books:

"Business Security"
Crary Publications – December 2003
Contributing Author – Workplace Violence Management

"Retail Crime, Security, and Loss Prevention: An Encyclopedic Reference"
Elsevier Butterworth Heinemann Publishers – March 2008
Contributing Author – Citizen's Arrest (Private Person Arrest)

Trials & Depositions: 2010 – 2014

2010 Skiadiotis v. Bellagio
For Defense
Eighth Judicial District Court - Las Vegas, NV – Deposition

Andonie v. City Limits Showgirls
For Defense
Sacramento County (CA) Superior Court – Deposition & Trial

Musai v. DTG Operations, Inc. dba Dollar Rent a Car
For Defense
Los Angeles County (CA) Superior Court – Deposition

People v. Kashani
For Defense
Orange County (CA) Superior Court – Criminal Trial

Driggers vs. Ramparts, Inc., et al.

Appendix III

1		Foxworth v. Nevada State Bank, et al
2		For Plaintiff
3		Eighth Judicial District Court - Las Vegas, NV – Deposition
4		Grasso v. Treasures Gentlemen's Club
5		For Defense
6		Eighth Judicial District Court - Las Vegas, NV – Deposition
7		Martinho v. Inter-Con Security Systems
8		For Defense
9		Alameda County (CA) Superior Court – Deposition
10		Sarah C. and Cheuk Y. v. Happy Rehabilitation Center
11		For Defense
12		Los Angeles County (CA) Superior Court – Deposition
13	2011	Aslanyan v. Pacific Specialty Insurance Company
14		For Defense
15		Los Angeles County (CA) Superior Court – Deposition
16		Denis-Jean Durrell v. Radio Radio, Inc., et al.
17		For Defense
18		Alameda County (CA) Superior Court – Deposition
19		Pixley v. Tavallodi, et al.
20		For Plaintiff
21		San Diego County (CA) Superior Court – Deposition and Trial
22		Barrera v. Jensen, et al.
23		For Defense
24		San Francisco County (CA) Superior Court – Deposition and Trial
25		Blanco v. Circus Circus
26		For Defense
27		U.S. District Court (District of Nevada) - Deposition
28	2012	Jones v. Allied Barton
29		For Plaintiff
30		Santa Clara County (CA) Superior Court – Deposition
31		Anderson v. Mandalay Bay
32		For Defense
33		Eighth Judicial District Court - Las Vegas, NV – Deposition
34		Fuentes v. Edgar Entertainment
35		For Plaintiff
36		Los Angeles County (CA) Superior Court – Deposition and Trial

		Winter v. Vista Entertainment Center For Plaintiff San Diego County (CA) Superior Court - Deposition
		Lawrence v. Market Street Bar & Grill, Inc. For Plaintiff Los Angeles County (CA) Superior Court – Deposition
		Franklin v. Clemett and Blanchard For Plaintiff Maricopa County (AZ) Superior Court – Deposition
	2013	Carver v. New York-New York For Defense Eighth Judicial District Court - Las Vegas, NV – Deposition
		Collins v. Speedee Mart For Defense Eighth Judicial District Court - Las Vegas, NV – Deposition
		Ireland v. Foothill Properties For Defense Eighth Judicial District Court - Las Vegas, NV – Deposition
		Turkson v. Blue Martini For Plaintiff Eighth Judicial District Court - Las Vegas, NV – Deposition
	2014	Whitten v. Desert Shores Villas For Plaintiff Eighth Judicial District Court - Las Vegas, NV – Deposition

Fee Summary

Consultation and other work, including but not limited to examination of evidence and documents, research, site inspection, meetings, document preparation (other than reports), deposition preparation, telephone calls, and local travel: Three Hundred Dollars ($300.00) per hour (Hourly Rate).

A. Deposition and other non-trial appearances, including preparation, on-call, wait and testimony time: Three Hundred Dollars ($300.00) per hour billed in accordance with applicable statutes. A three (3) hour minimum applies. Deposition fee must be received at least fourteen days (14) days prior to the date of deposition.

B. Trial appearance (includes pre-trial preparation, day of trial travel, on-call, wait, and testimony time): Appearance day (all or part) – Three Thousand Five Hundred Dollars ($3,500.00). Additional contiguous days – Two Thousand Dollars ($2,400.00) per day prorated in half day increments.

[Tab 6]

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Other	COURT MINUTES	March 06, 2014

A-13-678269-C Cara Driggers, Plaintiff(s)
vs.
MGM Resorts International, Defendant(s)

March 06, 2014 **9:30 AM** **Motion for Summary Judgment**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

De Castroverde, Orlando	Attorney for Plaintiff
Mushmeche-Buras, Gina M.	Attorney for Deft Ramparts Inc

JOURNAL ENTRIES

- Matter argued and submitted. Court stated its findings and ORDERED, Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino's Motion for Summary Judgment is GRANTED IN PART; Granted as to Causes of Action 1 through 5 (Assault and Battery, False Arrest and False Imprisonment, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Negligent Use of Excessive Force); Sixth Cause of Action - Negligent Hiring, Training, Supervision & Retention as to Defendant Luxor, still exists; Seventh Cause of Action is DISMISSED as to Luxor. Defense counsel to prepare the Order to include findings of fact and conclusions of law, circulating to Plaintiff's counsel for approval as to form and content. Matter SET for Status Check regarding receipt of proposed order.

3/21/14 STATUS CHECK: ORDER (CHAMBERS)

[Tab 7]

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TRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS, Plaintiff, vs. MGM RESORTS INTERNATIONAL, Defendant.	CASE NO. A678269 DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

THURSDAY, MARCH 6, 2014

***TRANSCRIPT OF PROCEEDINGS*:**
DEFENDANT RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiff: ORLANDO DE CASTROVERDE, ESQ.

For the Defendant: GINA MUSHMECHE-BURAS, ESQ.

RECORDED BY: RACHELLE HAMILTON, Court Recorder

THURSDAY, MARCH 6, 2014, AT 10:08 A.M.

THE COURT: Okay, page two Cara Driggers v. Rampart, 678269.

MR. DE CASTROVERDE: Good morning, Your Honor, Orlando De Castroverde for the Plaintiff, Cara Driggers.

MS. MUSHMECHE-BURAS: Good morning, Your Honor -- excuse me -- Gina Mushmeche here on behalf of Luxor Hotel and Casino, Defendant.

THE COURT: Okay, it's motion for summary judgment saying basically under *Wood v. Safeway*, et cetera, that the type of conduct that occurred could not be within course and scope, et cetera, and there's issues regarding the supervision and training claim and its impact even with regards to argument but in agreement that the negligent hiring claim gets taken out as I believe.

MS. MUSHMECHE-BURAS: I believe that is presented -- been represented in their opposition, Judge.

THE COURT: Go ahead, it's your motion please.

MS. MUSHMECHE-BURAS: Again, may it please the Court. My name is Gina Mushmeche and I do represent the Luxor in this case, and I believe the parties agree that NRS 41.745 is applicable and certainly it's Luxor's position that *Wood v. Safeway* is controlling in this case primarily because number one, the sexual assault -- the criminal sexual assault by Mr. Austin was an independent venture. It cannot possibly be said to be to the benefit of the Luxor for him to conduct himself in this way.

Honestly Luxor doesn't know what happened in that room that night, but if I take all of her allegations as true a sexual assault has nothing to do with

Luxor's business. And this was not committed in the course and scope of Mr. Austin's employment with the Luxor. And I understand the Plaintiffs are arguing that he was escorting Ms. Driggers to her room and that somehow it came out of this escort; however the moment he crossed the threshold into that room, literally and figuratively, he was no longer in the course and scope especially because he is committing an intentional crime. And more importantly the testimony from the Plaintiff was they said goodbyes to this security officer at the door. There's no allegations of sexual misconduct in the hallway or when they were walking through the casino. Everything happened after the fact in the room and at that point he was no longer in the course and scope, especially considering the nature of the crime he committed. And of course this is not for any business purpose for him to be in the hotel room as confirmed by Joseph Mullen in his testimony that entering a room and sexually assaulting a guest is not -- violates company policy. This was not foreseeable.

Now I understand there's been some testimony regarding dual escorts up to a room and that the reason for this is to protect both a guest and an officer from making allegations; however, under the law in *Wood v. Safeway* for respondeat superior liability it's a different perceivability test which I think we outlined in our brief, but it's -- the question for vicarious liability is whether the risk was one that may be fairly -- may be -- may fairly be regarded as typical or broadly incidental to the enterprise undertaken by the employer. I think that doesn't work here. And in applying those factors in *Wood v. Safeway* they determined for foreseeability what do you look at? You look at employers requiring identification, checking references, whether a person had a criminal history or not.

So here, as we said at the beginning, the Plaintiffs have already

abandoned their negligent hiring claim because not only was a background check done when Mr. Austin was hired, one was done two days before this incident because he was up for a promotion and again there was no evidence or suggestion to Luxor that he would commit such a heinous crime.

So just as in *Wood*, Austin's conduct it was not reasonably foreseeable as a matter of law. Nor was this horrific act anything incidental to the Luxor's business of running a hotel and casino.

Now I understand that the Plaintiffs have also argued that to suggest that because he was a security officer this is somehow akin to a special relationship test, case or to give it a heightened duty, and that just doesn't apply to this case. Those special relationship cases are the parent-student -- parent -- parent-child-teacher-student, counselor to a patient, and those are where you have an emotional bond between potential parties. Here that just isn't the case. There's no emotional bond that can be created in a ten-minute escort by a security officer to someone he's never met before. So I think their arguments along those lines are misplaced, and reliance on that case law doesn't support the position.

Okay, we didn't address the training and supervision in our brief; I get it. But all the training and supervision in world, I don't think that changes anything. This is an intervening and superseding act. This is a crime that he committed. So that, based on *Bower v. Harrah's* and *Wood v. Safeway:* a negligent action will not stand when there is an intervening cause that in and of itself is the natural and logical cause of the harm. Even if there was negligent -- even if Luxor negligently trained or supervised Austin or anybody else for that matter, it was his independent criminal act of a sexual assault that was the proximate cause of her injuries. And because of that I'm not sure -- I think that argument is futile anyway. We're happy

to address it if you want additional briefing on that.

Put simply this case is ripe for summary judgment because of *Wood v. Safeway*. I understand we may not have to like the case but it is certainly the precedent in this jurisdiction which tells us the Luxor is not responsible for the independent criminal tortuous acts of Mr. Austin.

THE COURT: Thank you.

MR. DE CASTROVERDE: Judge, we all agree clearly the intentional tort is not a duty of the employee in all these cases whether it be a sexual assault, whether it be a dealer punching a patron. Clearly the sexual assault in this case isn't a duty -- is not a duty of the Luxor employee, but what the Luxor defense fails to address and what they want to ignore is really everything that leads up to the intentional tort, and that's the important analysis that the Court has to consider. And for the defense to succeed on summary judgment they must satisfy the three prongs of NRS 41.745. It's a conjunctive test, all three of the requirements. And also its -- whether there's a triable issue of fact, if there's a genuine material issue of fact, if it's a close question, it's for the jury to decide. They make sure as a matter of law that all three of these prongs are so clearly in their favor that as a matter of law they're entitled to summary judgment, and they can't even meet one of the tests, Judge.

With regards to *Wood v. Safeway*, that case is clearly distinguishable from ours. The only really consistent facts from our case and that case is that you -- the intentional tort is a sexual assault. But if you look at the facts of our case and with -- they want to essentially ignore is everything leading up to when the sexual assault happened. And if you look at the employee Austin he's a security guard. Ms. Driggers, she's lost. Her and her friend they needed to find -- help to get up to

their room. The security guard Austin escorts them up to their room. Once he gets into the room is when the sexual assault occurs.

We have testimony from the Luxor themselves by way of discovery responses, interrogatories, request for productions, they have their own procedures and policies specifically for what a guard must do when escorting an employee up -- or not -- a patron up to their room, Judge. They've got policies and procedures in place to make sure that there's two guards that do it. Particularly if it's a woman guest that it's a male and a female guard that escort the guest up to their room. When the guard goes -- begins the escort they're supposed to call dispatch. These are all policies and procedures in place specifically for a guard, what they must do when they take a guest up to the hotel room.

There was also a lot of testimony from the guards for -- the other guard that we -- deposition testimony that it's very common that the patrons are intoxicated. Often times there are girls -- female patrons are intoxicated, they don't know how to get to their room. There's a club there at the hotel. It's very common.

So this is their particular duty. Austin, that was his duty, that was something that he was assigned, something that he was asked, called upon to do, and that's exactly what he was doing when he was walking Ms. Driggers and her friend up to the hotel room. Very similar to a card dealer, he's dealing and then he has problems with the patron. The patron, you know, says something to the dealer. The dealer punches the patron. Obviously once the battery occurs, the sexual assault occurs, you know clearly that's not within the duty of the employee under their vicarious liability. But clearly there's a question, a triable issue of fact whether or not, you know, he was in the course and scope of his employment, whether or not these three prongs have been met by the Luxor.

THE COURT: Okay, I have a couple questions for you.

MR. DE CASTROVERDE: Sure.

THE COURT: Looking at your opposition on page four, I mean you say at the time of the assault the -- there's two things, okay? Seven, you say Defendant Austin did not inform dispatch that he was leaving on an escort, okay? It appears both parties agree he violated Luxor policy by not notifying that he was going on an escort, right?

MR. DE CASTROVERDE: Yeah.

MS. MUSHMECHE-BURAS: Correct.

THE COURT: It's your undisputed -- I mean I'm just reading number seven of your --

MR. DE CASTROVERDE: Sure and on their reply they disputed that. They said there's some -- it's not clear whether or not in fact that happened.

THE COURT: I'm taking your facts as true for purposes of the motion for summary judgment --

MR. DE CASTROVERDE: Correct.

THE COURT: -- on the standard. So at least from your perception he wasn't following the company policy, so his actions of not following company policy, doing something that would be on his own versus within the course and scope appears to start when he doesn't inform dispatch.

Just looking at your cause of action, okay? Now just so I'm clear, you have seven causes of action in your amended complaint, okay? And the only one I saw that Luxor was named on was the sixth cause of action: hiring, training, supervision and retention subject to the hiring now being dismissed. And it appears -- or maybe it doesn't appear, maybe I'll ask you -- walking through -- I'm going to

walk through the cause of action, which one do you say Luxor has vicarious liability on because that just wasn't a hundred percent clear.

MR. DE CASTROVERDE: Well --

THE COURT: Luxor seems to move on all of them subject to --

MR. DE CASTROVERDE: Sure.

THE COURT: -- the caveat with training and super --

MR. DE CASTROVERDE: We're alleging the Luxor is vicariously liable for the tortuous facts of Austin.

THE COURT: Okay so you're saying the first cause of action for assault and battery?

MR. DE CASTROVERDE: Correct.

THE COURT: Are you also saying the second cause of action for false arrest and false imprisonment?

MR. DE CASTROVERDE: Correct.

THE COURT: And the third cause of action intentional infliction?

MR. DE CASTROVERDE: Correct.

THE COURT: Fourth cause of action negligent infliction?

MR. DE CASTROVERDE: Yes.

THE COURT: Obviously you have negligent infliction of emotional distress but you all know what I'm talking about.

MR. DE CASTROVERDE: Correct. Basically for all the tortuous acts committed by their employee that the Luxor is vicariously liable for those -- that tortuous.

THE COURT: So for one through five, just so I'm -- basically it was negligent use of excessive force just so that -- since I named the first four I might as well the

fifth, and then the sixth is the negligent, and the seventh of not -- it was not titled but it appears like it's an emotional -- I don't know if it's an emotional distress claim or if it's a --

MS. MUSHMECHE-BURAS: Punitive?

MR. DE CASTROVERDE: We're alleging punitives. I don't think it was a specific cause of action.

THE COURT: Yeah, I'm not sure if seven was truly a cause of action or just inadvertently done when it appears to be your conclusory paragraph so as a result of then there's pain, suffering and over ten thousand damages, but --

MR. DE CASTROVERDE: Correct. And Judge, to your point, to your question --

THE COURT: You know where my points going is *Wood v. Safeway* makes it clear really on the first five that if he's acting outside his course and scope they can't be liable --

MR. DE CASTROVERDE: Yeah.

THE COURT: -- and I haven't seen anything that makes it disputed whether he was --

MR. DE CASTROVERDE: Really Judge, it's clearly distinguishable from *Wood v. Safeway*, and there you have a janitors who is working there and he sexually assaulted a handicapped girl who was also working in the store, a storekeeper, okay? There's really no relationship between the two. Here you have --

THE COURT: Arguably in that case doesn't the employer have more of an obligation to protect its own -- well, one's their employee and one's their guest, so.

MR. DE CASTROVERDE: Because he is a guard who specifically by the

Luxor's own admissions or own interrogatories, discover responses the only deposition sworn statements of their own guards for -- it's their duty to help patrons to their room. It's their duty if you have an intoxicated guest to make sure they help them. That's part of their job as a guard. You're in a position of trust, authority. In particular they're very cognizant of the fact that there are a lot of intoxicated people, particularly late in the evening and they're going to be lost to their room.

So clearly -- and I'll admit that that's the duty to help the patron up to the room. In this case that's exactly what the employee did, Austin did. Now whether or not in doing so he didn't follow the policies to a tee, let's say he should have dispatch but he didn't call dispatch doesn't mean he's not still following his duty. He's doing something that asked of him, he's just not doing it exactly how he's supposed to be doing it.

We all have employees. We go to -- employees, they go to work, you know. Maybe they should show up at eight but they show up at eight-0-five. They should do X, Y and Z, but they only do X, Y, they don't do Z. It doesn't mean they're not -- no longer in the course and scope of their employment, so I think that would be --

THE COURT: I think you're miss -- not -- I don't think we're on the same page is where I was going. It seems that the action started earlier on and not following. I don't think neither one of you are arguing that sexual assault was in the course and scope of anybody's employment description with regards to the Luxor.

MR. DE CASTROVERDE: Clearly, yeah. We're not arguing that but we are arguing all the actions that Austin took in escorting Ms. Driggers and her friend up to the room were clearly tasks within his duty as a guard. And you have their own sworn testimony, officer -- the guard Ford, their own discovery responses where

Luxor concedes that this is something that is asked of a guard. A guard -- this is a common duty, so that's what's clearly distinguishable from say Safe v. Wood [sic]. This is something that the guard is asked to do.

THE COURT: Appreciate that.

Last brief response, it's your motion.

MS. MUSHMECHE-BURAS: Sure. Basically he was terminated -- suspended and terminated for violating policies, and whatever escort that could have been his job duty I agree with the Court, you know. He went rogue the minute he didn't call dispatch, but no sexual assault happened during -- whether that -- you find the escort in and of itself as part of his job duty. When he got to the room, even if he -- if there was a dispatch or any of this, the sexual assault happened after he completely deviated and entered her room because he had no authority whatsoever to go into her room for any reason. You know, this wasn't a welfare check or any of these other situations where possibly a security officer may enter a guest room. That wasn't the case here. They said goodbye at the door and what happened after that was completely an independent venture of Mr. Austin, and therefore we believe summary judgment is still appropriate.

THE COURT: The Court agrees. With regards to cause of action one through five to the extent that there's claims of vicarious and/or respondeat superior liability on behalf of Rampart Inc. DBA Luxor, the Court would find summary judgment is appropriate. Specifically under *Wood v. Safeway* the parties -- the undisputed facts show that it was not within the course and scope. It was not anything that was allowed, interpreted, it was an intentional tort and *Wood v. Safeway* makes it clear that the intentional torts of employees the employer cannot be held responsible for in looking at the factors in this particular case.

With regards to the sixth cause of action, retention and supervision were not pled, cannot be addressed in an oral motion without any paperwork, et cetera, so the Court to the extent -- I guess it's not before the Court so it's not that I'm denying it, it's just not before the Court so the sixth cause of action still exists to the extent that it exists subject to the agreement that the negligent hiring has been reduced.

With regards to the seventh cause of action, I'm dismissing it as to Luxor because it doesn't appear that there really is something that is to Luxor, okay? If I have incorrectly stated that and it -- it just -- it looks like it's just conclusory and that that captioning is inadvertent and so the seventh cause of action would also be as to Luxor.

And I'm not in any way making any further rulings than what I stated. I'm going to ask defendants to prepare detailed findings in fact and conclusions of law, circulate it plaintiff's counsel, provide it back to the Court. Please do be cognizant of Rule 56, and it does have to be detailed findings in fact and conclusions of law. And the Court is adopting the undisputed facts set forth in the pleadings and adopting obviously that statements as set forth here today into it, and I'm not going to further detail out each and every undisputed issue of material fact in which the Court found it appropriate as a matter of law to grant summary judgment in the first five causes of action with respect to Defendant Luxor only because I'm just incorporating it by reference.

Okay, I appreciate it. Thank you so very much.

MS. MUSHMECHE-BURAS: Thank you.

///

///

[Proceeding concluded at 10:27 a.m.]

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

RACHELLE HAMILTON
Recorder/Transcriber

[Tab 8]

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ORDR

CARA DRIGGERS,

Plaintiff,

v.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive,

Defendants.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO,

Cross Claimant,

v.

TERRENCE DAVID AUSTIN,

Cross Defendant.

