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Elizabeth A. Brown
Clerk of Supreme Court

6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

7
8 EVANGELINA ORTEGA, AN INDIVIDUAL;
9 AND MIRIAM PIZARRO-ORTEGA,
AN INDIVIDUAL,

10 Appellants,

11 vs.

12 CHRISTIAN CERVANTES-LOPEZ, AN
13 INDIVIDUAL; AND MARIA AVARCA, AN
INDIVIDUAL,

14 Respondents.
15

CASE NO.: 68471

16 **OPPOSITION TO EMERGENCY MOTION TO CONTINUE ORAL**
17 **ARGUMENT HEARING ON MARCH 16, 2017**

18 COMES NOW, Appellants EVANGELINA ORTEGA and MIRIAM
19 PIZARRO-ORTEGA, by and through their attorneys of record, the law firm of
20 ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and hereby submit the
21 following Opposition to Motion to Continue Oral Argument on March 16, 2017.

22 **ARGUMENT**

23
24 **A. Plaintiff's Motion Is Untimely Pursuant to NRAP 34(a).**

25 NRAP 34 governs any request for postponement of oral argument. That section
26 states, in pertinent part:
27

1 (a) Notice of Argument; Postponement. The clerk shall advise all parties of
2 the date, time, and place for oral argument, the time allowed for oral
3 argument, the court before which argument will occur, and if before the
4 Supreme Court, whether it will be before the full court or a panel, and if
deemed appropriate, the issues to be addressed at oral argument. A
motion to postpone the argument must be filed reasonably in advance of
the date fixed for hearing.

5 (b) Time Allowed for Argument. Unless the case is submitted for decision
6 on the briefs under Rule 34(f), each side, at the court's discretion, will be
7 allowed 15 or 30 minutes for argument. If counsel believes that additional
8 time is necessary for the adequate presentation of his or her argument,
9 counsel may request such additional time as he or she deems necessary.
A motion to allow longer argument must be filed reasonably in advance
of the date fixed for the argument and shall be liberally granted if cause
therefor is shown. A party is not obliged to use all of the time allowed,
and the court may terminate the argument whenever in its judgment
further argument is unnecessary.

10 Notice was sent to the parties on February 16, 2017 of the upcoming oral
11 argument. A reminder notice was sent to the parties on March 3, 2017. At no time
12 following the receipt of these notices did counsel disclose to this Court or the
13 Defendants that additional counsel would be appearing in this matter. The basis of the
14 motion relies upon this additional counsel, who have not actually substituted or
15 associated in as appellate counsel, having a trial conflict. This motion is therefore
16 untimely and inappropriate, given that the Affiant, Joel Henriod, is not Appellate
17 counsel of record. It is unclear how Mr. Henriod planned on handling the oral argument
18 when no notice, association of counsel or substitution of counsel was provided to the
19 Court or parties.

20 Additionally, there are only three judicial days between this motion and the oral
21 argument. Counsel has already spent significant preparation time for the scheduled
22 hearing. NRAP 34(a) requires that the motion be submitted a reasonable time ahead of
23 the scheduled argument. The timing of the motion is unreasonable given any true
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1 emergency. The motion does not state why current Plaintiffs counsel could not handle
2 the argument, as he is intimately familiar with the case.

3 **B. Plaintiff's Motion Does Not Present an Emergency under NRAP 27(e).**

4 NRAP 27(e) governs the filing of emergency motions. That section states, in pertinent
5 part:
6

7 (e) Emergency Motions. If a movant certifies that to avoid irreparable harm
8 relief is needed in less than 14 days, the motion shall be governed by the
following requirements:

9 (1) Before filing the motion, the movant shall make every practicable effort
10 to notify the clerk of the Supreme Court, opposing counsel, and any
opposing parties proceeding without counsel and to serve the motion at
11 the earliest possible time. If an emergency motion is not filed at the
earliest possible time, the court may summarily deny the motion.

12 (2) A motion filed under this subdivision shall include the title "Emergency
13 Motion Under NRAP 27(e)" immediately below the caption of the case
and a statement immediately below the title of the motion that states the
14 date or event by which action is necessary.

15 (3) A motion filed under this subdivision shall be accompanied by a
certificate of the movant or the movant's counsel, if any, entitled "NRAP
16 27(e) Certificate," that contains the following information:

17 (A) The telephone numbers and office addresses of the attorneys for the
parties and the telephone numbers and addresses for any pro se parties;

18 (B) Facts showing the existence and nature of the claimed emergency; and

19 (C) When and how counsel for the other parties and any pro se parties
20 were notified and whether they have been served with the motion; or, if
not notified and served, why that was not done.

21 Plaintiff did not present any facts justifying an emergency situation to continue
22 oral argument. While Plaintiff was apparently considering associating counsel as early
23 as February 27 (when notice was received), at no time did Plaintiff associate or
24 substitute appellate counsel into the case. Furthermore, Plaintiff cites to no authority
25 which stands for the proposition that association of appellate counsel is an emergency
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27


1 situation justifying continuation of oral argument.

2 The main issue on appeal involves the Plaintiff's failure to provide a computation
3 of damages pursuant to NRCP 16.1. This is a violation of the court rules, and not
4 "personal accusations". Plaintiff has stated no reasons justifying a continuance, given
5 that current counsel is familiar with the arguments and issues before this Court.
6

7 Appellants request that the emergency motion be denied.

8 DATED this 10 day of March, 2017.

9
10 ROGERS, MASTRANGELO, CARVALHO &
MITCHELL

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1 CERTIFICATE OF MAILING

2 The undersigned hereby confirms that on the 10th day of March, 2017, a true
3 and correct copy of the foregoing **OPPOSITION TO EMERGENCY MOTION TO**
4 **CONTINUE ORAL ARGUMENT HEARING ON MARCH 16, 2017** was served
5 via Electronic Service and placed in the U.S. mails at Las Vegas, Nevada, first-class
6 postage fully prepaid thereon, addressed to the following:

7
8 DANIEL S. SIMON, ESQ.
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14 Attorney for Respondent

15 
16 An employee of the ROGERS, MASTRANGELO,
17 CARVALHO & MITCHELL

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