Case No. A-13-678269-C

Dept. No. XXXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART DEFENDANT RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO's MOTION FOR SUMMARY JUDGMENT

On March 6, 2014, this matter came on for hearing before the Honorable Joanna S. Kishner, with Gina M. Mushmeche, Esq. appearing for the Defendant Ramparts, Inc., d/b/a Luxor Hotel & Casino ("Luxor") and Orlando De Castroverde, Esq. appearing for Plaintiff, Cara Driggers. The Court, having read and considered the pleadings on file including Defendant's Motion for Summary Judgment, Plaintiff's Opposition, and Defendant's Reply thereto, and having considered the oral arguments of counsel, being fully advised on the premises, and good cause appearing, therefore makes the following findings of fact, conclusions of law and Order.:

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I. FINDINGS OF FACT

SUBSTANTIVE FACTS

The Court finds the following facts undisputed, material and controlling:

1. Austin was employed as a Security Officer by Luxor on June 17, 2012

2. Luxor's employees, including Austin, all received a copy of the General Rules of Conduct for employees.

3. The General Rules of Conduct prohibit employees from offensive conduct towards guests.

4. Sexually assaulting a guest is clearly offensive conduct.

5. The General Rules of Conduct prohibit employees from violating any federal, state or local laws.

6. Sexually assaulting a guest in a room violates several laws including but not limited to *Nevada Revised Statute* ("*NRS*") 200.364 (Sexual Assault), *NRS* 200.400 (Battery with intent to commit a crime), *NRS* 200.481 (Battery), *NRS* 200.460 (False Imprisonment), and *NRS* 200.471 (Assault).

7. The General Rules of Conduct prohibit employees from participating in conduct which would in any way reflect adversely on the company.

8. Sexually assaulting a guest clearly reflects adversely on the company.

9. The General Rules of Conduct prohibit employees from using physical force against another person.

10. Sexually assaulting a guest requires using physical force against another person.

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11. Prior to being hired, Luxor required Austin to show proof of identification.

12. Prior to being hired Luxor checked Austin's references.

13. Prior to being hired, Luxor drug tested Austin.

14. Prior to being hired, Luxor determined Austin had no prior criminal history by searching his name and social security number.

15. In fact, Austin was in the process of potentially being promoted to a supervisory position with security.

16. In connection with that promotion and as part of that application process, another background check was conducted on June 15, 2012, two (2) days before the incident subject of this lawsuit.

17. On June 17, 2012, Cara Driggers and a companion arrived at the Luxor.

18. Cara Driggers and her companion were having trouble locating their friend's hotel room.

19. Cara Driggers and her companion approached security officers including Co-Defendant Austin, requesting assistance.

20. Austin proceeded to escort Cara Driggers and her companion.

21. Cara Driggers alleges Austin was not invited in the room and she assumed he left.

22. Cara Driggers' companion used her room key to enter Room No. 19345.

23. Upon entering the room, Cara Driggers alleges Austin sexually assaulted her.

24. After the alleged sexual assault, Cara Driggers testified that:

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Question: *So you were getting ready to call the police that night and Angela stopped you?*

Answer: *She said, I'm married, and - - well, she said, Please don't. I'm married. I have two kids. She's, like, my husband and I are separated. That's why I'm here. Girls' vacation. Please don't. If I - - if I have to be a witness, she's, like, I can't. And she's, like, I can't be a witness. I'll lose my kids.*

. . .

And I remember telling her, Well, that's not my fucking fault. Because guess what? I'm single. I'm an adult. And I can do what the hell I want. *I can go out drinking. I can be here with you. I'm not doing anything wrong being here with you.*

25. Cara Driggers did not report the alleged sexual assault until the next day and she testified:

Answer: *As soon as we get down the elevator, I bolt. I run through the casino, full speed, to the registration desk. And I'm, like, Please, help me. There's, like, a huge line at registration. And there's, like, a guy. And I'm, like - - I'm, like, Please, help me. Please, help me. I'm, like, I was sexually assaulted. Please, I need - - I need to see a supervisor. Get me somebody. I'm, like, I have a witness.*

Question: *And - - and let me stop you. So what time is this?*

Answer: *Maybe 11:30 or 12.*

Question: *Okay.*

Answer: *And I'm telling the guy - - and I'm trying to be quiet at first because there's a huge line.*

. . .

But I was, like, You get me somebody.

. . .

And he was, like, acting like it was no big deal. Like, calm down. Be quiet. He was, like, a total dick.

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> *And then I was, like, you want me to start getting loud? I'm like - - because I was sexually assaulted by one your security guards. I just started getting loud.*
>
> . . .
>
> *And he's, like, Okay. Come here. Come here.*
>
> *And he's, like, Okay. Okay. What - - okay. What happened?*
>
> *And I'm, like, get me somebody down here.* ***I don't want to tell you. It's none of your fucking business.*** *I'm, like, Get me a security guard - - I mean, a manager now. I'm, like, I have a witness. She could be leaving town. I don't know who she is. I don't - - and I need a statement from her. Please, somebody has to help me. This is my witness. Please. She doesn't want to cooperate.*
>
> . . .
>
> *And I'm, like, Please, can somebody come with me right now to go get her and make her. You guys have to make her give a statement.*
>
> ***And he said - - fuck - - fucking - - this guy was such an asshole.***

26. Initially, Cara Driggers indicated that she did not want to press charges.

27. Luxor immediately suspended Austin pending investigation, investigated the incident and two days later Austin was terminated for violating company policy.

28. There is an outstanding warrant for Austin's arrest for the alleged crimes.

29. Cara Driggers agreed during her deposition that Luxor did not have a policy that would have allowed Terrence Austin to sexually assault her.

30. Cara Driggers also testified that she sued Terrence Austin because he committed an intentional criminal act (sexual assault) against her.

31. Steven Peterson, Director of Security for Luxor, testified that the officer was responsible for his conduct and that Luxor is not responsible for the act of one person

who went rogue, and did what he did on his own.

32. Dede Aspero, Former Director of Human Resources for Luxor, testified that Luxor was not responsible because the person who committed the crime [Austin] should be held responsible.

33. Plaintiff and another female guest approached Defendant Austin, Zachary Ford, and an unidentified male, to ask for guidance on how to get to their hotel room.

34. At the time, Defendant Austin and Zachary Ford were employed as grave yard shift security guards by Defendant Luxor.

35. Defendant Austin escorted both Plaintiff and the second female guest arm in arm across Defendant's hotel lobby to the elevators and up to their room

36. Defendant Austin entered the room uninvited and sexually assaulted Plaintiff.

37. At the time of the assault, Defendant's policy was that a female guest required a two-officer escort, and if possible, one of the officers should be a female.

38. At the time of the assault, Defendant's policy was that when a security officer left his post on an escort, he should inform dispatch.

39. Defendant Austin did not inform dispatch that he was leaving on an escort.

PROCEDURAL FACTS

40. Cara Driggers filed a Complaint on March 13, 2013, alleging causes of action for assault and battery, false arrest and false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent use of excessive force, negligent hiring, training, supervision and retention and punitive damages.

41. Luxor moved for summary judgment on the basis that Nevada law holds that

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Luxor cannot be held liable for Austin's independent act that was not in the scope of his employment and only motivated by Austin's own interests. Luxor also contended his criminal acts were intervening and superceding.

42. While Plaintiff filed an Opposition to Luxor's Motion for Summary Judgment, she agreed to abandon her claim for negligent hiring.

II. CONCLUSIONS OF LAW

A. Summary Judgment

1. Under Nevada law, a party may seek summary judgment when there a facts in dispute and the moving party is entitled to judgment as a matter of law. *NRCP* 56. When a party properly moves for and supports a motion for summary judgment, the party opposing the motion must bring forth "specific facts demonstrating the existence of a genuine issue for trial . . . by affidavit or otherwise" and, if he does not, summary judgment should be entered in favor of the moving party. *Wood v. Safeway,* 121 Nev. 724, 121 P.3d (1920) (2005).

2. There is no genuine issue for trial because Luxor is not responsible for the intentional conduct of its employee in this matter. *Nevada Revised Statue* 41.745 limits an employer's liability for injury caused by the intentional conduct of an employee. That statute provides, in pertinent part:

> *An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:*
>
> *(a) Was a truly independent venture of the employee;*
> *(b) Was not committed in the course of the very task assigned to the employee; and*
> *(c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment.*
>
> *For the purposes of this subsection, conduct of an employee is reasonable*

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foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

[Emphasis added].

3. Summary judgment on the issue of respondeat superior liability in favor of the employer is appropriate where the undisputed facts show an employee acted "outside the scope of his employment and was not furthering the business interests" of the employer. *Burnett v. CBA Security Service,* 107 Nev. 787, 789, 820 P.2d 750 (1991).

4. "When there is undisputed evidence concerning the employee's status at the time of the tortious act the issue may be resolved as a matter of law." *Rockwell v. Sun Harbor Budget Suites,* 112 Nev. 1217, 1225 (1996); *Moleno v. Asher,* 96 Nev. 814, 818, 618 P.2d 880 (1980).

5. When "there is no material dispute as to when and where the . . . inappropriate contact occurred . . . [a] case is ripe for . . . determination." *Jane Doe A v. Jeremy Green,* 298 F. Supp.2d 1025, 1041 (D. Nev. 2004).

6. In this matter, there are no disputes as to when, where and how the assault occurred.

7. Austin's assault on Cara Driggers was a truly independent venture outside the course and scope of his employment. *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005).

8. Even though Austin was on the premises and had access to Plaintiff's hotel room as a result of his employment, the entry into the room and the assault were not committed within the course of the work and assigned tasks given to Austin. *Id.*

9. Luxor can only be liable if "the employee's intentional conduct [was] foreseeable under the circumstances." *Id.*

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10. An employee's act is reasonable foreseeable only if the employer has reasonable cause to anticipate the criminal act and the resulting injury. *Id.*

11. The standard for foreseeability in the context of respondeat superior is different than the standard for negligence:

> *'[F]oreseeability' in this context must be distinguished from 'foreseeability' as a test for negligence. In the latter sense 'foreseeable' means a level of probability which would lead a prudent person to take effective precautions whereas 'foreseeability' as a test for respondeat superior merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business. In other words, where the question is one of vicarious liability, the inquiry should be whether the risk was one 'that may fairly be regarded as typical of or broadly incidental' to the enterprise under-taken by the employer.*

Id. At 740 citing *Rodgers v. Kemper Construction Co.,* 50 Cal.App.3d 608, 124 Cal.Rptr. 143, 148-49 (Cal.App. 1975) (citations omitted).

12. Luxor had no reason to believe Austin would commit a sexual assault. Austin received the General Rules of Conduct, which outlines conduct employees should or should not engage in, including but committing sexual assaults.

13. In addition, Luxor required proof of identification, checked employee references, conducted drug testing and determined Austin had no prior criminal history. There was no reason for Luxor to believe Austin would commit a sexual assault.

14. Austin's assault is repugnant and startling.

15. The risk that Austin would sexually assault a customer is not one that is "typical" or "broadly incidental" to Luxor's business. *Id.*

16. "A sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions."

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Lisa M. v. Henry Mayo Newhall Memorial Hospital, 907 P.2d 358, 364 (Cal. 1995).

17. Austin's decision to commit the sexual tort on Cara Driggers did not arise out of the performance of his job duties.

18. Austin "simply took advantage of solitude, access and superior knowledge to commit a sexual assault" on Plaintiff. *Id.* At 365.

19. Although the circumstances of his job made it possible, Austin's actions were "entirely of his own, independent invention. For this reason it would be unfair and inconsistent with the basic rationale of respondeat superior to impose liability." *Id.* At 367.

20. *Prell Hotel Corp. v. Antonacci,* 86 Nev. 390, 469 P.2d 399 (1970) is distinguishable here because Austin was not acting in the course and scope of his employment or in the course of the task assigned to him at the time he entered Plaintiff's room or committed the assault. See, *Wood*, 121 Nev. At 724, 738-739 (2005).

21. *Rockwell v. Sun Harbor Budget Suites,* 112 Nev. 1217, 1225 (1996), is distinguishable here because there is no question of fact that sexually assaulting a guest is outside the course and scope of Austin's employment.

22. The remaining cases cited by Plaintiff are distinguishable because they all involve "special relationships" of trust between the victim and assailant. See, *Lisa M. v. Henry Mayo Newhall Memorial Hosp.*, 907 P.2d 358, 364 (Cal. 1995). No such relationship exists between a hotel employee and a hotel guest.

i. Assault and Battery.

23. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway, Id.* and

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

these claims are dismissed as to Luxor.

ii. False Arrest and False Imprisonment.

24. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

iii. Intentional Infliction of Emotional Distress.

25. Austin's sexual assault on Cara Driggers was an independent venture outside

the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

iv. Negligent Infliction of Emotional Distress.

26. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

v. Negligent Use of Excessive Force.

27. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

vii. Punitive Damages.

28. Plaintiff's claim for punitive damages fails as a matter of law. In *Smith's Food & Drug Center v. Bellegarde,* the Nevada Supreme Court adopted the standard set forth in Restatement (Second) of Torts Section 909 (1979). The section provides:

> Punitive damages can properly be awarded against a master or other principle because of an act by an agent if, but only if:

(a) a principle or a managerial agent authorized the doing and the manner of the act, or;
(b) the agent was unfit and the principle or managerial agent was wreckless in employing or retaining him, or;
(c) the agent was employed in a managerial capacity and was acting in the scope of employment, or;
(d) the principle or managerial agent of the principle ratified or approved the act.

Bellagarde, 114 Nev. 602, 610-611, 958 P.2d 1208, 1214 (1998).

In this case, Austin was merely an employee and had no managerial authority. Further, there are no other facts or evidence which would subject Luxor to punitive damages. These claims are dismissed as to Luxor.

II. ORDER OF THE COURT

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that: Defendant's Motion for Summary Judgment is GRANTED on Plaintiff's claims for assault and battery, false arrest and false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent use of excessive force, and punitive damages.

Summary Judgment is also GRANTED on Plaintiff's claim for negligent hiring pursuant to the agreement of the parties. Summary Judgment is DENIED as to the negligent training, supervison and retention claims as they were not sought in the Motion and thus were not before the Court.

DATED this 24 day of March, 2014.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

[Tab 9]

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CLERK OF THE COURT

NOE
MARTIN J. KRAVITZ, ESQ.
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DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS, Plaintiff, v. RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive, Defendants.	Case No. A-13-678269-C Dept. No. XXI
RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, Cross Claimant, v. TERRENCE DAVID AUSTIN, Cross Defendant.	

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART DEFENDANT RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO's MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law and Order Granting in Part Ramparts, Inc. d/b/a Luxor Hotel & Casino's Motion for Summary Judgment

was entered in the above-entitled matter on the 24th day of March, 2014. A copy of said Order is attached hereto.

DATED this 27 day of March, 2014.

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

MARTIN J. KRAVITZ, ESQ.
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 21 day of March, 2014, I served a true and correct copy of **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART DEFENDANT RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO's MOTION FOR SUMMARY JUDGMENT** by placing same in the U.S. Mail, postage prepaid, addressed to the following:

Alex De Castroverde, Esq.
Orlando De Castroverde, Esq.
Kimberly Valentin, Esq.
DE CASTROVERDE LAW GROUP
1149 South Maryland Parkway
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Attorneys for Plaintiff

An Employee of Kravitz, Schnitzer & Johnson, Chtd.

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ORDR

CARA DRIGGERS,

Plaintiff,

v.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive,

Defendants.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO,

Cross Claimant,

v.

TERRENCE DAVID AUSTIN,

Cross Defendant.

Case No. A-13-678269-C

Dept. No. XXXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART DEFENDANT RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO's MOTION FOR SUMMARY JUDGMENT

On March 6, 2014, this matter came on for hearing before the Honorable Joanna S. Kishner, with Gina M. Mushmeche, Esq. appearing for the Defendant Ramparts, Inc., d/b/a Luxor Hotel & Casino ("Luxor") and Orlando De Castroverde, Esq. appearing for Plaintiff, Cara Driggers. The Court, having read and considered the pleadings on file including Defendant's Motion for Summary Judgment, Plaintiff's Opposition, and Defendant's Reply thereto, and having considered the oral arguments of counsel, being fully advised on the premises, and good cause appearing, therefore makes the following findings of fact, conclusions of law and Order.:

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

I. FINDINGS OF FACT

SUBSTANTIVE FACTS

The Court finds the following facts undisputed, material and controlling:

1. Austin was employed as a Security Officer by Luxor on June 17, 2012

2. Luxor's employees, including Austin, all received a copy of the General Rules of Conduct for employees.

3. The General Rules of Conduct prohibit employees from offensive conduct towards guests.

4. Sexually assaulting a guest is clearly offensive conduct.

5. The General Rules of Conduct prohibit employees from violating any federal, state or local laws.

6. Sexually assaulting a guest in a room violates several laws including but not limited to *Nevada Revised Statute* ("*NRS*") 200.364 (Sexual Assault), *NRS* 200.400 (Battery with intent to commit a crime), *NRS* 200.481 (Battery), *NRS* 200.460 (False Imprisonment), and *NRS* 200.471 (Assault).

7. The General Rules of Conduct prohibit employees from participating in conduct which would in any way reflect adversely on the company.

8. Sexually assaulting a guest clearly reflects adversely on the company.

9. The General Rules of Conduct prohibit employees from using physical force against another person.

10. Sexually assaulting a guest requires using physical force against another person.

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DISTRICT JUDGE
DEPARTMENT XXXI
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11. Prior to being hired, Luxor required Austin to show proof of identification.

12. Prior to being hired Luxor checked Austin's references.

13. Prior to being hired, Luxor drug tested Austin.

14. Prior to being hired, Luxor determined Austin had no prior criminal history by searching his name and social security number.

15. In fact, Austin was in the process of potentially being promoted to a supervisory position with security.

16. In connection with that promotion and as part of that application process, another background check was conducted on June 15, 2012, two (2) days before the incident subject of this lawsuit.

17. On June 17, 2012, Cara Driggers and a companion arrived at the Luxor.

18. Cara Driggers and her companion were having trouble locating their friend's hotel room.

19. Cara Driggers and her companion approached security officers including Co-Defendant Austin, requesting assistance.

20. Austin proceeded to escort Cara Driggers and her companion.

21. Cara Driggers alleges Austin was not invited in the room and she assumed he left.

22. Cara Driggers' companion used her room key to enter Room No. 19345.

23. Upon entering the room, Cara Driggers alleges Austin sexually assaulted her.

24. After the alleged sexual assault, Cara Driggers testified that:

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DEPARTMENT XXXI
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Question: *So you were getting ready to call the police that night and Angela stopped you?*

Answer: *She said, I'm married, and - - well, she said, Please don't. I'm married. I have two kids. She's, like, my husband and I are separated. That's why I'm here. Girls' vacation. Please don't. If I - - if I have to be a witness, she's, like, I can't. And she's, like, I can't be a witness. I'll lose my kids.*

. . .

And I remember telling her, Well, that's not my fucking fault. Because guess what? I'm single. I'm an adult. And I can do what the hell I want. *I can go out drinking. I can be here with you. I'm not doing anything wrong being here with you.*

25. Cara Driggers did not report the alleged sexual assault until the next day and she testified:

Answer: *As soon as we get down the elevator, I bolt. I run through the casino, full speed, to the registration desk. And I'm, like, Please, help me. There's, like, a huge line at registration. And there's, like, a guy. And I'm, like - - I'm, like, Please, help me. Please, help me. I'm, like, I was sexually assaulted. Please, I need - - I need to see a supervisor. Get me somebody. I'm, like, I have a witness.*

Question: *And - - and let me stop you. So what time is this?*

Answer: *Maybe 11:30 or 12.*

Question: *Okay.*

Answer: *And I'm telling the guy - - and I'm trying to be quiet at first because there's a huge line.*

. . .

But I was, like, You get me somebody.

. . .

And he was, like, acting like it was no big deal. Like, calm down. Be quiet. He was, like, a total dick.

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DISTRICT JUDGE
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> *And then I was, like, you want me to start getting loud? I'm like - - because I was sexually assaulted by one your security guards. I just started getting loud.*
>
> . . .
>
> *And he's, like, Okay. Come here. Come here.*
>
> *And he's, like, Okay. Okay. What - - okay. What happened?*
>
> *And I'm, like, get me somebody down here.* ***I don't want to tell you. It's none of your fucking business.*** *I'm, like, Get me a security guard - - I mean, a manager now. I'm, like, I have a witness. She could be leaving town. I don't know who she is. I don't - - and I need a statement from her. Please, somebody has to help me. This is my witness. Please. She doesn't want to cooperate.*
>
> . . .
>
> *And I'm, like, Please, can somebody come with me right now to go get her and make her. You guys have to make her give a statement.*
>
> ***And he said - - fuck - - fucking - - this guy was such an asshole.***

26. Initially, Cara Driggers indicated that she did not want to press charges.

27. Luxor immediately suspended Austin pending investigation, investigated the incident and two days later Austin was terminated for violating company policy.

28. There is an outstanding warrant for Austin's arrest for the alleged crimes.

29. Cara Driggers agreed during her deposition that Luxor did not have a policy that would have allowed Terrence Austin to sexually assault her.

30. Cara Driggers also testified that she sued Terrence Austin because he committed an intentional criminal act (sexual assault) against her.

31. Steven Peterson, Director of Security for Luxor, testified that the officer was responsible for his conduct and that Luxor is not responsible for the act of one person

who went rogue, and did what he did on his own.

32. Dede Aspero, Former Director of Human Resources for Luxor, testified that Luxor was not responsible because the person who committed the crime [Austin] should be held responsible.

33. Plaintiff and another female guest approached Defendant Austin, Zachary Ford, and an unidentified male, to ask for guidance on how to get to their hotel room.

34. At the time, Defendant Austin and Zachary Ford were employed as grave yard shift security guards by Defendant Luxor.

35. Defendant Austin escorted both Plaintiff and the second female guest arm in arm across Defendant's hotel lobby to the elevators and up to their room

36. Defendant Austin entered the room uninvited and sexually assaulted Plaintiff.

37. At the time of the assault, Defendant's policy was that a female guest required a two-officer escort, and if possible, one of the officers should be a female.

38. At the time of the assault, Defendant's policy was that when a security officer left his post on an escort, he should inform dispatch.

39. Defendant Austin did not inform dispatch that he was leaving on an escort.

PROCEDURAL FACTS

40. Cara Driggers filed a Complaint on March 13, 2013, alleging causes of action for assault and battery, false arrest and false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent use of excessive force, negligent hiring, training, supervision and retention and punitive damages.

41. Luxor moved for summary judgment on the basis that Nevada law holds that

Luxor cannot be held liable for Austin's independent act that was not in the scope of his employment and only motivated by Austin's own interests. Luxor also contended his criminal acts were intervening and superceding.

42. While Plaintiff filed an Opposition to Luxor's Motion for Summary Judgment, she agreed to abandon her claim for negligent hiring.

II. CONCLUSIONS OF LAW

A. Summary Judgment

1. Under Nevada law, a party may seek summary judgment when there a facts in dispute and the moving party is entitled to judgment as a matter of law. *NRCP* 56. When a party properly moves for and supports a motion for summary judgment, the party opposing the motion must bring forth "specific facts demonstrating the existence of a genuine issue for trial . . . by affidavit or otherwise" and, if he does not, summary judgment should be entered in favor of the moving party. *Wood v. Safeway,* 121 Nev. 724, 121 P.3d (1920) (2005).

2. There is no genuine issue for trial because Luxor is not responsible for the intentional conduct of its employee in this matter. *Nevada Revised Statue* 41.745 limits an employer's liability for injury caused by the intentional conduct of an employee. That statute provides, in pertinent part:

> *An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:*
>
> *(a) Was a truly independent venture of the employee;*
> *(b) Was not committed in the course of the very task assigned to the employee; and*
> *(c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment.*
>
> *For the purposes of this subsection, conduct of an employee is reasonable*

JOANNA S. KISHNER
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LAS VEGAS, NEVADA 89155

foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

[Emphasis added].

3. Summary judgment on the issue of respondeat superior liability in favor of the employer is appropriate where the undisputed facts show an employee acted "outside the scope of his employment and was not furthering the business interests" of the employer. *Burnett v. CBA Security Service,* 107 Nev. 787, 789, 820 P.2d 750 (1991).

4. "When there is undisputed evidence concerning the employee's status at the time of the tortious act the issue may be resolved as a matter of law." *Rockwell v. Sun Harbor Budget Suites,* 112 Nev. 1217, 1225 (1996); *Moleno v. Asher,* 96 Nev. 814, 818, 618 P.2d 880 (1980).

5. When "there is no material dispute as to when and where the . . . inappropriate contact occurred . . . [a] case is ripe for . . . determination." *Jane Doe A v. Jeremy Green,* 298 F. Supp.2d 1025, 1041 (D. Nev. 2004).

6. In this matter, there are no disputes as to when, where and how the assault occurred.

7. Austin's assault on Cara Driggers was a truly independent venture outside the course and scope of his employment. *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005).

8. Even though Austin was on the premises and had access to Plaintiff's hotel room as a result of his employment, the entry into the room and the assault were not committed within the course of the work and assigned tasks given to Austin. *Id.*

9. Luxor can only be liable if "the employee's intentional conduct [was] foreseeable under the circumstances." *Id.*

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DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

10. An employee's act is reasonable foreseeable only if the employer has reasonable cause to anticipate the criminal act and the resulting injury. *Id.*

11. The standard for foreseeability in the context of respondeat superior is different than the standard for negligence:

> *'[F]oreseeability' in this context must be distinguished from 'foreseeability' as a test for negligence. In the latter sense 'foreseeable' means a level of probability which would lead a prudent person to take effective precautions whereas 'foreseeability' as a test for respondeat superior merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business. In other words, where the question is one of vicarious liability, the inquiry should be whether the risk was one 'that may fairly be regarded as typical of or broadly incidental' to the enterprise under-taken by the employer.*

Id. At 740 citing *Rodgers v. Kemper Construction Co.,* 50 Cal.App.3d 608, 124 Cal.Rptr. 143, 148-49 (Cal.App. 1975) (citations omitted).

12. Luxor had no reason to believe Austin would commit a sexual assault. Austin received the General Rules of Conduct, which outlines conduct employees should or should not engage in, including but committing sexual assaults.

13. In addition, Luxor required proof of identification, checked employee references, conducted drug testing and determined Austin had no prior criminal history. There was no reason for Luxor to believe Austin would commit a sexual assault.

14. Austin's assault is repugnant and startling.

15. The risk that Austin would sexually assault a customer is not one that is "typical" or "broadly incidental" to Luxor's business. *Id.*

16. "A sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions."

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

Lisa M. v. Henry Mayo Newhall Memorial Hospital, 907 P.2d 358, 364 (Cal. 1995).

17. Austin's decision to commit the sexual tort on Cara Driggers did not arise out of the performance of his job duties.

18. Austin "simply took advantage of solitude, access and superior knowledge to commit a sexual assault" on Plaintiff. *Id.* At 365.

19. Although the circumstances of his job made it possible, Austin's actions were "entirely of his own, independent invention. For this reason it would be unfair and inconsistent with the basic rationale of respondeat superior to impose liability." *Id.* At 367.

20. *Prell Hotel Corp. v. Antonacci*, 86 Nev. 390, 469 P.2d 399 (1970) is distinguishable here because Austin was not acting in the course and scope of his employment or in the course of the task assigned to him at the time he entered Plaintiff's room or committed the assault. See, *Wood*, 121 Nev. At 724, 738-739 (2005).

21. *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1225 (1996), is distinguishable here because there is no question of fact that sexually assaulting a guest is outside the course and scope of Austin's employment.

22. The remaining cases cited by Plaintiff are distinguishable because they all involve "special relationships" of trust between the victim and assailant. See, *Lisa M. v. Henry Mayo Newhall Memorial Hosp.*, 907 P.2d 358, 364 (Cal. 1995). No such relationship exists between a hotel employee and a hotel guest.

i. Assault and Battery.

23. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway, Id.* and

these claims are dismissed as to Luxor.

ii. False Arrest and False Imprisonment.

24. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

iii. Intentional Infliction of Emotional Distress.

25. Austin's sexual assault on Cara Driggers was an independent venture outside

the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

iv. Negligent Infliction of Emotional Distress.

26. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

v. Negligent Use of Excessive Force.

27. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

vii. Punitive Damages.

28. Plaintiff's claim for punitive damages fails as a matter of law. In *Smith's Food & Drug Center v. Bellegarde,* the Nevada Supreme Court adopted the standard set forth in Restatement (Second) of Torts Section 909 (1979). The section provides:

> Punitive damages can properly be awarded against a master or other principle because of an act by an agent if, but only if:

(a) a principle or a managerial agent authorized the doing and the manner of the act, or;
(b) the agent was unfit and the principle or managerial agent was wreckless in employing or retaining him, or;
(c) the agent was employed in a managerial capacity and was acting in the scope of employment, or;
(d) the principle or managerial agent of the principle ratified or approved the act.

Bellagarde, 114 Nev. 602, 610-611, 958 P.2d 1208, 1214 (1998).

In this case, Austin was merely an employee and had no managerial authority. Further, there are no other facts or evidence which would subject Luxor to punitive damages. These claims are dismissed as to Luxor.

II. ORDER OF THE COURT

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that: Defendant's Motion for Summary Judgment is GRANTED on Plaintiff's claims for assault and battery, false arrest and false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent use of excessive force, and punitive damages.

Summary Judgment is also GRANTED on Plaintiff's claim for negligent hiring pursuant to the agreement of the parties. Summary Judgment is DENIED as to the negligent training, supervison and retention claims as they were not sought in the Motion and thus were not before the Court.

DATED this 24 day of March, 2014.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

[Tab 10]

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CLERK OF THE COURT

ORDER

MARTIN J. KRAVITZ, ESQ.
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DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS, Plaintiff, v. RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive, Defendants.	Case No. A-13-678269-C Dept. No. XXXI **ORDER DENYING PLAINTIFF'S MOTION FOR IMMEDIATE STAY ON ORDER SHORTENING TIME**
RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, Cross Claimant, v. TERRENCE DAVID AUSTIN, Cross Defendant.	

On March 25, 2014, this matter came on for hearing before the Honorable Joanna S. Kishner, with Kimberly Valentin, Esq. appearing for plaintiff, Cara Driggers and Gina Mushmeche, Esq. appearing for the Defendant Ramparts, Inc., d/b/a Luxor Hotel & Casino ("Luxor") The Court, having read and considered the pleadings on file including Plaintiff's

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Motion for Immediate Stay on and Order Shortening Time, Defendant's Opposition, and having considered the oral arguments of counsel, rules as follows:

IT IS ORDERED that Plaintiff's Motion for Immediate Stay on and Order Shortening Time is denied.

IT IS SO ORDERED.

DATED this 2nd day of ~~March,~~ April 2014.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Respectfully Submitted by:

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

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12509

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[Tab 11]

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DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS,

Plaintiff,

v.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive,

Defendants.

Case No. A-13-678269-C

Dept. No. XXXI

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO,

Cross Claimant,

v.

TERRENCE DAVID AUSTIN,

Cross Defendant.

NOTICE OF ENTRY OF ORDER DENYING PLANTIFF'S MOTION FOR IMMEDIATE STAY ON ORDER SHORTENING TIME

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Immediate Stay on Order Shortening Time was entered in the above-entitled matter on the 2nd day of April,

///

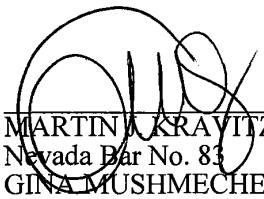
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2014. A copy of said Order is attached hereto.

DATED this 7th day of April, 2014.

KRAVITZ, SCHNITZER & JOHNSON CHTD.



MARTIN J. KRAVITZ, ESQ.
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Attorneys for Defendants Ramparts, Inc. d/b/a Luxor Hotel & Casino

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 7th day of April, 2014, I placed a true and correct copy of the foregoing Notice of Entry of Order in the U.S. Mail with postage pre-paid and addressed to the following counsel of record:

Alex De Castroverde, Esq.
Orlando De Castroverde, Esq.
Kimberly Valentin, Esq.
DE CASTROVERDE LAW GROUP
1149 South Maryland Parkway
Las Vegas, Nevada 89104
Attorneys for Plaintiff



An employee of Kravitz, Schnitzer,& Johnson, Chtd.

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CLERK OF THE COURT

ORDER

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DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS,

Plaintiff,

v.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive,

Defendants.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO,

Cross Claimant,

v.

TERRENCE DAVID AUSTIN,

Cross Defendant.

Case No. A-13-678269-C

Dept. No. XXXI

ORDER DENYING PLAINTIFF'S MOTION FOR IMMEDIATE STAY ON ORDER SHORTENING TIME

On March 25, 2014, this matter came on for hearing before the Honorable Joanna S. Kishner, with Kimberly Valentin, Esq. appearing for plaintiff, Cara Driggers and Gina Mushmeche, Esq. appearing for the Defendant Ramparts, Inc., d/b/a Luxor Hotel & Casino ("Luxor") The Court, having read and considered the pleadings on file including Plaintiff's

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Motion for Immediate Stay on and Order Shortening Time, Defendant's Opposition, and having considered the oral arguments of counsel, rules as follows:

IT IS ORDERED that Plaintiff's Motion for Immediate Stay on and Order Shortening Time is denied.

IT IS SO ORDERED.

DATED this 2nd day of ~~March,~~ April 2014.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Respectfully Submitted by:

KRAVITZ, SCHNITZER & JOHNSON, CHTD.

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Approved as to form and content

12509

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CLERK OF THE COURT

MSJ

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DISTRICT COURT

CLARK COUNTY, NEVADA

CARA DRIGGERS, Plaintiff, v. RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive, Defendants.	Case No. A-13-678269-C Dept. No. XXXI **DEFENDANT RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS OF NEGLIGENT TRAINING, SUPERVISION AND RETENTION**

COMES NOW, Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino, (hereinafter "Luxor") by and through its counsel of record, the law firm of Kravitz, Schnitzer & Johnson, Chtd., and hereby files this Motion for Summary Judgment on Plaintiff's Claims of Negligent Training, Supervision and Retention.

This motion is made and based upon all the pleadings and papers on file herein, the following Memorandum of Points and Authorities, the attached exhibits, and any oral argument of counsel as may be permitted at the hearing on this matter.

DATED this 10th day of APRIL, 2014.

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring ***DEFENDANT RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS OF NEGLIGENT TRAINING, SUPERVISION AND RETENTION*** on for hearing before this Court on the 13 day of May, 2014 at the hour of 9:30am .m., or as soon thereafter as counsel may be heard in Department 31.

DATED this 10th day of APRIL, 2014.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case involves an unfortunate incident at Luxor Hotel & Casino where Plaintiff, Cara Driggers ("Plaintiff") was sexually assaulted inside a hotel room by one of Luxor's ex-employees, Terrence David Austin ("Austin"). On March 6, 2014, this Court granted Luxor's Motion for Partial Summary Judgment on Plaintiff Cara Drigger's claims for assault and battery, false arrest and false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent use of excessive force, and punitive damages. *See* **Exhibit 1**. This Court also determined that Plaintiff's claims for negligent training, supervision, and retention were not sought in the Motion for Summary Jeudgment and were not before the Court at that time. *Id.* Luxor now seeks summary judgment on Plaintiff's remaining claims of negligent training, supervision and retention. As discussed more fully below, summary judgment should be granted in Luxor's favor because it neither breached its duty to Plaintiff, nor was the proximate cause of her harm.

The undisputed facts demonstrate that Luxor did not breach its duty to train, supervise or retain Austin while he was employed by Luxor as a security officer. Austin participated in Luxor's month-long training program for security officers as a new hire. Austin was observed, evaluated and tested to ensure he understood the policies and procedures. Austin was trained regarding Luxor's two-guard policy for guest escorts, and was informed of the policy to notify dispatch of any guest escorts. Luxor trained Austin regarding its policy against sexual harassment and assault. Moreover, on the night of the events in question Austin was properly supervised by a Luxor Security Manager.

While employed, Austin gave Luxor no reason to believe that he was violent in nature. He had no criminal background, and received positive reviews about his disposition during training.

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Once Luxor learned of his outrageous conduct subject to this lawsuit, he was suspended and then terminated. Although Austin eventually failed to follow policy, this is not evidence that the policy was inadequate. Because the undisputed facts demonstrate Luxor took reasonable care to train, supervise and retain Austin, summary judgment should granted.

Moreover, even if Luxor did not properly train, supervise or retain Austin, his independent actions are an intervening cause precluding Luxor from liability. Claims for negligence will not stand in Nevada when there is an unforeseeable intervening cause that "in and of itself is the natural and logical cause of the harm." *Wood v. Safeway, Inc.*, 121 Nev. 724, 740-741 (Nev. 2005); *Bower v. Harrah's Laughlin, Inc.*, 215 P.3d 709, 725 (2009). Here, Austin's actions were not foreseeable. Luxor checked Austin's references, ran two (2) background checks, observed Austin to have a cheerful disposition, and never disciplined Austin for any violent or sexually inappropriate behavior. In fact, this Court, in ruling on the previous summary judgment motion, determined that "***Luxor had no reason to believe Austin would commit a sexual assault***." *See* **Exhibit 1**. It was not foreseeable that Austin would commit a sexual assault against a guest. Austin made an independent, unanticipated decision to ignore his training, violated Luxor policy and committed a crime. Austin's actions were the unforeseeable intervening cause of Plaintiff's harm. As the undisputed facts evidence that Luxor was not the cause of Plaintiff's harm, summary judgment should be granted in its favor.

II. UNDISPUTED FACTS

A. JUDICIALLY DETERMINED UNDISPUTED FACTS

The Court, in its March 24, 2014 Order on Defendant's Motion for Summary Judgment (attached as **Exhibit 1**), found the following facts undisputed, material and controlling:

1. Austin was employed as a Security Officer by Luxor on June 17, 2012.
2. Luxor's employees, including Austin, all received a copy of the General Rules of

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Conduct for employees.

3. The General Rules of Conduct prohibit employees from offensive conduct towards guests.

4. Sexually assaulting a guest is clearly offensive conduct.

5. The General Rules of Conduct prohibit employees from violating any federal, state or local laws.

6. Sexually assaulting a guest in a room violates several laws including but not limited to *Nevada Revised Statute* ("*NRS*") 200.364 (Sexual Assault), *NRS* 200.400 (Battery with intent to commit a crime), *NRS* 200.481 (Battery), *NRS* 200.460 (False Imprisonment), and *NRS* 200.471 (Assault).

7. The General Rules of Conduct prohibit employees from participating in conduct which would in any way reflect adversely on the company.

8. Sexually assaulting a guest clearly reflects adversely on the company.

9. The General Rules of Conduct prohibit employees from using physical force against another person.

10. Sexually assaulting a guest requires using physical force against another person.

11. Prior to being hired, Luxor required Austin to show proof of identification.

12. Prior to being hired Luxor checked Austin's references.

13. Prior to being hired, Luxor drug tested Austin.

14. Prior to being hired, Luxor determined Austin had no prior criminal history by searching his name and social security number.

15. In fact, Austin was in the process of potentially being promoted to a supervisory position with security.

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16. In connection with that promotion and as part of that application process, another background check was conducted on June 15, 2012, two (2) days before the incident subject of this lawsuit.

17. On June 17, 2012, Cara Driggers and a companion arrived at the Luxor.

18. Cara Driggers and her companion were having trouble locating their friend's hotel room.

19. Cara Driggers and her companion approached security officers including Co-Defendant Austin, requesting assistance.

20. Austin proceeded to escort Cara Driggers and her companion.

21. Cara Driggers alleges Austin was not invited in the room and she assumed he left.

22. Cara Driggers' companion used her room key to enter Room No. 19345.

23. Upon entering the room, Cara Driggers alleges Austin sexually assaulted her.

...
...
...

27. Luxor immediately suspended Austin pending investigation, investigated the incident and two days later Austin was terminated for violating company policy.

28. There is an outstanding warrant for Austin's arrest for the alleged crimes.

29. Cara Driggers agreed during her deposition that Luxor did not have a policy that would have allowed Terrence Austin to sexually assault her.

30. Cara Driggers also testified that she sued Terrence Austin because he committed an intentional criminal act (sexual assault) against her.

31. Steven Petersen, Director of Security for Luxor, testified that the officer was responsible for his conduct and that Luxor is not responsible for the act of one person who went rogue, and did what he did on his own.

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32. Dede Aspero, Former Director of Human Resources for Luxor, testified that Luxor was not responsible because the person who committed the crime [Austin] should be held responsible.

33. Plaintiff and another female guest approached Defendant Austin, Zachary Ford, and an unidentified male, to ask for guidance on how to get to their hotel room.

34. At the time, Defendant Austin and Zachary Ford were employed as grave yard shift security guards by Defendant Luxor.

35. Defendant Austin escorted both Plaintiff and the second female guest arm in arm across Defendant's hotel lobby to the elevators and up to their room

36. Defendant Austin entered the room uninvited and sexually assaulted Plaintiff.

37. At the time of the assault, Defendant's policy was that a female guest required a two-officer escort, and if possible, one of the officers should be a female.

38. At the time of the assault, Defendant's policy was that when a security officer left his post on an escort, he should inform dispatch.

39. Defendant Austin did not inform dispatch that he was leaving on an escort.

B. ADDITIONAL STATEMENT OF UNDISPUTED FACTS RELEVANT TO TRAINING AND SUPERVISION

1. Before Austin began working as a security officer, Luxor provided him with at least four (4) weeks of field training to learn how to act as a security officer prior to beginning work. *See* **Exhibit 2**, Austin's Training File, Drig00571-00656; *See* **Exhibit 3**, Deposition Steven Petersen 56:11-18.

2. During this four (4) weeks of field training, Austin was evaluated, observed and coached to ensure he understood the policies and procedures. *See* Exhibit 2.

3. Austin acknowledged that "all guests and fellow employees will be respected, fairly

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treated . . ." and that he "will always have their safety and security as [his] number one policy. *See* **Exhibit 2**, Drig00629.

4. Austin was described by his Field Training Officer as "a pleasure to train and evaluate." *See* **Exhibit 2**, Austin's Training File Drig00638.

5. Austin also received classroom training, first responder training, defensive tactics training, haz-com training, and hazardous communications training. *See* **Exhibit 3**, Deposition Steven Petersen 56:15-23.

6. Austin learned about Luxor's policy that when escorting a female guest to her room, two officers (preferably one female) should escort the guest. *See* **Exhibit 3,** Deposition of Steven Petersen 56:24-25, 57:1-8.

7. Austin received additional training throughout his tenure as a security officer at Luxor. *See* **Exhibit 2**.

8. On the night of the events subject to this lawsuit, an Assistant Security Shift Manger was on duty at the Luxor and responsible for supervision of Austin. *See* **Exhibit 5**, Steven Petersen Affidavit.

9. The Security Shift Manager's duties are to consistently walk around the property, monitor radio traffic, respond to incidents occurring on the property, and supervise the actions of the security officers assigned to the current shift. *Id.*

10. The Luxor Security Manual States that both Assistant Security Shift Managers and Security Shift Managers are tasked with oversight of all daily operations of the security shift and have authority to administer manager responsibilities over Security Officers. *Id.*

11. On the night of the events subject to this lawsuit, Austin was acting under the supervision of this Security Shift Manager on duty. *Id.*

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12. Austin had not previously displayed any behavior warranting additional supervision on the part of the Security Manager. *Id.*

13. Steven Petersen, Director of Security for Luxor, testified that this is the first time a security officer was accused of sexually assaulting a guest in his over twenty (20) years working for Luxor. *See* **Exhibit 3**, Steven Petersen Deposition 88:10-16.

14. Prior to the incident in question, Austin was not disciplined for violent or sexually inappropriate behavior. *See* **Exhibit 4**, Austin's Personnel File

15. Austin had never been suspected of, and never exhibited any violent or sexually inappropriate behavior prior to the incident in question. *See* **Exhibits 2, and 4**.

III. JUDICIALLY DETERMINED CONCLUSIONS OF LAW

The Court, in its March 24, 2014 order on Defendant's Motion for Summary Judgment also held the following conclusion of law were applicable to the facts of this case:

...

6. In this matter, there are no disputes as to when, where and how the assault occurred.

7. **Austin's assault on Cara Driggers was a truly independent venture outside the course and scope of his employment.** *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005)(emphasis added).

8. Even though Austin was on the premises and had access to Plaintiff's hotel room as a result of his employment, the entry into the room and the assault were not committed within the course of the work and assigned tasks given to Austin. *Id.*

9. Luxor can only be liable if "the employee's intentional conduct [was] foreseeable under the circumstances." *Id.*

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10. An employee's act is reasonably foreseeable only if the employer has reasonable cause to anticipate the criminal act and the resulting injury. *Id.*

...

12. ***Luxor had no reason to believe Austin would commit a sexual assault***. Austin received the General Rules of Conduct, which outlines conduct employees should or should not engage in, including but committing sexual assaults.

13. In addition, Luxor required proof of identification, checked employee references, conducted drug testing and determined Austin had no prior criminal history. ***There was no reason for Luxor to believe Austin would commit a sexual assault***.

14. Austin's assault is repugnant and startling.

....

17. Austin's decision to commit the sexual tort on Cara Driggers did not arise out of the performance of his job duties.

18. Austin "simply took advantage of solitude, access and superior knowledge to commit a sexual assault" on Plaintiff.

19. Although the circumstances of his job made it possible, Austin's actions were "entirely of his own, independent invention. For this reason it would be unfair and inconsistent with the basic rationale of respondeat superior to impose liability."

IV. STATEMENT OF LAW

A. SUMMARY JUDGMENT STANDARD.

Summary Judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions and affidavits, if any, that are properly before the Court demonstrate that no genuine issue of material fact exist, and the moving party is entitled to judgment as a matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

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Substantive law controls whether factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

The Nevada Supreme Court has held that the non-moving party may not defeat a Motion for Summary Judgment by relying "on gossamer threads of whimsy, speculation and conjecture." *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada Supreme Court has also made it abundantly clear when a Motion for Summary Judgment is made and supported as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon general allegations and conclusions, but must by affidavit or otherwise set forth specific facts demonstrating the existence of a genuine factual issue. *Id.*

The pleadings and proof offered in a Motion for Summary Judgment are construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still "bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered." *Wood*, 121 Nev. at 732, 121 P.3d at 1031.

The non-moving party bears the burden to set forth specific facts demonstrating the existence of a "genuine" issue for trial or have summary judgment entered against him. *Collins v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). When there is no genuine issue of material fact and the non-moving party provides no admissible evidence to the contrary, summary judgment is "mandated." *Celotex Corp. v. Catrett*, 477 US 317, 322 (1986).

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Here, there is no genuine issue for trial. The undisputed facts demonstrate that Defendant's Motion for Summary Judgment on Plaintiff's claim for negligent training, hiring and retention should be granted.

B. UNDISPUTED FACTS DEMONSTRATE LUXOR IS NOT LIABLE FOR NEGLIGENT TRAINING, SUPERVISION OR RETENTION

To prevail on her claim for negligent training or supervision, Plaintiff must show "(1) a general duty on the employer to use reasonable care in the training and/or supervision of employees to ensure that they are fit for their positions; (2) breach; (3) injury; and (4) causation." *Reece v. Republic Services, Inc.*, 2011 U.S. Dist. LEXIS 24933, *33 (D.Nev. Mar. 10, 2011); *see also Hall v. SSF, Inc., 112 Nev. 1384, (1996); Petersen v. Miranda*, 2014 U.S. Dist. LEXIS 3427 (D.Nev., Jan. 10, 2014).

Similarly, "to succeed on a claim for negligent [] retention, a plaintiff must establish that: (1) defendant owed a duty of care to the plaintiff; (2) defendant breached that duty by [] retaining, ... an employee even though defendant knew, or should have known, of the employee's dangerous propensities; (3) the breach was the cause of plaintiff's injuries; and (4) damages." *Petersen v. Miranda*, 2014 U.S. Dist. LEXIS 3427, *17 (D. Nev. Jan. 9, 2014).

Applying these principles to the case at bar, Luxor must be granted summary judgment on Plaintiff's claims for negligent training, supervision and retention because the undisputed facts demonstrate no breach of duty and a lack of causation.

1. LUXOR DID NOT BREACH ITS DUTY TO USE REASONABLE CARE IN TRAINING, SUPERVISING OR RETAINING AUSTIN

i. *Luxor Had No Reason to Know of Austin's Violent Proclivities*

Nevada Courts also hold that "[c]laims for ***negligent training and supervision*** are based upon the premise that an employer should be liable when it places an employee, ***who it knows or should have known*** behaves wrongfully, in a position in which the employee can harm someone

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else." *Colquhoun v. BHC Montevista Hospital, Inc.,* 2010 WL 2346607, *3 (D.Nev. June 9, 2010).(emphasis added)(internal citations omitted).[1] And again, to prevail on her claim for ***negligent retention*** Plaintiff must show that Luxor "retained, ... [Austin] even though [it] knew, or should have known, of [his] dangerous propensities." *Petersen v. Miranda*, 2014 U.S. Dist. LEXIS 3427, *17 (D. Nev. Jan. 9, 2014).

The undisputed facts and conclusions of law established by this Court demonstrate that Luxor had no reason to know of Austin's violent nature, nor should it have known. *See* Exhibit 1, p. 9 ¶12. Importantly, this Court has already made the determination that, "**Luxor had no reason to believe Austin would commit a sexual assault"** *See* **Exhibit 1**, p.9 ¶12. It is an undisputed fact, established by this Court, that Luxor checked Austin's references and required him to submit to a drug test prior to hiring him. *See* **Exhibit 1**, p.3 ¶12-13. A background check on Austin revealed no prior criminal history. *See* **Exhibit 1**, p. 3 ¶14-16. **And, just two days before the incident Austin submitted to an additional background check**. *See* **Exhibit 1**, p. 3 ¶14-16. Austin had never exhibited any violent or sexually inappropriate behavior prior to the incident in question which could have alerted Luxor to his true nature. *See* **Exhibits 4 and 5**. Furthermore, Steven Petersen, Director of Security for Luxor, testified that this is the first time a security officer was accused of sexually assaulting a guest in his over twenty (20) years working for Luxor. *See* **Exhibit 3**, Steven Petersen Deposition 88:10-16. These undisputed facts demonstrate that Luxor did not know, and had no reason to know of Austin's true nature.

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[1] Courts from other jurisdictions similarly hold that "[w]hen a third party asserts a negligent retention and supervision claim against an employer, liability results not because of the employer-employee relationship, but *because the employer had reason to believe that an undue risk of harm to others would exist as a result of the employment of the alleged tortfeasor*. The employer is subject to liability only for such harm as is within that risk. If, therefore, the risk exists because of the quality of the employee, there is *liability only to the extent that the harm is caused by the quality of the employee that the employer had reason to believe would be likely to cause harm.*" *Thomas v. County Com'rs of Shawnee County*, 40 Kan.App.2d 946, 961, 198 P.3d 182, 192 - 193 (Kan.App.,2008)(emphasis added).

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i. ***Luxor Properly Trained and Supervised Austin***

Furthermore, the undisputed facts demonstrate that Luxor used reasonable care in the actual training and supervision of Austin to ensure that he was fit for his position. Before Austin began work as a security officer he went through four weeks of training on how to properly conduct himself as a security officer. *See* **Exhibit 2**. This training included how to properly interact with guests. *See* **Exhibit 2**, Drig00629. As part of his training, Austin received a copy of the General Rules of Conduct for Employees at Luxor (*See* **Exhibit 1**, p.2 ¶2). The General Rules of Conduct prohibit employees from offensive conduct towards guests. *See* **Exhibit 1**, p.2 ¶3. The General Rules of Conduct also prohibit employees from using physical force against another person. *See* **Exhibit 1**, p.2 ¶9.

Additionally, at the time of the assault, Luxor policy required a two-officer escort for female guest escorts, and if possible, one of the officers should be female. *See* **Exhibit 1**, p.6 ¶37. At the time of the assault, Luxor policy also required a security officer to inform dispatch of the escort. *See* **Exhibit 1**, p.6 ¶38. Austin was trained on this policy. *See* Exhibit 3, Deposition of Steven Petersen 56:24-25, 57:1-8. Luxor continued to train Austin throughout his employment. *See* **Exhibit 2**. And, on the night of the events subject to this lawsuit, an Assistant Security Shift Manger was on duty at the Luxor and responsible for supervision of Austin. *See* **Exhibit 5**.

The undisputed facts establish that Luxor had no reason to believe Austin would commit an act of violence. Morever, the undisputed facts demonstrate that Luxor trained and supervised Austin in all aspects relating to his position as a security officer. There is no question of fact left for a jury to decide. Luxor's duty to train, supervise and retain Austin, did not require Luxor to actually alter Austin's violent proclivities. Luxor's duty was to ensure that Austin was properly trained as a security guard, was supervised and was retained only as long as he was fit for the

position. Luxor did just that. Luxor should be granted summary judgment on Plaintiff's claims for negligent supervision, training and retention.

2. LUXOR WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF'S HARM

Even if Plaintiff were able to prove that Luxor breached its duty to properly train, supervise, or retain Austin, the undisputed facts demonstrate a lack of causation. "A negligence action will not stand when there is an intervening cause that in and of itself is the natural and logical cause of the harm." *Wood v. Safeway, Inc.,* 121 Nev. 724, 740-741 (Nev. 2005). Austin's independent actions were the proximate cause of Plaintiff's injuries and broke the chain of liability to Luxor.

For an intervening act to be superseding, and relieve a negligent actor of liability, the act must not be reasonably foreseeable. *Bower v. Harrah's Laughlin, Inc.*, 215 P.3d 709, 725 (2009). The Court in Bower held that when determining whether an intervening cause is foreseeable a Court should consider whether:

> (1) the intervention causes the kind of harm expected to result from the actor's negligence, (2) the intervening event is normal or extraordinary in the circumstances, (3) the intervening source is independent or a normal result of the actor's negligence, (4) the intervening act or omission is that of a third party, (5) the intervening act is a wrongful act of a third party that would subject him to liability, and (6) the culpability of the third person's intervening act. Id. citing Restatement (Second) of Torts § 442 (1965).

Here, all of these factors are applicable. (1) Austin's intervening violent act was not expected to result from Luxor's negligence. This Court has specifically held: "Luxor had no reason to believe Austin would commit a sexual assault." *See* **Exhibit 1**, p.9 ¶12; (2) The intervening violent act of Austin was extraordinary in the circumstances. Luxor's head of security testified that a Luxor security guard had not been accused of an act of sexual assault

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against a guest in the past twenty (20) years. *See* **Exhibit 4**, Steven Petersen Deposition 88:10-16. (3) The intervening source – the violent act of Austin - is independent and not a normal result of Luxor's negligence. This Court determined: "Austin's actions were 'entirely of his own, independent invention.'" *See* **Exhibit 1**, p.10 ¶19; (4) The intervening act is that of a third party – Austin; (5) Austin's violent intervening act is a wrongful act of a third party and absolutely subjects him to liability – there is a warrant out for his arrest; and (6) Austin is absolutely culpable and responsible for what this Court has determined to be a "**truly independent venture outside the course and scope of his employment.**" **Exhibit 1**, p.8 ¶7. These facts demonstrate that Austin's acts were not reasonably foreseeable to Luxor, and thus his acts were an intervening superseding cause of Plaintiffs harm.

Moreover, the Court in *Bower* held, that "**[w]hen a third party commits an intentional tort or a crime, the act is a superseding cause, even when the negligent party created a situation affording the third party an opportunity to commit the tort or crime.**" *Bower v. Harrah's Laughlin, Inc.*, 215 P.3d 709, 725 (2009). Under such circumstances, **the negligent actor would only be liable if it knew or should have known, at the time of the conduct, that it was creating the opportunity for the crime and that the actor might use the opportunity to commit the crime.** *Id.* (citation omitted). This is exactly what happened here. Austin committed an intentional tort and Luxor did not know, and had no reason to know, that Austin was likely to commit such a crime.

The Nevada Supreme Court's decision in *Wood v. Safeway* provides further support to the conclusion that Austin's actions were independent, unforeseeable and preclude Luxor's liability. *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005). In *Wood*, a janitor working for a cleaning company sexually assaulted a Safeway employee. *Id.* The district court granted summary

judgment in the employer's favor on every cause of action based on any negligence. The Nevada Supreme Court affirmed the district court's decision. *Id.* 741.

The Supreme Court in *Wood* stated that their decision turned on whether "the specific crime of sexual assault by one of its employees was reasonably foreseeable to the employer under the circumstances." *Id.* The Supreme Court found that because the employer required proof of identification, checked employee references, the employee had no prior criminal history, and there were no prior sexual harassment complaints against the employee that the sexual assault was not reasonably foreseeable. *Id.* Accordingly, the Court held that the employee's criminal act constituted an intervening superseding act that relieved the employer of liability as a matter of law. *Id.* at 741.

Safeway resembles the facts and circumstances of this case, and this Court has already recognized *Safeway* as controlling law. *See* **Exhibit 1**. Here, the undisputed facts demonstrate Luxor required Austin's proof of identification before hiring. Luxor checked Austin's references. Austin had no prior criminal history. There were no prior sexual harassment complaints against Austin. Austin's sexual assault was unforeseeable. Austin's assault was a superseding intervening cause of any harm to Plaintiff and, therefore, his independent actions preclude liability against Luxor.

There is no evidence which even remotely suggests that Luxor should have foreseen Austin's independent act of sexual assault. Austin clearly possesses the utmost level of culpability for his own intentional torts. As a result, just as in *Wood*, even if Luxor breached its duty, Luxor is not liable for Austin's "sexual assault of [Plaintiff] because his intervening criminal actions were a superseding cause that relieves" Luxor of liability. *Id.* at 742. As such, Austin's independent, unforeseeable actions, were an intervening superseding cause precluding

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Luxor from liability for negligent training, supervision or retention. Luxor's motion for summary judgment should be granted.

CONCLUSION

For all of the foregoing reasons, Luxor respectfully requests that this Court grant its Motion for Summary Judgment on Plaintiff's remaining claims of negligent training, supervision and retention.

DATED this 10th day of April, 2014.

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EXHIBIT “1”

EXHIBIT “1”

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ORDR

CARA DRIGGERS,

Plaintiff,

v.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO, TERRENCE DAVID AUSTIN, DOES I - X and ROE CORPORATIONS XI - XX, inclusive,

Defendants.

RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO,

Cross Claimant,

v.

TERRENCE DAVID AUSTIN,

Cross Defendant.

Case No. A-13-678269-C

Dept. No. XXXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART DEFENDANT RAMPARTS, INC., D/B/A LUXOR HOTEL & CASINO's MOTION FOR SUMMARY JUDGMENT

On March 6, 2014, this matter came on for hearing before the Honorable Joanna S. Kishner, with Gina M. Mushmeche, Esq. appearing for the Defendant Ramparts, Inc., d/b/a Luxor Hotel & Casino ("Luxor") and Orlando De Castroverde, Esq. appearing for Plaintiff, Cara Driggers. The Court, having read and considered the pleadings on file including Defendant's Motion for Summary Judgment, Plaintiff's Opposition, and Defendant's Reply thereto, and having considered the oral arguments of counsel, being fully advised on the premises, and good cause appearing, therefore makes the following findings of fact, conclusions of law and Order.:

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

I. FINDINGS OF FACT

SUBSTANTIVE FACTS

The Court finds the following facts undisputed, material and controlling:

1. Austin was employed as a Security Officer by Luxor on June 17, 2012

2. Luxor's employees, including Austin, all received a copy of the General Rules of Conduct for employees.

3. The General Rules of Conduct prohibit employees from offensive conduct towards guests.

4. Sexually assaulting a guest is clearly offensive conduct.

5. The General Rules of Conduct prohibit employees from violating any federal, state or local laws.

6. Sexually assaulting a guest in a room violates several laws including but not limited to *Nevada Revised Statute* ("*NRS*") 200.364 (Sexual Assault), *NRS* 200.400 (Battery with intent to commit a crime), *NRS* 200.481 (Battery), *NRS* 200.460 (False Imprisonment), and *NRS* 200.471 (Assault).

7. The General Rules of Conduct prohibit employees from participating in conduct which would in any way reflect adversely on the company.

8. Sexually assaulting a guest clearly reflects adversely on the company.

9. The General Rules of Conduct prohibit employees from using physical force against another person.

10. Sexually assaulting a guest requires using physical force against another person.

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11. Prior to being hired, Luxor required Austin to show proof of identification.

12. Prior to being hired Luxor checked Austin's references.

13. Prior to being hired, Luxor drug tested Austin.

14. Prior to being hired, Luxor determined Austin had no prior criminal history by searching his name and social security number.

15. In fact, Austin was in the process of potentially being promoted to a supervisory position with security.

16. In connection with that promotion and as part of that application process, another background check was conducted on June 15, 2012, two (2) days before the incident subject of this lawsuit.

17. On June 17, 2012, Cara Driggers and a companion arrived at the Luxor.

18. Cara Driggers and her companion were having trouble locating their friend's hotel room.

19. Cara Driggers and her companion approached security officers including Co-Defendant Austin, requesting assistance.

20. Austin proceeded to escort Cara Driggers and her companion.

21. Cara Driggers alleges Austin was not invited in the room and she assumed he left.

22. Cara Driggers' companion used her room key to enter Room No. 19345.

23. Upon entering the room, Cara Driggers alleges Austin sexually assaulted her.

24. After the alleged sexual assault, Cara Driggers testified that:

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Question: *So you were getting ready to call the police that night and Angela stopped you?*

Answer: *She said, I'm married, and - - well, she said, Please don't. I'm married. I have two kids. She's, like, my husband and I are separated. That's why I'm here. Girls' vacation. Please don't. If I - - if I have to be a witness, she's, like, I can't. And she's, like, I can't be a witness. I'll lose my kids.*

. . .

And I remember telling her, Well, that's not my fucking fault. Because guess what? I'm single. I'm an adult. And I can do what the hell I want. *I can go out drinking. I can be here with you. I'm not doing anything wrong being here with you.*

25. Cara Driggers did not report the alleged sexual assault until the next day and she testified:

Answer: *As soon as we get down the elevator, I bolt. I run through the casino, full speed, to the registration desk. And I'm, like, Please, help me. There's, like, a huge line at registration. And there's, like, a guy. And I'm, like - - I'm, like, Please, help me. Please, help me. I'm, like, I was sexually assaulted. Please, I need - - I need to see a supervisor. Get me somebody. I'm, like, I have a witness.*

Question: *And - - and let me stop you. So what time is this?*

Answer: *Maybe 11:30 or 12.*

Question: *Okay.*

Answer: *And I'm telling the guy - - and I'm trying to be quiet at first because there's a huge line.*

. . .

But I was, like, You get me somebody.

. . .

And he was, like, acting like it was no big deal. Like, calm down. Be quiet. He was, like, a total dick.

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And then I was, like, you want me to start getting loud? I'm like - - because I was sexually assaulted by one your security guards. I just started getting loud.

. . .

And he's, like, Okay. Come here. Come here.

And he's, like, Okay. Okay. What - - okay. What happened?

And I'm, like, get me somebody down here. ***I don't want to tell you. It's none of your fucking business.*** *I'm, like, Get me a security guard - - I mean, a manager now. I'm, like, I have a witness. She could be leaving town. I don't know who she is. I don't - - and I need a statement from her. Please, somebody has to help me. This is my witness. Please. She doesn't want to cooperate.*

. . .

And I'm, like, Please, can somebody come with me right now to go get her and make her. You guys have to make her give a statement.

And he said - - fuck - - fucking - - this guy was such an asshole.

26. Initially, Cara Driggers indicated that she did not want to press charges.

27. Luxor immediately suspended Austin pending investigation, investigated the incident and two days later Austin was terminated for violating company policy.

28. There is an outstanding warrant for Austin's arrest for the alleged crimes.

29. Cara Driggers agreed during her deposition that Luxor did not have a policy that would have allowed Terrence Austin to sexually assault her.

30. Cara Driggers also testified that she sued Terrence Austin because he committed an intentional criminal act (sexual assault) against her.

31. Steven Peterson, Director of Security for Luxor, testified that the officer was responsible for his conduct and that Luxor is not responsible for the act of one person

who went rogue, and did what he did on his own.

32. Dede Aspero, Former Director of Human Resources for Luxor, testified that Luxor was not responsible because the person who committed the crime [Austin] should be held responsible.

33. Plaintiff and another female guest approached Defendant Austin, Zachary Ford, and an unidentified male, to ask for guidance on how to get to their hotel room.

34. At the time, Defendant Austin and Zachary Ford were employed as grave yard shift security guards by Defendant Luxor.

35. Defendant Austin escorted both Plaintiff and the second female guest arm in arm across Defendant's hotel lobby to the elevators and up to their room

36. Defendant Austin entered the room uninvited and sexually assaulted Plaintiff.

37. At the time of the assault, Defendant's policy was that a female guest required a two-officer escort, and if possible, one of the officers should be a female.

38. At the time of the assault, Defendant's policy was that when a security officer left his post on an escort, he should inform dispatch.

39. Defendant Austin did not inform dispatch that he was leaving on an escort.

PROCEDURAL FACTS

40. Cara Driggers filed a Complaint on March 13, 2013, alleging causes of action for assault and battery, false arrest and false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent use of excessive force, negligent hiring, training, supervision and retention and punitive damages.

41. Luxor moved for summary judgment on the basis that Nevada law holds that

Luxor cannot be held liable for Austin's independent act that was not in the scope of his employment and only motivated by Austin's own interests. Luxor also contended his criminal acts were intervening and superceding.

42. While Plaintiff filed an Opposition to Luxor's Motion for Summary Judgment, she agreed to abandon her claim for negligent hiring.

II. CONCLUSIONS OF LAW

A. Summary Judgment

1. Under Nevada law, a party may seek summary judgment when there a facts in dispute and the moving party is entitled to judgment as a matter of law. *NRCP* 56. When a party properly moves for and supports a motion for summary judgment, the party opposing the motion must bring forth "specific facts demonstrating the existence of a genuine issue for trial . . . by affidavit or otherwise" and, if he does not, summary judgment should be entered in favor of the moving party. *Wood v. Safeway,* 121 Nev. 724, 121 P.3d (1920) (2005).

2. There is no genuine issue for trial because Luxor is not responsible for the intentional conduct of its employee in this matter. *Nevada Revised Statue* 41.745 limits an employer's liability for injury caused by the intentional conduct of an employee. That statute provides, in pertinent part:

> *An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:*
>
> *(a) Was a truly independent venture of the employee;*
> *(b) Was not committed in the course of the very task assigned to the employee; and*
> *(c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment.*
>
> *For the purposes of this subsection, conduct of an employee is reasonable*

foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

[Emphasis added].

3. Summary judgment on the issue of respondeat superior liability in favor of the employer is appropriate where the undisputed facts show an employee acted "outside the scope of his employment and was not furthering the business interests" of the employer. *Burnett v. CBA Security Service,* 107 Nev. 787, 789, 820 P.2d 750 (1991).

4. "When there is undisputed evidence concerning the employee's status at the time of the tortious act the issue may be resolved as a matter of law." *Rockwell v. Sun Harbor Budget Suites,* 112 Nev. 1217, 1225 (1996); *Moleno v. Asher,* 96 Nev. 814, 818, 618 P.2d 880 (1980).

5. When "there is no material dispute as to when and where the . . . inappropriate contact occurred . . . [a] case is ripe for . . . determination." *Jane Doe A v. Jeremy Green,* 298 F. Supp.2d 1025, 1041 (D. Nev. 2004).

6. In this matter, there are no disputes as to when, where and how the assault occurred.

7. Austin's assault on Cara Driggers was a truly independent venture outside the course and scope of his employment. *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005).

8. Even though Austin was on the premises and had access to Plaintiff's hotel room as a result of his employment, the entry into the room and the assault were not committed within the course of the work and assigned tasks given to Austin. *Id.*

9. Luxor can only be liable if "the employee's intentional conduct [was] foreseeable under the circumstances." *Id.*

10. An employee's act is reasonable foreseeable only if the employer has reasonable cause to anticipate the criminal act and the resulting injury. *Id.*

11. The standard for foreseeability in the context of respondeat superior is different than the standard for negligence:

> *'[F]oreseeability' in this context must be distinguished from 'foreseeability' as a test for negligence. In the latter sense 'foreseeable' means a level of probability which would lead a prudent person to take effective precautions whereas 'foreseeability' as a test for respondeat superior merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business. In other words, where the question is one of vicarious liability, the inquiry should be whether the risk was one 'that may fairly be regarded as typical of or broadly incidental' to the enterprise under-taken by the employer.*

Id. At 740 citing *Rodgers v. Kemper Construction Co.*, 50 Cal.App.3d 608, 124 Cal.Rptr. 143, 148-49 (Cal.App. 1975) (citations omitted).

12. Luxor had no reason to believe Austin would commit a sexual assault. Austin received the General Rules of Conduct, which outlines conduct employees should or should not engage in, including but committing sexual assaults.

13. In addition, Luxor required proof of identification, checked employee references, conducted drug testing and determined Austin had no prior criminal history. There was no reason for Luxor to believe Austin would commit a sexual assault.

14. Austin's assault is repugnant and startling.

15. The risk that Austin would sexually assault a customer is not one that is "typical" or "broadly incidental" to Luxor's business. *Id.*

16. "A sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions."

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Lisa M. v. Henry Mayo Newhall Memorial Hospital, 907 P.2d 358, 364 (Cal. 1995).

17. Austin's decision to commit the sexual tort on Cara Driggers did not arise out of the performance of his job duties.

18. Austin "simply took advantage of solitude, access and superior knowledge to commit a sexual assault" on Plaintiff. *Id.* At 365.

19. Although the circumstances of his job made it possible, Austin's actions were "entirely of his own, independent invention. For this reason it would be unfair and inconsistent with the basic rationale of respondeat superior to impose liability." *Id.* At 367.

20. *Prell Hotel Corp. v. Antonacci,* 86 Nev. 390, 469 P.2d 399 (1970) is distinguishable here because Austin was not acting in the course and scope of his employment or in the course of the task assigned to him at the time he entered Plaintiff's room or committed the assault. *See, Wood,* 121 Nev. At 724, 738-739 (2005).

21. *Rockwell v. Sun Harbor Budget Suites,* 112 Nev. 1217, 1225 (1996), is distinguishable here because there is no question of fact that sexually assaulting a guest is outside the course and scope of Austin's employment.

22. The remaining cases cited by Plaintiff are distinguishable because they all involve "special relationships" of trust between the victim and assailant. *See, Lisa M. v. Henry Mayo Newhall Memorial Hosp.,* 907 P.2d 358, 364 (Cal. 1995). No such relationship exists between a hotel employee and a hotel guest.

i. Assault and Battery.

23. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway, Id.* and

these claims are dismissed as to Luxor.

ii. False Arrest and False Imprisonment.

24. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

iii. Intentional Infliction of Emotional Distress.

25. Austin's sexual assault on Cara Driggers was an independent venture outside

the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

iv. Negligent Infliction of Emotional Distress.

26. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

v. Negligent Use of Excessive Force.

27. Austin's sexual assault on Cara Driggers was an independent venture outside the course and scope of his employment pursuant to *Wood v. Safeway,* 121 Nev. 724, 739, 121 P.3d 1026 (2005) and these claims are dismissed as to Luxor.

vii. Punitive Damages.

28. Plaintiff's claim for punitive damages fails as a matter of law. In *Smith's Food & Drug Center v. Bellegarde,* the Nevada Supreme Court adopted the standard set forth in Restatement (Second) of Torts Section 909 (1979). The section provides:

> Punitive damages can properly be awarded against a master or other principle because of an act by an agent if, but only if:

(a) a principle or a managerial agent authorized the doing and the manner of the act, or;
(b) the agent was unfit and the principle or managerial agent was wreckless in employing or retaining him, or;
(c) the agent was employed in a managerial capacity and was acting in the scope of employment, or;
(d) the principle or managerial agent of the principle ratified or approved the act.

Bellagarde, 114 Nev. 602, 610-611, 958 P.2d 1208, 1214 (1998).

In this case, Austin was merely an employee and had no managerial authority. Further, there are no other facts or evidence which would subject Luxor to punitive damages. These claims are dismissed as to Luxor.

II. ORDER OF THE COURT

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that: Defendant's Motion for Summary Judgment is GRANTED on Plaintiff's claims for assault and battery, false arrest and false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent use of excessive force, and punitive damages.

Summary Judgment is also GRANTED on Plaintiff's claim for negligent hiring pursuant to the agreement of the parties. Summary Judgment is DENIED as to the negligent training, supervison and retention claims as they were not sought in the Motion and thus were not before the Court.

DATED this 24 day of March, 2014.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

EXHIBIT “2”

EXHIBIT “2”

TRAINING FILE

DRIG 00541

LUXOR
OC
Cover Sheet

Name:	AUSTIN	TERRENCE	Employee#	693589
	Last	*First*		

Written Score:	100%	Date:	5/11/12
Proficiency Test:	***Pass*** Fail	Date:	

Officer Signature:		Date:	5/11/12
Instructor's Name:	JOE SCAMMAHORN	Date:	5-11-12
Instructor sign:		Date:	5-11-12
Training Manager:		Date:	5-11-12

Instructor's Comments

The unauthorized possession or use of firearms, weapons (weapons include knives), explosives, mace, cameras, recording or other electronic devices, on company property is prohibited according to the property "General Rules of Conduct."

Luxor Security Officers are not permitted to carry a "knife" while on duty, unless approved by the property "Director of Security" and is issued by the property.

OC MANUAL ACKNOWLEDGMENT

. I acknowledge I have received a copy of this manual, read it and understand it. Additionally, I understand it is my responsibility to familiarize myself with all other use of force policies. Finally, I understand it is my responsibility to follow these guidelines when using OC and maintain my certification to carry and use OC.

Received Date:	5/11/12
Print Trainee Name:	TERRENCE AUSTIN
Signature:	Terrence Austin
Employee #:	693589
Instructor print:	JOSEPH SCHMMAHORN
Signature:	
Training Coordinator:	

OC POLICY ACKNOWLEDGMENT

I have been certified to carry and use OC. I acknowledge I have received a copy of this policy, read it and understand it. Additionally, I understand it is my responsibility to familiarize myself with all other use of force policies. Finally, I understand it is my responsibility to follow these guidelines when using OC and maintain my certification to carry and use OC.

Certification Date:	5/11/12
Print Trainee Name:	TERRENCE AUSTIN
Signature:	
Employee #:	693589
Instructor print:	JOE SCHAMMAHORN
Signature:	
Training Coordinator:	

OC BASIC COURSE WRITTEN EXAM

NAME: TERRENCE AUSTIN I.D.#: 693589
PRINT

DATE: 5/11/12 SCORE: 100%

CIRCLE THE CORRECT ANSWERS

1) Which of the following is primarily classified as an inflammatory –

(A) OC
B) CS
C) CN
D) CM
E) CR

2) How often should an OC canister be shaken to insure properly mixture –

A) Every day
B) Once a week
C) Once a month
D) Every six months
(E) Don't' have to shake it

3) When determining the best OC product, the first consideration should be –

A) The percentage of OC in the canister
B) The size of the canister
(C) The Scoville heat units
D) The kind of pepper used to make the OC
E) Who will be issued the canister

4) Most of the time, a burst of OC should last how long –

(A) One half second
B) One quarter second
C) One second
D) Two seconds

5) Normal ventilation will remove OC from a room in what length of time –

A) One to two minutes
B) Five to ten minutes
C) Ten to twenty minutes
D) Thirty to forty-five minutes
E) Two to four hours

6) The foam spray has a maximum range of –

A) Two feet
B) Five feet
C) Eight feet
D) Twelve feet

7) OC should be sprayed –

A) At the subject's chest
B) Directly into the subject's eyes
C) Approximately one foot over the subject's head
D) At the subject's waist

8) What delivery system has the fastest effect on the eyes, respiratory system, and skin –

A) A stream spray
B) A cone-shaped spray
C) A fog
D) Foam
E) Splatter

9) After what length of time should medical assistance be sought if the symptoms of OC exposure persist –

A) 15 minutes
B) 30 minutes
C) 45 minutes
D) 60+ minutes

10) The risk of cross contamination from OC –

A) Reduces dramatically after ten minutes
B) Is negligible
C) Remains until skin, clothing, and surfaces are decontaminated
D) Lasts about 45 minutes

11) Which delivery system is best to use under windy conditions –

A) Cone-shaped spray
B) Stream spray
C) Fog spray
D) Foam spray
E) Splatter

12) Officers should not use OC (foam delivery) closer than _____ from the face of the aggressor –

A) There is no recommended minimum distance
B) Three feet
C) One foot
D) Two feet
E) Four feet

13) Before touching a surface sprayed with OC, you should –

A) Wash the surface with soap and water to remove the risk of cross contamination
B) Do nothing, surfaces need not be washed because OC evaporates
C) Treat the surface with a disinfectant before touching it
D) Rinse the surface with water

14) The active ingredient in OC comes from –

A) The glands of a skunk
B) Red peppers
C) A mixture of man-made chemicals
D) Extract of Poison Sumac
E) Bees

15) What distance should you maintain from your opponent when you assume a reactionary gap –

A) 1 to 4 feet
B) 2 to 5 feet
C) 3 to 7 feet
D) 4 to 6 feet

16) What two factors will you most rely upon to determine your control tactics –

A) Size and strength
B) Age and skill
C) Gender and skill
D) Training and experience
E) Opponent and environment

17) A subject sprayed with OC should exhibit all of the following symptoms except –

A) Swelling of the mucous membranes
B) Temporary loss of strength
C) Temporary difficulty breathing
D) Uncontrollable vomiting
E) Temporary closing of the eyes

18) Once a subject stops resisting, the use of OC must –

A) Decrease
B) Stop
C) Change to very short bursts
D) Continue until the subject is in handcuffs
E) Remain unchanged

19) In most circumstances, officers should warn each other that OC may or will be used by saying –

A) "Spray"
B) "OC"
C) "Move"
D) "Down"
E) "Back"

20) If the cover officer sees the subject reaching for a weapon before he sprays the subject, he should warn the primary officer by shouting –

A) "OC"
B) The name of the weapon
C) "Condition red"
D) "Hands"
E) "Watch out"

OC PEPPER SPRAY
PROFICIENCY EXAM

AUSTIN	TERRENCE		5/11/12
Print: Last Name,	First Name	Signature	Date

RATING INSTRUCTIONS: Rate observed behavior with reference to the scale below. Comment on the most and least satisfactory performance of the day. A specific comment is required on all ratings of 2 or less and 6 or above. Check N.O. if not observed. If trainee fails to respond to training check N.R.T. comment.

RT = Remedial Training	NO = Not Observed
INT = Initial	NRT = Not Responding to Training

		RT	INT								NO	NRT
1	Position of Interview (POI)			1	2	3	4	5	6	7		
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3	Forward Shuffle			1	2	3	4	5	6	7		
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6	Shuffle Pivot			1	2	3	4	5	6	7		
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8	Holding Canister/Strong Side			1	2	3	4	5	6	7		
9	Holding Canister/Weak Side			1	2	3	4	5	6	7		
10	Strong Side Draw			1	2	3	4	5	6	7		
11	Weak Side Draw			1	2	3	4	5	6	7		
12	Push and Spray – Defensive Position			1	2	3	4	5	6	7		
13	Push, Draw, and Spray			1	2	3	4	5	6	7		
14	Spray and Dodge			1	2	3	4	5	6	7		
15	Dodge, Draw, and Spray			1	2	3	4	5	6	7		
16	Disengage and Spray – 1 Officer, Standing			1	2	3	4	5	6	7		
17	Multiple Aggressors			1	2	3	4	5	6	7		
24	Works with Instructors			1	2	3	4	5	6	7		
25	Works with Students			1	2	3	4	5	6	7		
26	General Proficiency			1	2	3	4	5	6	7		

Instructor Comments: WORKS WELL WITH EVERYONE AND HELPS WITH MAKING SURE EVERYONE UNDERSTANDS THE MATERIAL BEING PRESENTED

Instructor Name (print):	Joe Sammahorn		
Instructor Signature		Date	5-11-12

Rev. 6/15/11

Training Coordinator:

I understand that I am responsible for following all of the policies listed above and any failure to do so could result in revocation of my work card and in closing of a venue or operation. If I am unsure about any part of this material, I will seek clarification from my supervisor.

If you are unable to read and understand the attached policies provided to you in English, please advise Human Resources/Employee Relations so that arrangements to have the policy translated for you are made.

TERRENCE AUSTIN	SECURITY OFFICER
Print Employee Name	Position/Title
Signature	693589
	Employee Number
10/19/11	
Date Completed	

Revised Nov.09

LUXOR

ACKNOWLEDGEMENT FORM

This document attests that I have attended the Luxor Hotel and Casino **"Bars and Nightclubs, Responsible Service of Alcoholic Beverages** on (October 19, 2011). I have been trained and/or informed and understand the following information. *(Please initial on the left and sign at the bottom.)*

Employee Initials:

TA I accept responsibility for recognizing signs of intoxication, sizing up customers, ability to slow down consumption of alcohol, cutting off intoxicated customers, and understand effects of alcohol intoxication including severe medical incidents. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility on how to handle intoxicated customers who are not in the casino by not escorting them into the casino and notifying security. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility for monitoring activities at tables, bars, and restrooms and will immediately report any observations of illegal activity. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility to manage social behavior, enforce dress code, ID and eviction of violators, and monitoring of activities such as theft. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility to recognize larceny as well as the effects of prostitution. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I acknowledge that access to venues and locations by Law Enforcement and regulatory personnel is to be immediately granted with a business card or official ID. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that minors are prohibited in bars, lounges, and nightclubs and all employees must check identification. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that the use of excessive force and/or anything defined as such will not be tolerated. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that an arrest made on the premises should be a last resort and the elements of the crime must have been met. I am responsible for providing proper documentation in the event of identifying witnesses and any necessary statements. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that it is my responsibility to observe and if necessary intervene when inappropriate behavior is witnessed.

TA I understand that I should only patrol my area of responsibility. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility to evaluate customers before they enter a venue and asses attitude and demeanor. In the event that a customer is a VIP they do not bypass proper procedures. If I am unsure about any part of this material, I will seek clarification from my supervisor.

LUXOR HOTEL & CASINO
HAZARD COMMUNICATIONS ANNUAL TRAINING

Luxor Hotel & Casino is committed to providing each of its employees with a safe and healthy work environment. You have been trained in the Hazard Communication Program as stated in Occupational Safety and Health Administration (OSHA) standard 29 CFR 1910.1200. You realize that you have the "Right to Know".

INFORMATION	EMPLOYEE INITIALS
1. I understand my "Right to Know".	TA
2. I understand what a Material Safety Data Sheet (MSDS) is.	TA
3. I understand where my department's MSDS's are located.	TA
4. I understand my department's chemical labeling system & I understand the Hazardous Rating Scale (0-4).	TA
5. I understand that all chemicals must be contained in a properly labeled container.	TA
6. I understand that I am not to mix chemicals together unless I have been trained and authorized.	TA
7. I understand what Personal Protective Equipment (PPE) is and will use it when handling chemicals that require it.	TA

EMPLOYEE NAME (print): TERRENCE AUSTIN

EMPLOYEE SIGNATURE: Terrence Austin

EMPLOYEE JOB TITLE: Security Officer EMPLOYEE # 693589

DATE OF TRAINING: 1/19/12

INSTRUCTOR NAME: S. MA

TRAINING COORDINATOR/MANAGER: _____



HAZARD COMMUNICATION TRAINING

In compliance with the Department of Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910.1200), I have received the following information:

1. I have been comprehensively trained in regard to the "Right To Know" standard and understand the potential hazards related to chemicals that I use to perform my job.

2. I understand the proper use of Personal Protective Equipment.

3, I understand how to read and interpret information on Material Safety Data Sheets and where they are located.

4. I understand that all containers containing potentially hazardous materials must be appropriately labeled.

I further agree to observe and follow the safe work practices as presented to me in the Hazard Communication Training Class I have attended.

TERRENCE AUSTIN
EMPLOYEE NAME (PRINT)

EMPLOYEE SIGNATURE

SOCIAL SECURITY NUMBER

SECURITY OFFICER
EMPLOYEE JOB TITLE/PROPERTY

S. MA
INSTRUCTOR NAME

INSTRUCTOR
INSTRUCTOR TITLE

1/19/12
DATE OF TRAINING

HAZ-CIRC

DRIG 00553

HO[illegible] : CASINO HAZARD COMMUN[illegible] IONS QUIZ
(CIRCLE ONE ANSWER ONLY)

NAME: TERRENCE AUSTIN DATE: 1/19/12

SSN: _____ SCORE: 10[illegible]

PROPERTY: LUXOR

1. The color yellow on a chemical label refers to:
   A. Caution
   B. Health Hazard
   (C.) Reactive Hazard

2. The "Number 4" on a hazard rating means an extreme hazard.
   (A.) True
   B. False

3. Personal Protective Equipment includes:
   A. Gloves
   B. Ear Plugs
   (C.) Both A and B

4. If a chemical label indicates you must wear safety goggles, then safety goggles are:
   A. Recommended
   B. Optional
   (C.) Required

5. Material Safety Data Sheets are available to you only if you are currently using the chemical.
   A. True
   (B.) False

6. If you find an unlabeled chemical you should:
   A. Try to identify it
   B. Leave it alone
   (C.) Report it to your Supervisor or the Safety Coordinator.

7. An example of a physical hazard from chemical is:
   A. Allergies
   (B.) Explosions
   C. Inhalation

8. An example of a health hazard from chemicals is:
   A. Skin Irritation
   B. Swallowing Chemicals
   (C.) Both A and B

9. It is safe to mix chemical:
   A. At home
   (B.) Only when specifically instructed to by use instructions on the label
   C. If you are running low on one product

10. If you wear gloves, you don't have to worry about washing your hands when you take the gloves off.
    A. True
    (B.) False

DRIG 00554

LUXOR

Hepatitis B Vaccine training form: .

Employee Last Name: (print) AUSTIN

Employee First Name: (print) TERRENCE

Employee Badge number: 693589

Employee Department: Security Position Security Officer

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself.

However, **I decline hepatitis B** vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease.

If in the future, I continue to have occupational exposure to blood or other potentially infectious materials and I want the vaccination offer of hepatitis B vaccine, I can receive the vaccination series at no charge to me.

Employee Signature: [signature] Date: 1/19/12 **DECLINING VACCINATION**



First Dose: will be on: _____ Employee Signature: _____

Second Dose: will be on: _____ Employee Signature: _____

Third Dose: will be on: _____ Employee Signature: _____

The Department is responsible for the completion of the written record requirement of acceptance or declination.. The department will keep an excel spreadsheet and notify their employees of the clinics as they are held on Luxor Property.

If for any reason the employee missed the vaccination at property, and they want to continue the series before our next held on site vaccination, contact the safety manager. We can send the employee directly to a Concentra Clinic.

This is a 3 part series of vaccination. Signing this form, **you agree to receive your vaccinations** on time at scheduled intervals: The department notifies you on the clinic dates.

Sign here to accept a vaccination at the next clinic:

_____ Date: _____

Rev. 1.8.08cak

LUXOR

Security Department Bloodborne pathogens Quiz

Name: TERRENCE AUSTIN Employee # 693589 Date: 1/19/12

What organ is affected by the Hepatitis B Virus?

A) Heart B) Lungs (C) Liver D) All

When removing contaminated clothing, you should fold it carefully so the exposed area is visible to others.

(True) False

The exposure control plan contains information and procedures to protect employees from exposure and transmission of Bloodborne pathogens in the workplace.

(True) False

What is "Occupational Risk?"

_____ Contact with a positive HIV person
_____ Contact with a positive HBV person
__X__ Contact with blood or bodily fluids
_____ Contact with possible HBV, HIV persons

How are contaminated materials disposed of?

SHARPS CONTAINERS, BIO HAZARD BAGS

You can pick up contaminated broken glass as long as you are wearing gloves.

True (False)

For you to become infected the disease carrying contaminate must enter your body.

(True) False

It's easier to become infected with HIV than with HBV

True (False)

If your hands or other skin is exposed to blood or other body fluids, you should wash them with soap and water, vigorously scrubbing all areas.

(True) False

DRIG 00556

LUXOR
Customer Service ADA Training Acknowledgement Form

I understand it is the policy of Luxor Hotel & Casino to provide a high level of service to all guests. I have attended the Customer Service ADA training provided by Luxor Hotel & Casino and understand the standards of conduct that are expected of me when communicating with guests with disabilities. I agree to adhere to the key points of service as listed below when interacting with guests with disabilities.

Key Points of Service

- Treat the guest as a healthy, traveling person, treat them with the same respect you treat any other guest.
- Ask guests with disabilities if they need your help. Don't just grab an arm or push a wheelchair.
- Don't be offended if a guest refuses an offer of help. The guest knows best what she/he can or can not do.
- Speak directly to the guest, not a companion.
- Reduce or eliminate distractions, give the person your full attention and make good eye contact.
- If you feel the guest doesn't understand, do not raise your voice, try using simpler words to restate your message.
- Just relax; be yourself. Helpfulness and friendliness project a better attitude then anxiety.

Employee Signature

TERRENCE AUSTIN

Employee Name (Please Print)

Security

Department

1/19/12

Date

"SAFLOK" SYSTEM

ACKNOWLEDGEMENT

I UNDERSTAND THE POLICY AND THE PROCEDURES AND HOW TO USE THE "SAFLOK" SYSTEM. I UNDERSTAND AND KNOW HOW TO UTILIZE THE "SAFLOK" INFORMATION TO BE USED/SAVED IN THE "ITRAK" REPORT SYSTEM.

PRINT TRAINEE NAME: TERRENCE AUSTIN EMPLOYEE #: 693589

TRAINEE SIGNATURE: _____ DATE: 1/13/17

FIELD TRAINING OFFICER SIGNATURE: _____ EMPLOYEE #: 24578

TRAINING COORDINATOR: _____ DATE: 1/14/17

DRIG 00558

LUXOR
OC
Cover Sheet

Name:	AUSTIN	TERRENCE	Employee#	693589
	Last	*First*		

Written Score:	100%	**Date:**	11/17/11
Proficiency Test:	***Pass*** **Fail**	**Date:**	11/17/11

Officer Signature:	Terrence Austin	**Date:**	11/17/11
Instructor's Name:	JOSEPH SCAMMAHORN	**Date:**	11-17-11
Instructor sign:		**Date:**	11-17-11
Training Manager:	71726	**Date:**	11-18-11

Instructor's Comments

The unauthorized possession or use of firearms, weapons (weapons include knives), explosives, mace, cameras, recording or other electronic devices, on company property is prohibited according to the property "General Rules of Conduct."

Luxor Security Officers are not permitted to carry a "knife" while on duty, unless approved by the property "Director of Security" and is issued by the property.

OC POLICY ACKNOWLEDGMENT

I have been certified to carry and use OC. I acknowledge I have received a copy of this policy, read it and understand it. Additionally, I understand it is my responsibility to familiarize myself with all other use of force policies. Finally, I understand it is my responsibility to follow these guidelines when using OC and maintain my certification to carry and use OC.

Certification Date:	11/17/11
Print Trainee Name:	TERRENCE AUSTIN
Signature:	
Employee #:	693589
Instructor print:	JOSEPH SCAMMAHORN
Signature:	
Training Coordinator:	711726 11/18/11

OC MANUAL ACKNOWLEDGMENT

. I acknowledge I have received a copy of this manual, read it and understand it. Additionally, I understand it is my responsibility to familiarize myself with all other use of force policies. Finally, I understand it is my responsibility to follow these guidelines when using OC and maintain my certification to carry and use OC.

Received Date:	11/17/11
Print Trainee Name:	TERRENCE AUSTIN
Signature:	Terrence Austin
Employee #:	693589
Instructor print:	JOSEPH SCHMAHORN
Signature:	
Training Coordinator:	21726 11/18/11

DRIG 00561

OC BASIC COURSE WRITTEN EXAM

NAME: TERRENCE AUSTIN I.D.#: 693589
PRINT

DATE: 11/17/11 SCORE: 100%

CIRCLE THE CORRECT ANSWERS

1) Which of the following is primarily classified as an inflammatory –

A) OC
B) CS
C) CN
D) CM
E) CR

2) How often should an OC canister be shaken to insure properly mixture –

A) Every day
B) Once a week
C) Once a month
D) Every six months
E) Don't' have to shake it

3) When determining the best OC product, the first consideration should be –

A) The percentage of OC in the canister
B) The size of the canister
C) The Scoville heat units
D) The kind of pepper used to make the OC
E) Who will be issued the canister

4) Most of the time, a burst of OC should last how long –

A) One half second
B) One quarter second
C) One second
D) Two seconds

DRIG 00562

5) Normal ventilation will remove OC from a room in what length of time –

A) One to two minutes
B) Five to ten minutes
C) Ten to twenty minutes
D) Thirty to forty-five minutes
E) Two to four hours

6) The foam spray has a maximum range of –

A) Two feet
B) Five feet
C) Eight feet
D) Twelve feet

7) OC should be sprayed –

A) At the subject's chest
B) Directly into the subject's eyes
C) Approximately one foot over the subject's head
D) At the subject's waist

8) What delivery system has the fastest effect on the eyes, respiratory system, and skin –

A) A stream spray
B) A cone-shaped spray
C) A fog
D) Foam
E) Splatter

9) After what length of time should medical assistance be sought if the symptoms of OC exposure persist –

A) 15 minutes
B) 30 minutes
C) 45 minutes
D) 60+ minutes

10) The risk of cross contamination from OC –

A) Reduces dramatically after ten minutes
B) Is negligible
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11) Which delivery system is best to use under windy conditions –

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12) Officers should not use OC (foam delivery) closer than _____ from the face of the aggressor –

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B) Three feet
C) One foot
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A) Wash the surface with soap and water to remove the risk of cross contamination
B) Do nothing, surfaces need not be washed because OC evaporates
C) Treat the surface with a disinfectant before touching it
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14) The active ingredient in OC comes from –

A) The glands of a skunk
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C) A mixture of man-made chemicals
D) Extract of Poison Sumac
E) Bees

15) What distance should you maintain from your opponent when you assume a reactionary gap –

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16) What two factors will you most rely upon to determine your control tactics –

A) Size and strength
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17) A subject sprayed with OC should exhibit all of the following symptoms except –

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A) Decrease
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D) Continue until the subject is in handcuffs
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A) "Spray"
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C) "Move"
D) "Down"
E) "Back"

20) If the cover officer sees the subject reaching for a weapon before he sprays the subject, he should warn the primary officer by shouting –

A) "OC"
B) The name of the weapon
C) "Condition red"
D) "Hands"
E) "Watch out"

OC PEPPER SPRAY
PROFICIENCY EXAM

Print: Last Name,	First Name	Signature	Date
AUSTIN	TERRENCE		11/17/11

RATING INSTRUCTIONS: Rate observed behavior with reference to the scale below. Comment on the most and least satisfactory performance of the day. A specific comment is required on all ratings of 2 or less and 6 or above. Check N.O. if not observed. If trainee fails to respond to training check N.R.T. comment.

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INT = Initial	NRT = Not Responding to Training

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16	Disengage and Spray – 1 Officer, Standing			1	2	3	4	5	6	7		
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25	Works with Students			1	2	3	4	5	6	7		
26	General Proficiency			1	2	3	4	5	6	7		

Instructor Comments:

Instructor Name (print):	JOSEPH SCRIMSHORN		
Instructor Signature		Date	11-17-11

Rev. 6/15/11

Training Coordinator: 74726 11/18/11

DRIG 00566

LUXOR

Defensive Tactics
Cover Sheet

Name:	AUSTIN	TERRENCE	Employee#	693589
	Last	First		

Written Score:	100%	Date:	9/8/11
Proficiency Test:	Pass Fail	Date:	9/9/11

Officer Signature:	Terrence Austin	Date:	9/9/11
Instructor Print:	TONY SCHMIDT	Date:	9/9/11
Instructor Sign:		Date:	9/13/11
Training Manager:		Date:	9/9/11

Instructor's Comments

Passed to be an Instructor

Luxor security officers are not permitted to carry a knife while on duty, unless approved by the property Director of Security and issued by the property.

DEFENSIVE TACTICS MANUAL ACKNOWLEDGMENT

I acknowledge I have received a copy of this manual, read it and understand it. Additionally, I understand it is my responsibility to familiarize myself with all other use of force policies. Finally, I understand it is my responsibility to follow these guidelines when using Defensive Tactics.

Received Date:	9/5 - 9/9/11
Print Trainee Name:	TERRENCE AUSTIN
Trainee Signature:	Terrence Austin
Employee #:	193589
Instructor print:	TONY SCHMIDT
Instructor Signature:	
Training Coordinator:	

13. When searching a subject you should search in the following manner?

A. In sections of two dividing the body at the waist
B. Starting at the feet and working up
(C) In sections of four starting at the head and working down
D. Checking the waist first

14. It has been estimated what percentage of suspects often resist arrest agter the first cuff is applied?

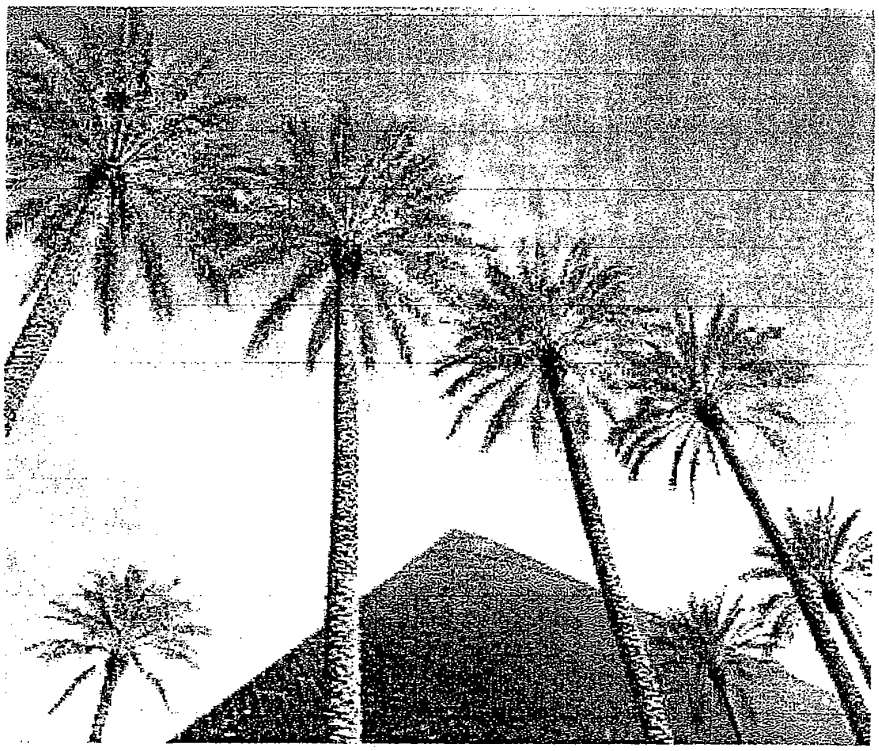
A. 10 to 15%
B. 28 to 38%
(C) 48 to 67%
D. 41 to 62%

15. Name the five footwork techniques used for the basic course.

A. FORWARD
B. REAR
C. NORMAL
D. SHUFFL PIVOT
E. PROGRESSIVE SHUFFLE (PIVOT

16. The Use of Force is based on Resistance.

(T) (F)



DEFENSIVE TACTICS
STUDENT EVALUATION FORM

AUSTIN	TERRENCE	[signature]	9/9/11
Print: Last Name,	First Name	Signature	Date

RATING INSTRUCTIONS: Rate observed behavior with reference to the scale below. Comment on the most and least satisfactory performance of the day. A specific comment is required on all ratings of 2 or less and 6 or above. Check N.O. if not observed. If trainee fails to respond to training check N.R.T. comment.

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2	Position of Advantage (POA)		TA	1	2	3	(4)	5	6	7		
3	Forward Shuffle		TA	1	2	3	(4)	5	6	7		
4	Rear Shuffle		TA	1	2	3	(4)	5	6	7		
5	Normal Pivot		TA	1	2	3	(4)	5	6	7		
6	Shuffle Pivot		TA	1	2	3	(4)	5	6	7		
7	Progressive Pivot		TA	1	2	3	(4)	5	6	7		
8	Compliant Cuffing w/search (two officer)		TA	1	2	(3)	4	5	6	7		
9	Cuffed Search (Incidental)		TA	1	2	3	(4)	5	6	7		
10	Rear Wrist Lock w/Cuffing (POA)		TA	1	2	(3)	4	5	6	7		
11	Rear Wrist Lock - Front w/Cuffing (POI)		TA	1	2	(3)	4	5	6	7		
12	Arm Bar Takedown		TA	1	2	3	(4)	5	6	7		
13	Arm Bar Rollovers		TA	1	2	3	(4)	5	6	7		
14	Goose Neck Controls (two officer escort)		TA	1	2	3	(4)	5	6	7		
15	Reverse Wrist Take Downs		TA	1	2	3	(4)	5	6	7		
16	Prone Position Cuffing (assisted stand up)		TA	1	2	(3)	4	5	6	7		
17	Gun Retention (Same Side – Straight Arm)		TA	1	2	(3)	4	5	6	7		
18	Gun Retention (Same Side – Bent Arm)		TA	1	2	(3)	4	5	6	7		
19	Gun Retention (Cross Grab – Straight Arm)		TA	1	2	(3)	4	5	6	7		
20	Gun Retention (Cross Grab – Bent Arm)		TA	1	2	3	(4)	5	6	7		
21	Gun Retention (Straight Arm – Rear)		TA	1	2	3	(4)	5	6	7		
22	Gun Retention (Cross Grab – Rear)		TA	1	2	3	(4)	5	6	7		
23	Wall Search		TA	1	2	3	(4)	5	6	7		
24	Works with Instructors		TA	1	2	3	4	(5)	6	7		
25	Works with Students		TA	1	2	3	4	(5)	6	7		
26	General Proficiency		TA	1	2	3	4	(5)	6	7		

Instructor Comments:

Instructor Name (print):	Steven Swegman		
Instructor Signature	[signature] 71669	Date	: 9/9/11

Rev. 6/10/11

DRIG 00570

LUXOR®

End of Phase – Weekly Evaluation
FTO Recommendation

Recruit: Terrence Austin **Employee Number:** 693589

FTO: Brian Lothrop **Employee Number:** 709643

Phase/Week: 4 **Date:** 9/20/2010

Is this recruit progressing satisfactorily? (YES) (NO)

Recruit is now: (Behind schedule) (On schedule) (Ahead of schedule)

Significant Strengths:
The trainee as shown good floor duties, in fills poker drop and handle for our guest. He has also shown good hotel patrol procedures

Significant Weaknesses:

FTO Recommendation:
The trainee has retained what he has learned and applys it to his duties good. If he had questions he asked and remembers for next time.

FTO Recommends: (X) **Advancement** ( ) **Remedial** ( ) **Termination**

FTO Signature: Brian Lothrop

Training Manager Signature:

LUXOR®

Field Training Weekly Observation Report

Recruit's Name: Tarronce Dastin EMP #: 693585 Date: 09-19-2020
FTO's Name: Brian Lothrop EMP #: 709648 Report #:

Rating Instructions: Rate observed behavior with reference to the scale below. If Recruit fails to respond to training, check the "N.R.T." box and comment.

Shift: Swings Phase: 4

Categories:	Ratings =	Not acceptable			Acceptable			Superior	N.O.
Appearance:									
General		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ 6	☐ 7	☐
Attitude:									
Acceptance of training program		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ 6	☐ 7	☐
Attitude towards Security work		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ 6	☐ 7	☐
Knowledge:									
Policies and Procedures		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Basic Floor Duties		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
County Ordinances and NRS Statutes		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Performance:									
Basic Floor Duties		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Hotel Patrol		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Outside Orientation		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Orientation / Response time to calls		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Routine Forms (Accuracy / Completeness)		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Field Performance: Non Stress		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Field Performance: Stress		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Investigative Skills		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Interview		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Self initiated field activity		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ 6	☐ 7	☐
Officer Safety: General		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Officer Safety: With Suspects		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Control of Conflict: Voice		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ 6	☐ 7	☐
Control of Conflict: Physical		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Problem Solving		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Radio: Use of Codes / Procedure		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Radio: Listens and comprehends		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Radio: Articulation / Etiquette		☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☐ 6	☐ 7	☐
Relationships:									
With the Public		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ 6	☐ 7	☐
Other department members		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ 6	☐ 7	☐

Minutes of remedial time

Once completed this form shall be printed and signed. The Recruit will be provided a copy. The FTO will then forward this form to the Training Manager for review. Once accepted the completed form will be added to the Recruit's permanent training file. It is the Recruit's responsibility to address any items He/She may disagree with. The Recruit may do so with their FTO, the on Duty Manager, or the Training Manager.

Recruit Officer Signature

FTO Signature

Shift Manager

Training Manager

DRIG 00573

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: ~~Brian Lothrop~~ Terrence Austin Emp. ID #: 693589

FTO: Brian Lothrop Emp. ID #: 709648

Date: 09-19-20P

Phase: 4

Daily Observations

Identify significant strengths:

The trainee has learned and done showroom duties went over the showroom duties went to casino cage and soft count for EVS escort. woke up two sleeper. Observed to females approaching guys.

Identify significant weakness:

None observed.

Brian Lothrop
FTO signature

DRIG 00574

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: Lothrop Emp. ID #:

Date: 9/19/10

Phase: 4

Daily Observations

Identify significant strengths:

EVS - ESCORT Clean up HARD & SOFT COUNT & MAIN CAGE
THEATRE Security
PR Sleeping in BATHROOM & ATRIUM
ASK possible ADAM Henry's to LEAVE PROPERTY
LOST TICKET PROCEDURES
CHECKS ATRIUM AED

Identify significant weakness:

KEY PROCEDURES FOR SOFT COUNT

Trainee signature

Accepted by FTO signature

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: Terrence Austin Emp. ID #: 693585

FTO: Brian Lothrop Emp. ID #: 109648

Date: 9/14/2010

Phase: 4

Daily Observations

Identify significant strengths:

The trainee has done hotel patrol practice, has done 2 locks with self admit 12054, 6215. And noise complaint in room 20304 loud TV in room 20305. The train has listen to the radio heard the lockout in room 3313 then has IA the guest in.

Identify significant weakness:

~~[illegible]~~ has almost used red key first with lock but was fixed his mistake. ~~[illegible]~~

Brian Lothrop

FTO signature

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: Lothrop Emp. ID #: 709642

Date: 9/14/2010

Phase: 4

Daily Observations

Identify significant strengths:

EDWARD 2 ~~POST~~ POST, EDWARD 2 POST
TRACKING, PYRAMID, EAST, WEST TOWERS, UPPER & LOWER
CASINO FLOOR PATROL
LOCK OUTS
COMPLAINTS (NOISE)
GUEST RELATIONS
~~UPPER~~

Identify significant weakness:

GOTTA REMEMBER TO LOG ON RADIO ~~DURING~~ WHEN
~~TRACKING~~ DISPATCHED WHILE TRACKING

Trainee signature

Accepted by FTO signature

DRIG 00577

Field Training Problem Based Learning Exercise Missing Property

You are dispatched to room 13154 for a missing property report. Upon your arrival a male guest states he is missing $5000.00 dollars, airline tickets, and some miscellaneous paperwork from the telephone book where he was hiding it. The guest claims the maid must have taken it. You also notice the telephone book may be recently replaced. How will you resolve this problem?

FIRST, I would try to calm him down. ASK him WAS HE THE ONLY ONE WITH ACCESS to THE ROOM. ASK him to write VOLUNTARY REPORT AND write WHAT his he WAS IN THE ROOM, AND DID HE CHECK FOR MISSING ITEMS. I would ASK him to RETRACE his steps OF when he LAST seen THE ITEMS. ~~Last~~ ASK HIM could he HAVE MISPLACED ITEMS. File A report. ~~Tell him~~ Give HIM A RISK MANAGEMENT CARD WITH Report Number. Tell HIM HE HAS ANY CONCERNS CALL THE NUMBER ON THE ~~BACK~~ CARD. LET HIM NO THAT THERE will BE AN INVESTIGATION. ~~INTO THE MATTER~~

Contact SECURITY MANAGER, FRONT DESK MANAGER ABOUT THE THEFT.

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: Terrance Austin Emp. ID #: 693589

FTO: Brian Lothrop Emp. ID #: 709648

Date: 09/13/2010

Phase: 4

Daily Observations

Identify significant strengths:

The trainee is done basic floor duties fills, poker drop, slot escort, and bb keys for case, the trainee sat at the booth I introduced some things as a booth officer. The trainee is going to do pit drop

Identify significant weakness:

listen on radio and speak clear on radio.

Brian Lothrop

FTO signature

DRIG 00579

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: Lothrop Emp. ID #:

Date: 9/13/2010

Phase: 4

Daily Observations

Identify significant strengths:

POKER DROP
FILLS
SERVICE DOG (ASKED BOSS)
SLOT ESCORT
LEARNED HOW TO DO PIT FILLS
GEOGRAPHY

Identify significant weakness:

REPORTS
SOME RADIO CODES

Trainee signature

Accepted by FTO signature

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee:

Emp. ID #: 693589

FTO: LINTON

Emp. ID #: 736607

Date: 9/8/10

Phase: 3

Daily Observations

Identify significant strengths:

CAUGHT ON VERY QUICK WITH REPORT WRITING TODAY. LEARNED WHO TO CONTACT FOR CERTAIN REPORTS. WROTE A COUPLE "FAKE" REPORTS AND DID VERY WELL FOR BEING HIS 1ST TIME. KNOWS ALL CUT OFFS ON THE 2ND FLOOR. DID GOOD W/

Identify significant weakness:

HAS TO WORK ON GRAMMER AND PUNCTUATION.

736607

FTO signature

DRIG 00581

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: LINTON Emp. ID #:

Date: 9/8/10

Phase:

Daily Observations

Identify significant strengths:

Lock outs
cut offs 2nd FL
MEMORY
GUEST Relations
PATRONS & GUEST (THE DIFFERENCE)
Cut offs to ATRIUM ON 4th FL
Voluntary Report

Identify significant weakness:

NEED A LITTLE MORE PRACTICE ON REPORTS (ACCIdents, INCident)
TRACKING

Terrence Austin
Trainee signature

[signature] - 736607
Accepted by FTO signature

DRIG 00582

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: AUSTIN Emp. ID #: 693589

FTO: LINTON Emp. ID #: 736607

Date: 9/7/10

Phase: 3

Daily Observations

Identify significant strengths:

BROUGHT IN AMR TO THE WEST EMPLOYEE ENTRANCE. OBSERVED OZ BEING USED. DID VERY GOOD AT VERBAL TESTING AND WRITTEN TESTING

Identify significant weakness:

HAS NOT HAD A CHANCE TO WRITE A REPORT ONLY OBSERVE. I WANT HIM TO WRITE AT LEAST 1 WITH ME

736607

FTO signature

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: LINTON Emp. ID #:

Date: 9/7/10

Phase: III

Daily Observations

Identify significant strengths:

AMR, CCFD PROCEDURES
POKER DROP
MEMORY
WHAT ATTRACTIONS ON ATRIUM LEVEL
KNOT COLORS MEAN CODE BLUE = BOMB, CODE RED - FIRE, YELLOW - SMOKE

Identify significant weakness:

~~REPORTS~~ WRITING REPORTS
CSO - PROCEDURES.
~~AREAS~~ STAIRWELLS

Terrence Austin
Trainee signature

Ryan Linton 736607
Accepted by FTO signature

DRIG 00584

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: ~~OT~~ AUSTIN Emp. ID #: 693589

FTO: LINTON Emp. ID #: 736607

Date: 9/6/10

Phase: 3

Daily Observations

Identify significant strengths:

GATHERED INFO ON HOW TO HANDLE A DOMESTIC VIOLENCE. WATCHED ME DO A MISSING PROPERTY REPORT.

Identify significant weakness:

WHEN DOING FOLLS HE FACED THE CAPCT THE WRONG WAY. WHICH CAUSED HIM TO LOSE USUAL OF THE MONEY.

736607

FTO signature

DRIG 00585

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: RYAN LINTON Emp. ID #:

Date: 9/6/10

Phase: 3

Daily Observations

Identify significant strengths:

~~DOMESTIC VIOLENCE REPORTS~~

MISSING PROPERTY REPORTS

CLEARING FILLS

SECURING ROOMS

Identify significant weakness:

DOMESTIC REPORTS

SLOT MACHINES NUMBERS (AREAS)

Terrence Austin
Trainee signature

Ryan Linton 35607
Accepted by FTO signature

LUXOR®

Luxor Security Department
Field Training Critical Task List

Employee #: 693589

Recruit Name: AUSTIN

Field Training Officer

Week #1: LINTON Week #2: forgot to 3 w/ hand Week #3 LINTON Week #4 Lothrop

1. The Field Training Critical Task List (CTL) will be used to document initial training of new officer's during their four weeks in the FTO training program. As the trainee progresses through the program the tasks will become more difficult.

2. The Field Training Officer (FTO) and the trainee will date and initial the start and completion lines for each topic.

3. Each topic should be discussed and performed where applicable. If the Discussed Colum indicates an "XX" it must be performed. The Discussed line should be initialed by the Trainee and FTO once discussion on the topic is completed and both the trainee and FTO agree the procedures concerning the topic are understood. If a topic is not performed during the training period the performed line will not be initialed. The trainee and FTO will only initial the performed line if the topic was performed.

4. It is the responsibility of each FTO assigned to the recruit to discuss and complete as many topics as possible. The recruit cannot be released from the program without having at least discussed each topic and performed at least 95% of all applicable topics.

Phase	Hand-out	Topic	Discussed	Performed
1		**Orientation:**		
		Introductions to other department member		
		Explain sign in procedures	XX TA	XX TA
	X	**Radio procedures**	XX TA	XX TA
		Key control procedures	XX TA	XX TA
	X	**Bulletin boards and assignment schedules**	XX TA	XX TA
		Uniforms and appearance standards	XX TA	XX TA

1		**Time clock procedures**	XX TA	TA
		Telephone procedures	XX TA	
		Customer service standards	XX TA	XX TA
		Property Geography:		
		Casino Level	XX TA	XX TA
		Retail Outlets	XX TA	XX TA
		Attractions Level	XX TA	XX TA
		Hotel	XX TA	XX TA
		Basement	XX TA	XX TA
		Inclinators/Elevators	XX TA	XX TA
		Back of House	XX TA	XX TA
		Outside Areas	XX TA	XX TA
		Officer Safety:		
		Stance and balance	XX TA	
		Minimal safe distance	XX TA	
		Maintain visual contact with suspect (suspects hands)	XX TA	
		Maintain control of suspects movements	XX TA	
		Personal Protective Equipment	XX TA	
		Keep Dispatch informed	XX TA	
		Back up Officers in place	XX TA	
2		**Hotel Procedures:**		
		Patrol/Protrac procedures	TA XX	TA XX
		Location of fire protection equipment/alarms	TA XX	
		Door checks/ajar	TA XX	TA XX
	X	Entry verification	TA XX	
	X	**Pin outs**	XX	
	X	**Room entry procedures**	XX	
		Casino Procedures:		
	X	**Table (Pit) fills**	TA XX	XX
	X	**Table credit and Marker procedures**	XX	
		Incorrect/Voided table fills	TA	
		Poker fills	TA	
		Race & Sports fills	TA	
	X	**Poker/Pit drops**	XX	
	X	**Key (Cage) procedures**	XX	
		Notifying Surveillance	XX	
	X	**Open/Close Hard count**	XX	
	X	**Open/Close Soft count**	XX	
	X	**Funds escort**	XX	
		Card escort		

2	X	Validator drop		
		General patrol		
		Overview of Security booth		
	X	**Key, Camera procedures**	XX	
3		**Emergency Procedures:**		
		AED Locations	XX	
		Delayed elevators		
		Paramedic Escort/Elevator lock out		
		Power outage		
		Windstorm		
		Hazardous material/Gas leak		
		Fire alarm system/Officer response	XX	
	X	**Evacuation procedures**	XX	
		Flooding		
	X	**Bomb threats**	XX	
		Cage/~~Change~~ booth robbery		
		Death and Suicide		
		Other Procedures:		
		Mobile patrol		
	X	**Employee entrance/lot**	XX	
	X	**Lost & Found handling**	XX	
		Overview of Dispatch		
		Photograph requirements		
	X	**Identification checks/Acceptable ID**	XX	
		Domestic disturbance		
	X	**Formal trespass**	XX	
		Arrest/Detention	XX	
		Weapons pat down		
1		**Computer Procedures:**		
		Network Logon		
		Introduction to iTrak		
		Short term vendor List	XX	

Revised 02/25/10

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: Austin Emp. ID #: 693589

FTO: Hayner Emp. ID #: 736278

Date: 08/30/10

Phase: 2 day 1

Daily Observations

Identify significant strengths:

Retains new information very well - takes notes - which is great! Crammed a lot of information in your mind today & you adapted very well & went with the flow. Performed poker drop - 1st time - did good. Pin out room - did on his own after watching 1st time - Room entry procedures you kept in mind office safety. Fills were done perfect & it was his 2nd day of doing fills, went over key cage procedures & he took & returned keys on own, notified surveillance, patrols well & looks for safety issues, minors, id checks, suspicious activity. We walked 2nd floor cut offs - 4th floor shortcuts to atrium, all AEDs etc -

Identify significant weakness:

With so much information I hope you retain most. Study your notes for Eval - ask questions to other officers - refer to your notes also - use your resources. ! Good Luck!

FTO signature

DRIG 00590

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: HAYNER Emp. ID #: 736278

Date: 8/30/10

Phase: 2 day 1

Daily Observations

Identify significant strengths:

LEARNED HOW TO DO POKER PROP, LIQUID SPILL
LOCATED ALL AED, PYRAMID FLOOR ELEVATORS
LEARNED CUT OFFS, FLOOR SECURITY
PIN OUT, UNPIN
LEARNED HOW TO DO LOCK OUT
PIT FILLS
I THINK I STILL KNOW MY NAME (MEMORY

Identify significant weakness:

TOWER FLOORS (HOW MANY)
STAIRWELL

Trainee signature

Accepted by FTO signature

LUXOR®

Field Training Weekly Observation Report

Recruit's Name: AUSTIN EMP #: 693589 Date: 8/28/10
FTO's Name: LEMON EMP #: 736607 Report #:

Rating Instructions: Rate observed behavior with reference to the scale below. If Recruit fails to respond to training, check the "N.R.T." box and comment.

Shift: SWING Phase: I

Categories:	Ratings =	Not acceptable			Acceptable			Superior	N.O.
Appearance:									
General		☐ 1	☐ 2	☐ 3	☒ 4	☐ 5	☐ 6	☐ 7	☐
Attitude:									
Acceptance of training program		☐ 1	☐ 2	☒ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Attitude towards Security work		☐ 1	☐ 2	☒ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Knowledge:									
Policies and Procedures		☐ 1	☐ 2	☒ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Basic Floor Duties		☐ 1	☐ 2	☒ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
County Ordinances and NRS Statutes		☐ 1	☒ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Performance:									
Basic Floor Duties		☐ 1	☐ 2	☒ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Hotel Patrol		☐ 1	☒ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Outside Orientation		☐ 1	☒ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Orientation / Response time to calls		☐ 1	☐ 2	☐ 3	☒ 4	☐ 5	☐ 6	☐ 7	☐
Routine Forms (Accuracy / Completeness)		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Field Performance: Non Stress		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Field Performance: Stress		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Investigative Skills		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Interview		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Self initiated field activity		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Officer Safety: General		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Officer Safety: With Suspects		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Control of Conflict: Voice		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Control of Conflict: Physical		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Problem Solving		☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☒
Radio: Use of Codes / Procedure		☐ 1	☒ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Radio: Listens and comprehends		☐ 1	☒ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Radio: Articulation / Etiquette		☐ 1	☒ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐
Relationships:									
With the Public		☐ 1	☐ 2	☐ 3	☒ 4	☐ 5	☐ 6	☐ 7	☐
Other department members		☐ 1	☐ 2	☐ 3	☒ 4	☐ 5	☐ 6	☐ 7	☐

Minutes of remedial time

Once completed this form shall be printed and signed. The Recruit will be provided a copy. The FTO will then forward this form to the Training Manager for review. Once accepted the completed form will be added to the Recruit's permanent training file. It is the Recruit's responsibility to address any items He/She may disagree with. The Recruit may do so with their FTO, the on Duty Manager, or the Training Manager.

Recruit Officer Signature

FTO Signature

Shift Manager

Training Manager

DRIG 00593

LUXOR®

End of Phase – Weekly Evaluation
FTO Recommendation

Recruit: Austin **Employee Number:** 736607

FTO: Linton **Employee Number:** 693589

Phase/Week: 1 **Date:** 8/28/10

Is this recruit progressing satisfactorily? (YES) (NO)

Recruit is now: (Behind schedule) (On schedule) (Ahead of schedule)

Significant Strengths:

knows basic floor and hotel duties. Arrives to calls in timely manner.

Significant Weaknesses:

needs to work on basic radio codes. And needs to be shown outside more.

FTO Recommendation:

Austin has all basic duties down for both the floor and the hotel. He has done very well for the 1st phase. & even went into 2nd phase critical task

FTO Recommends: (X) **Advancement** ( ) **Remedial** ( ) **Termination**

FTO Signature: [signature] - 736607

Training Manager Signature: _____

Revised 02/12/08

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: AUSTIN Emp. ID #: 693589

FTO: LINTON Emp. ID #: 736607

Date: 8/28/10

Phase: 1

Daily Observations

Identify significant strengths:

HELPED WITH WHEELCHAIR ASSIST TODAY. ALSO RESPONDED IN TIMELY MANNER TO AN IRATE GUEST CALL

Identify significant weakness:

CAN DO BETTER WITH RADIO CODES. DID GOOD IN HOTEL BUT COULD USE MORE WORK

736607

FTO signature

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENICE AUSTIN Emp. ID #: 693589

FTO: LINTON Emp. ID #: 736607

Date: 8/28/10

Phase: 1

Daily Observations

Identify significant strengths:

MEMORY
LEARNING ABOUT OTHER AREAS (DISPATCH)
HELP W/ WHEELCHAIR (AST)
HELP W/ IRRATE GUEST IN LOBBY

Identify significant weakness:

~~[illegible]~~ RADIO CODES
GOTTA REMEMBER W's E's A's T's NUMBERING

Trainee signature

Accepted by FTO signature 736607

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: AUSTIN Emp. ID #: 693589

FTO: LINTON Emp. ID #: 736607

Date: 8/25/10

Phase: 1

Daily Observations

Identify significant strengths:

DID VERY WELL AT VERBAL AND WRITTEN TESTING FOR WHICH ELEVATORS GO TO WHICH FLOOR. ALSO DID PRO TRACKING IN THE EAST TOWER. DID VERY GOOD AT FILLS. TERMS WHERE ALL PETS ARE.

Identify significant weakness:

NEEDS TO WORK ON RADIO TRANSMISSION. EVEN WHEN I TOLD HIM WHAT TO SAY HE WOULD STILL SAY IT WRONG.

736607
FTO signature

DRIG 00597

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: RYAN LINTON Emp. ID #:

Date: 8/25/10

Phase: 1

Daily Observations

Identify significant strengths:

MEMORY ALWAYS A plus
LEARNED TRACKING. I THINK I HAVE it pretty Good.
LOCATIONS - GETTING Better
ROOMS & FLOOR NUMBERS (getting better)

Identify significant weakness:

little confusion on Rooms Floors.
But I'm gettin it

Terrence Austin
Trainee signature

Ryan Linton 73663
Accepted by FTO signature

LUXOR®

Security Department Coaching and FTO Daily Journal

Trainee: AUSTIN

Emp. ID #:

FTO: LINTON

Emp. ID #: 736607

Date: 8/24/10

Phase: 1

Daily Observations

Identify significant strengths:

VERY GOOD MEMORY WAS ABLE TO TAKE ME TO CERTAIN AREAS AFTER ONLY SEEING THEM ONE TIME.

Identify significant weakness:

NEEDS TO LEARN WHAT ELEVATORS GO TO WHICH FLOOR, BUT ITS ONLY 2ND DAY.

736607

FTO signature

LUXOR®

Security Department Coaching and Trainee Daily Journal

Trainee: TERRENCE AUSTIN Emp. ID #: 693589

FTO: RYAN LINTON Emp. ID #: 736607

Date: 8/24/10

Phase:

Daily Observations

Identify significant strengths:

GREAT MEMORY
GREAT LEADERSHIP
GREAT LISTENER
PEOPLE PERSON
PERSONALITY
GREAT ATTITUDE
ALWAYS ON TIME / RESPONSIBLE

Identify significant weakness:

CAN BE TO NICE SOMETIME

Trainee signature

Accepted by FTO signature 736607

DRIG 00600

LUXOR

Security Department Bloodborne pathogens Quiz

Name: TERRENCE AUSTIN Employee # 693589 Date: 8/19/10

What organ is affected by the Hepatitis B Virus?

A) Heart B) Lungs (C) Liver D) All

When removing contaminated clothing, you should fold it carefully so the exposed area is visible to others.

True (False)

The exposure control plan contains information and procedures to protect employees from exposure and transmission of Bloodborne pathogens in the workplace.

(True) False

What is "Occupational Risk?"

_____ Contact with a positive HIV person
_____ Contact with a positive HBV person
__X__ Contact with blood or bodily fluids
_____ Contact with possible HBV, HIV persons

How are contaminated materials disposed of?

RED BAG

You can pick up contaminated broken glass as long as you are wearing gloves.

True (False)

For you to become infected the disease carrying contaminate must enter your body.

(True) False

It's easier to become infected with HIV than with HBV

True (False)

If your hands or other skin is exposed to blood or other body fluids, you should wash them with soap and water, vigorously scrubbing all areas.

(True) False

DRIG 00601

LUXOR®

Security Department Academy Pre-Test

Name TERRENCE AUSTIN **EMP#** 693589

1. Emergency traffic or "33 Traffic" is used whenever there is any type situation where lives could be in danger.

(/) True

( ) False

2. When responding to a report of a domestic violence the first arriving Officer shall not make contact until back up Officer's arrive no matter the circumstances.

(/) True

( ) False

3. When escorting someone under arrest or being detained who will be notified when entering the Casino Security Office. (Check all that apply)

(\) Hotel Manager (NOT)

(\) On Duty Security Manager

(\) Security Dispatch

( ) Slot Manager

(/) Surveillance

4. Card counting is a criminal offense

(\) True

(/) False

DRIG 00602

5. In Security only one person is in complete command

(/) True

( ) False

6. If a guest is unable, or refuses to pay a bill, the inn cannot place a lien on the guest's belongings or prevent the guest from removing personal property from the inn.

(/) True

( ) False

7. A check of handcuff tightness will be conducted at least.

(/) Every hour

( ) Every half hour

( ) Every 15 Minutes

8. When spelling out information phonetically the following would be represented as:

Blue - _____, _____, _____, _____

Red - _____, _____, _____

9. It is a gaming law that a person must produce identification upon request, and a Security officer has complete authority in forcing someone to produce identification.

(\) True

( ) False

10. If you place your hands on an individual to encourage them to go with you to the Casino Security Office has force been used?

(/) Yes

( ) No

11. The trespass warning is Nevada Revised Statute 207.200 (fill in the blanks)

12. No one can remain on our property after being asked by us to leave.

(\) True

( ) False

13. In cases where a Security Officer has not witnessed the crime, you should react based on the information provided by the guest involved and detain the suspect in order to prevent that suspect from leaving the property.

(\) True

( ) False

14. It would be okay to talk to the press if no one else was available to answer their questions

( ) True

(\) False

15. During CPR a rate of 30 – 2 refers to what.

( ) Number of compressions and pulse checks

( ) Number of compressions to breathes

( ) Number of compressions and Officers needed

16. Every crime by a fine of not more than $1000.00 or by imprisonment in a county jail for not more than six (6) months is what type

( ) Misdemeanor

( ) Gross Misdemeanor

( ) Felony

17. Apologizing to a guest for any inconvenience is the same as admitting guilt, therefore, you should never apologize to a guest.

( ) True

( ) False

18. When we conduct a pat-down search we are looking for anything which may be considered unlawful.

( ) True

( ) False

19. If a guest refuses to give us information it means we do not have to complete a report.

( ) True

( ) False

20. Our policy is to check the identification of any person who appears to be under the age of.

30

True

LUXOR®

Security Department Academy Test

NAME TERRENCE AUSTIN **EMP#** 693589

1. Security is the protection from and elimination of any element or agent, which tends to jeopardize the welfare and security of the person, persons or firm by whom you are employed.

(✓) True

( ) False

2. A Security Officer is socially expected to take certain actions when confronted with a disturbance, crime or threats to life and property. This refers to what

( ) The Social Contract

(✓) A Security Officers pledge

( ) The Managers expectations

3. Our policy is to check the identification of any person who appears to be under the age of ___.

(✓) 21

( ) 30

( ) 32

( ) 40

DRIG 00606

4. Card counting is a criminal offense

( ) True

(✓) False

5. In Security only one person is in complete command

(✓) True

( ) False

6. Title ___ is part of the Bank Secrecy Act adopted by the Federal Government to prevent money laundering by monitoring cash activity.

( ) 5

( ) 77

(✓) 31

( ) 50

7. A check of handcuff tightness will be conducted at least (Check all that apply)

( ) Every hour

( ) Every half hour

(✓) Every 15 Minutes

( ) Whenever the suspect tells you the handcuffs are to tight

8. No private person is legally compelled to make an arrest upon another, unless ordered to do so by a Peace Officer.

( ) True

(✓) False

9. When checking proof of age the following form of identification are acceptable (Check all that apply)

(✓) Government issued Drivers License

( ) Voters Registration Card

( ) Government issued Identification Card

( ) Fishing License

(✓) US Resident Alien Card

(✓) US Military Identification

( ) College Identification Card

( ) Passport

10. The law allows only three (3) circumstances in which a detainment can occur where neither the casino nor the employee may be held liable on account of the detainment. What are the circumstances?

1 - Cheating, 2 - Felony, 3 - Shoplifting

11. To call an elevator car during an emergency you would dial "___", plus the car number

( ) 3

( ) 12

(✓) 76

( ) 85

12. A wrongful act, injury, or damage for which civil action can be brought is what type of law

( ) Criminal law

(✓) Tort

( ) Common law

( ) Statutory law

13. The trespass warning is Nevada Revised Statute 207.200 (fill in the blanks)

14. The ADA requires our businesses to allow people with disabilities to bring their service animals onto our premises in whatever areas customers are generally allowed.

(✓) True

( ) False

15. No one can remain on our property after being asked by us to leave.

(✓) True

( ) False

16. The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable searches* and seizures shall not be violated and no warrants shall be issued, but upon *probable cause*, supported by oath or affirmation, and particularly describing to place to be searched and the persons or things to be seized.

( ) 1st Amendment

(✓) 4th Amendment

( ) Bill of rights

17. During an emergency situation Security shall prioritize their activity. The priority shall be?

1 - LIFE, 2 - PROPERTY, 3 - RESTORATION of NORMAL BUSINESS

18. The phrase "Excuse me sir, can I talk to you?" is considered to be?

( ) A way of being polite

( ) Good Customer Service

(✓) A Tactical Peace Phrase

19. If a Guest states they do not want to give an Officer their name or other information during an incident such as an accident, it means the Officer does not need to complete a report.

( ) True

(✓) False

20. During or after an emergency the media shall be barred from the site unless given permission to enter by the Public Relations Department.

(✓) True

( ) False

21. When using a fire extinguisher the acronym P.A.S.S. stands for?

P = PULL

A = AIM

S = SQUEEZE

S = SWEEP

22. Every crime by a fine of not more than $1000.00 or by imprisonment in a county jail for not more than six (6) months is what type

(✓) Misdemeanor

( ) Gross Misdemeanor

( ) Felony

23. A deposition in law, means

(✓) is witness testimony given under oath and recorded for use in court at a later date

( ) A way for Lawyers to decide if they will proceed with their case

( ) An opportunity for the opposing counsel to berate the witness

24. Ego is your ENEMY.

25. A person being formally trespassed can refuse to give you their name or any other personal information.

(✓) True

( ) False

26. If an ID is determined to be invalid, you should confiscate it.

(✓) True

( ) False

27. A person must know they are free to refuse.

(✓) True

( ) False

28. Every suspect will be treated with DIGNITY and Respect, regardless of how they act.

29. When we patdown we look for WEAPONS.

30. A business like the Luxor is not responsible for the safety and care of its guests.

( ) True

(✓) False

31. An assault must be committed with physical contact, and it is not enough to simply show or display force, even if doing so would give the victim reason to fear or expect immediate harm.

( ) True

(X) False

32. Which of the following is *not* true when dealing with verbal abuse?

(a.) Protect your ego

b. Don't take possession of the person's problem

c. Use the word "you" instead of "I" or "me"

d. Don't respond defensibly

33. If a room is being used for illegal purposes, such as drug sales or prostitution, the innkeeper and their agents or employees have no legal right to enter the room as part of the innkeepers function.

(✓) True

( ) False

34. The key in using force lies in what is a reasonable response under the circumstances presented by the threat.

(✓) True

( ) False

35. A Security Officer is covered by the same immunities, as would a federal, state, or local law enforcement officer.

( ) True

(✓) False

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End of Phase – Weekly Evaluation
FTO Recommendation

Recruit: Terrence Austin **Employee Number:** 693589

FTO: Haynes **Employee Number:** 736278

Phase/Week: Final **Date:** 9/21/10

Is this recruit progressing satisfactorily? (YES) (NO)

Recruit is now: (Behind schedule) (On schedule) (Ahead of schedule)

Significant Strengths:

Trainee shows terrific initiative to perform daily duties on his own & is eager to learn & be released from training. He has an incredible memory. He is great with Guests & fellow employees. Uses common sense. Performed Central Floor duties which he had not been exposed to with ease.

Significant Weaknesses: Displays patience with young punks with attitude yet remained firm. → OVER

Talks too low on Radio - Advised him and he practiced throughout the night.

FTO Recommendation:

Trainee Austin will be an asset to our department. He brings a great joking personality and patience, coupled with understanding & previous managerial experience will be useful in dealing with fellow employees & difficult guests. His drive and willingness to learn is also an asset. I would suggest cross training in different positions/posts ASAP - Booth, dispatch etc.

FTO Recommends: (X) **Advancement** ( ) **Remedial** ( ) **Termination**

FTO Signature: Patricia Haynes

Training Manager Signature: _____

Revised 02/12/08 DRIG 00614

Final Evaluation

Instructions: Answer all questions to the best of your ability. If a question requires an explanation, please give a detailed one as short answers will not be acceptable. When giving locations please provide a detailed location, for example: by the west tower near wardrobe, etc. GOOD LUCK!

1) Between what cores is the pool walkover (walkway)?
   CORES 2 + 3
2) Where is group reservations/reservations located?
   ACROSS FROM CARD cutting ROOM
3) Between what cores is stairwell 9?
   CORES 3 + 4
4) What part of the hotel is near the North Dock?
   WEST TOWER
5) Where is stairwell 1 located?
   CORE 1
6) Where can you find the card cutting room?
   ACROSS FROM GROUP RESERVATIONS/RESERVATIONS
7) What can you find at the attractions level/atrium level?
   BODIES, TITANIC, SHOWS (MENO, FANTASY, CARROT TOP)
   FOOD COURT, SHOPS, T+T, BATHROOMS, OXYGEN BAR
   2 OTHER SMALL BARS
8) Where can you find Criss Angel's corvette?
   FRONT WALK MAIN ENTRANCE EAST
9) The poker room is located where on the casino floor?
   HIGH LIMIT
10) What core is the Deli located?
    CORE 2
11) Explain what an NRT is?
    ATM / TICKET REDEMPTION
12) When doing fills, credits and dt's, the white copy goes where?
    WHITE COPY FOLLOWS THE MONEY
13) What floors do you protrac on the upper?
    30 to 11

14) How many pits are there?

7

15) How many officers are dispatched to a guest lock out? How many on a welfare check?

(1) (2)

16) Explain what a welfare check is?

WHEN YOU CHECK ON A PERSON WHO HAS NOT RESPONDED TO AWAKE UP CALL

17) What are Validators?

18) What is the procedure for a guest lock out?

VERIFY ID, CHECK LAST NAME.

19) Explain how to respond to a noise complaint in the hotel?

STAND to THE SIDE. KNOCK ON DOOR "ANNOUNCE Security: KNOCK 2 MORE TIMES. IF NO ANSWER NOTIFY DISPATCH.

20) What is an Adam Henry? Explain how you handle an Adam Henry?

ALLEGE HOOKER, APPROACH ADAM HENRY; ASK FOR PROOF OF AGE IF ADAM HENRY REFUSES OR HAS NONE(ID), POLITELY ASK to LEAVE PROPERTY

21) What are you looking for when you patrol the hotel? And the casino floor?

~~SUSPICIOUS ANYTHING~~ SAFTY HAZZARD, ANYTHING SUSPICIOUS, BROKEN GLASS. SUSPICIOUS ACTIVITY

22) Is a college school id with a picture on it acceptable identification?

NO, IT IS NOT (MUST BE MILITARY, DRV LIC., PASSPORT, STATE/Govt ISSUED W/ PICTURE)

23) What cores is room 11063 in between?

CORE 2 & 3

24) What is NRS 207.200?

TRESPASS WARNING

25) What is pinning out a room? Name the steps to PIN OUT a room?

LOCKING ROOM FROM GUEST ENTERING. ~~INSERT YELLOW KEY~~

INSERT YELLOW KEY (LIGHT WILL BLINK ORANGE & RED

26) In the pyramid, what floor gives you access to the atrium level?

4th Floor

27) On which floor of the pyramid are there cut offs? How many cut offs are there?

2nd Floor 3

28) How many stairwells are in the pyramid? How many are in each tower? (14), (4)

29) How many floors are in the towers? How many in the pyramid? (22), (30)

30) Stairwell 14 is located where on the casino floor?

31) What is the 1209 key used for?

Card cutting Room

32) What is the 86 key used for?

Annex Drop

33) Where is the beauty salon located?

West Tower

34) Briefly explain the duties at the E-1 post?

Check badges, and bags, visitor, vendors

35) Where is the storage area for slots located in the basement?

East service Elevators behind materials Control

36) Which glass back elevator does not have casino level access?

Glass Back 2

37) Elevator 3B accesses which floors?

Floor 16-21

38) Elevator 2B accesses which floors?

Floors 6-15

39) When completing a guest slip and fall accident report, what pictures are required?

picture of accident area, (Guest injuries, shoes, and face (Body parts))

40) Besides the Security Manager and the employee's supervisor, who else is notified for an employee accident?

Property Ops, Front Desk

41) You are sent to a guest illness report. The guest informs you they got ill after eating at the More Buffet and claim it must be food poisoning. What information is required to complete the report?

WHAT THE GUEST ATE IN THE LAST 72 hrs. AND WHAT THEY DRANKED. DETAILED

42) You are dispatched to the Bell desk for a lost ticket/luggage release. What is it and what do you do? VERIFY ID, ASK HOW MANY BAGS? DESCRIPTION

43) You are dispatched to a domestic near Tender Steakhouse. You are first on scene and notice two people pushing each other, what do you do?

CALL FOR BACK UP, AND try to SEPARATE PARTIES if possible

44) There is a medical emergency in audio visual office, AMR and CCFD have been notified. Where will you meet them and what route will be used?

SOUTH DOOR

45) You are responding to a medical emergency in a room in the East Tower. You are asked to escort AMR and/or CCFD to the room. Name two routes which can be used.

NORTH ENTRANCE / CORE 4 EMERGENCY DOOR

46) You have been asked to escort AMR/CCFD to an emergency in the Race and Sports. Which is the best route to use?

CORE 2

47) Where can you find the short cut which takes you from tower to tower?

3RD FLOOR

48) You are dispatched to an active alarm with strobes and audibles on the 12th floor of the pyramid. Dispatch informs you it is a manual pull at Core 4. Explain what you do.

49) What is the difference between back up and assistance?

BACK UP IS WHEN YOU NEED HELP.
ASSISTANCE - WATCH & OBSERVE

50) What is a Code blue? Code Red? Code yellow?

Bomb, FIRE, SMOKE

51) What does 408 mean? 421A?

INTOXICATED

52) Do we force people into the CSO to formally trespass them?

NO, WE ASK would they like to come WITH US

53) What do you do if you verify a minor is gambling and has credits on the slot machine?

ARREST OR ESCORT OFF PROPERT

MINOR KEEPS money

54) How many levels are in the Use of Force Continuum?

5

[illegible]
8-3-10

Mid Term Evaluation Test

100% Great job!

1. How many floors in the pyramid? 30
2. How many floors in each tower? 22
3. How many stairwells in the pyramid? 14
4. How many stairwells in each tower? 4
5. What floor is the short cut connection to the towers on? 3
6. In the pyramid, starting at elevator set 1 on the 2nd floor, how many cut offs are there in which you will have to take a stairwell up or down to the next floor to proceed on the second floor? 3
7. How many guest entrances are there in the pyramid? 5
8. How many guest elevators are in the pyramid? 28
9. How many guest elevators are in the pyramid on the casino floor? 23
10. How many guest elevators are there in each tower? 8
11. Each elevator set in the pyramid has a number followed by a letter. Letter A represents what set elevators and letter B represents what set of elevators? A = GLASS BACK B = REGULAR
12. How many pits on the casino floor? 7
13. How many AED locations are there to be utilized by security incase of emergencies? 12
14. How many short cuts from the fourth floor of the pyramid to the attractions level? 2
15. How many "Starbucks" coffee shops are there on Luxor property? 3
16. When doing fills, the white copy follows what? MONEY
17. What do you verify on a guest lockout? ID LAST NAME
18. What pit is the "Party Pit?" TABLE 6
19. What pit is the "Craps" pit? 5
20. How many tables in the poker room? 11 OR 8 LIVE
21. What is the Nevada Revised Statute Number for trespass? 207.200
22. From the center of the casino floor, the pool area is in what direction? ~~SOUTH~~ WEST
23. From the security booth, the main entrance is in what direction? ~~SOUTH~~ EAST
24. From the pool area, the Excalibur walk way is in what direction? NORTH
25. From the parking garage of the Luxor, the main cage is in what direction? SOUTH

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Luxor Security Department
Training Acknowledgement

I read and understand the standards of the Security Department policies on Arrest, Detainment and Formal Trespass.

Date: 8/13/10

Employee Number: 693589

Employee Name: Terrence Anton

DRIG 00621

LUXOR®

Security Department Emergency Response Training Acknowledgement

I TERRENCE AUSTIN, have attended the Luxor Security Departments training on Emergency Response. I understand the protocols set by this department when faced with an emergency situation and agree to maintain their standards. I also agree it is my responsibility to know and follow the policies in their entirety and if I find any part of it confusing to make my Instructor aware so it may be clarified.

1. I 'am aware of all emergency evacuation routes from the building and understand it is my obligation to oversee the evacuation of all individuals from an affected area.
TA Initial

2. I understand the safety of guests and employees is the responsibility of the Security Department generally and the Officers on the scene specifically.
TA Initial

3. I understand If I' am instructed to evacuate and discontinue efforts I will Evacuate by the most practical way taking all guests and employees with me.
TA Initial

4. I have been trained on the procedures I 'am required to take when faced with an emergency condition which cannot be extinguished or controlled without placing myself in jeopardy including evacuation, immediate notification and request for emergency services, and causing a manual notification by pull station.
TA Initial

5. I have been trained on conducting a room by room search effectively and safely.
TA Initial

6. I 'am aware once the evacuation of an area has occurred re-entry will be prohibited except to responding emergency service personnel, Security, authorized executives, and Property Operations.
TA Initial

7. I have been trained on the gathering points, emergency command areas, and secondary dispatch locations and understand their purpose and procedures.
TA Initial

8/18/10	693589	TERRENCE AUSTIN	Terrence Austin
Date	Emp#	Printed Name	Signature

Instructor _____ Emp# _____

DRIG 00622

TA I understand that I am responsible for following all of the policies listed above and any failure to do so could result in revocation of my work card and in closing of a venue or operation. If I am unsure about any part of this material, I will seek clarification from my supervisor.

If you are unable to read and understand the attached policies provided to you in English, please advise Human Resources/Employee Relations so that arrangements to have the policy translated for you are made.

TERRENCE AUSTIN	SECURITY OFFICER
Print Employee Name	Position/Title
Terrence Austin	693589
Signature	Employee Number
8/18/10	
Date Completed	

LUXOR

ACKNOWLEDGEMENT FORM

This document attests that I have attended the Luxor Hotel and Casino ***Leased Club and Lounge Venue Security and Luxor Security Training***. I have been trained and/or informed and understand the following information. *(Please initial on the left and sign at the bottom.)*

Employee Initials:

TA I accept responsibility for recognizing signs of intoxication, sizing up customers, ability to slow down consumption of alcohol, cutting off intoxicated customers, and understand effects of alcohol intoxication including severe medical incidents. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility on how to handle intoxicated customers who are not in the casino by not escorting them into the casino and notifying security. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility for monitoring activities at tables, bars, and restrooms and will immediately report any observations of illegal activity. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility to manage social behavior, enforce dress code, ID and eviction of violators, and monitoring of activities such as theft. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility to recognize larceny as well as the effects of prostitution. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I acknowledge that access to venues and locations by Law Enforcement and regulatory personnel is to be immediately granted with a business card or official ID. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that minors are prohibited in bars, lounges, and nightclubs and all employees must check identification. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that the use of excessive force and/or anything defined as such will not be tolerated. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that an arrest made on the premises should be a last resort and the elements of the crime must have been met. I am responsible for providing proper documentation in the event of identifying witnesses and any necessary statements. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I understand that it is my responsibility to observe and if necessary intervene when inappropriate behavior is witnessed.

TA I understand that I should only patrol my area of responsibility. If I am unsure about any part of this material, I will seek clarification from my supervisor.

TA I accept responsibility to evaluate customers before they enter a venue and asses attitude and demeanor. In the event that a customer is a VIP they do not bypass proper procedures. If I am unsure about any part of this material, I will seek clarification from my supervisor.

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The Luxor Security Department has installed a new notification system (3n) which will allow Security to initiate all notifications to Executives, and Security members in the event of an emergency. This new system is fully automated and will make notifications by several different means including telephone, email, and text messaging. The systems primary use will be to notify Executives, Managers, and Security Department members when an emergency has occurred on property which we may need to respond to. An example of this would be in a catastrophic event where we require more manpower to contain the situation, or specific instructions followed not unlike the systems used by police services now. The information provided will not be shared and is kept on a confidential server.

Thank you
Kelly Belford
Security Training Manager

Name: TERRENCE AUSTIN
Employee Number: 693589
Address: _____
City, State, Zip: _____
Email #1: TERRENCE.AUSTIN@YAHOO.COM
Email #2: INTERCEPTOR422APP@YAHOO.COM
Business Phone: _____ Ext: _____
Mobile Phone: 702 289-0557 Carrier: BOOST
Home Phone: _____
Other Phone: 712-406-9442
Text Message Number (if different then mobile): _____

DRIG 00625

LUXOR®

Security Department Parking Permit Application

Red Lot Employee Parking

Employee Name TERRENCE AUSTIN Employee # 693589

Department/Position SECURITY / SECURITY OFFICER

Make of Car (Primary)	INFINITY G35	Model (ex. Camry, Charger)	INFINITY		
Plate State		Plate Number		Color	BLUE

Make of Car		Model (ex. Camry, Charger)			
Plate State		Plate Number		Color	

Make of Car		Model (ex. Camry, Charger)			
Plate State		Plate Number		Color	

For Security Department Use Only

Request Date _____ Pass# _____

☐ New DOH _____

☐ Replacement Old Pass# _____ Receipt# _____

☐ Lot Change Previous Lot _____ Old Pass# _____

ADA compliant _____ Expiration _____

DRIG 00626

LUXOR®

Security Department

Monday, August 11, 2008

I have been issued badge #92. I agree I 'am responsible for this badge and agree should it become lost or stolen it will be immediately reported to the on duty Security Manager. I also agree if it is lost I 'am responsible for its replacement cost of $65.00.

693589

Employee Number

TERRENCE AUSTIN

Name

Terrence Austin

Signature

DRIG 00627

MGM MIRAGE

INTERNAL COMMUNICATION

TO: All Security Department Personnel 8/12/2010

FROM: Kyle Edwards Vice President of Corporate Security

RE: **POLICY CONCERNING CONFIDENTIALITY**

All confidential information must be kept in strict confidence. Confidential information includes all information about our customers, potential customers and employees, including information regarding credit or play data. The key to confidentiality is that employees may neither disclose nor make unauthorized use of Company information acquired by the employee in the course of employment.

All information obtained by the Surveillance Department and/or any of its employees acting in the course of employment or utilizing any Company property, including written materials and recorded information (whether photograph, audio, video tape, DVD, or any other format; collectively "Recordings") is (a) Company property, (b) is confidential information and (c) may be utilized only on behalf of the Company.

Recordings may not be made or duplicated by any means for personal use. Personal use of surveillance equipment (including any use of surveillance equipment for purposes unrelated to surveillance on behalf of the Company) is against Company policy and standards and will not be tolerated.

Any violation of this Policy concerning Confidentiality will be grounds for disciplinary action, up to and including termination.

ACKNOWLEDGMENT

I have reviewed and understand the above Policy Concerning Confidentiality. I understand that if I violate the above policy, I will be subject to disciplinary action, and that such disciplinary action may include termination.

Name: Terrence Date: 8/12/10

DRIG 00628